INTERNATIONAL ENERGY AGENCY



VOLUME ONE

ORIGINS AND STRUCTURE

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The International Energy Agency (IEA) is an autonomous body which was established in November 1974 within the framework of the Organisation for Economic Co-operation and Development (OECD) to implement an international energy programme.

It carries out a comprehensive programme of energy co-operation among twenty-three* of the OECD's twenty-four Member countries. The basic aims of the IEA are:

i) co-operation among IEA participating countries to reduce excessive dependence on oil through energy conservation, development of alternative energy sources and energy research and development;

ii) an information system on the international oil market as well as consultation with oil companies;

iii) co-operation with oil producing and other oil consuming countries with a view to developing a stable international energy trade as well as the rational management and use of world energy resources in the interest of all countries;

iv) a plan to prepare participating countries against the risk of a major disruption of oil supplies and to share available oil in the event of an emergency.

* *IEA participating countries are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States. The Commission of the European Communities takes part in the work of the IEA.*

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Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

— to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
— to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
— to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

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THE HISTORY OF THE INTERNATIONAL ENERGY AGENCY
THE FIRST TWENTY YEARS

VOLUME I

ORIGINS AND STRUCTURES OF THE IEA

Table of Contents

Executive Director's Foreword 11

Table of Abbreviations 15

Chapter I Introduction 19

Chapter II Origins of the IEA 27

A. Economic and Political Origins: Crisis of 1973-1974 27
1. Events Leading Up to the IEA 27
2. Producer Countries' Organization 30
3. Industrial Countries' Institutional Arrangements 33
4. Industrial Countries' Responses 36

B. Industrial Countries' New Organizational Requirements 38
1. Lessons of the 1973-1974 Crisis 38
2. Range of Institutional Alternatives 40

C. Diplomatic and Institutional Steps to Establish the IEA 43
1. Pilgrims Society Speech 43
2. Washington Energy Conference 45
3. Energy Co-ordinating Group (ECG) 46
4. Founders' Objectives 48
5. OECD Council Decision 49
6. Agreement on an International Energy Program 55
7. Governing Board Decision on the Program 58

Chapter III The I.E.P. Agreement of 1974 61

A. Legal Status of the I.E.P. Agreement in International Law 63

B. Legal Effect of the I.E.P. Agreement in the National Law of Members 64

C. IEA Participating Countries, States, Signatory States and Governments 66

D. Provisional Application 67

E. Consents to Be Bound 69

F. Absence of Reservations; Acceptance of Declarations 71

G. Entry into Force 73

H. Accession 74

I. Right of Accession of the European Communities (European Union) 76

J. Application to Territories 79

K. Amendments 81

L. Disputes 84

M. Interpretation 87

N. General Review of the I.E.P. 91

O. Depositary 93

P. I.E.P. Agreement Languages 94

Q. Withdrawal 94

R. Duration 95

Chapter IV IEA Relationships 97

A. Membership in the IEA 97
1. Signatories 98
2. Membership by Accession 99
3. Exceptional Situation of Norway 104
4. Federal States 110
5. Territorial Changes: Germany 114
6. Policy Considerations and Recent Developments 114

B. Obligations of Members 116
1. Commitments Directly Under the I.E.P. Agreement 116
2. Binding Decisions of the Governing Board 120
3. Other Actions of the Governing Board 122
4. Commitments Under Other Agreements 123
5. Flexibility and Waiver of Rights Under the I.E.P. Agreement 125

C. The IEA as an Autonomous Agency of the OECD 129
1. The IEA-OECD Legal Relationship in General 129
2. Programme Autonomy of the IEA 132
3. Financial Autonomy of the IEA 135
4. Autonomy in Personnel Questions 138

D. Competence in External Relations 143
1. General Purposes and Powers 143
2. Committee on Non-Member Countries (NMC) 147
3. Situation of the European Communities (European Union) 151
4. Capacity to Enter into International Agreements 155

Chapter V Internal Structure of the IEA 157

A. The Governing Board 157
1. Functions and Competence 157
2. Composition 161
3. Meetings at Ministerial and Official Levels 162
4. Informal Meetings 167
5. Place and Frequency of Meetings 169
6. Convening Meetings 171
7. Representation 172
8. Rules of Procedure 173
9. Closed and Open Meetings 176
10. Observers 177
11. Officers and Elections 180
12. Agendas 182
13. Voting and Consensus 184
(a) Unanimity 188
(b) I.E.P. Majority 189
(c) First Special Majority 193
(d) Second Special Majority 195
(e) Norway and IEA Voting 196
14. Abstentions 200
15. Written Procedure 201
16. Effect of Actions: Decisions, Recommendations, Declarations, Conclusions and Others 205
(a) Political Commitments 206
(b) Legal Commitments 210
(c) Recommendations 215

17. Creation of Other Organs 217
(a) Committee on Budget and Expenditure (BC)..... 218
(b) Committee on Energy Research and Technology (CERT) 218
(c) Committee on Non-Member Countries (NMC)..... 219
(d) Industry Advisory Board (IAB)..... 220
(e) Coal Industry Advisory Board (CIAB)..... 221
18. Special Activities 222
19. Conclusions and Minutes..... 224
(a) Governing Board Meetings at Official Level..... 224
(b) Ministerial Level Meetings..... 227
20. Management Committee 228

B. The Standing Groups..... 230
1. Function and Competence..... 230
2. Procedures 234

C. The Committees..... 236
1. Function and Competence..... 237
2. Procedures..... 240

Chapter VI The Secretariat..... 241

A. Powers of the Governing Board..... 242

B. Establishment of the Secretariat 244

C. Relation to the OECD 247

D. Combined Energy Staff..... 248
1. Establishment 248
2. Services to the OECD..... 252

E. The Executive Director 254
1. Functions 254
2. Appointment 259
3. Voting Rule for Appointments 261
4. Term of Office 262
5. Conditions of Service 264

F. The Deputy Executive Director 264
1. Functions 264
2. Appointment 265
3. Term of Office 267
4. Conditions of Service 267

G. Staff Policies and Conditions of Service 268

Chapter VII Programmes of Work, Budgets and Finance 273

A. Introductory Summary 273

B. Programmes of Work 276
1. Function 276
2. Content and Style 281
3. Procedure 282

C. Budgets 285
1. Function 285
2. Content and Style 286
3. Procedure 288

D. Governing Board Functions and Procedures 290

E. Committee on Budget and Expenditure 293

F. Members' Financing Obligation 295

G. Scale of Contributions 297
1. Calculation 297
2. Membership Changes 300
3. Procedure 302

H. Voluntary Contributions and Grants 303
1. Authority 303
2. Description of Contributions 303
3. Alternative Financing 304
4. Procedures 305

I. Financial Regulations 306

J. Expenditure for Special Activities 310

K. Audits 312

Chapter VIII General Principles of the Agency 317

A. Operational Efficiency 317

B. Security 318
1. Brief Description of the IEA Security System 323
2. Security During the Gulf Crisis (1990 - 1991) 329
3. Policy of Openness 331

C. Languages 332

D. Documents 339

Appendices 343

Appendix I Membership 343

Appendix II Officers of the Governing Board at Ministerial and Official Level, Standing Groups and Committees 345

Appendix III Agreement on an International Energy Program 353

Appendix IV OECD Council Decision on the Establishment of the Agency 405

Appendix V Organization of the IEA Secretariat 411

Appendix VI Highlights of Principal IEA Events 1974-1993 413

Foreword

The International Energy Agency celebrates in 1994 the twentieth anniversary of its founding. The marking of this event presents the occasion for a systematic look back at the history of the Agency's origins, structures, policies and actions. Focusing on the main industrial countries' co-operation on energy policy, the history begins with the troubled days of the 1973-1974 Middle East War crisis and its immediate aftermath, when the oil producers appeared relatively well organized to utilize their new oil based economic and political power, while the industrial countries were inadequately equipped with information and organization to meet the corresponding challenges to them.

The vulnerability of the industrial countries was dramatized in the course of the crisis by the Arab embargo and the shock of rapidly rising prices for oil. During the years leading up to the crisis, the industrial countries became increasingly dependent upon oil imported mainly from one region known for its political fragility. The reasons for this dependence are well understood. The industrial countries permitted excessive and even wasteful and inefficient use of energy and of oil in particular. Energy conservation measures in those countries were woefully underdeveloped. Their oil production potential was not fully realized, nor was sufficient investment devoted to the development of other energy sources as alternatives to oil. They had yet to devise a workable system for responding to serious disruptions in oil supply; and their organizational arrangements for co-operation could not enable them to cope effectively with the institutional implications of those situations. All considered, a surer formula for the eruption of disagreeable surprises would be difficult to imagine.

One constructive outcome of the crisis was the sudden and intense attention that governments and populations in the industrial countries concentrated on "the energy problem", and this soon brought calls for rapid

responses by policy makers. In situations of short supply in energy, "beggar-my-neighbour" policies would have to be avoided as tending to *worsen* and *expand* economic hardship, while the adoption of *burden* sharing arrangements and policies designed to *mitigate* economic hardship would have to be formulated and implemented. The policy and institutional lessons of the crisis led swiftly in November 1974 to the establishment of the IEA with a broad mandate on energy security and other questions of energy policy co-operation among Member countries. The main policy decisions and the Agency framework were firmly anchored in the IEA treaty called the "Agreement on an International Energy Program", and the new Agency was lodged as a mutual convenience at the OECD in Paris. The Agency would become, as this *History* shows, the focal point for the industrial countries' energy co-operation on such issues as: security of supply, long-term policy, information "transparency", energy and the environment, research and development and international energy relations.

Over the ensuing twenty years, the Agency's operational mandate has expanded, particularly in the sectors of *energy and the environment* and co-operation with *non-Member* countries, without reducing the importance of ensuring the overall objective of security of energy supply in adequate amounts at affordable prices. Since the establishment of the Agency, energy markets have become more global and transparent, with decisive effects upon the balance of supply and demand. Hence IEA Members are giving high priority to the improvement of energy policies, which contributes to the equilibrium of world energy markets, and to the sharing of experience and longer-term perspectives not only among themselves but also with the rest of the energy consuming and producing world.

Volume I of the *History* recounts these events from the crisis period through the diplomatic response stage, the adoption of the institutional instruments and the start-up of the IEA, and examines the evolving structure of the Agency over its first twenty years. This description and analysis of the Agency's origins and structures will be followed by Volume II which will take up more specifically, sector by sector during the same period, the activities of the Agency, Members' co-operation on energy policies and IEA operations. Volume III will contain a collection of the key reference documents on IEA activities discussed in the *History*.

In producing this work at my request, Richard Scott, an IEA Senior Consultant, has drawn upon his IEA experience going back to the 1974 negotiations on the Agreement and continuing during most of the past twenty years in which he served the Agency as its chief Legal Counsel.

Although the author was afforded Secretariat assistance and direct access to all IEA documentation, he has prepared this *History* entirely upon his independent responsibility and not as a representative of the Agency, thus enhancing the work's objectivity and overall usefulness. The author's independent views may not necessarily coincide, of course, with those of the Agency, its Member countries or the Secretariat.

I gratefully acknowledge the valuable contribution made by Mr. Scott in producing this book and the assistance provided by many present and past colleagues in the Agency. I wish particularly to acknowledge the leading roles of my predecessor Executive Director, Dr. Ulf Lantzke, and the two successive Deputy Executive Directors who served the IEA during the past twenty years, Messrs J. Wallace Hopkins and John P. Ferriter, in developing the Agency into the effective instrument for energy policy co-operation it has become today.

Helga Steeg
Executive Director

Table of Abbreviations

ADD	Addendum
AHGIER	Ad Hoc Group on International Energy Relations
AST	Allocation Systems Test
bbl	price (of oil) per barrel
BC	Budget Committee
BPFC	Base Period Final Consumption
C	Council
CADDET	Centre for Analysis and Dissemination of Demonstrated Energy Technologies
CCH	Commerce Clearing House
CEC	Commission of the European Communities (European Commission)
CEET	Centre for European Economies in Transition
CERM	Co-ordinated Emergency Response Measures
CERT	Committee on Energy Research and Technology
CES	Council and Executive Secretariat
CIAB	Coal Industry Advisory Board
CIF	Cost, Insurance and Freight
CORR	Corrigendum
CPE	Centrally Planned Economies
CRD	Committee on Energy Research and Development
CVW	Combined Voting Weights
DAE	Dynamic Asian Economies
DED	Deputy Executive Director
DG	Direction Générale of the European Commission
DSC	Dispute Settlement Centre
EC	European Communities
EEC	European Economic Community

ECG	Energy Co-ordinating Group
ECMT	European Conference of Ministers of Transport
EET	European Economies in Transition
EMM	Emergency Management Manual
EPCA	Energy Policy Conservation Act (United States, 1975)
ESS	Emergency Sharing System
EU	European Union
EXD	Executive Director
GATT	General Agreement on Tariffs and Trade
GREENTIE	Greenhouse Gas Technology Information Exchange
GVW	General Voting Weights
IAB	Industry Advisory Board
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
IEA	International Energy Agency
I.E.P.	International Energy Program
IIAB	International Industry Advisory Body
IPCC	Intergovernmental Panel on Climate Change
ISAG	Industry Supply Advisory Group
IWP	Industry Working Party
LTCP	Long-Term Co-operation Programme
mbd	million barrels (of oil) a day
NATO	North Atlantic Treaty Organization
NEA	Nuclear Energy Agency
NMC	Committee on Non-Member Countries
NESO	National Emergency Sharing Organisation
NIS	Newly Independent States
OAPEC	Organization of Arab Petroleum Exporting Countries
OECD	Organisation for Economic Co-operation and Development
OEEC	Organisation for European Economic Co-operation
OLADE	Latin American Energy Organization
OLC	Office of the Legal Counsel
OLIS	On-Line Information Service
OPEC	Organization of Petroleum Exporting Countries

ORGA	Official Records of the General Assembly
OVW	Oil Consumption Voting Weights
PROV	Provisional
QA	Questionnaire A
QB	Questionnaire B
QC	Questionnaire C
R & D	Research and Development
R D & D	Research, Development and Demonstration
REV	Revision
SEQ	Standing Group on Emergency Questions
SFRY	Socialist Federal Republic of Yugoslavia
SLT	Standing Group on Long-Term Co-operation
SOM	Standing Group on the Oil Market
SPC	Standing Group on Relations with Producer and Other Consumer Countries
UNCED	United Nations Conference on Environment and Development
UNTS	United Nations Treaty Series

Introduction

During the Middle East War crisis of 1973-1974, the main industrial countries became painfully aware of their vulnerability to the new economic power of the oil producer countries. For the industrial countries, the sting in that crisis derived from their sudden need to respond to the oil embargo by a number of Arab producers and from the price spike that took oil prices rapidly to historic and damagingly high levels. Perhaps even more troublesome, however, was the realization that, having accepted for some years the short-term luxury of growing oil import dependence, the industrial countries were themselves largely responsible for the very predicament in which they suddenly found themselves.

As discomforting as that realization might have been at the time, it became the wellspring of the industrial countries' response and was a necessary step in building the new institutional systems which could make the problems more manageable. One promising element was the notion that if those countries bore their share of the responsibility for causing the crisis, they might find within themselves the means of resolving or controlling the situation in the future. Their contributions to the extent of the crisis had included excessive reliance on oil generally and imported oil in particular, insufficient investment in indigenous oil exploration and exploitation, in diversification of energy sources and in the development of energy technologies. To this list must be added weak conservation and energy efficiency measures, inadequate collection and use of data on the operation of the oil market and the absence of arrangements for workable systems of oil supply shortfall management. Increasing the industrial countries' vulnerability still further was their capstone failure to organize themselves properly by means of institutions designed to deal successfully with those problems and others to come in the years ahead.

Realization of the scope of these shortcomings gave the industrial countries the impetus to join together to take the rapid, decisive and innovative remedial action through organized international co-operation. In

order for their combined efforts to be effective, the main industrial countries in North America, Western Europe and the Far East, already grouped together in the OECD, would have to participate in strength in a new energy agency. The International Energy Agency was the co-operation vehicle they created to ensure their future energy security (including an emergency oil sharing system) and the optimum management of the energy policy problems which had led them into the crisis.

Although the international system did not then offer co-operative organizations with suitable, ready-made institutional *solutions*, the system did provide the *means* to establish a suitable institutional arrangement in a short period of time. The system had already produced a multitude of international organizations in many different configurations for a variety of purposes, and thus provided guidance and a wealth of experience to draw upon or steer away from. In the forming of the IEA, the key instruments proved to be international treaty law and the use of a treaty to establish an intergovernmental organization designed to meet the particular problems of the industrial countries. The venerable treaty device was utilized on 18 November 1974 in the form of the "Agreement on an International Energy Program" [usually called the "I.E.P. Agreement", reproduced below in Appendix III].

The I.E.P. Agreement set forth in formally binding terms the necessary provisions for the oil Emergency Sharing System and other elements of the Agency, and provided the framework for co-operation. Although the main objective of the founders was to build the means of managing the immediate problems before them, principally energy security and long-term energy policy co-operation, their vision in fact went much further. The founders broadened the Agency's mandate to include future situations which could not be fully anticipated in 1974. This approach enabled the Agency to respond later to a number of new situations, including oil supply disruptions below the IEA Emergency Sharing System threshold levels, the 1990-1991 Gulf crisis, the growing importance of "energy and the environment" questions and the changes in Central and Eastern Europe and many other regions.

Yet time was of the essence in 1974. The treaty rule permitting "provisional application" of the I.E.P. Agreement was utilized to launch the Agency long before that Agreement could enter into force under the applicable formal rules. The OECD provided rapid logistical support and was ready to accept the IEA as an "autonomous Agency". While instant action during the crisis itself was not to be realistically expected, the international system already in place gave the Agency the benefit of a

rolling start within months after the crisis. The Agency could commence operations on the day that the I.E.P. Agreement was signed.

The IEA was distinguished almost immediately for its institutional innovations designed to meet the industrial countries' particular requirements, and for the spirit in which the Agency carried out its tasks. The new co-operative arrangements could succeed only if a number of vital conditions were satisfied. Those conditions and the institutional outcomes may be summarized as follows:

1. The joining of the main industrial countries in IEA membership. There were sixteen Member countries at the outset; there are now twenty-three participants, all OECD countries except Iceland. The possibility of still further extensions of membership has not been excluded.

2. The adoption in legally binding form of the key elements of the Program, particularly the oil Emergency Sharing System. That was accomplished by inclusion in the treaty of the key formulations on the Emergency Sharing System together with the corresponding rules on structure and procedure.

3. The establishment and operation of a workable process for objective, rapid and effective decision-making. That condition was realized by lodging the power of decision in the IEA's Governing Board, in the hands of high level officials holding positions of *policy responsibility* in the Member governments. The Board's decisions are made in practice by *consensus*, despite the existence of an elaborate system of formal voting rules. Those rules are rarely applied explicitly and directly, because normally Members neither invoke them nor require that issues be brought to a formal vote (even for institutional issues such as Budgets and Programmes of Work). The IEA voting rules are not entirely dominated by the traditional doctrine of sovereign equality but reflect also the Members' relative economic stakes in the outcome of the Agency's activities. The IEA system of weighted voting, based in large part on the oil consumption of each Member and majority voting on most decisions to be taken by Agency bodies, is a discrete but valuable element of support for IEA objectives.

4. The conferring of unprecedented powers upon an international Secretariat to activate an oil emergency sharing system and carry out other actions. As an impartial body in the established tradition of intergovernmental organizations, the new Secretariat was empowered to

make the objective administrative findings which would be necessary to activate the IEA's Emergency Sharing System without the need for prior political decisions. This was assured by fail-safe mechanisms built into the I.E.P. Agreement and by the continuing state of readiness of the Secretariat members to take the necessary actions.

5. The establishment of new forms of co-operation on long-term energy policies. This was accomplished in broad terms in the I.E.P Agreement, developed in the Long-Term Co-operation Programme adopted in 1976 and developed further in later actions of the Governing Board on alternative energy sources, conservation and efficiency and research and development. A recent example is the adoption by IEA Ministers in 1993 of an up-dated statement on "IEA Shared Goals" that provide a basis for developing their energy policies.

6. Finally, the integration of the foregoing elements into a workable organizational structure. Governments sought mechanisms for energy co-operation in an atmosphere of flexibility and operational efficiency, where the vision would not be limited to the world of the Members but would be extended outward as well to the non-Member world and its energy problems. These objectives were achieved in part by the IEA formal structure at the outset. Since 1974, moreover, the policy outlooks and forthcoming spirit of the Member countries, of their representatives working with the Agency and of Secretariat members have also played an essential role in integrating all of the critical elements into a coherent organizational system.

This *History* of the IEA's first twenty years brings together an account of both the origins of the Agency and its institutional structure. The events discussed briefly above are recounted in Chapter II, while the structure and institutional developments are discussed in Chapters III to VIII inclusive. Chapter II looks at the problems leading to the energy crisis at the time of the Middle East War, the lessons industrial countries learned in 1973-1974 and the resulting reassessment of their energy situation. There follows a narrative of the early diplomatic efforts to bring the leading industrial countries together and to obtain the desired organizational outcomes. Chapter III looks at treaty and procedural questions which give force to the I.E.P. Agreement and to Agency structures and actions. IEA relationships come under scrutiny in Chapter IV, particularly Membership questions, the obligations of Members (to the Agency and to each other), the important

autonomy of the IEA in its extensive relations with the OECD and competence of the Agency in external relations. Chapter V describes and analyzes the functions, powers, composition and procedures of the Governing Board, which is the IEA organ holding the supreme power in the Agency, and of the Standing Groups and Committees. Chapter VI considers the IEA Secretariat's functions and responsibilities, including the special responsibilities for the operation of the Emergency Sharing System, not usually assigned to the Secretariats in other international organizations. In Chapter VII is found the history and description of the IEA's vitally important Programmes of Work, Budgets and financing. Finally, Chapter VIII on "General Principles of the Agency" looks at the history of the leading generalized or "horizontal" policies and practices which have shaped the Agency's work in all sectors since 1974. The "operating efficiency" objective developed at the Governing Board's first meeting permeates IEA activities and deserves recognition as one the key elements in its success. Security, languages and documents, reviewed in Chapter VIII, have also had significant and evolving roles to play in the history of the Agency. This Volume ends with Appendices in which are found: a list of IEA Members with the dates of membership actions for each (Appendix I), lists of the individuals who have served as officers of Governing Board and other IEA organs since 1974 (Appendix II), the full texts of the I.E.P Agreement (Appendix III) and of the OECD Council Decision on the Establishment of the Agency (Appendix IV), the organization of the IEA Secretariat (Appendix V), and highlights of principal IEA events 1974-1993 (Appendix VI).

Volume II will enlarge upon this institutional background in recounting the history of IEA policies and actions, many of which are referred to in Volume I as elements incidental to more institutional considerations. In Volume III most of the key documents discussed in the first two Volumes will be reproduced for convenient reference.

The foregoing summary has surely alerted the reader to the fact that this institutional history is not intended to provide simply a traditional narrative of leading or interesting IEA events, although there are necessarily elements of narrative in the pages that follow. Rather, the purpose of this Volume I is to present in some detail the reasons the founders created the IEA, the significance of their institutional choices and the building blocks of the structure they put in place and operated successfully over the Agency's first twenty years.

The author's intention is to describe and analyze the IEA's historical foundations, particularly for Agency constituents, for governments, their

officers, energy co-operation planners and builders, for scholars and others who concern themselves with international co-operation in energy or in other domains, and for those who might do so one day in the future. In this, the author permits himself the assumption that historical works of this kind will advance the cause of co-operation of governments in conducting their relations with each other in a world system that is too limited in resources, too fragile in structure and too hazardous overall for those relations to be left to the individual circumstances of each government's independent actions.

Throughout the description and analysis of the IEA's origins and structure, this *History* will reflect the spirit in which the Agency was created and developed over its first twenty years. Embarking upon the ambitious International Energy Program described in this book represented a major act of faith of the Member governments. The establishment and successful operation of the Agency since 1974 demonstrated the enormous political will necessary to prevail over competing pressures and objectives and to overcome organizational inertia and the normal start-up difficulties of any international institution. The creation of the Agency demonstrated that a group of like-minded governments facing an adverse and deteriorating economic situation like oil import vulnerability is capable of responding constructively when the group identifies its mutual interests, establishes its group cohesion, and seizes the opportunity to build a sound and stable institutional mechanism for the achievement of common objectives.

The success of the IEA was made possible by an essentially optimistic judgement that constructive co-operation in a coherent institutional setting provides the best means for tackling serious multinational problems, particularly in view of the disagreeable alternatives that might have to be faced. That optimistic spirit, it will be seen in this *History*, has continued to guide and shape the work of the Agency. It may be hoped that the successful institutional effort to establish and develop the IEA over the past twenty years will not be far out of sight and influence when international relations again give rise to sudden and apparently intractable problems in the future.

In the research, writing and production of this *History*, the author has been greatly aided by the interest, support and assistance of a large number of people. Executive Director Helga Steeg initiated the IEA history project

and guided it personally as the work progressed. Her support, insights and wise judgements were invaluable, as were those of her Deputy, John P. Ferriter. Craig Bamberger, my successor as IEA chief Legal Counsel, read an early draft of the entire manuscript; his comments and suggestions were of inestimable value. Natalie Newbern served admirably as research and editorial assistant; she prepared elements used in Appendix VI, the "Highlights of Principal IEA Events 1974-1993", drawing upon the Annual Reports of the Governing Board to the OECD Council. Parts of early drafts of the *History* were read and commented upon, with great benefit to the author, by Therese Bürger, Guy Caruso, Peter Huggins and Quincy Lumsden, all members of the IEA Secretariat. Useful suggestions and information were also provided by Jasper Abramowski, Mario Barreto, Richard Dawson, Angela Dredden, Sergio Garribba, Roger Johnson, Stéphane De Loecker, Robert Ovart, Mieke Reece, Paul Sankey, Timothy Simmons, Robert Skinner, Lee Solsbery, Shane Streifel, James Tapper, Frank Tamburrano, Karen Treanton and Paul Vlaanderen of the Secretariat. Lorraine and Karen Scott suggested many improvements in the manuscript. In addition, I am indebted on the IEA production side to Sue Adams, Ian Denison, Françoise Full, Joyce Heard, Annette Leifeld and Michael Prange who helped transform the manuscript into a book. Computer expertise was ably brought to bear by Jim Murphy, Greg Prowse, Claudie Brinkmeijer, Angela Gazar and Bertrand Sadin of the Secretariat, and by Jack Phipps and Warren Waters. Many other colleagues provided logistical and other valuable support, including: Barbara Avrillon, Gladys Boisard-Findlay, Faye Bouré, Shirley Burnett, Gwyn Darling, Marilyn Ferris, Linden Ford, Amanda Hansen, Lynette Rogers-Goderum, Mary Harries-White, Barbara Jacob, Joaõ Lopes-Viegas, Margaret Jones, Kate Kelly, Gillian Laing-Balitrand, Maggy Madden, Anne Mayne, Sandra Mooney, Jean-Louis Mourao, Anke Mungen, Aideen Neville, Roisin O'Connell, Olivier Parada, Audrey Power, Elisabeth Young, Sarah Watkins-Roddy and Catherine Wynaendts. I wish also to express my gratitude for the assistance of the reference service staffs of the United Nations Information Centre in Paris and the University of San Diego Law School Library in San Diego, California.

This work simply could not have been brought to completion without the contributions mentioned above. Nevertheless, it goes without saying that the author remains solely responsible for any errors of omission or commission, of fact or of judgement, which might have found their way into the text.

CHAPTER II

ORIGINS OF THE IEA

A. Economic and Political Origins: Crisis of 1973-1974

1. Events Leading Up to the IEA

The International Energy Agency came into being in 1974 in response to the need for the major energy consuming countries to co-operate effectively on a broad spectrum of energy policies and most urgently on security of oil supply. The origins of the Agency may be found in the fundamental changes in economics and politics associated with the international oil market during the period leading up to the Middle East War crisis of 1973-1974 and the industrial countries' responses to those changes.

The world oil market had been dominated for years by the major oil companies which enjoyed considerable power to influence prices paid to oil producers. During much of the decade preceding the crisis, an excess of potential oil supply distributed among a number of producers led to downward pressure on the real prices paid for oil. When problems of short supply arose under those circumstances, there remained sufficient capacity in the United States and elsewhere to provide a comfortable sense of oil security to industrialized countries in Europe and the Far East as well as in the United States.

In the course of the late 1960s and early 1970s, however, this relatively stable oil supply situation eroded and then disappeared, because the world relied excessively on this commodity. Excessive use of oil created the risks of a serious energy crisis and durable problems of energy supply management. Oil demand in the industrial countries increased dramatically through economic growth, but energy conservation measures were inadequate, and the development of alternative sources of energy was insufficient. Lower prices for oil had translated into reduced investment in the United States oil industry and a decline in production capacity. Incipient environmental constraints on the production of oil and other

major energy sources also contributed to the tightening of the market. These factors eventually transformed the traditional "buyers' market" into a "sellers' market" for oil. There were also growing demands by the oil producer countries, grouped in the Organization of Petroleum Exporting Countries (OPEC), for greater participation in the control and benefits of their indigenous oil wealth. This meant higher prices, with increased transfers of wealth from industrial countries to producers, inflation and strains on financial markets. Moreover, the additional oil which would be required would have to be provided largely by sources outside of the industrial countries and particularly by Middle Eastern suppliers. Under these circumstances it could not be excluded that the oil producing countries might also find that their oil wealth, then rapidly increasing in value, could be employed not only to greater economic advantage, but also as a weapon to obtain political objectives in wholly unrelated areas of international relations. The stage was thus set for potentially far-reaching economic, political and social disruptions.

The industrial countries' worst fears were realized in the crisis of 1973-1974 when a number of the Members of the Organization of Arab Petroleum Exporting Countries (OAPEC) took concerted action, beginning in October 1973, to reduce their previous oil production from about 20.8 million barrels per day (mbd) to about 15.8 mbd. These reductions were set to increase in monthly increments, until their economic and political objectives were achieved, and they were sufficiently implemented to increase oil prices dramatically, in some spot transactions by as much as six-fold. The producers were able to fix prices in the range of 400 per cent above previous levels, bringing about a number of the economic consequences referred to above. The disappearance of sufficient spare capacity in non-OAPEC countries meant that the production cuts would indeed disrupt the industrial countries' essential oil supplies and that little could be done in the short-run to reduce the price spike.

The political impact of the changes in market conditions was seen most vividly in the Arab producers' use of the "oil weapon" in an embargo intended to induce policy changes in the target countries with respect to Israel. The embargo was established by the selective delivery of available oil and by the deliberate production cuts. So-called "friendly countries" would continue to receive their previous levels of supply without disturbance. Although the embargo was not uniformly applied, Saudi Arabia and Libya cut off virtually all supplies to the United States, which they viewed as the principal adversary. Denmark, The Netherlands, Portugal, Rhodesia and South Africa were also embargo targets.

The immediate supply disruption had to be managed by the oil industry and industrial country governments as best they could under the circumstances. The oil companies scrambled to adjust available supplies when possible, but they were hampered by insufficient market information, organizational weaknesses and the political difficulties of taking the allocation decisions. On a pragmatic and imperfect basis, companies could pro rate the available supply among their affiliates and customers on the basis of actual or forecast oil consumption, a task that was not made easier by their resulting political exposure in both producer and industrial countries. While decisions of that kind would normally have been taken by governments, in this case governments were unprepared to cope with the mix of economic and political questions. Like the oil companies, governments suffered from insufficient information and organizational weakness, but they also faced political difficulties arising from conflicting national perceptions and objectives which prevented them from acting together as a group to meet the common crisis.

These events brought home to policy makers in the industrialized countries the extent of their oil import dependence and vulnerability, both in the threat of economic losses and in the political pressures arising in the course of threatened or actual oil supply cuts or "accidental" disruptions stemming from natural or other causes. In sum, the industrial countries had to face up to the fact of their having little or no control over one of the vital commodities employed in their advanced economies and to their having made inadequate preparations for taking collective measures to manage the consequential economic and political vulnerability.

It was soon apparent to consumer governments that the resounding success of the oil producers during the 1973-1974 crisis could not be ignored and that energy policy issues could not be left to the oil companies or be addressed effectively by individual countries acting alone. International co-operation through permanent institutions would be necessary to meet the new challenges. The industrial countries' response would need to take full cognizance of the fact that the oil producers' successes resulted from their concerted action based upon their newly achieved economic power and that the producers' future energy policies would doubtless be developed and applied within the context of established institutional mechanisms for international co-operation, and particularly in OPEC. Hence the industrial countries took a fresh look at the then existing institutional basis for their own co-operation on energy policy questions, especially the OECD, only to find that institutional base to be wholly inadequate for the management of the risks of more troublesome hardships

in the future. They would have to seek a more suitable mechanism for establishing their solidarity and for sharing the burdens of hardships to come.

The foregoing historical background is further developed in Ulf Lantzke, "The OECD and its International Energy Agency", *Daedalus,* vol.104, p. 217 (Fall 1975); "The Oil Crisis: in Perspective", *Daedalus,* vol. 104; Daniel Yergin, *The Prize,* Chs. 28-31 and sources cited in Yergin. The story of these events must now turn to the more specific institutional aspects, first to the oil producer's organization, which seemed so successful in 1973-1974, and then to the industrial countries' co-operation in OECD, which was found to be wanting, before moving to the industrial countries' responses and the new institutions which are the main subject of this *History.*

2. Producer Countries' Organization

While the industrial countries were imperfectly organized to deal with a crisis of the magnitude of the 1973-1974 events, as will be seen in Section 3 below, the oil producers were much more effectively prepared, largely because of their perceived need to deal on a concerted basis initially with the major oil companies. The oil producers found that they required organized co-operation in order to obtain their objectives in the market, objectives which they believed they could not achieve individually vis-à-vis the international oil companies. Pricing and other problems arising in the late 1950s induced them to seek a basis for joint action in order to strengthen their negotiating position with the companies. In place of individual government action, which had previously suffered from *ad hoc,* incomplete, and ineffective measures of co-operation, the producer group sought to solve these problems by utilizing the public international law institutions of diplomacy and international organization to increase their individual economic and political power. The producer countries' effective power potential would rise in the *aggregate,* and they accordingly sought the requisite grouping through formal international organization. As will be seen below in Section B, these lessons of co-operation would in turn become well understood by the industrial countries as they assessed the institutional aspects of the 1973-1974 crisis.

OPEC of course came much earlier. Following initiatives of Venezuela, the government of Iraq convened the Conference of the Exporting Countries at Baghdad from 10-14 September 1960 to seek a co-operative solution to the oil producer problems. The Conference brought together in a traditional

diplomatic forum the representatives of the Governments of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, the countries which became the five founding Members of OPEC, later joined by others to make a total of thirteen Members (now twelve). The main outcome of the Conference was the adoption of three resolutions which, when later approved by the appropriate authorities of each Member, formed the "Agreement Concerning the Creation of the Organization of Petroleum Exporting Countries" [U.N.T.S. Vol. 443, p. 248]. That Agreement recites the considerations which led the Members to act, describes the immediate co-operative action to be taken, and sets forth the rudiments of the international organization which came to be known as OPEC. Stating the Members' action in the simple but logical form of conference resolutions, the Agreement provided the basic legal framework of OPEC.

The considerations which led to the adoption of the OPEC Conference Resolutions show clearly that at the outset the OPEC Agreement was directed principally toward achieving higher petroleum prices. The Resolutions refer to the importance of petroleum export income to financing development programmes and to balancing the Members' annual national budgets. They also state that petroleum is a "wasting asset and to the extent that it is depleted must be replaced by other assets". After acknowledging the world-wide reliance on petroleum as a primary source of energy generation, the preamble concludes "that any fluctuation in the price of petroleum necessarily affects the implementation of the Members' programmes, and results in a dislocation detrimental not only to their own economies, but also to those of all consumer nations". The resolutions provided that the principal aim of the Organization "shall be the unification of petroleum policies for the Member Countries and the determination of the best means for safeguarding the interests of Member Countries individually and collectively". While the initial statements of OPEC commitments were essentially defensive in character (to protect themselves vis-à-vis the major oil companies), the organization which was called into being at Baghdad was fully capable of carrying out offensive as well as defensive measures when market or political opportunities presented themselves.

In the industrial countries, ever-increasing demand for oil in the 1960s, as seen above, led to corresponding increases in oil imports and dependency of the United States, Western Europe and Japan on OPEC oil. During the 1960s, OPEC was only modestly successful in influencing oil prices, which remained relatively stable in absolute terms. Low prices brought about increased demand which in turn increased the market power of the low cost producers in the Middle East and in Venezuela. The OPEC

countries used this period to build up gradually a sense of community interest and awareness of the need for co-operative action. They provided training opportunities for government experts in OPEC, carried out joint research and economic preparations, prepared for a more favorable time in the future to act, and slowly built up pressure on consumers as market conditions changed. The risks of growing vulnerability were thus fully visible to the discerning eye.

The combined effect of tightening market conditions and the existence of a co-operative organization in the late 1960s enabled the OPEC countries to wrest power over prices from the oil companies. During the period of 1969-1972, OPEC countries began setting prices without negotiation with the oil companies. With oil production cuts over a few months of the 1973-1974 crisis, a $2.59 per barrel marker price was raised to $11.65, effective 1 January 1974. The oil producers also discovered the political utility of the "oil weapon". The oil embargo employed during the 1973 Middle East War against Denmark, The Netherlands, Portugal, Rhodesia, South Africa and the United States by the Arab oil producers demonstrated to the producer countries their new potential for the exercise of political power, even in the absence of a specific OPEC mandate for the exercise of political power. Although the 1973-1974 embargo was not imposed by OPEC itself, but rather by the Arab oil producer Members of OAPEC (which included such non-OPEC countries as Egypt and Syria), OPEC emerged from the crisis as the key producer organization with cartel-like powers over the production and pricing of oil in the world market and thus became the potential force the industrial countries would have to contend with in future years.

This swift and extraordinary increase in power of the oil producers was made possible by the existence of OPEC, which then appeared to have become one of the most dramatically successful international organizations in the briefest period of time. Furthermore, the industrial countries could reasonably expect more difficulties to come. As a permanent organization rapidly advancing to meet its aims, OPEC was seen as standing ready, with well-developed economic and political resolve, to act in the future on behalf of producer countries. Although the producers' powers were partially produced by the effects of external events rather than the systematic exercise of cartel powers, and although OPEC's later influence on prices was not always so dramatic, the organizational lessons of the 1973-1974 crisis led the industrial countries to reassess their organizational arrangements which had been in place during the crisis. This is the subject of Section 3 which follows.

3. Industrial Countries' Institutional Arrangements

While the key oil producers were able to act coherently in the 1973-1974 crisis because of the institutional arrangements they had made in OPEC (See Section A-2 above), the industrial countries appeared at that time to be in organizational disarray, unable to act in a unified fashion. The policy differences which divided the industrial countries and the temptations of each to go its own way in pursuit of its interests, without full regard for the situations of others, could not be overcome through their existing forms of international co-operation. Although the principal industrial countries were grouped together in the OECD, that Organisation was not at that time equipped to deal promptly with the types of problems presented by the crisis. Later, however, OECD was to provide the framework for the establishment of the International Energy Agency, which was specifically designed to meet the industrial countries' energy organization needs. To understand why this came about, it is necessary to examine some of the main institutional structures which determined the roles OECD could and could not play in the crisis.

The OECD evolved in 1961 out of the Organisation for European Economic Co-operation (OEEC), which initially had been established by Western European countries to co-ordinate Marshall Plan aid to Europe following World War II. Reconstituted as the OECD, the Organisation's membership expanded to include the United States and Canada, and the Organisation's character changed from a regional to a broader functional organization of the developed market economy democracies.

At the time of the 1973-1974 crisis, the OECD was the principal economic organization of the industrialized market economy countries of Europe, North America and Asia (by that time Australia, Japan and New Zealand had also become Members). The responsibility of the OECD extended to virtually all economic questions which its Members wished the Organisation to consider, including such important sectors as the development of its Member countries' economies, the expansion of world trade, and the progress of developing countries. Energy questions, of course, fell clearly within the Organisation's mandate. Although at that time the OECD was not particularly considered to be the international organization of high energy consumer governments, it was indeed the forum in which those governments carried out economic co-operation under the most auspicious institutional conditions then available to them.

The OECD's principal functions were directed to policy development and promotion, as well as consultation and co-operation in the areas of the Organisation's economic mandate. Members had undertaken institutional

obligations in Article 3(a) of the OECD Convention to "keep each other informed and furnish the Organisation with the information necessary for the accomplishment of its tasks". Members also agreed in Article 3(b) to "consult together on a continuing basis, carry out studies and participate in agreed projects" and in Article 3(c) to "co-operate closely and where appropriate take co-ordinated action". The OECD was the forum in which economic policies could be developed on the basis of shared information, and in which matters of mutual concern to the Members could become the subject of recommendations, decisions or other actions of the Council, the supreme body of the Organisation. Unlike most contemporary international organizations, the OECD Council was empowered by Article 5(a) to "take decisions which, except as otherwise provided, shall be binding on all the Members". That decision-making power was not limited to internal matters concerning the work of the OECD, but extended also to decisions on any matter falling within the broad competence of the Organisation. It is not surprising under these circumstances that unanimity was the rule of decision in the OECD Council. According to Article 6.1 "Unless the Organisation otherwise agrees unanimously for special cases, decisions shall be taken and recommendations shall be made by mutual agreement of all the Members". Since each Member was entitled to be represented and had one vote in the OECD Council, the unanimity rule required in principle the agreement of all twenty-four OECD Member countries. Although few exceptions to that rule had been made in the OECD before the establishment of the International Energy Agency, unanimity in OECD had never required the affirmative vote of each Member. Article 6.2 of the Convention recognized the right of abstention and provided that "such abstention shall not invalidate the decision or recommendation, which shall be applicable to the other Members but not to the abstaining Member". As will be seen below, that provision played a key role in the establishment of the International Energy Agency in the OECD. Then as now the Organisation's work was carried out by the Council, with co-ordination and general assistance of an Executive Committee and with the support of some twenty-five (now about thirty) functional Committees established by the Council. Each of the Committees was given a specific mandate in the field of its main concern.

The main OECD structure for dealing with energy questions at the time of the 1973-1974 crisis was composed of the Council, the Executive Committee and two functional bodies, the Oil Committee and the Energy Committee, which had been given general power to carry forward the Organisation's work in their respective fields. Well thought out for its

assigned purposes, the foregoing OECD structure could not respond effectively in the 1973-1974 crisis. Neither of those Committees was given the power of decision or competence to act directly upon Member countries' policies. The Committees' principal functions were to prepare proposals for submission to the Council, which retained the sole power to act for the Organisation in the field of energy. The Council could act only on the basis of unanimity of it Members, with each Member regardless of the size of its economy having one vote in the Council.

In respect of oil, the OECD had adopted two legislative measures applicable only to the European Member countries of the Organisation. These measures, held over from the OEEC, dealt with stockpiling and oil apportionment in an emergency. The OECD Oil Apportionment Decision [C(72)201(Final)] adopted procedures to be carried out in the event of an oil supply emergency in Europe and encouraged European Member countries to prepare advance plans for carrying out reductions in consumption of petroleum products. That Decision provided that if an oil supply emergency should arise or appear imminent, the Chairman of the OECD Oil Committee would consult the Secretary-General and convene the Oil Committee. The Committee would prepare apportionment recommendations for the Council, which could by unanimous decision put into effect the emergency procedures provided in the Decision.

Under the apportionment procedures, fuel (bunker) requirements for ocean-going vessels and air transport were to be met in full. Ninety percent of the remaining available oil supplies would be "automatically allocated to Member countries in the same proportion as each Member country's normal consumption of the product to that of all the European Member countries" [C(72)201(Final)]. The other ten per cent of supplies would be subject to special allocation to be decided by the Oil Committee in consideration of serious economic difficulties. In making the special allocations, the Oil Committee would act by a two-third majority vote, subject to the right of a Member country to request the Council to review the decision, in which case unanimity would be required.

According to the OECD Oil Apportionment Decision, when the Council decided that oil supplies should be apportioned, the International Industry Advisory Body (IIAB), consisting of fifteen oil companies would be activated to advise the Oil Committee on matters relating to the availability of oil for OECD Europe and to assist in the implementation of the Oil Committee's recommendations for the apportionment of available oil supplies. The IIAB would assist the Oil Committee in assessing the overall deficit in supplies as compared with estimated consumption levels. Although the IIAB had

remained on a standby basis since it was first convened in 1967, it did not meet during the 1973-1974 crisis, as will be seen below.

In addition to the Apportionment Decision, the OECD had in place in 1973-1974 an oil stockpiling measure containing a recommendation to the governments of European Member countries "to achieve as soon as possible a stock level of at least 90 days average inland consumption of the previous calendar year" [C(71)113(Final)]. One of the important functions of the Oil Committee was to review that recommendation and to report annually to the Council on the progress achieved in its implementation.

Although the foregoing systems would be taken into account in the later development of the IEA, the major weaknesses in the systems were also manifest. Not only were OECD procedures encumbered by the requirement of unanimity, but also the OECD's information systems were incompletely developed and that Organisation was not equipped with the support services necessary to mount a successful defensive operation in the event of an emergency. The Oil Apportionment Decision was only a first step in the direction of effective defensive measures. It applied only to the European countries and was limited to the apportionment of products. In these circumstances, there seemed to be little chance that the OECD measures could play a significant role in an oil supply emergency.

These insufficiencies inherent in the OECD were, of course, known to the industrial countries, and efforts were being made to strengthen OECD co-operation. Consultations within the OECD took place in the summer of 1973 to associate the United States and Canada with the European countries in a new oil apportionment scheme. A number of meetings were held in an *ad hoc* group which was established by the OECD Oil Committee to develop an expanded apportionment system. There were also informal discussions in the OECD Secretariat about the need to create a stronger institutional basis to manage a wider range of energy problems. However, this developmental work in the OECD was overtaken by the crisis in 1973-1974 when the industrial countries' attentions became sharply focused upon the crisis itself and their responses to the crisis as well as the institutional lessons they drew from their not altogether satisfactory experiences in dealing with it.

4. Industrial Countries' Responses

During the lead-up to the crisis and throughout the period of the crisis, there was available to the industrial countries in effect only the institutional response mechanisms of the OECD, described briefly above. In order for co-

operation efforts to be effective in such crisis situations, there had to be a close convergence of the relevant policies of the OECD Members, strong political will among them to act together and firm judgment that the institutional arrangements in the OECD were themselves sufficient and workable. None of these conditions was satisfied with respect either to the Organisation's formal oil measures or to its general institutional framework for co-operation.

At the time of the crisis, OECD Europe's oil stocks were below the recommended ninety-day level, standing only at about a seventy day supply. This stock condition doubtless reduced the potential vulnerability of the consumers, but the failure to reach the ninety-day objective perhaps symbolized the incomplete state of their overall preparation for a significant oil supply emergency. Their failure to co-ordinate the use of their stocks during the course of the crisis was a further failure of organization which weakened their response.

The OECD never invoked the European oil apportionment machinery which might have distributed the oil supply loss more equitably in Europe and could have been extended on an *ad hoc* basis to the United States, Canada, Japan and others. Since the unanimous decision that was needed to implement apportionment could doubtless not be achieved, there was no official proposal to invoke the European apportionment system. The underlying reasons for this failure have been stated effectively as follows:

> The scheme could not be activated, however, in part because trust in the flexibility of the oil market was too strong to achieve the unanimous agreement that was necessary. Other considerations, such as a concern lest the oil exporters be offended, may have added to the reluctance, but lack of information must be regarded as the really decisive element [Ulf Lantzke, "The OECD and its International Energy Agency", *Daedalus*, vol. 104, p. 217, 220 (Fall 1975)].

It was perhaps unreasonable to expect that a rule of unanimity could operate effectively in the face of the divergent interests and policies of so many countries concerned with such a vital matter. The OECD emergency procedures thus could not provide a suitable basis for the industrial countries' response to the 1973-1974 crisis. The actual role which the OECD could play under these circumstances was a limited, though useful one. The industrial countries were grouped in the Oil Committee and its High-Level Group, composed of representatives of most of the leading industrial countries. Each body was convened four times during the crisis.

Two reports on the supply situation were prepared for those bodies by the Oil Committee Chairman, after informal consultation with a number of oil companies. Since the requisite unanimous approval was lacking, no attempt was made to activate the International Industry Advisory Body (IIAB), the established institutional channel for such consultation.

Information exchanges on such matters as stock levels and supply and demand restraint measures took place in these OECD meetings, as well as in meetings of Heads of Delegation of Members and in other informal meetings convened by the OECD Secretary-General. An effort to co-ordinate information gathering through an OECD Secretariat questionnaire was attempted without noticeable success. On the other hand, the OECD Council was able to adopt recommendations to its Members on the supply of bunker fuels for shipping and fishing and on the supply of fuel for civil aircraft [C(73)257(Final)] and [C(73)258(Final)]. No other formal legislative or operational action was taken by the OECD Council during the crisis. For the most part the individual governments and the major oil companies were left to their own devices to make the best they could out of this novel and perplexing situation.

While the OECD's information activity response was relatively useful as far as it went, the available information was not sufficient to meet the needs of Member countries, and the institutional arrangements offered by the OECD were clearly not strong enough for mounting a workable multilateral crisis management effort. This organizational inadequacy of the industrial countries and the absence of convergent policies greatly increased their vulnerability to oil supply interruptions. Before the end of 1973, a clear perception of the industrial countries' relative weakness led their policy-makers to consider more urgently the need to develop additional institutional mechanisms for dealing with their common energy problems.

B. Industrial Countries' New Organizational Requirements

1. Lessons of the 1973-1974 Crisis

The process of assessment of the 1973-1974 crisis began immediately while the first impacts of the crisis were felt. Consideration of the "lessons to be drawn" from the crisis continued in capitals, international organizations, oil companies, universities and elsewhere for years afterwards. On the institu-

tional side, interest in future steps to be taken was particularly strong, for the major lessons of the crisis involved a reassessment of the structure, composition, competence and operational arrangements of institutional co-operation in the energy field. The major lessons ultimately drawn by the industrial countries, as reflected in the later steps they took, included the following:

- **The World Market for Oil.** The oil market should be seen essentially as one world market, for oil is a fungible commodity; market events almost anywhere in the world affect consumers everywhere in the world, and would continue to do so in the future. Hence the major industrial countries throughout the world have common interests which should be addressed not only on an individual country basis, but also on a co-operative basis in permanent international institutions.
- **The Broader Energy Problem.** Since oil security is directly affected by broader issues concerning all major energy sources, energy conservation and the availability of alternative sources of energy such as coal and nuclear power (and the more exotic sources under research and development R & D) determine in part the dependence on oil, as do considerations of protection of the environment. Hence those subjects are sufficiently germane to bring them together with oil into the scope of policy co-operation in international institutions.
- **Long-Term Energy Co-operation.** International co-operation should be employed with a long-term goal to reduce oil import dependence and economic vulnerability. This co-operation would increase incentives for developing the supply of oil as well as enhance measures for conservation and use of alternative energy sources to reduce oil imports.
- **Relations with Producers.** Consumer countries should establish arrangements for co-operative relations with the oil producer countries and with other consumer countries in order to achieve better mutual understanding and to benefit from developments in the energy field.
- **Safety Net: Oil Sharing, Treaty Rules.** As a high priority matter, co-operative institutions should establish an oil emergency sharing system to enable industrial countries to share equitably among themselves the burdens of any future oil embargo or supply disruption from natural or other causes. The sharing system and other key elements of co-operation should be established by means of treaty rules, legally binding under international law, and should be organized through permanent international institutions.
- **Fail-Safe Mechanism in the Sharing System.** Operation of the oil sharing system should not require a prior unanimous decision of the

members (a form of prior political decision), but should be triggered by a secretariat, as part of a technical process of supply disruption assessment (administrative decision) when the treaty level of shortfall is reached, subject ultimately to political safeguards.

- **Secretariat Role.** The secretariat, as an impartial body of the new institution should receive extraordinary and unprecedented powers, including the ability to trigger the sharing system despite possible political pressures which might prevent governments from acting promptly or effectively in an oil emergency situation.
- **Decision Making System.** The new institution should have a workable system for making objective, rapid and effective decisions. Voting rules should not be governed solely by the traditional doctrine of sovereign equality (one country, one vote), but should be designed to reflect the realities of decision-making in modern international organizations, including majority voting where possible and voting weighted in accordance with the members' relative economic interest in the subject of the decision.
- **Information Systems.** Systems should be devised to develop more relevant and detailed information for oil market transparency generally and for the particular information, including confidential and proprietary data, required to operate the oil emergency sharing system. Arrangements should be made for the dissemination of such information as appropriate.
- **Arrangements with Oil Companies.** Finally, regular and systematic arrangements would have to be made with oil companies not only to provide to the new institution relevant information available to them, but also to advise on the development and operation of the oil sharing system.

These were some of the major institutional "lessons" drawn from the 1973-1974 crisis. They would each have to be woven into the fabric of the industrial countries' new institutional arrangements for energy. As seen in the next Section, the "lessons" also raised questions about what form the new institutions should take, and whether a wholly new institution should be formed or whether the new energy functions could be made part of an existing organization on either an integrated or an autonomous basis.

2. Range of Institutional Alternatives

As the industrial countries absorbed the "lessons" described above, they rapidly saw that the new energy functions called for an institutional "home"

in a public international organization. A threshold question was whether the new institutional arrangements should constitute a series of *ad hoc* conferences or a permanent organization. The *ad hoc* alternative would be the weakest of all, in that each meeting would have to be organized and convened case by case as other diplomatic conferences are, without the advantages of continuing organization and a dedicated secretariat. Complex operational functions, like the management of an oil emergency sharing system, would be difficult or impossible to carry out under those circumstances. Hence an *ad hoc* approach looked like a certain formula for failure, while a permanent structure would provide constant support and make rapid operational functions relatively easy to carry out, permitting industrial countries to engage in much more far-reaching energy co-operation. A permanent structure would also transmit a much stronger political message about the industrial countries' resolve to co-operate in the field of energy in general, and to deal with the more immediate problems of oil supply crises in particular. Despite sporadic expressions of interest in an *ad hoc* conference approach in the aftermath of the crisis, this alternative did not find wide support and was soon abandoned. Among possible forms of permanent organization, a private foundation or corporation or non-governmental organization or other arrangement unable to provide the advantages of legally binding decision-making and the recognized status of public intergovernmental organizations under international law would not be satisfactory. Most of the major industrial countries consistently favored the establishment of permanent institutions in the form of an inter-governmental organization, and that of course was the final outcome, which resulted in the grouping of those countries in an "agency" specifically designed to meet their objectives.

The next key question for the industrial countries was whether the permanent institutions should be grafted onto an existing organization on an integrated or autonomous basis, or should be framed in a wholly new agency with its own treaty and independent structure. In the end the outcome consisted of something of each. From a practical standpoint there was only one existing organization that could be seriously considered for the grafting approach. Despite a number of the OECD's institutional weaknesses which will be seen in the discussion below, the OECD alternative presented some attractive advantages. The OECD was already experienced in dealing with oil and other energy questions. The OECD enjoyed a highly developed and respected expertise in economic analysis and statistics. The OECD offered an existing organization with an established staff, physical facilities, legal status and privileges and

immunities, and it was an on-going concern in which a new agency could expect to function immediately. Moreover, the OECD was the principal organization of the industrial market economy countries and would be expected to embody any new institutional arrangements involving the economic co-operation of those countries. Since all of the prospective participants were also Members of the OECD, a way might be found to accommodate the new functions in the existing structure of that Organisation without encountering insurmountable institutional difficulties.

However, there were other OECD considerations which presented possible problems for the industrial countries. While all of the prospective participants were OECD Members, the converse was not true. The OECD countries which would not be ready immediately to participate might find it politically difficult to have the new agency established within that Organisation. Under the OECD's general voting rules, each of those countries could prevent the Council from taking the decision establishing the agency and might interfere with the decisions and operations of the agency once it was established. The latter consideration in particular presented an unacceptable risk to the efficient operation of the new energy co-operation functions. Hence it would not be possible to establish the new arrangement as an integrated part of the OECD.

Even if the membership of the OECD and a new agency should one day become co-extensive, serious questions were foreseen or foreseeable, for example:

- Would a voting system with weighted voting be inconsistent with the OECD's provisions on those subjects?
- Would an executive head of an agency, holding special responsibilities and with recognized energy expertise, be subject to control by the Secretary-General of the OECD?
- Could an operational agency function effectively and develop its own atmosphere and modes of working in the OECD, which was considered to be more of a think-tank without well defined operational responsibilities?
- Would members of an agency operating in the OECD be represented there by high level officials from capitals with the necessary energy policy decision-making responsibilities in their governments? Would members' representatives assure rapid adjustment to changes in the energy field and promote the operations of the agency in accordance with the policies which might be developed for agency operations?
- Could an agency have its own Budgets and personnel policies, which might not always coincide with those of the OECD?

- Could an agency have the policy advantages of a visibility separate from that of the OECD, which could be an important element of acceptability and the respect with which it would be held throughout the world?

The integrated institutional approach raised all of the foregoing questions, while the establishment of an agency on an autonomous basis with the OECD was another possibility to be considered. Still another question was the means of establishing the policy and institutional commitments which would be necessary to meet the industrial countries' objectives. That could be approached on the "soft" basis of non-binding declarations or by decisions of an existing international organization like the OECD. A third possibility would be a separate treaty in which the objectives, policies, structure, binding legal rules, voting system and all the elements of a conventional international organization could be developed. The treaty approach could be adopted independently of other institutions, and itself create a new agency, or as part of arrangements for an autonomous relation of a new agency with an existing organization, with the advantages of each.

These were some of the alternative institutional ideas which were in the air during the diplomatic process which began with policy formulations and consultations among the industrial countries during the 1973-1974 crisis and continued until the International Energy Agency was established in November 1974. The diplomatic phase included the lead-up to the Washington Energy Conference, the Washington Energy Conference itself in February 1974 and the follow-up negotiations which took place from February to November 1974 in the Energy Co-ordinating Group in Brussels, where the institutional as well as the policy and legal commitment questions were resolved.

C. Diplomatic and Institutional Steps to Establish the IEA

1. Pilgrims Society Speech

The initiative in proposing the establishment of the new energy institutions was taken by U. S. Secretary of State Kissinger in the midst of the 1973-1974 crisis, when American thinking about the magnitude of the problem and the need for international co-operation had evolved to the point where

new proposals could be made. In his address to the Pilgrims Society in London on 12 December 1973, Secretary Kissinger stated that the energy crisis of 1973 could become "the economic equivalent of the sputnik challenge of 1957" [Reproduced in *USA Documents,* Public Affairs Office, United States Mission to the European Communities, No. 61, 1973, p. 8, also available under the title "Secretary Kissinger Reviews U.S. - European Relations," address by Secretary of State Henry A. Kissinger to Pilgrims of Great Britain, London, England, 12 December 1973, S.I. 106: K64/3]. The highly respected French newspaper *Le Monde* reported the Pilgrims Society speech under a headline "Un Nouveau 'Discours de Harvard'," referring to General Marshall's Harvard speech of 5 June 1947, in which the Marshall Plan for post-war economic assistance to Europe was proposed [*Le Monde,* 14 December 1973, p. 1, col. 3].

Separating the transient from the underlying causes of the energy crisis, Secretary Kissinger remarked that it was "not simply a product of the Arab-Israeli war; it is the inevitable consequence of the explosive growth of world-wide demand outrunning the incentives for supply". The long-term solution to the economic aspect of the energy crisis would be "a massive effort to provide producers an incentive to increase their supply, to encourage consumers to use existing supplies more rationally, and to develop alternate energy sources".

In order to realize these objectives and to co-ordinate an international research program to develop new energy technologies, Secretary Kissinger proposed that an "Energy Action Group" be established by the countries of Europe, North America and Japan. This proposal, which constituted the first official statement concerning new institutional arrangements, grouped together high officials of those countries and provided for participation of the European Economic Community and the developing countries. The Pilgrims Society statement of Secretary Kissinger outlined in those terms the organizational concept and major objectives which were later translated into the instruments establishing the International Energy Agency. Secretary Kissinger was not alone in speaking out on this question. A few days after his speech, there was a summit conference of the European Communities at Copenhagen, at the close of which the conference Chairman Jørgensen declared that the Heads of State or Government considered that it would be "useful to study with other oil-consuming countries within the framework of the OECD ways of dealing with the common short and long term energy problems of consumer countries" [See European Communities, *Seventh General Report on the Activities of the European Communities in 1973,* (1974), pp. 487 and 490].

2. Washington Energy Conference

The United States moved rapidly to achieve the organizational objective set out in the Pilgrims Society speech. On 11-13 February 1974 the Washington Energy Conference brought together Ministerial level representatives of the thirteen principal oil consumer countries (Belgium, Canada, Denmark, France, the Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, The Netherlands, Norway, the United Kingdom and the United States) as well as senior officials of the EEC and the OECD [See Washington Energy Conference February 1974, Communiqué, Doc. 17 (Rev. 2), 13 February 1974; reproduced in International Legal Materials, 1974, vol. 13, p. 462]. By that time the United States' perception of the energy crisis included both its political aspect, represented by the embargo, and its economic and social element, represented by the dramatic increase in oil prices, and the implications of both would have to be considered.

In his welcoming speech, Secretary Kissinger emphasized first that "the energy situation poses severe economic and political problems for *all* nations. Isolated solutions are impossible" [Conference Document 6, p. 2]. He declared that "this challenge can be met successfully only through concerted international action", and he recognized that developing countries must be brought into the consultation on the energy problems. A basic consideration was that "Cooperation *not* confrontation must mark our relations with the producers". Although specific proposals on institutions were not made at that time, the United States recognized its "national responsibility to contribute significantly to a collective solution" and stated its willingness to make specific proposals in the "follow-on" work of the Conference to share American advances in energy technology.

The American policy statement on a programme for meeting the energy crisis contained, in addition to the points mentioned in the Pilgrims Society speech, a proposal for the allocation of available supplies in time of emergencies and prolonged shortages. This proposal reflected the judgment that "we cannot leave our security or our national economies to forces outside our control". Offering to make available a portion of the total American petroleum supply in times of emergency or prolonged shortage, the United States' proposals referred to an oil-sharing formula, to a system of criteria to determine the existence of oil supply shortages, to a mechanism for carrying out the arrangement, and to programmes for stockpiling and standby rationing.

The Communiqué issued at the close of the Conference expressed the agreement of the Ministers on "the need for a comprehensive action program to deal with all facets of the world energy situation by cooperative measures.

In so doing they will build on the work of the OECD" [Communiqué, point 9]. The action programme would cover the areas of conservation, demand restraint, emergency allocation of oil supplies, accelerated development of alternative energy sources, and research and development. This work would be carried out by "follow-on machinery," a co-ordinating group which was instructed to develop a programme based on the considerations outlined above [point 16].

The institutional beginning announced in the Communiqué was a modest but vital one. There had been formal or informal discussions of a wide range of institutional possibilities, including "none at all" as one extreme, the use of "contact groups", the existing mechanisms of the OECD, the United Nations and other international organizations, or a new and separate international agency. However, the Communiqué did not prejudice the ultimate outcome in any way. It did refer to monitoring and focusing on the tasks which might be addressed in existing organizations and it provided that the group was to "Establish such *ad hoc* working groups as may be necessary to undertake tasks for which there are presently no suitable bodies" [point 16]. There were also to be a conference of producer and consumer countries, and consultations with developing and other consumer and producer countries. As respects particular organizations, Ministers not only referred broadly to the OECD as noted above, but also "welcomed the initiatives in the UN to deal with the larger issues of energy and primary products at a world-wide level" [point 15]. Although the modest institutional beginning contained in the Communiqué did not succeed in attracting the support of France, the Conference outcome did represent the consensus view of all other Conference participants. The participants had developed clear but incompletely refined ideas of the necessary mechanisms, i.e. that they must act together, develop oil stocks, control energy demand and establish an effective organization. Still, the Communiqué gave little hint of the comprehensive policy and institutional mandates which were actually given the IEA later in the year as the outcome of the "follow-on" in the Energy Co-ordinating Group.

3. Energy Co-ordinating Group (ECG)

Shortly after the close of the Washington Conference, the Energy Co-ordinating Group (ECG) convened in Brussels to carry out the mandate given by the Conference and to develop the programme in detail. All of the Washington Conference countries, with the exception of France, participated in the ECG, together with the OECD and the Commission of the European Communities. They were later joined by Austria, Spain,

Sweden, Switzerland and Turkey. The ECG was chaired first by Ambassador Roger Ockrent, a Professor of International Law, Permanent Representative of Belgium to the OECD and long time Chairman of the Executive Committee of that Organisation. Early in the life of the ECG, the untimely death of Mr. Ockrent led to the succession of Ambassador Etienne Davignon of Belgium, who exercized strong leadership as Chairman of the Group and later as the first Governing Board Chairman of the new Agency.

Representatives of the seventeen countries and the two international institutions met together at the Brussels Palais d'Egmont from early March until November 1974, when their work culminated in agreed proposals for the establishment of the IEA. These took the form of two draft instruments. The first was a draft OECD Council decision establishing the International Energy Agency called officially the "Decision of the Council Establishing an International Energy Agency of the Organisation", hereinafter referred to as the "Council Decision", adopted on 15 November 1974 by unanimity with the exception of abstentions by Finland, France and Greece [C(74)203(Final); International Legal Materials, 1975, vol. 14, p. 789, and reproduced in Appendix IV below]. The second was the draft treaty entitled "Agreement on an International Energy Program", hereinafter referred to as the "I.E.P. Agreement" or the "Agreement", signed in Paris on 18 November 1974 [C(74)203 and Corrigendum 1; International Legal Materials, 1975, vol. 14, p. 1, and reproduced in Appendix III below]. The work of the ECG went well beyond policy analysis, negotiation and drafting. It identified the key directions for co-operation in energy policy, enabled the senior officials of the seventeen countries and the two organizations to understand each other's problems, which was significant in itself, and fostered a firm sense of confidence that the group could work together effectively with worthwhile results in a permanent institutional setting. That sense of confidence and mutual respect provided the new Agency with its fundamental wellspring which endures to the present day.

The ECG set the tone and atmosphere of the Agency at that time and in the years that followed. Indeed, the early meetings of the Governing Board were very much like the ECG transported from Brussels to Paris. Many of the key representatives had participated fully in the ECG. The ECG Chairman Davignon (Belgium) took the Chair of the Governing Board for the first two years. His successor as Governing Board Chairman for the following two years, D. K. Rohwedder (Germany), had led his country's delegation in the ECG. Of great operational importance for the IEA was the maintenance in the Governing Board of the élan and spirit of co-operation which had proved to be so productive in Brussels. From the outset, the

main operating principles of the Agency were its flexibility, operational efficiency and simplicity [as will be seen in Chapter VIII, Section A below]; each was a direct inheritance from the ECG. The Agency still exists very much in the institutional mould that was crafted in 1974 by the ECG.

4. Founders' Objectives

The founders' objectives were drawn into sharp focus in the ECG, where the objectives on substantive policy retained the broad elements developed in the Washington Energy Conference but were supplemented with more concrete and far-reaching institutional notions. On all issues, the ECG contributed refined concepts and detailed formulations in treaty and formal decision language.

On programme content, the founders continued to be concerned above all with overall energy security, and particularly with oil supply security. This was translated into the Emergency Sharing System Chapters of the I.E.P. Agreement [Chapters I to IV inclusive], where meticulously detailed treaty rules and operational mechanisms were established. Energy security was envisaged on a still wider basis, however, to include Members' overall reduction of "their dependence on imported oil by undertaking long-term co-operative efforts on conservation of energy, on accelerated development of alternative sources of energy, on research and development in the energy field and on uranium enrichment" [I.E.P. Agreement, Preamble, paragraph 6]. The founders translated this objective into the Long Term Co-operation Chapter [Chapter VII of the Agreement] and later, in more specific formulations into the Long-Term Co-operation Programme. They retained the producer-consumer country co-operation objective in a statement on the desire of IEA countries "to promote co-operative relations with oil producing countries and with other oil consuming countries, including those of the developing world, through a purposeful dialogue, as well as through other forms of co-operation, to further the opportunities for a better understanding between consumer and producer countries" [Preamble, paragraph 3], which was translated into Chapter VIII of the Agreement. Another objective was stated much more clearly than previously: the desire "to play a more active role in relation to the oil industry by establishing a comprehensive international information system and a permanent framework for consultation with oil companies" [Preamble paragraph 5], which was taken into Chapters V and VI of the Agreement.

While the programme objectives were largely foreseen in the Washington Energy Conference, the ECG brought innovation in form as

well as body to the scant institutional objectives stated in the Washington Communiqué. ECG Chairman Davignon reflected a major institutional objective in his statement that the Members

> must incorporate operational arrangements capable of providing a framework for co-operation which can rapidly be put into motion on the basis of efficient decision-making machinery.

[Davignon, "The Aims of the International Energy Agency", *OECD Observer,* No. 73, January-February 1975, p. 20]. The founders translated this institutional goal into Chapter IX and the decision process which appears throughout the Agreement. In referring to arrangements being made to create the new Agency within the framework of OECD, Chairman Davignon also stated that this

> responds to a complex need: to maintain the political impetus and ensure the efficiency of the work, yet be able to draw upon the knowledge and experience of an existing organisation.

The founders also sought to enlarge the membership of the IEA to include the other Members of the OECD, of which there were eight at that time. This appears in the Preamble's recognition that other Members of OECD "may desire" to join in the IEA Members' efforts (Preamble, paragraph 9). Institutional objectives also included the wish that the IEA not duplicate or impair in any way the work of other international organizations but rather that it facilitate other organizations in their work, particularly the work of the OECD. In grafting the IEA onto an existing institution, the founders also sought to avoid the need to build a wholly new and independent organization which might be seen as leading to confrontation with oil producers, while Agency countries wished in fact to widen and further develop international co-operation in the energy sector. The founders' overall objectives were confirmed by Chairman Davignon in his "Chairman's Statement to the Press" of 18 November 1974 [reproduced in Annex II to IEA/GB(74)9(1st Revision), pp. 22-24].

5. OECD Council Decision

After the Energy Co-ordinating Group completed its work in producing the proposed I.E.P. Agreement and the Council Decision texts, the next formal steps to be taken in founding the IEA were actions bringing these

instruments into force. The ECG's draft I.E.P. Agreement, containing the detailed energy programme provisions as well as the essential internal and external institutional arrangements, needed to be processed pursuant to established treaty procedures under international law, including signature and formal ratification. The OECD Council Decision needed to be adopted by the OECD pursuant to that Organisation's procedures, which called for unanimity of OECD Members but permitted abstentions. Although both instruments were essential to the ECG concept of the Agency as an autonomous unit of the OECD, one or the other had to be adopted first, and for practical reasons that turned out to be the OECD Council Decision.

The paramount reason for this sequence was the lingering uncertainty about whether or not the OECD in the end would be able to adopt the Decision. Only sixteen of the twenty-four OECD countries were ready to participate in the IEA at the outset. The IEA structures included innovations which might encounter resistance in the OECD, such as the system of voting weights, never before employed in the OECD, and the IEA rule on majority voting on most decisions and all recommendations, actions which required unanimity under OECD rules. Moreover, since France had not fully joined in the Washington Conference Communiqué and had not participated directly in the ECG negotiations, there was some question about whether France would exercise its power to prevent the Agency from being established, even as an autonomous Agency, as a formal part of an organization where France was the host country and an important as well as highly visible Member. None of the other OECD countries which declined at the outset to participate in IEA was considered to have such strong doubts as to raise that kind of question, for most of them were not fully ready then to join the Agency but would do so within its first few years. Yet the two instruments were written on the assumption that France would not interpose a formal objection. Although France would not itself join immediately, it was expected that France would abstain from acting on the proposal and would thus permit the Decision to be adopted. That of course is what finally transpired.

Until shortly before the mid-November target date for the OECD Council Decision, there was no clear assurance that the Decision could be adopted at all, and if adopted what its final terms might be. Since the final text of the I.E.P. Agreement necessarily contained references to the OECD, the Agreement could not be signed before the Council Decision was adopted. If the proposed Decision were to fail in the OECD Council, the draft I.E.P. Agreement would have to be amended to delete references in paragraphs 8 and 9 of the Preamble to the establishment of IEA organs in the OECD and to other possible OECD Members joining the Agency, as well

as the provisions of Article 64.1 on the OECD scale of contribution rules and of Article 71 on accession to the Agreement by OECD Members. Moreover, if the Agency were not to become part of the OECD, the prospective Members would have to consider adding a number of provisions to complete explicitly some of the institutional aspects of the Agency, which had been left to inference, like the actual creation of the IEA (the language usually employed states that the parties "hereby establish an international organization to be known as . . ." or another formulation to that effect, which did not appear in the draft I.E.P. Agreement). Other additions to be made would have included an explicit text on the objective legal personality and privileges and immunities of the Agency and the Secretariat and additional provisions on institutional aspects of the new Agency. With the adoption of the Council Decision, these concerns promptly disappeared.

The draft Council Decision as developed in the ECG was the subject of considerable debate, some of which reverted to more modest institutional views expressed at the Washington Energy Conference. In the OECD, there were suggestions in the air that would have tended to tighten the links between the Agency and the OECD and to establish an enlarged measure of OECD presence in Agency operations. Those suggestions contained elements

- to adopt the name "Energy Agency of the Organisation" instead of International Energy Agency, which would highlight the OECD connection rather than the autonomy of the Agency;
- to remove the characterization of the IEA as an autonomous institution, as being unnecessary in view of the text as a whole;
- to provide emphasis in Article 6(a)(v) on the co-operation of the Agency with other Member countries of the OECD;
- to arrange for the IEA Secretariat to function under the authority of the OECD Secretary-General, not that of the Executive Director alone, in accordance with the instructions and orders of the Governing Board, with both to be responsible to the Governing Board for the execution of the IEA Program;
- to arrange for the Executive Director to be appointed on the proposal of the Secretary-General;
- to integrate the IEA Budget into the Budget of the Organisation as in other OECD special Budgets (technically referred to as Part II Budgets in OECD terminology, and requiring OECD Council unanimity).

While there was some accommodation to those views [See Council Decision Articles 1, 7(a) and (b), and 10(a)], and other minor improvements were

adopted, the main elements of those views were not accepted by the future IEA Members. A workable balance between the OECD's institutional interests and the IEA's requirement of autonomy having been struck in the course of earlier discussions in the ECG and in bilateral contacts, the basic elements of that balance were not to be disturbed.

In the end, the draft Council Decision was adopted on 15 November 1974 without extensive amendment and in the form in which it had been negotiated in Brussels. It was clear that the OECD Secretary-General welcomed the setting up of the IEA within the OECD, for this was regarded as being fully in harmony with the OECD Convention and traditions. There was an expectation that the Agency would also contribute a dynamic element to the Organisation and that the other bodies of the OECD would gain from close association with the work of the Agency, which in turn would benefit from its close association with the OECD. The establishment of the IEA would reduce neither the general co-operative efforts within the OECD nor the work of its various bodies on energy policies and related questions.

At the Council meeting on 15 November 1974, most Delegates noted the general function of the Agency in energy co-operation and of particular elements of the Program, including the emergency plan, alternative energies, research and development, relations with oil companies and the information system. Strong supporting statements were made by the Delegates for Austria, Belgium, Canada, Spain, Sweden, Switzerland and Turkey. Neutrality was mentioned by the countries which would make a statement on that subject at the I.E.P. Agreement signature ceremony on 18 November. Reference to co-operation with oil producers or a future dialogue with them or both was made by most of the Delegates, including the Delegates of some countries which were not able to become Members of the Agency at the outset (e.g. Finland, France, New Zealand, Norway).

Among the countries not immediately becoming Members of the Agency, Australia explained concerns about its responsibility to provide petroleum products to nearby countries, about co-operation in bunkering for shipping or for particular grades of oil and about co-operation between producers and consumers in international commodity trade. The Delegate for Finland referred to participation in parts of IEA co-operation of special interest to Finland. France spoke on the situation of non-Members and to the scope of IEA activities. In New Zealand the Government had not yet taken a decision on membership but was expected to do so shortly. Iceland did not envisage joining the Agency. Norway was prepared to enter into a separate, binding agreement with the Agency and soon did so [See Chapter IV, Section A-3 below]. The other OECD Members which could not join in 1974, with the

exception of Iceland, did become Members in the years that followed. The new IEA Members also made a declaration in the Council in which they indicated that the task of the new Agency would be to implement the I.E.P. Agreement in all respects and thus to work on all aspects of energy. They stressed the autonomy and operational character of the Agency and their wish to extend the benefits of its work to the OECD as a whole, through reciprocal co-operation and consultation in the context of the relationship between the two institutions.

The Decision was adopted unanimously by the OECD Council on 15 November 1974, with abstentions by Finland, France and Greece. The text of the Decision, reproduced in full in Appendix IV below, may be summarized as follows:

- **Formal establishment.** Article 1 states that the IEA "is hereby established as an autonomous body within the framework of the Organisation" [See Chapter IV, Section C below].
- **Membership.** Article 2 identifies the original 16 Members and provides for new Members [See Chapter IV, Section A below].
- **European Communities (European Union).** Article 3 provides for accession by the Communities [See Chapter IV, Section D-3 below].
- **Governing Board.** Articles 4 and 5 contain provisions on the composition and powers of the Governing Board as the supreme body of the Agency, on the binding nature of its decisions, on delegation of powers, on rules of procedure and voting rules, and on powers to establish organs and adopt procedures required for the proper functioning of the Agency [See Chapter V, Section A below].
- **International Energy Program.** Article 6 provides for the Governing Board specifically to adopt an International Energy Program, with aims corresponding to the main programme provisions of the Agreement, and to adopt other measures of co-operation in the energy field; upon the Governing Board's proposal the Council may confer other responsibilities upon the Agency [See Chapter III below].
- **Provision for Staff.** Article 7 refers to the staff of the Agency as forming part of the Secretariat of the OECD; but the staff is also to report to and be responsible to the organs of the Agency; provision is made as well for appointment by the Governing Board of the Executive Director of the Agency on the proposal or with the concurrence of the OECD Secretary-General [See Chapter VI below].

- **Reports to the OECD Council.** Article 8 calls for an annual report by the Governing Board and other communications on its initiative or on request of the Council [See Chapter IV, Section C-2 below].
- **Co-operation With Bodies of the OECD.** Article 9 provides for the Agency to co-operate with other competent OECD bodies in areas of common interest, and for those bodies and the Agency to consult with one another regarding their respective activities [See Chapter IV, Section C-2 below].
- **Budget and Finance.** Article 10 contains detailed provisions on budget and finance questions: the IEA Budget is to be part of the OECD Budget (Part II), the Board is to fix the Members' shares of contributions, provision is made for special expenses and for the IEA to have an advisory organ on financial and budgetary questions; autonomy on these questions is provided under a procedure whereby the Board's Budget proposals are adopted in the Council when the same Members who voted for them in the Board also vote for them in the Council; the Board is empowered to accept voluntary contributions, grants and payments for services rendered by the Agency [See Chapter VII below].
- **Special Activities.** Article 11 establishes rules for special activities other than those required to be carried out by all Members under the Agreement [See Chapter V, Section A-18 below].
- **External Relations.** Article 12 contains broadly the same text on this subject that is found in Article 63 of the I.E.P. Agreement [See Chapter IV, Section D below].
- **Application of the Agreement.** Article 13 provides for cessation of membership of a country for which the Agreement is no longer applicable, but arranges for continued participation of a country which gives special notice that the International Energy Program is binding upon it pursuant to this Decision [See Section C-7 and Chapter IV, Section A-1 below].
- **Entry into Force.** Article 14 provides for the Decision to enter into force on 15 November 1974, the day of its adoption.

Since the entry into force of the Decision, occasion for amending the Decision has never arisen, nor has that subject ever been discussed in the Governing Board or the OECD Council. Meanwhile Finland, France and Greece have withdrawn their abstentions and have joined in the Decision, each in connection with its respective application for membership in the

Agency, thus bringing the support of all OECD countries to the Decision. (Iceland did not abstain but it is not a Member of the Agency).

6. Agreement on an International Energy Program

The establishment of the Agency within the framework of OECD was effected not only by the adoption of the OECD Council Decision, but also by the conclusion of an international agreement among the Members. While the main function of the Council Decision was to graft the Agency onto the OECD and to make the institutional arrangements with the OECD for that purpose, the Agreement was designed to deal more specifically with those substantive elements of energy relations and the corresponding institutional arrangements which in the aggregate are designated as the "International Energy Program". Although the Program could have been adopted with binding effect in the Council Decision, the treaty form was thought to provide advantages flowing from parliamentary commitment, and from the treaty's formality, visibility and fully independent legal standing.

The Agreement on an International Energy Program (the I.E.P. Agreement) was signed by representatives of the sixteen founding Members at the OECD in Paris on 18 November 1974, three days *after* the Council Decision was adopted. The Agreement entered into provisional application immediately upon signature [See Chapter III, Section D below]. It entered formally into force on 19 January 1976 for the Members which had taken their consent to be bound action in sufficient time; for other Members it entered into force ten days after their respective consents to be bound were deposited. The current total number of Members, each of which has taken its definitive action to be bound, is twenty-three (all OECD Members except Iceland) [See International Energy Agency Membership, Appendix I below].

The Agreement itself was made in binding treaty form under international law [See Article 5 of the Vienna Convention on the Law of Treaties]. The framers thus intended to adopt the I.E.P. in the most solemn form of international instrument to ensure the highest commitment of governments to the Program as a whole and particularly to the detailed rules governing the Agency's oil Emergency Sharing System. In Article 1 Members formally undertook to "implement the International Energy Program as provided for in this Agreement through the International Energy Agency, described in Chapter IX . . .".

The I.E.P. Agreement includes provisions covering energy policy questions in the broadest sense of the term as well as details of the

institutional arrangements and the usual formal and final clauses. Significantly, the main directions of the Agreement follow the policy sectors taken up in the Washington Energy Conference Communiqué. These directions of the Agreement may be summarized as follows:

- **Members' Objectives.** The Preamble of the Agreement states the principal objectives and a few of the considerations which led to the establishment of the Agency [See Section C-4 above].
- **Emergency Self-Sufficiency in Oil Supplies.** Chapter I contains the Members' oil emergency reserves commitment (stocks), initially fixed at the equivalent of sixty days of net oil imports, later raised to the current level of ninety days, and it sets forth associated rules on that subject.
- **Demand Restraint.** Chapter II states the obligation of Members to have ready a programme of contingent demand restraint measures sufficient to reduce oil consumption to meet the Agency's emergency standards, and it contains rules to implement demand restraint.
- **Allocation.** Chapter III contains the technical treaty rules on the system of oil allocation as part of the IEA Emergency Sharing System, including the Members' commitment to allocate available oil as foreseen in that System.
- **Activation.** Chapter IV provides the rules about the levels of oil supply shortfall sufficient to activate the Emergency Sharing System, outlines the procedures to be followed in triggering the System and applies a fail-safe mechanism when the Secretariat finds that the actual or expected shortfall meets the I.E.P. trigger requirements. It also calls for oil industry consultation in the allocation process, carried out through the Industry Advisory Board [See Chapter V, Section 17(d) below], and sets out the procedure for deactivating the System.
- **Information Systems.** Chapter V contains the rules for establishing and operating the Agency's information systems designed to provide oil industry information generally and in relation specifically to expected or actual oil supply emergencies as provided in the Agreement.
- **Consultations with Oil Companies.** Chapter VI sets up the IEA "Framework of Consultations with Oil Companies" and provides procedural rules concerning the consultations.
- **Long-Term Co-operation.** Chapter VII states broadly the key elements of long-term policy to reduce dependence on imported oil;

the detailed Long-Term Programme was adopted not in the I.E.P. Agreement itself, but in the Governing Board's 1976 major decision on this subject.

- **Relations with Producers and Other Consumers.** Chapter VIII contains broad rules concerning these relations and gives the basic mandate to the IEA's organ responsible for the Agency's work in that sector, initially the Standing Group on Relations with Producer and Other Consumer Countries, more recently the Committee on Non-Member Countries [See Chapter IV, Section D-2 below].
- **Institutional and General Provisions.** Chapter IX sets out the composition and competence of the Governing Board and the Standing Groups together with the rules applicable to those bodies. Included also are provisions for the Secretariat, the voting system, relations with other entities, financial arrangements and special activities [See Chapters V-VIII below].
- **Final Provisions.** Chapter X contains the normal final clauses for international agreements of this kind together with provisions concerning new Members, accession by the European Communities (European Union), amendments and general review of the I.E.P. Agreement [See Chapter III below].

During the period since signature, the I.E.P. Agreement has been amended only in three respects: to add language versions to the Agreement, to reflect changes brought about by the addition of new Members and to remove a date limitation on provisional application by new Members. At its meeting on 5-7 February 1975, the Governing Board adopted the French and German versions of the I.E.P. Agreement which had been signed in the English version only [See IEA/GB(75)8, Item 9, Annex V]. Over the years Article 62 has been amended for each new Member, to add its name and voting weights, and to change the consequential voting weight totals and, when appropriate, the number of voting weights required for the two "special majorities" [the majorities required for decisions on certain issues under the Emergency Sharing System, discussed in Chapter V, Section A-13 (c) and (d) below]. Article 71.3 was amended on 20-21 May 1976 to make possible the provisional application of the Agreement by a new Member acceding after 1 May 1975, the original cut-off date for the use of that procedure [See IEA/GB(76)24, Item 2, Annex I, paragraph 3(d)]. Otherwise the I.E.P. Agreement as originally signed has not been amended. There have been no amendments touching the substantive energy policy provisions of the Agreement.

7. Governing Board Decision on the Program

While the Council Decision was necessary to establish the Agency in the OECD, and the I.E.P. Agreement was necessary to fix the international obligations of the Members and the terms of the Program, a means of lodging the Program legally in the Agency itself was also required. That would be necessary for:

- the Agreement to apply to the Agency as an entity;
- the organs of the Agency to be formally created with their respective memberships, powers, procedures and policy directives as contained in the Agreement; and
- all of the institutional arrangements in the Agreement to become operational.

This was achieved when the Governing Board of the IEA adopted the "Decision on the International Energy Program" on 18 November 1974 at its first meeting [IEA/GB(74)9(1st Revision), Item 4(a) and IEA/GB/DOC.74/5, Annex]. Under the operative part of that Decision, the Governing Board

> DECIDES that:
>
> 1. The International Energy Program set out in the Agreement [on an International Energy Program] is hereby adopted and shall be carried out by the Agency and Participating Countries in accordance with its terms;
> 2. The organs provided for in the Program are hereby established as organs of the Agency; they shall carry out their responsibilities in accordance with the procedures set out in the Program and shall take decisions, recommendations and other actions as provided therein;
> 3. The Participating Countries of the Agency shall fulfil the obligations and enjoy the rights provided for in the International Energy Program as set out in the Agreement.

The Preamble of that Decision stated that: "all countries participating in the Agency, in addition to becoming Signatory States to the Agreement, wish to adopt by this Decision the International Energy Program in the manner which creates legally binding rights and obligations in accordance with the International Energy Program as set out in the Agreement". In the lead-in to the operative part of the Decision, Members declared that they were

"Acting pursuant to the Decision of the Council, Article 4, which empowers the Governing Board, *inter alia*, to make decisions which shall, except as otherwise provided, be binding upon Participating Countries and to delegate powers to other organs of the Agency".

The International Energy Program, which in effect is co-extensive with the I.E.P. Agreement, was thus adopted by the Members in a Decision of the Governing Board as well as in the Agreement itself. That decision incorporated by reference the terms of the Agreement in its entirety, making the Program binding on all IEA Members under the terms of the OECD Convention. The effect of this Governing Board Decision was to enact the full Program within the Agency, for the purposes of internal organization, in parallel with the Agreement. The Decision also satisfied the requirements of Article 13(b) of the Council Decision which enables a country to remain a Member of the Agency on the basis of the binding effect of the Program Decision (made under powers recognized in the Council Decision to make binding decisions) when the country is no longer in formal terms a party to the I.E.P. Agreement itself. That procedure was employed by Japan, which found itself sufficiently bound to the Program by virtue of the Council Decision and the IEA Program Decision so that it was unnecessary for Japan to duplicate the effect of those Decisions in the more formal procedure of consenting to be bound by ratifying the I.E.P. specifically as such. The Board's Decision on the Program, quite useful for internal IEA purposes, did not affect the status of the I.E.P. Agreement in any way. The Agreement remains fully valid independently under the rules of international law.

The events recounted in this Chapter began with the challenges of the 1973-1974 crisis to the industrial countries and conclude with the institutional responses of these countries. In order to reach that concluding point of institution building, the group of industrial countries had to identify their shared interests, establish the political will to act decisively upon them, marshall the necessary technical, diplomatic, legal and political expertise, and seize the unique opportunity to combine these elements into a process which would bring about a comprehensive and effective response to the new energy challenges. In 1974 the I.E.P. Agreement symbolized that response. The Agreement was itself the vital instrument for the realization of the founders' energy co-operation objectives. To the present day the Agreement continues to serve these functions.

CHAPTER III

The I.E.P. Agreement of 1974

The Agreement on an International Energy Program, signed on behalf of the initial sixteen Member states on 18 November 1974, reflected the founders' conviction that the Program should be established in an international treaty rather than in an instrument of lesser juridical standing. The most compelling reason for the treaty approach was the need to establish the Agency's Emergency Sharing System, set out in the first five Chapters of the Agreement, in absolutely binding terms from a legal standpoint. In situations of oil supply disruptions presenting high economic and political stakes, it could not be excluded that states might be drawn into action which did not entirely conform to the interests of the group as a whole. Internal as well as external forces acting on the states might have disruptive effects in the course of a crisis, particularly a deep and prolonged crisis bringing severe suffering to their constituencies. At times the costs of compliance with a system of oil sharing might be high. The short term interests of a country could run counter to respect for the interests of the group as a whole. In some situations there could be pressures by oil producers on selected Members. Or compliance might jeopardize other political objectives, leading industrial countries toward "beggar-my-neighbour" rather than co-operative sharing actions. Although such difficulties were foreseeable, the founders could not allow them to undermine the objectives of the new Agency. The IEA's Sharing System could not function unless all Members respected their oil stocking and demand restraint commitments and carried out their oil sharing obligations fully and promptly when they arose under the fail-safe IEA formulations. Since the founders had seen the divisive factors at work in various degrees during the 1973-1974 crisis, they naturally wished, in the application of their political objective of sharing the available oil supplies, to minimize those potential risks to the integrity of the new emergency response system.

During the 1973-1974 crisis, experience with non-legally binding arrangements had not been particularly favourable. European Members of

the OECD had not performed fully on the political commitments they had taken in the OECD Stocks Recommendation to maintain oil stocks for emergency purposes. Nor had it proved possible for those Members to find the political will to activate the loosely structured OECD Oil Apportionment Decision applicable to European Members of OECD [See Chapter II, Section A-3 above]. Coherent and effective sharing arrangements on a wider basis could not be put in place during the crisis. Thus it was evident that voluntary systems based on recommendations, declarations, or other non-legally binding, imprecise or insufficiently developed arrangements could not always be expected to function properly in times of crisis. Since a system of commodity sharing in times of crisis is inherently one that distributes the burdens, no country could reasonably be expected to carry out a costly co-operative action unless it were satisfied that the strongest measures were in place to ensure that the other participants in the system would accept their shares of the overall burden and carry out their commitments under the system.

The founders concluded that the best way to minimize these problems was to use legally binding provisions on the *key elements* of the system and to embody those provisions in an international treaty, thus making the commitments as formal, visible and convincing as possible. A treaty could be expected to assist Members with their own constituencies in times of crisis. The adoption of legal undertakings would have the advantage of placing them within the international legal system and subjecting them to incentives for compliance. Monitoring and administration would also be greatly facilitated, particularly with the advantage of the IEA reporting, reviewing and performance assessment capabilities. In that context, since the incentives for implementation would then become readily apparent, the Program would be much more effective than it might have been if established on political formulations with less formal standing than the legal arrangements which were adopted in the treaty.

This Chapter examines particular treaty aspects of the I.E.P. Agreement, reviews the international as well as national legal dimensions of the Agreement and describes the mechanisms by which the Agreement was initially applied, entered into force, brought new Members into the Agency, and managed a number of treaty related questions, including territorial applications, amendments, disputes, interpretation, review and duration. Although these considerations represent the more formal rather than energy policy aspects of the Agreement, they provided the indispensable IEA operational framework which constantly influenced the way that the Agency carried out its functions.

A. Legal Status of the I.E.P. Agreement in International Law

Although no question has ever been raised about the status of the I.E.P. Agreement as a "treaty" in the technical sense of international law, it is useful to recall briefly the authority for that important characterization. Article 2.1(a) of the Vienna Convention on the Law of Treaties defines "treaty" for the purposes of the Convention as

> . . . an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

The I.E.P. Agreement fits comfortably into that definition in every respect. Moreover, the Agreement is written in clearly stated legally binding form. The signatory governments, identified in the Preamble, state immediately before Article 1 that they "HAVE AGREED as follows:. . .". The term "Participating Countries", employed throughout the Agreement to identify the Contracting Parties, is defined in Article 1.2, to mean "States to which this Agreement applies provisionally and States for which the Agreement has entered into and remains in force". Throughout the text of the Agreement the mandatory form "shall" is used to identify legally binding commitments, as in Article 2.1: ". . .each Participating Country *shall* maintain emergency reserves sufficient to sustain consumption for at least 60 days with no net oil imports" (later raised to 90 days); Article 5.1: each "*shall* at all times have ready a program of contingent oil demand restraint measures enabling it to reduce its rate of final consumption in accordance with Chapter IV"; Article 6.1: each "*shall* take the necessary measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV", et cetera [Emphasis added; see Chapter IV, Section B-1 below].

The Vienna Convention, moreover, provides quite specifically for the status of treaties establishing international organizations; i.e. intergovernmental organizations like the IEA [See Vienna Convention, Article 2.1(i)]. Thus Article 5 of the Convention states:

> The present Convention applies to any treaty which is the constituent instrument of an international organization . . .

The legally binding effect of a treaty such as the I.E.P. Agreement is confirmed in Articles 26 and 27 of the Convention which are reproduced in Chapter IV, Section B-1 below.

B. Legal Effect of the I.E.P. Agreement in the National Law of Members

While the I.E.P. Agreement created obligations for Members at the international legal level, it was not the intention to do so directly at the national level of Members' internal law, not automatically so in any event. The Agreement states international obligations of governments, of the Agency itself and of its organs; none of its provisions is addressed to companies, other entities or individuals. The Agency operates under the notion that the two bodies of international and national law are separate. Since the Agreement is not considered to be "self-executing" (i.e. not automatically applicable as national law), implementing legislation (or other regulatory measures) was required in those countries in which the governments had not been empowered independently to take the actions required by the Agreement. This conclusion follows not only from the absence of self-executing language or intent, but also by implication from the Agreement language providing for its "provisional application", i.e. its application prior to its entry into force following the deposit of the requisite number of consents to be bound [See Section G below] and from the implementation provisions of Article 66, both of which will be discussed below. Although the Agreement does not apply by its terms directly as national law of the Members, in recent years the Members have reported to the Agency that in fact the necessary legislative authority for implementation of the Agreement is in place in all of their countries.

"Provisional application" of the I.E.P. Agreement by all Signatory States was provided in Article 68.1 of the Agreement [See Section D, below]. This was a temporary arrangement to enable the Agency to function at the outset before the Agreement entered into force. During the provisional application period, Members' actions inconsistent with the Agreement could be excused on the basis of *national* legal requirements. Once the Agreement entered into force, however, this legal relationship was to be reversed for Members which had given or would give their consents to be bound. For those Members (which now include all Members of the Agency), legislative defenses were no longer available in cases where their

actions might be constrained by internal legislation inconsistent with the Agreement.

There is no provision in the Agreement making any of the commitments it contains subordinate to national law once the Member has given its consent to be bound. The commitments in the Agreement thus require Members to conform their national law to the terms of the Agreement. This is made specific for the IEA in Article 66 of the Agreement which states this as follows:

IMPLEMENTATION OF THE AGREEMENT

Article 66

> Each Participating Country shall take the necessary measures, including any necessary legislative measures, to implement this Agreement and decisions taken by the Governing Board.

In practice this provision required all Members to have those implementing measures in place *before* giving their formal consent to be bound by the Agreement and to maintain them or fully conforming successive measures in force thereafter. Moreover, this provision confirmed the founders' intention that in all Member countries the Agreement would not impose rules of conduct directly on companies, other entities and individuals in the way that national legislation could. Although at the international level, in the words of the Vienna Convention, "A party (meaning a state) may not invoke the provisions of its internal law as justification for its failure to perform a treaty" [Article 27], at the national level the I.E.P. Agreement is not binding directly on companies, other entities or individuals, but requires national level implementing measures in order to be binding upon them.

IEA Members report periodically on the state of readiness of their legislative and regulatory measures necessary to enable them to carry out their commitments under the Agreement, and specifically under the Emergency Sharing System provisions. These reports were compiled by the Secretariat at the request of the Standing Group on Emergency Questions(SEQ) in the form of two summary documents, one entitled "Draft Summary of Energy Emergency Legislation of IEA Countries" [IEA/SEQ(89)25(1st Revision)] and the second, "Member Countries' Legislation, Administrative Procedures and Policy Attitudes Concerning the Use of Stocks in Supply Disruptions" [IEA/SEQ(89)26(2nd Revision)]. These reports make it clear that the implementing measures were adopted in basically three different modalities: (1) parliamentary action in connection with the ratification of the I.E.P.

Agreement, (2) specific legislation authorizing actions mandated by the I.E.P. Agreement and (3) energy legislation directed more generally to energy emergency problems. Most, if not all IEA Members have extensive legislation in the latter category. As shown in the two SEQ documents mentioned above, Members have in place the legislation necessary to carry out their Emergency Sharing System commitments.

C. IEA Participating Countries, States, Signatory States and Governments

The formal terms identified in the title of this Section need to be clarified because they appear at various places in the I.E.P. Agreement and have given rise to questions about their respective roles in the IEA lexicon and the various relations among them. The essential point is that the Agreement, as stated in Article 1.2, has been entered into among "States" in the international law sense of the term; that is, states established and recognized as such in the international system. In Chapter X of the Agreement the parties to the Agreement are clearly identified as "States" or "Signatory States" or "acceding States". The states are identified on the signature pages of the Agreement not as "Governments" or "Participating Countries" but by the name of the state in each case. There has never been any suggestion of the admission of non-state entities to IEA membership, although the European Communities (European Union) enjoy a particular status carrying the right to accede to the Agreement [See Chapter IV, Sections A and D-3 below].

States are represented in international relations by their respective governments, and the term "The Governments" appears as the first words of the Preamble of the Agreement. Literally it is the governments which, immediately following the Preamble, "HAVE AGREED as follows". However, the term "governments" is not defined or extensively employed. It gives way to the "Participating Countries" as the term of art used throughout the Agreement. Virtually all of the obligations of Members are taken in the name of "Participating Countries", an expression better adapted to repeated usage in an Agreement of this kind than "States". Article 1.2 resolves any questions about the meaning of "Participating Countries" by defining it to mean "States to which this Agreement applies provisionally and States for which the Agreement has entered into and remains in force". So "Participating Countries" refers simply to the IEA

Member states. (Note that the term "Members" is often used in I.E.A. documentation and in this work as a convenient shorthand term in place of "Participating Countries", although the term "Members" is not employed in the Agreement to refer to IEA states, countries or governments).

"Signatories" and "Signatory States" refer to the states on whose behalf the Agreement has actually been signed. In the case of this Agreement, that category consists only of the sixteen founding Members of the Agency: Austria, Belgium, Canada, Denmark, Germany, Ireland, Italy, Japan, Luxembourg, The Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Agreement was signed on behalf of the sixteen countries on 18 November 1974; and there were no later signatures as such because no provision was made for later signatures. The six countries which joined the Agency since that date (Australia, Finland, France, Greece, New Zealand and Portugal), are not Signatories in the technical sense, but are rather "acceding States" because they each acceded to the I.E.P. Agreement in accordance with the Agreement's provisions on that procedure [See Section H below]. Although Norway is considered as a Member for most purposes, it is neither a signatory nor an acceding State in technical terms, for its participation is regulated by special arrangements [See Chapter IV, Section A-3].

Signature of the I.E.P. Agreement took place at an "Inter-governmental Meeting of Members" which immediately preceded the first Governing Board meeting on 18 November 1974. At the Intergovernmental Meeting the OECD Secretary-General welcomed the representatives, who then signed the Agreement. The Conclusions of that meeting appear with the Conclusions of the first meeting of the Governing Board [IEA/GB(74)9(1st Revision), p. 1].

D. Provisional Application

Immediately upon signature of the Agreement, the Signatories were bound to apply the Agreement on a provisional basis. "Provisional application" played an important role at the outset of the IEA because it was understood that the Members' constitutional procedures for giving their "consents to be bound" [See Section E below] would take a considerable period of time in some cases, but that the Program would have to become operational immediately. In order to avoid an expected delay of six months or longer (in the end it was about fourteen months) before the Agreement could enter

into force definitively, the Members agreed in Article 68.1 on the "provisional application" of the Agreement as follows:

> Notwithstanding the provisions of Article 67, this Agreement shall be applied provisionally by all Signatory States, to the extent possible not inconsistent with their legislation, as from 18th November, 1974 following the first meeting of the Governing Board.

Provisional application is specifically provided for in Article 25 of the Vienna Convention on the Law of Treaties. It had been employed successfully in a number of instruments establishing other intergovernmental organizations, including the Organisation for European Economic Co-operation (the OEEC, later transformed into the OECD) and in the GATT. It would also prove successful in the case of the IEA as an effective means of bridging the time gap between signature of the Agreement and its entry into force.

The effect of the provisional application of the I.E.P. Agreement was to launch the Agency immediately upon signature, with virtually no delay in its initial operations. The first Governing Board meeting followed on the same day as the signature. Members were specifically committed under the terms of the Agreement to carry out the Program on a provisional basis to the extent that it was possible to do so under their existing legislation, an important advantage in view of the emergency preparedness mission of the Agency and the potentially long period necessary for Members to carry out their constitutional procedures and for the Agreement to enter into force.

At the outset all sixteen founding Signatories applied the Agreement provisionally under Article 68.1. The provisional application arrangement was later established also for Greece, New Zealand and Portugal in connection with their respective applications for accession to the Agreement [See Chapter IV, Section A-2 below]. That was carried out for acceding Members pursuant to Article 71.3 as amended, which provides this:

> Accession may take place on a provisional basis under the conditions set out in Article 68, subject to such time limits as the Governing Board, acting by majority, may fix for an acceding State to deposit its notification of consent to be bound.

In the other cases of accession, for Australia, Finland and France, there was no provisional application, and the new Members deposited definitive instruments of accession without preceding them with the deposit of provisional instruments. In all cases of provisional application, time limits

were fixed for deposit of the definitive instrument of accession. For founding Members the initial time limit was 1 May 1975, as fixed in Article 67.1 of the Agreement, but that time limit proved to be too short. Consequently, on successive occasions the Board granted extensions of time in intervals varying from about three to six months until in each case the definitive instrument was deposited. The extensions were granted by the Board pursuant to Article 67.4 of the Agreement.

Provisional application under I.E.P. Agreement Article 68.2 continued until one of three events took place: (1) the Agreement definitively entered into force for the State concerned by deposit of the definitive consent to be bound, (2) the depositary received notification that the State concerned would not "consent to be bound" by the Agreement (i.e. gave notice that it would not ratify the Agreement), or (3) if the time limit for notification of consent to be bound by the State concerned expired. For each IEA Member, the provisional application terminated upon the definitive entry into force of the Agreement for the State concerned.

The Signatories were fully able to meet their obligations under the Agreement, including financial contribution obligations, during the period of provisional application which lasted from 18 November 1974 until the Agreement entered into force on 19 January 1976 and until each Signatory had deposited its definitive consent to be bound. Acceding Members also performed their obligations fully during their respective periods of provisional application. During those periods, the occasion did not arise for any Member country to seek to excuse non-performance of the Agreement for its part, on account of the absence of legislative authority prior to the completion of its constitutional procedures. The provisional application rule thus made it possible for the Agency to advance its work during the initial period of its life when the Members were, in parallel actions, obtaining the necessary legislative authority to carry out the Agreement on a more permanent basis. A membership chart showing the dates of membership actions of all Members can be found in Appendix I.

E. Consents to Be Bound

In order for the I.E.P. Agreement to enter into force in the full sense of the term for a Member, treaty rules and the Agreement itself require that the State give its "consent to be bound" to the Government of Belgium which serves as the depositary of the Agreement. Article 67.1 of the Agreement provides:

> Each Signatory State shall, not later than 1st May, 1975, notify the Government of Belgium that, having complied with its constitutional procedures, it *consents to be bound* by this Agreement (Emphasis added).

However, Article 67.1 does not specify the means by which the State's consent is to be expressed. That specification is given in Article 11 of the Vienna Convention on the Law of Treaties, as follows: "The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting the treaty, ratification, acceptance, approval or accession, or by any other means if so agreed." The consents to be bound of most of the founding Signatory States were expressed by the deposit with the Government of Belgium, as depositary of the I.E.P. Agreement, of their respective instruments of ratification [See Article 14 of the Vienna Convention]. In one case the alternative procedure provided in Article 13(b) of the OECD Council Decision on the Establishment of the Agency was applied [See Chapter II, Section C-7 above].

As indicated above in Section D, it was necessary for the Governing Board to grant extensions of time for deposit of the consents to be bound in cases of provisional application. Under Article 67.4 extensions may be granted by the Governing Board, acting by majority, upon the request of any Signatory State. The Members requesting time extensions were usually asked to explain the reasons for delay in completing their constitutional procedures and to complete them at the earliest possible time, the Board agreeing on the same occasion to review the situation at an early meeting of the Board [See for example IEA/GB(80)86, Item 7]. Time limits were also retained for New Zealand, Greece and Portugal which had the benefits of provisional accession, for those provisional benefits could not continue indefinitely. In the other cases of accession, for Australia, Finland and France, there were no arrangements for provisional application or time limits, and these new Members deposited definitive instruments of accession without preceding them with the deposit of provisional instruments.

For the Signatory States, the deposit of those instruments, together with the entry into force of the Agreement under Article 67.2, completed the formal actions for them to be definitively bound by the terms of the Agreement [See Section G below]. The deposit of the instrument for Signatory States could be made either before or after the entry into force of the Agreement. States which deposited their instruments by 9 January 1976 became definitively bound on 19 January 1976. Signatories which deposited their instruments after 19 January 1976 became definitively bound ten days after the deposit was effected [See Appendix I].

F. Absence of Reservations; Acceptance of Declarations

Reservations to the I.E.P. Agreement were theoretically possible under the international law on this subject as codified in the Vienna Convention on the Law of Treaties. Article 2.1(d) defines the term as follows:

> 'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

Article 19 of that Convention permits a State to formulate reservations when signing or ratifying a treaty unless the reservation is prohibited or excluded by the treaty or is "incompatible with the object and purpose of the treaty". In the I.E.P. Agreement there is no reference to reservations: they are neither prohibited nor permitted expressly. While the formulation of reservations might have been theoretically possible, the general sense of the founders was that the Program was to be an integrated and balanced whole which would be disrupted by any reservations and that probably none could be made consistently with the "object and purpose" of the Agreement, certainly none that would reduce the Program to an *à la carte* selection process for Members. Hence no reservations were lodged at the time of signature and none at the time of ratification by the founders or accession by the new Members.

Although reservations were not made, there was ample scope for Members to make "declarations" or statements without the intent or consequence of excluding or modifying the legal effect of any provision of the Agreement. The declarations made at the time of signature on behalf of Austria, Canada, The Netherlands, Spain, Sweden, Switzerland and Turkey are reproduced in IEA/GB(74)9(1st Revision), Annex I; the Governing Board's action on them appears in that document, Item 4(b) to (d). In its action on the declarations, the Board made it clear that they contained no reservations or exceptions to the declarant States' full acceptance of the I.E.P. Agreement. In doing so the Board first noted the declarations generally, and then noted specific responses to particular declarations, as follows [IEA/GB(74)9(1st Revision), Item 4(c) to (d):

> (c) upon receiving the declarations, the Governing Board
> (1) noted the declarations on the oil stock question by Austria and Turkey and concluded that the contents of

those declarations are consistent with the Agreement on an International Energy Program;

(2) noted the declaration of Canada concerning the Canadian constitutional system, the declaration of the Netherlands concerning territorial application and the declaration of Switzerland concerning Liechtenstein.

(d) noted the declarations of Austria, Sweden and Switzerland, concerning their neutrality.
It noted also that these three States have determined that participation in the Agreement is consistent with their neutrality.
The three states are acceding to the Agreement with all the obligations which it contains and undertake to implement all parts of the Agreement.
Their commitment to achieve the purposes of the Agreement, and their determination to put it into force are not diminished by the declarations made at the time of signature.

Hence none of those declarations constituted formal reservations to the Agreement, and none of them was repeated in the instruments of ratification which were subsequently deposited with the Government of Belgium. The only founding Member of the IEA to deposit a declaration with the depositary at the time of depositing its consent to be bound was Germany, which referred to the application of the I.E.P. Agreement to Berlin, to the administration of stocks, to control of research and development and to the relevant rights and responsibilities of the Allied authorities.

At the time of admission of later Members, declarations were not made on behalf of Greece, New Zealand or Portugal, but were made on behalf of Australia, Finland and France. Australia referred to its federal constitution, to its foreign investment policy, to other relevant energy policies, and to its understandings concerning Chapters I-IV of the Agreement (the oil Emergency Sharing System) on supply to certain non-Members and territories and on bunker fuel requirements for shipping. Australia also could not regard itself as bound by Chapter V of the IEA's Long-Term Co-operation Programme entitled "Legislative and Administrative Obstacles and Discriminatory Practices" (for reasons largely parallel to those expressed by Australia in the OECD). In its Conclusions on the Australian declaration, the Board responded on the Long-Term point but did not consider that the other parts of the declaration required response [The declaration, an explanatory statement and the Board's

Conclusions are found in IEA/GB(79)8, Item 2 and Annex I]. The declaration was mentioned in the Australian Instrument of Accession. While the Australian actions clearly constituted a reservation to the Board's Long-Term Co-operation Programme decision, they did not exclude or modify in any way the legal effects of the Agreement itself and were not considered as formal reservations to it.

In the proceedings for the membership of Finland in 1991, the Government of Finland made a declaration on neutrality. The response of the Governing Board was made parallel to the Board's response to the earlier declarations on that subject [the Finnish declaration appears in IEA/GB(91)5 and the Board's response in IEA/GB(91)19, Item 2(b)]. Like the other declarations on neutrality, the Finnish declaration was not treated as a reservation. France also made a statement in the course of its IEA membership proceedings. Its statement concerned the additional time that might be required to complete the steps being taken to bring French emergency reserves up to the level required under the I.E.P. Agreement [this statement was noted by the Governing Board, IEA/GB(91)45, Item 2(b)]. The French statement, like those made for other countries as described above, was not considered to constitute a formal reservation to the I.E.P. Agreement.

G. Entry into Force

I.E.P. Agreement Article 67.2 governed the initial entry into force of the Agreement on 19 January 1976, some fourteen months after signature. Article 67.2 also provided for the deferment of entry into force until a critical minimum number of Members had given their consents to be bound:

> On the tenth day following the day on which at least six States holding at least 60 per cent of the combined voting weights mentioned in Article 62 have deposited a notification of consent to be bound or an instrument of accession, this Agreement shall enter into force for such States.

The critical minimum was thus close to the number required to constitute a majority of Signatories when the Agency was established. When consents to be bound had been deposited by Canada, Denmark, Germany, Ireland, Japan, Luxembourg, Spain, Sweden, Switzerland, the United Kingdom and the United States on 9 January 1976, the requirements of Article 67.2 were

satisfied. The United States was the last of this group. The 121 combined voting weights held by the eleven Members exceeded the required minimum of six countries holding 60 per cent of the combined voting weights at that time, and the group then constituted more than a majority of the Signatories. The requirements of Article 67.2 thus being satisfied, the Agreement entered into force ten days later on 19 January for all Members which had given their consent to be bound by 9 January [See IEA/GB(76)13, Item 7(a)].

For each Signatory which deposited its consent to be bound *after* 9 January 1976, which was the case for Austria, Belgium, Italy, The Netherlands, and Turkey, the Agreement entered into force on the tenth day following the deposit of the country's consent to be bound [See Article 67.3]. Parallel rules apply to accessions under Article 71.2. The Agreement would enter into force for an acceding State on the tenth day following deposit of its instrument or on the date of entry into force of the Agreement, whichever was later in time. Since none of the acceding States qualified *before* the entry into force of the Agreement, the effective date for each accession was the tenth day *following* the deposit of the State's definitive instrument of accession [See Appendix I].

H. Accession

Accession to the I.E.P. Agreement is simply the procedure by which a State which is *not* a Signatory formally accepts and becomes bound by the Agreement. Six States have acceded to the Agreement to date: Australia, Finland, France, Greece, New Zealand and Portugal. The procedure for accession and its legal effects are codified in Article 15 of the Vienna Convention on the Law of Treaties. As adopted for the IEA, accession procedures are found in I.E.P. Agreement Article 71. Paragraph 1 of that Article provides as follows:

> This Agreement shall be open for accession by any Member of the Organisation for Economic Co-operation and Development which is able and willing to meet the requirements of the Program. The Governing Board, acting by majority, shall decide on any request for accession.

The conditions for accession are described in Chapter IV, Section A-2 below.

As noted above, the Agreement authorized accession to take place on a provisional basis under the same conditions applied to Signatory States

under Article 68 [See Section D above], "subject to such time limits as the Governing Board, acting by majority, may fix for an acceding State to deposit its notification of consent to be bound" [Article 71.3]. Provisional application was established for Greece, New Zealand, and Portugal, and time limits of a number of months were fixed and extended as required. Definitive consents to be bound were deposited by each within the time limits as extended [See Appendix I].

Rules on entry into force of the Agreement for acceding States are provided in Article 71.2 as follows:

> This Agreement shall enter into force for any State whose request for accession has been granted on the tenth day following the deposit of its instrument of accession with the Government of Belgium, or on the date of entry into force of the Agreement pursuant to Article 67, paragraph 2, whichever is the later.

New Zealand was the only acceding State whose request for accession had been granted before the Agreement entered into force on 19 January 1976, making it theoretically possible for its instrument of accession also to be deposited before entry into force of the Agreement, with the consequence that New Zealand could have become a Member definitively on that date with the others. However, the New Zealand instrument of accession was not deposited until 29 December 1976, and its membership became fully effective ten days later. All of the other requests for accession were granted after the Agreement entered into force, and the membership of those States accordingly became definitive ten days after their respective accession instruments were deposited, as indicated in Appendix I.

Each of the Governing Board's decisions granting requests for accession was accompanied by a provision to the effect that the State's accession to the Agreement would be deemed also to constitute the State's accession to all of the decisions of the Governing Board which would be in force on the date of the deposit. Declaring an exception for Chapter V of the Long-Term Co-operation Programme, Australia was the only acceding State which found itself unable to accede to all of those decisions, but only for that exception. All of the other acceding States have acceded not only to the I.E.P. Agreement, but also without exception to all Governing Board decisions in force on the date of deposit of the accession instrument.

I. Right of Accession of the European Communities (European Union)

The relations between the European Communities (EC) and the IEA fall into two distinct categories: (1) the operational relations which have been in place on a regular basis since the establishment of the Agency and continue to the present time, and (2) future relations which could be brought about by accession of the EC to the I.E.P. Agreement. The operational relations under which the EC has participated quite extensively in the work of the Agency are described in Chapter IV, Section D-3 below. This Section is confined to the formal point of possible EC accession to the I.E.P. Agreement itself. While the designation "*European Union*" (EU) came into official usage with the recent entry into force of the Treaty on European Union (commonly known as the "Maastricht Treaty"), the designations "*European Communities*" (EC) and the "*Commission of the European Communities*" (CEC) are retained in this *History*, since they are employed in the applicable IEA and OECD instruments.

The possibility of EC accession is expressly provided in I.E.P. Agreement Article 72 as follows:

> 1. This Agreement shall be open for accession by the European Communities.
> 2. This Agreement shall not in any way impede the further implementation of the treaties establishing the European Communities.

Moreover, Article 3 of the Council Decision Establishing the IEA provides that

> This Decision will be open for accession by the European Communities upon their accession to the Agreement in accordance with its terms.

In parallel with the procedures for OECD Members to join the Agency, the foregoing texts arguably envisage the possibility of the EC becoming a Member of the Agency upon its accession to the two instruments which established the IEA in the OECD, the I.E.P. Agreement and the Council Decision, although the precise effect of the texts quoted above on this subject is not altogether clear.

During the 1974 Energy Co-ordinating Group (ECG) negotiations in Brussels, there was a question about possible conflict between the

future I.E.P. Agreement and the treaties establishing the European Communities. Although the founders of the IEA did not identify specific points of conflict, they sought to reduce the theoretical risks of conflict and possible opposition within the EC (particularly from an EC Member State which was not participating in the ECG), which led to the inclusion of Article 72. At that time EC accession was not considered to be a realistic possibility in the near future, but Article 72 was added to accommodate the possible convergence of energy policies of EC Member States at a later time, and their possible representation by the European Communities in the IEA.

There are major procedural differences between accession by States under Article 71 and accession by the EC under Article 72. In the former case an invitation by the Governing Board is necessary, and the new Member must be "able and willing to meet the requirements of the Program" [Article 71.1]. For the EC there is no requirement of a Governing Board invitation or of a showing of being "able and willing to meet the requirements of the Program". These differences, which doubtless had a sound political origin, left a number of questions to be resolved. Since the possibility of EC accession has received renewed attention in recent years, the unresolved questions need to be examined.

Perhaps the most far-reaching of those questions would be the future relationship between the EC Member States and the Agency, as well as that between the EC and the Agency. After EC accession, would the Member States remain Members of the IEA but recede from active direct participation, leaving the EC to act as their spokesman in whole or part in IEA organs? Or would the individual Member States formally withdraw as IEA Members and be represented exclusively by the EC? A bare accession by the EC would not seem to change the institutional situation of the EC beyond its present status in the Agency, except perhaps to enlarge its role by delegation of power from the EC Member States for the EC to act as their spokesman. In that respect it may be questioned whether the Maastricht Treaty brought about any substantial change in the status of the EC, particularly in view of the apparent absence of a specific basis for an EC common energy policy and the presence in the Treaty's Article B of the principle of "subsidiarity".

Any formal substitution of the EC Member States by the EC itself would raise a number of important institutional questions for the IEA, including:

- **Obligations.** I.E.P. Agreement obligations are taken by "Participating Countries" throughout the Agreement; "Participating Countries"

are defined in Article 1 as "*States* to which this Agreement applies provisionally and *States* for which the Agreement has entered into and remains in force" [Emphasis added]. How would those obligations of "States" be made applicable to the EC?

- **Ability to Carry out the Program.** Although a demonstration of the EC's ability and willingness to carry out the Program is not formally required, and willingness may be inferred from the accession itself, there remains a question about the ability of the EC to carry out key obligations, such as the oil stock, demand restraint, allocation, information and long-term provisions of the Agreement and Governing Board decisions.
- **Voting.** The right to vote is limited to Participating Countries which are enumerated in Article 62.2, with the number of votes assigned to each. Would the EC have votes in addition to the those of the Member States? Or would the EC cast the established votes of its Member States, either in their names or in its own name? Governing Board action would be required to resolve these questions.
- **IEA Financial arrangements.** Those arrangements refer to the OECD scale of contributions which applies only to "Participating Countries". What adjustments would have to be made to those arrangements?
- **OECD Council Decision on the Establishment of the IEA.** Would the Council Decision's rules on contributions of Participating Countries and other subjects also have to be adapted for the EC?

Theoretically there are a number of procedural means of bringing about the necessary adjustments to the IEA institutional arrangements on the foregoing subjects, once the desired outcome might be identified. If an Article 72 accession by the EC were envisaged, and follow-up arrangements were to be made, whether by formal amendment of the I.E.P. Agreement or by other and perhaps less burdensome and less time consuming procedural mechanisms (possibly a separate agreement between the IEA and the EC or accession by the EC to a Governing Board decision), there would have to be a Governing Board consensus. While Article 72 does not formally require a Governing Board agreement on EC accession, the procedural steps necessary to arrange any formal substitution of the EC for its Member States would lead inexorably to the conclusion that a Governing Board consensus would be indispensable.

Another large question would be the ability of the EC to carry out the I.E.P. Agreement commitments, even if textual changes were adopted or other arrangements were made. There would doubtless be need for transfer

of authority from the Member States to the EC, not only on oil stock questions, but also on demand restraint, allocation, the data systems, the Long-Term Programme and others. Institutionally, the EC would either have to be authorized to speak for the Member States (and cast their votes or express their consensus), or would have to displace them entirely, for which end consensus in the Governing Board would have to be achieved.

Up to the present time, it has not appeared that in either the modalities or the scope of substitution of the Member States by the Commission in IEA operations there was sufficient consensus among the Member States to allow the Commission to approach the IEA directly on the accession question, although some informal soundings and contacts have taken place from time to time. In the meantime there has been considerable reflection on this subject in IEA Member countries and within the Secretariat.

J. Application to Territories

The I.E.P. Agreement makes no exceptions to the general treaty rule that in the absence of a different intention "a treaty is binding upon each party in respect of its entire territory" [See Article 29 of the Vienna Convention on the Law of Treaties]. However, the Agreement does permit a Member to broaden the territorial scope of its commitments by extending the application of the Agreement to territories for whose international relations it is responsible or to territories within its frontiers for whose oil supplies it is legally responsible. The Agreement also contains territorial application provisions in a few technical rules of the Emergency Sharing System. To date, there has been one major territorial change for a particular Member in the history of the Agency. That change resulted from the unification of Germany in 1990, by which rights and obligations of the Federal Republic became applicable with respect to the German Länder in the east.

The provision on extension of the I.E.P. Agreement to territories is contained in Article 70:

> 1. Any State may, at the time of signature, notification of consent to be bound in accordance with Article 67, accession or at any later date, declare by notification addressed to the Government of Belgium that this Agreement shall apply to all or any of the territories for whose international relations it is responsible, or to any territories within its frontiers for whose oil supplies it is legally responsible.

2. Any declaration made pursuant to paragraph 1 may, in respect of any territory mentioned in such declaration, be withdrawn in accordance with the provisions of Article 69, paragraph 2.

At the time of signature, two declarations on territorial application were made, one by The Netherlands limiting the application of the Agreement to the territory of the Kingdom in Europe [IEA/GB(74)9(1st Revision) Annex I, p.16], and the other by Switzerland on the application of Chapters I to VI of the Agreement (the Chapters on the Emergency Sharing Systems, Information Systems and Oil Company Consultations) to Liechtenstein [IEA/GB(74)9(1st Revision) Annex I, p. 20].

In addition to the Agreement's provision for declarations on territory, specific territorial references are contained in the Emergency Sharing System's technical rules governing stocks and allocation. The emergency oil stockholding obligation of Members is not strictly territorial. Thus Article 3 of the Annex to the Agreement provides that a Member may credit oil stocks held in another country toward its oil stock commitment only if the other country agrees with the Member that it "shall impose no impediment to the transfer of those stocks" to the Member. Stocks held within the Member's country may not be counted if they are held as international marine bunkers, since such bunkers are treated as exports under a 1976 Governing Board decision incorporated into the Emergency Management Manual (EMM) [4th Ed. 1982 p. 37]. The allocation provisions of the Agreement also contain territorial considerations, such as the territory on which an oil supply shortfall might occur and the maintenance of historical trade patterns in an emergency. Article 17.2 treats the territorial shortfall problem as follows: when the oil supply shortfall trigger situation occurs in "a major region" of a Member rather than in the Member's over-all territory, in cases where the oil market is incompletely integrated, allocation is to take place under technical rules provided in that Article. The situation of non-Members is also considered. While the oil allocation rules in the Agreement do not extend formal rights to non-Members, Article 11.1 contains the following language: "Historical oil trade patterns *should* be preserved as far as is reasonable, and due account *should* be taken of the position of individual non-participating countries" (Emphasis added). The use of "should" in those commitments indicates a clear intention that these are recommendations to the Agency and its Members, but are not formally binding obligations. Nevertheless, those territorial recommendations are to be taken into account as appropriate in the allocation process.

Germany has always presented a special territorial situation for the Agency, because of Berlin and the former East German Länder. Following OECD practice, from the outset in 1974 the Agency has referred to the Federal Republic simply as "Germany" and has included "Land Berlin" in accordance with the Declaration deposited with Belgium when Germany gave its consent to be bound by the I.E.P. Agreement in 1975; but the Länder of the German Democratic Republic were not included before the unification. On 3 October 1990 the two German States were united into a single sovereign State through the accession of the German Democratic Republic to the Federal Republic of Germany. On that day the OECD Council adopted a Resolution [C(90)143(Final)] extending to the unified Germany the OECD Convention and all Acts adopted by the Council applicable to Germany. The IEA took parallel action in respect of the I.E.P. Agreement and the Acts of the Governing Board, as stated in the Board's Conclusions of 31 October 1990 in which the Governing Board [IEA/GB(90)39, Item 5]

(b) noted that the Agreement on an International Energy Program and all Acts of the Governing Board applicable to Germany also apply, as of 3rd October, 1990, to the territory incorporated into the Federal Republic of Germany as a result of the unification of Germany;
(d) noted that the implications of German unification for the IEA Budget, the Scale of Contributions and International Energy Program Agreement provisions, will be examined by the Governing Board at a later meeting.

While the territorial provisions of the I.E.P. Agreement are necessary to make the application of the Agreement clear, and to resolve political and technical questions in some cases, those provisions have not given rise to major problems. Over the years those provisions have been applied smoothly, and the necessary actions have been taken to ensure that the Agency's objectives and Members' intentions have been realized.

K. Amendments

Under general rules, a treaty may be amended by agreement of the parties or in accordance with rules contained in the treaty itself [See Vienna Convention on the Law of Treaties, Articles 39 and 40]. Article 40 of the

Vienna Convention contains the rules applicable to multilateral treaties, including in paragraph 2 the rights of all parties to be notified of amendment proposals and to take part in the decision on the action to be taken on the proposals and in the negotiation and conclusion of any agreement for the amendment of the treaty. Article 40.3 ensures that every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended. Those rules and others in Article 40 apply unless the treaty provides otherwise.

The Vienna Convention rules mean that all of the parties must agree to the treaty amendments or to the procedure by which amendments are to be adopted. In the case of the I.E.P. Agreement there are two procedures, a general one, but also a more specific one for amending the voting rules on the occasion of membership changes or the periodic reviews under Article 62.5 and 62.6. The more general procedures are provided in Article 73 as follows:

> This Agreement may at any time be amended by the Governing Board, acting by unanimity. Such amendment shall come into force in a manner determined by the Governing Board, acting by unanimity and making provision for Participating Countries to comply with their respective constitutional procedures.

When compliance with a country's constitutional procedures is a condition for the entry into force of an international agreement for that country, it is not unusual for amendments of the agreement to be made subject to the same condition, as is the case for the IEA under Articles 67.1 and 71.2.

The constitutional procedures rule does not apply, however, to amendment of the voting provisions under Articles 62.5 and 62.6 of the Agreement, when membership changes occur or voting weight reviews are conducted. In deciding to amend those voting provisions, the Governing Board acts without the need for Members to obtain additional constitutional authority. The consent to be bound by the Agreement may thus be viewed as a consent to all future amendments on the voting questions in accordance with Articles 62.5 and 62.6. The voting rules have already been amended by the Governing Board in that fashion to reflect the changes required for the admission of the six new Members which joined the Agency after it was established. Article 62.7 requires, moreover, that any change in Article 62.2 (the voting weight table), 62.3 (majority) and 62.4 (the two special majorities) "shall be based on the concepts underlying those paragraphs and paragraph 6" (changes in

voting weights based upon a Member's oil consumption). This is discussed further in Chapter V, Section A-13 below.

Article 73 of the Agreement confers amendment powers on the Governing Board, subject of course to the other relevant provisions of the Agreement. For example, the adoption of amendments by "unanimity" means unanimity as defined in the Agreement. Article 62.1 states that "Unanimity shall require all of the votes of the Participating Countries *present and voting*" and that "Countries abstaining shall be considered as not voting" (Emphasis added). When applied to the adoption of amendments, those rules constitute an agreed departure from the otherwise applicable rule of international law; such a departure is permitted under the Vienna Convention articles referred to above.

In fact the I.E.P. Agreement has been amended to date only on a few occasions and for the following purposes only: (1) to add other language versions to the Agreement, (2) to reflect changes brought about by the addition of new Members and (3) to remove a date limitation on provisional application by new Members. At its meeting on 5-7 February 1975, the Governing Board adopted the French and German versions of the I.E.P. Agreement which had been signed in the English version only [See IEA/GB(75)8, Item 9, Annex V]. Article 62 paragraphs 2 and 4 were amended for each new Member in order to add its name and voting weights, the consequential voting weight totals, and when appropriate, the number of voting weights required for the two special majorities. Article 71.3 was amended on 20-21 May 1976 to make possible the provisional application of the Agreement by a new Member acceding after 1 May 1975, the original cut-off date for the use of that procedure [See IEA/GB(76)24, Item 2, Annex I, paragraph 3(d)]. Otherwise the I.E.P. Agreement as originally signed has not been amended. There have been no amendments touching the substantive energy policy or operational provisions of the Agreement.

While amendment by Governing Board decision is the established procedure for amending the Agreement, and no alternative means of amendment have in fact been employed for that purpose to date, other possibilities do exist in the international system for amending a treaty. Indeed the most frequently employed procedure is amendment by a subsequent treaty, which may displace the first treaty in whole or in part. The amending treaty may be attached to the amended treaty as a protocol or the second treaty can stand on its own. The rules to be applied are contained in Articles 39-41 of the Vienna Convention. To date the IEA has yet to apply the protocol or amending treaty procedure.

There exist also less formal means for the Members to alter their working relationships without formalizing amendments to the treaty. An example of the less formal approach is seen in the association arrangements with Norway. In order to accommodate the special status of Norway as a non-Member, yet almost full participant in the IEA [See Chapter IV, Section A-3 below], the voting rules were not formally changed, but the Governing Board agreed that for the bulk of majority vote decisions in which Norway could participate, in effect the Members would vote in such a way as to give Norway the equivalent voting status of a full Member of the Agency. Such an arrangement on the application of the Members' existing voting power did not constitute a formal amendment to the Agreement, but the result was a pragmatic solution permitting desired changes in relationships where required without undertaking the burdens of the more formal steps. That less formal adjustment has worked smoothly to all Members' satisfaction since the arrangements were made with Norway in 1975.

The I.E.P. Agreement established the key obligations of the Agency in a secure legal structure which would be difficult but not impossible to amend. The Agency countries thereby provided themselves with a firm treaty based foundation for their reliance on each other's performance of critical commitments on a vital area of economic life, in which they had become increasingly interdependent. Although the conferring of amendment powers upon the Governing Board might facilitate changing of the Agreement, the requirement of unanimity for such action assured Members of the continuing integrity of the Agreement and particularly of those elements, such as the oil supply emergency provisions, which were of principal importance to them.

L. Disputes

The founders of the Agency chose not to provide in the I.E.P. Agreement for specific procedures which could be invoked for the settlement of disputes arising under the Agreement, and for most potential disputes of that kind no later action for that purpose has been taken by the Governing Board. Yet even a cursory view of the Agreement suggests that, at least from a theoretical viewpoint, it created considerable potential for disputes among the Members and others, especially in the Emergency Sharing System. There was the expectation that in an emergency a multitude of actions would have to be taken pursuant to the complex I.E.P. provisions and that the interests at stake could be quite significant in political and financial

terms. Notwithstanding this potential for disputes, circumstances which could have led to disputes within the Agency have been adjusted in a satisfactory way without requests for formal dispute settlement procedures.

In the interest of the integrity and reliability of the Emergency Sharing System, it became necessary for the IEA to employ all available means to avoid situations in which disputes might arise under that System. The most important of those means was the practice of substituting consensus for formal voting procedures (without amendment of the Agreement or other formal arrangement). Consensus reduced the possibilities of polarization and isolation of the minority, made workable compromises possible, and enhanced the atmosphere of co-operation in the general interest [See Chapter V, Section A-13].

The IEA Member governments clearly adopted a political rather than a legal approach to dealing with situations which might evolve into more formal disputes. Policy choices must be made in the course of resolving disputes which might arise under the System. For example, the Emergency Sharing System was designed at the outset in terms of broad concepts requiring definition and development. Even with the advantage of twenty years of refinement in which the Emergency Sharing System has been quite well developed, tested, and understood, the key concepts are still sufficiently broad to raise policy issues in potential dispute situations. IEA governments have preferred that those choices be made not by judges or arbitrators, but by policy authorities in the national administrations represented in the IEA. Under the inchoate state of international institutions in the twentieth century, there was no compelling reason for the framers of the I.E.P. Agreement to submit to the discipline of greater legal precision in the Emergency Sharing System or to foresee a systematic submission of I.E.P. Agreement disputes to judges or arbitrators.

There were also more practical considerations which led to the political approach to conflict resolution. If the Emergency Sharing System were to serve its purposes promptly and effectively, a dispute settlement process could not be allowed to endanger the System. Therefore, the System had to be kept free of the risks of legal constraints, delays or blockages. This is reflected in the assumed preference in the I.E.P. Agreement for the advantages of the political process rather than for the advantages of certainty, precision, and the more ideal justice that legal procedures might bring.

Hence it comes as no surprise that dispute settlement procedures were not specifically dealt with at all in the Agreement; nor were they as such discussed at any length in the I.E.P. preparatory work which took place in the Energy Co-ordinating Group at Brussels in the course of 1974. While a

number of I.E.P. provisions were designed to help shape the resolution of policy disagreements within the Agency, and some of these will be discussed below, there was no specific provision for the resolution of disputes of a legal nature over questions of interpretation of the Agreement, over competence of the various IEA bodies, over the validity of unprecedented actions to be taken by the Secretariat, or over compliance by governments with their new I.E.P. obligations. Nor did the founders provide for the resolution of disputes which might arise between the co-operating oil companies and the Agency or governments or other companies.

The sense of the Energy Co-ordinating Group was that legal as well as political disagreements among the various participants would have to be resolved in accordance with the future decisions of the Governing Board, which is the highest level decision-making body of the Agency. Such questions as whether the Governing Board's actions concerning disputes would be a case-by-case process or whether the Board would establish separate mechanisms for dispute resolution were not explicitly addressed. Nor would it have been feasible for the founders to write into the I.E.P. Agreement a comprehensive dispute settlement mechanism while there was clearly a more urgent need to proceed with broader questions of policy. Furthermore, it would have been difficult at that early date to make a thorough analysis of the kinds of disputes which might arise under the Emergency Sharing System, and it would have been quite impossible to foresee the nature of disputes in those sectors which would be developed only after the Agency had become fully operational.

Institutional obstacles to the use of judicial or arbitral remedies also exist. No court, whether national or international, has been granted general jurisdiction over the parties or the subject matter of judicial actions which might be instituted, and no such jurisdiction, much less consent by the parties, has been given for arbitration proceedings specifically concerning the types of issues which could arise under the I.E.P. Agreement. While some Members may have agreed broadly on judicial or arbitral mechanisms which could theoretically include IEA issues, for example under the arbitration clauses contained in IEA energy R & D Implementing Agreements, no Member has invoked those clauses or other mechanisms on an adversarial basis in deliberations of IEA bodies.

Another element which works against formal dispute settlement procedures is the fact that the IEA Secretariat and the Governing Board are fully *sheltered* against dispute resolution proceedings. They are each internal creations of the IEA, having no independent legal capacity or standing under the I.E.P. Agreement or under national legislation

implementing the I.E.P. Agreement. Nothing in the I.E.P. Agreement establishes any remedy against actions of the Secretariat or the Governing Board, and it would be only with great difficulty that one could imagine what appropriate and effective legal remedies might be fashioned. The Secretariat, following normal international practice, is responsible solely to the principal organ of the Agency, in this case the Governing Board, which in turn is fully empowered to make all decisions necessary for the establishment and the functioning of the Secretariat. There is virtually no institutional control on actions by the Governing Board. Moreover, the Executive Director of the Agency, as well as the members of the Staff and the government representatives serving on the Governing Board or in other bodies of the Agency, are granted immunity from legal process under OECD rules. As an autonomous agency of the OECD, the IEA not only enjoys the benefits of the OECD's legal capacity and standing to appear in judicial and arbitral proceedings, but also enjoys the full immunity from legal process which is customary for international organizations. These immunities could be waived, of course, as could the immunities of governments under public international law, but there is no indication of any disposition to request or effect such waivers either generally or on a case-by-case basis.

On the international level, no institutional device has been established for the IEA (or the OECD generally or any OECD body) to participate in international judicial proceedings such as the advisory opinion process available in the International Court of Justice for United Nations institutions. No agreements have been made for arbitration of the IEA institutional type issues now under consideration, not even in the IEA's Dispute Settlement Centre which offers, under carefully designed conditions and limitations, a highly developed instrument of arbitration available to the co-operating oil companies. Great care was exercised to limit the jurisdiction of the Centre in such a way as to exclude consideration of these issues and to prevent the IEA, its organs, the Secretariat, or Member governments from being parties to arbitration proceedings conducted under the auspices of the Centre. With this avenue foreclosed and with other judicial and arbitration possibilities excluded for various reasons, it is clear that disputes arising under the I.E.P. Agreement are, under existing arrangements, subject to conflict resolution principally by means of the *political* process.

M. Interpretation

The I.E.P. Agreement is silent not only on the procedures for dispute resolution but also on the means of interpretation of the Agreement, a

question which is often presented in disputes under international treaties. Like other disputed questions, as indicated above in Section L, in the IEA questions of interpretation are more subject to political than strictly juridical means of resolution. In the absence of interpretation rules in the Agreement itself, those questions are governed by the general treaty rules of international law. The basic rule is provided in Article 31.1 of the Vienna Convention on the Law of Treaties:

> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Article 31 of the Vienna Convention contains rules concerning "context" referred to in the quotation of paragraph 1 above. The "context" to be taken into account includes, in addition to the text itself, the Preamble of the Agreement and annexes as well as certain other agreements and instruments. Other rules refer to subsequent treaties, practice and relevant rules of international law. When intended by the parties, special meanings are to be given to treaty terms. Rules are provided in Article 32 for recourse to supplementary means of interpretation, including preparatory work. These and other Convention rules provide useful and authoritative guidance on interpretation of the Agreement.

In the special cases of treaties establishing international organizations there is, moreover, a particularly important rule of interpretation which has been applied by the International Court of Justice. That rule was formulated as follows for the United Nations:

> . . . the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.
> and
> Under international law, the Organizations must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties . . . [See the Advisory Opinion of the International Court of Justice in *Reparation for Injuries Suffered in the Service of the United Nations,* I.C.J. Reports (1949) pp. 174, 180, 182].
> and
> . . . when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the

stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization [See *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter) (Advisory Opinion)*, I.C.J. Reports (1962) 151, 168].

The foregoing statements of what has been characterized as the rule of "institutional effectiveness" [See for example, Brownlie, *Principles of Public International Law*, 4th Ed. 1990 p. 705] correspond to the Governing Board's approach to the application of the I.E.P. Agreement and the principles of flexibility, operational efficiency and simplicity adopted by the Board at its first meeting [See Chapter VIII below]. In numerous cases, the Governing Board has appeared to apply the international law principles, including the rule of "institutional effectiveness", but always tacitly without express reference to the fact that the Agreement was in effect being interpreted by the decision being taken.

Examples of Governing Board action or acquiesence containing tacit interpretations of the I.E.P. Agreement may be found in the application of the following powers:

- the Governing Board's power to dispense with rules of procedure: in exercising that power in 1974 [See Chapter V, Section A-8], the Board in effect interpreted the words "shall adopt its own rules of procedure" [Article 50.2] to be permissive, not mandatory;
- the Agency's power to enter into an international agreement: in authorizing the Agreement Between the Agency and the Government of Norway in 1975 [See Chapter IV, Section D-4], the Board tacitly applied the "institutional effectiveness" rule to find an implied international legal capacity to enter into such an international instrument;
- the Governing Board's power to act beyond the 1 July 1975 deadlines set in Articles 2.2, 3.2, 18, 43 and Annex Article 9 as well as the 30 or 60 day deadlines set in Articles 29, 34 and 37 on various occasions in and after 1975, tacitly interpreting those provisions as setting targets, not deadlines on competence;
- the Executive Director's power to decline to make the "finding": in acknowledging tacitly the Executive Director's exercise of that power and thus for the Emergency Sharing System not to be activated on a number of occasions, the Governing Board interpreted the absolute trigger rules of Chapter IV of the Agreement to exclude "fluctuations of supply attributable to normal market forces, ordinary operational

difficulties of the industry, interruptions of supply due to strikes or cases in which activation would shortly become unnecessary because of an anticipated resumption of sufficient supply to the affected country or countries" [See IEA/ED/80.198 to Heads of Delegations]. But note that the Governing Board is empowered to substitute its own judgement to make the finding and thereby to activate the Emergency Sharing System [See Article 21.4].

As indicated in Chapter V, Section A-1 below, the Governing Board enjoys extremely broad powers to operate and develop the Agency; the broad powers conferred in Articles 51.2, 6.4 and 22 are supplemented by a number of specific powers relative to the Agreement. While interpretation is not mentioned specifically, the interpretation power is included by implication in Article 51.1 which states this:

> The Governing Board shall adopt decisions and make recommendations which are necessary for the proper functioning of the Program.

Since decisions taken by the Governing Board are "binding" as provided in Article 52.1, presumably an interpretation decision cast in legally binding terms would also be binding and without appeal inside or outside of the Agency. The Board has never had occasion to address that question or the important voting question of whether such a measure is a "management" matter subject to "majority" or whether it properly falls in the category of "all other decisions" in Article 61.1(b) requiring unanimity.

When serious controversy arises over a question of interpretation, the underlying policy concerns could be sufficiently important to compel consideration of the policy and operational implications of the available alternatives. The ultimate alternative is amendment of the Agreement [See Section K above]. When resort to broad powers of the Board and to interpretation fail, an amendment could become the only alternative to acquiescence. Since unanimity is required for amendments, even an amendment might not be a realistic alternative, particularly if a division of views of Members had emerged. Proceeding by formal amendment has the advantages of: (1) avoiding any doubt concerning the validity of a decision if made by interpretation, (2) being directly binding under the law of treaties, and (3) enjoying the permanence of a formal amendment and attracting greater public notice. However, those advantages have almost always been found to be outweighed by the burdens of the formal

amendment procedure: (1) the need to resort to a "consent to be bound" procedure with attendant delay and to rely upon provisional application, (2) the possible political problems of raising such a question in the parliaments of Members, and (3) the difficulty of effecting future adaptations. Understandably, interpretations and adaptations have been the procedures of choice in virtually all cases of difficulty, with the exception only of the new Member situations in which an amendment was indispensable and found to be facilitated under the special rules of Article 62.5.

N. General Review of the I.E.P.

The possible need for review of the I.E.P. Agreement once the Agency gained sufficient operational experience to make the exercise worthwhile did not escape the attention of the founders. They provided in Article 74 for a general review, as follows:

> This Agreement shall be subject to a general review after 1st May, 1980.

The effect of this provision was to keep in the air the possibility of a general review, which could be initiated with or without an Article 74 formulation. The general powers of the Governing Board could be employed at any time to launch a general review of the Agreement, but Article 74 provided a target date when the question might be considered. Article 74 did not set a rigid deadline for the review; it merely suggested at the outset a period of a little more than five years for the Agency to gain experience and then to consider conducting a review thereafter, without specifying when the review should take place. The decisions on whether to conduct a review and on its possible scope and timing were all left to the discretion of the Governing Board.

While there has been a number of partial reviews of the Agreement and of Members' energy security and policy needs, Article 74 has never been invoked formally and a systematic review of the Agreement as such has never taken place. Policy reviews are carried out each year in the Member countries, the Secretariat, the Standing Groups and the Governing Board in the process of developing the Agency's annual Programmes of Work. Specialized reviews are conducted periodically as the need arises to focus attention on particular sectors. Sometimes these take the form of general "brainstorming" sessions to re-examine the possible future directions of the Agency. Each of the lead-up periods to the Ministerial Level meetings of the Governing Board is taken up

with policy reviews as well in preparation for possible Ministerial action.

So far in the history of the Agency, there has been only one comprehensive review approaching the kind foreseen in Article 74, and that was not, strictly speaking, a review of the Agreement itself but one largely limited to pre-crisis situations and emergency preparation. This was the 1981 review ordered by the Governing Board at Ministerial Level on 8-9 December 1980, in the following terms:

> the Governing Board at Official Level will carry out a serious review of legal requirements in order to improve the basis for co-operation in pre-crisis situations and in emergency preparation [See IEA/GB(80)97, Item 2(m)(v)].

A High Level Ad Hoc Group of the Governing Board was constituted for that purpose under the chairmanship of the Executive Director (Ulf Lantzke). The Group began its work early in 1981 and reported to the June 1981 Ministerial Level meeting which noted the progress of its work, in particular the basic concept and main elements drawn from past experience, which included monitoring, information, stand-by sub-crisis measures, emergency reserve requirements, crude oil pricing and government/industry relations [See IEA/GB(81)33(2nd Rev.), Item 4; IEA/GB(81)31]. Subsequent Governing Board and Standing Group meetings reviewed the High Level Ad Hoc Group's work throughout the year, leading on 10 December 1981 to the Board's adoption of the decision on "Preparation for Future Supply Disruptions" [IEA/GB(81)86, Item 2, Annex I]. Among the provisions of that decision were the recognition of the importance of oil supply disruptions below the seven per cent level required to trigger the Emergency Sharing System, the enhanced monitoring functions, the inauguration of more comprehensive monthly oil reports from Members (Questionnaire C, now discontinued), the empowerment of the Executive Director to activate the emergency information system (Questionnaires A and B), the arrangement for the Board to meet promptly at the appropriate level to decide on necessary action to meet the situation, the inventory of possible measures to supplement market forces and the arrangements for company consultations.

The 1981 review was part of a process by which the Agency, beginning with the responses to the 1979-1981 oil supply disruptions, prepared itself to deal more effectively with what was known as "sub-crisis" situations, that is those not falling within the seven per cent shortfall concepts of the Emergency Sharing System. That process continued after the December 1981 Governing Board Decision, culminating in the 11 July 1984 "Decision on Stocks and Supply Disruptions" [IEA/GB(84)27, Item 2(a), Annex I] and

the applications in the 1990-1991 Gulf Crisis decisions [See IEA/GB(90)24, Annex; IEA/GB(90)27, Annex; IEA/GB(90)32, Annex; IEA/GB(90)39, Item 2; IEA/GB(90)46, Item 2; IEA/GB(91)1, Annex; IEA/GB(91)3, Annex; IEA/GB(91)19, Item 3; IEA/GB(91)46, paragraphs 4-8].

The multi-faceted IEA review process, described briefly above, has served to keep the Agency's work in close proximity to the evolving policy and operational concerns of the Members. It has permitted the Agency to adapt its programme and structures to the changing conditions of the energy markets and to broadening considerations of energy security. Although a systematic, Article 74 type review of the Agreement has not proven necessary or fruitful since the time of the IEA's establishment, the other review procedures applied by the IEA have served adequately the review needs of the Agency.

O. Depositary

The function of depositary of the I.E.P. Agreement has been carried out by the Government of Belgium which holds the single, original text of the Agreement. The general depositary responsibility was assigned to the Government of Belgium in Article 76 of the Agreement which provides this:

> The original of this Agreement, of which the English, French and German texts are equally authentic, shall be deposited with the Government of Belgium, and a certified copy thereof shall be furnished to each other Participating Country by the Government of Belgium.

Some of the specific notification functions of the depositary are stated in Article 75:

> The Government of Belgium shall notify all Participating Countries of the deposit of each notification of consent to be bound in accordance with Article 67, and of each instrument of accession, of the entry into force of this Agreement or any amendment thereto, of any denunciation thereof, and of any other declaration or notification received.

Each Signatory State is obligated in Article 67.1 to "notify the Government of Belgium that, having complied with its constitutional procedures, it consents to be bound by this Agreement". Parallel notifications are to be

given by acceding States [Article 71.2] and by States terminating the application of the Agreement to them [Article 69.2], as well as by States making declarations on the territorial application of the Agreement [Article 70], as provided in the cited Articles of the Agreement.

Under Article 76.2 of the Vienna Convention on the Law of Treaties, "The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance". A fuller inventory of the depositary's functions is set forth in Article 77.1 of that Convention, including the function of "registering the treaty with the Secretariat of the United Nations" [Article 77.1(g); and see Article 80]. Registration was required under Article 102 of the United Nations Charter. The Government of Belgium duly registered the I.E.P. Agreement with the United Nations Secretariat in 1977, and the Agreement was published in the United Nations Treaty Series, Volume 1040, p. 271, as No. 15664 in 1985.

In Brussels the Government of Belgium's depositary functions are carried out by the Treaties Section, Ministère des Affaires Étrangères, where the original I.E.P. Agreement and related documents are held.

P. The I.E.P. Agreement Languages

Article 76 of the I.E.P. Agreement refers to the English, French and German texts of the original Agreement as being "equally authentic". The original Agreement as well as all amendments have been established in the three languages [See Chapter VIII, Section C on Languages].

Q. Withdrawal

There are two fundamental rules governing the possible withdrawal of a State party to the I.E.P. Agreement. The first is the right of a party to withdraw "in conformity with the provisions of the treaty" [Vienna Convention, Article 54(a)]. The second is the general rule of treaty law which permits a party to withdraw from a treaty "at any time by consent of all the parties after consultation with the other contracting States" [Vienna Convention on the Law of Treaties, Article 54(b)].

In the case of the I.E.P. Agreement, Article 69.2 provides for a party to withdraw as follows:

> Any Participating Country may terminate the application of this Agreement for its part upon twelve months' written notice to the Government of Belgium to that effect, given not less than three years after the first day of the provisional application of this Agreement.

Under that provision, withdrawal was not possible before 18 November 1977, three years after the signature and provisional application of the Agreement. There were no withdrawal requests or actions during that period. From 18 November 1977 to the present day, Members have been free to withdraw at any time upon twelve months' notice, but there have been no withdrawals to date.

R. Duration

As indicated above in Section G, the I.E.P. Agreement entered into force on 19 January 1976, and for Members which thereafter deposited their consents to be bound the Agreement entered into force ten days following the dates of deposit of their respective consents to be bound. The Agreement remains in force until it is terminated in accordance with international law.

The rules governing termination of a treaty bear some conceptual similarity to the rules on the withdrawal of individual parties discussed above in the preceding Section. International treaty law permits the termination of a treaty for all parties either (1) at any time by consent of all the parties or (2) in conformity with the provisions of the treaty [See Vienna Convention on the Law of Treaties, Article 54]. The governing provision of the I.E.P. Agreement is Article 69.1 which provides that

> This Agreement shall remain in force for a period of ten years from the date of its entry into force and shall continue in force thereafter unless and until the Governing Board, acting by majority, decides on its termination.

Under the international legal rules referred to above, the parties could terminate the Agreement at any time, including the ten year period referred to in Article 69.1 quoted above, with the consent of all the parties (that is, in effect by unanimity), or they could conclude a later treaty with provision to that effect [Vienna Convention, Article 59]. Now that the initial ten year

period has passed, the I.E.P. Article 69.1 "majority" vote rule would apply in place of unanimity. Hence the present situation is that the Agreement may be terminated by the Governing Board acting by consensus in keeping with the Board's decision-making practice; or if that is not possible, by the affirmative vote of an IEA "majority" consisting of half of the Members voting and 60 per cent of the combined voting weights [Article 62.3]. Throughout the history of the IEA, there has been no discussion of an issue of this kind in any of the organs of the Agency. In practical terms, the Agreement will continue to remain in force indefinitely until termination action is taken under Article 69.1, quoted above.

IEA Relationships

Following the foregoing consideration of the formation of the Agency and the particular features of the I.E.P. Agreement, attention must be given to the key relationships which the creation of the Agency brought into being. This Chapter examines those relationships, beginning with membership in the IEA, in recounting the history of that most fundamental of IEA relationships. The next subject is the obligations of Members, which follows logically as the most immediate consequence of membership, viewed from the standpoint of the Members themselves. Then the focus shifts from Members' relationships to those of the Agency itself, first the Agency's important relationship of "autonomy" with the OECD, and then the external relations competence of the Agency generally.

A. Membership in the IEA

Membership in the IEA has been established through two quite separate procedures: (1) by signature of the I.E.P. Agreement and the procedures applicable to Signatories, or (2) by accession to the Agreement and the procedures appropriate to accession [See Chapter III, Section H above]. In either case, IEA Members were initial parties to the OECD Council Decision on Establishment of the Agency described above in Chapter II, Section C-5, or they were required to accede to that Decision as a condition of membership. At the time of signature, all of the Agreement Signatories were also parties to the Council Decision adopted three days before the Agreement was signed. That Decision identified by name the founding Members of the Agency, called "Participating Countries of the Agency" in Article 2(a), and made provision for membership to be enlarged both by the addition of those OECD Members "which accede to this Decision and to the Agreement in accordance with its terms" and by the addition of the European Communities (European Union) upon their accession to the two instruments [See Articles 2 and 3].

1. Signatories

The sixteen signatories were Austria, Belgium, Canada, Denmark, Germany, Ireland, Italy, Japan, Luxembourg, The Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. These countries had participated in the Washington Energy Conference in February 1974, or in the Brussels Energy Co-ordinating Group, or in both during the preparation of the I.E.P. Agreement and the Council Decision texts. Each of them had also participated in the Council Decision on 15 November 1974 before signing the Agreement on 18 November. They constituted the entire group of Signatories, for there was no provision for subsequent signatures, and the only provision for later membership was by means of accession. All of the Signatories were bound immediately to apply the Agreement provisionally before the Agreement would enter into force [See Chapter III, Section D above] and they were subject to the consent to be bound procedures provided in the Agreement [See Chapter III, Section E above].

All Signatories have since become definitive parties to the I.E.P. Agreement. They were required not only to be parties to the Council Decision (and they all were at the outset), but also to sign the I.E.P. Agreement, and to become definitively bound by the Agreement either by means of the deposit of their respective consents to be bound or by means of an alternative procedure provided in Article 13 of the Council Decision for the Program to become binding upon them by an internal IEA procedure. Thus Article 13(b) of the Council Decision provides that:

> . . . a Country whose Government shall have signed the Agreement may, upon written notice to the Governing Board and to the Government of Belgium to the effect that the adoption of the Program by the Governing Board is binding on it pursuant to this Decision, remain a Participating Country of the Agency after the Agreement shall have ceased to apply for it, unless the Governing Board decides otherwise. Such a Country shall have the same obligations and the same rights as a Participating Country of the Agency for which the Agreement shall have entered definitively into force.

In such a case a Participating Country need not be a party to the Agreement as such, but may remain in the Agency if identical legal obligations are undertaken in the prescribed manner. This latter procedure was made possible by the Governing Board when adopting the full text of the Agreement as a decision of the Governing Board [See Chapter II, Section C-7

above]. Under the authority of the Governing Board as recognized by the OECD Council, and the Board's powers as provided in the Agreement, the Board is empowered to make such decisions which are *legally binding* upon the Participating Countries. The procedure of Article 13(b) was employed by Japan for its definitive commitments under the International Energy Program; the other Members have expressed their commitments by separate consents to be bound to the I.E.P. Agreement itself. Thus in one way or the other all Signatories have accepted the obligations of the Agreement as a condition of membership in the Agency.

2. Membership by Accession

Provision was also made for qualified countries which were not Signatories to the I.E.P. Agreement to become Members of the IEA by accession to the Agreement. For prospective Members I.E.P. Agreement Article 71.1 provides that

> This Agreement shall be open for accession by any Member of the Organisation for Economic Co-operation and Development *which is able and willing to meet the requirements of the Program*. The Governing Board, acting by majority, shall decide on any request for accession [Emphasis added].

The condition that prospective Members be "able and willing to meet the requirements of the Program" has required in most cases a lengthy process of consultation and negotiation before a prospective Member's request for admission could be acted upon by the Governing Board. An elaborate procedure has been followed to ensure that the necessary elements are brought to the Board before it acts. To date, there have been six membership exercises in the history of the Agency, each following essentially the same procedural pattern, beginning with New Zealand (1976) and continuing with Greece (1977), Australia (1979), Portugal (1981), Finland (1992) and France (1992). New Zealand had participated in the Brussels ECG and was ready quite rapidly, about one month after the membership discussions were authorized by the Governing Board. In most other cases the process took many months; it lasted over a year for Portugal and France.

In all cases of new membership in the Agency, the Agency is required to marshall the facts and judgements about the ability of the prospective Member to carry out the Agency commitments, and the authorities of the country concerned must familiarize themselves with those commitments

and the Agency's practices and expectations. Both sides require time to work through the procedures and to resolve any problems posed by the prospective Member. This process is complicated by the fact that the new Member has an increasingly vast amount of Agency material to consider, accept and accommodate to, including all the Governing Board decisions since 1974, which range over broad fields of action. Additional time may be required when the views of a number of the new Member's government departments have to be developed and co-ordinated, or if legislation or parliamentary action on the consent to be bound is to be obtained.

Over the years, however, a procedural pattern has developed to simplify and expedite this process for countries which are already Members of the OECD. If IEA membership should be sought by *non-Members* of the OECD (which has not yet occurred), the IEA procedures could theoretically be carried out either *after* or *in parallel with* the procedures for OECD membership, since membership in OECD is a prerequisite to IEA membership. As developed to date, however, for countries which are already Members of the OECD the procedural pattern may be described in abbreviated form as follows:

(a) Initial Contacts. After possible informal soundings and other contacts, the competent authorities of the new Member make their first official expression of interest, usually by its Permanent Delegate to the OECD, to the IEA Executive Director or Deputy. This is normally followed by an informal meeting between the country's representatives and the Executive Director and key IEA Staff Members for preliminary discussions in which the Executive Director outlines the procedures to be followed and in which the next steps and a time table are agreed upon.

(b) Documentation. The Secretariat provides relevant Governing Board documentation (Conclusions and other documents, as appropriate), as well as selected Standing Group, Committee and other documents that are needed.

(c) IEA Member Commitment Paper. When the need arises, the IEA Legal Counsel prepares a paper outlining the principal commitments of IEA Members, in order to inform the new Member's authorities as fully as possible about the legal consequences of membership.

(d) Official Letter from the New Member. An official letter addressed to the Executive Director states formally the new Member's

interest in joining the Agency and proposes that discussions be entered into for that purpose.

(e) Governing Board Action on the Initial Letter. The Secretariat transmits the letter to the Governing Board which is asked to authorize the Executive Director to negotiate the specific terms of membership with the new Member. The Governing Board then discusses this question in an informal session.

(f) Information and Negotiation. This is essentially an information exchange exercise, with the Agency providing additional documentation if required, and the new Member providing the Secretariat with the information it needs to carry out the membership process. This stage also offers an opportunity for negotiations on any problems the new Member might encounter under the commitments of membership, particularly in accepting the binding effect of all Governing Board decisions. The Agency must gather information on the ability of the new Member to carry out these commitments. In particular it must ascertain that the new Member has sufficient legal and material ability to carry out the IEA oil Emergency Sharing System, and it must evaluate the new Member's energy data gathering and reporting capabilities, as well as the willingness of the oil companies operating in the new Member's territory to co-operate with the Member and with the IEA on oil emergency matters. New Members have always accepted *all obligations* under the I.E.P. Agreement without any formal reservation and *all* Governing Board decisions without exception, other than to note such points as the need for slight variations when additional time might be necessary or adjustments needed to accommodate a federal structure. In the case of Norway, since major derogations could not be fitted into the full membership system, arrangements were made at its request, for it to participate under the terms of a separate agreement [See Section A-3 below]. When the Agreement with Norway was approved by the Governing Board, the Board endorsed the Chairman's statement that it

> . . . results from a very special political and economic situation;
> it is therefore eminently "sui generis";
> Because of this singularity the Agreement cannot in any fashion
> be invoked as a precedent [IEA/GB(75)8, Item 4(b)].

Thus in IEA membership negotiations the new Members are expected to accept all obligations under the I.E.P. Agreement and the Governing Board

decisions. The arrangement with Norway, made on account of particular historical circumstances, cannot justify derogation from this principle.

(g) New Member's Formal Request for Membership. When the new Member's authorities and the Executive Director have reached a basic understanding on the terms of membership , the new Member's authorities write to the Executive Director to request formal accession to the I.E.P. Agreement.

(h) Report to the Governing Board. If the Executive Director is satisfied that the new Member meets the requirements of membership [I.E.P. Agreement Article 71.1], the Executive Director reports in writing to the Governing Board on the negotiations generally and proposes that the Board extend to the prospective new Member a formal invitation to accede to the I.E.P. Agreement. In addition to providing a basic judgement on the new Member's ability to meet IEA commitments, the report sets forth detailed data on the new Member's oil consumption (which are necessary for calculating the new Member's voting weights) and provides detailed information on whether the new Member's oil stock levels are sufficient to meet IEA requirements. The report is accompanied by a note to the Heads of IEA Delegations showing the recalculation of all Members' voting weights which would result from the change in membership.

(i) Governing Board Invitation. On the basis of the Executive Director's report, the Governing Board adopts the invitation decision (the voting rule is majority). In that action, the Board

- notes the Report containing the factual information and the Executive Director's proposals.
- extends the invitation to accede to the I.E.P. Agreement and sets a time limit for the deposit of the consent to be bound (the instrument of accession) if there is to be provisional application or if there is another need for setting a time limit.
- deems the Member's accession to the I.E.P. Agreement to constitute the Member's accession also to the decisions of the Governing Board which shall then be in force.
- amends the I.E.P. voting rules (adding the name of the new country, its voting weights, and any other necessary voting rule changes in the I.E.P. Agreement and in the decision dealing with voting when Norway participates). The I.E.P. Agreement amendments appear in the invitation decision and are adopted by unanimity in the three languages.

- decides any other questions as required in connection with the membership invitation.

(j) Participation in Governing Board Meetings. This is arranged to take place immediately after the invitation decision is made (near the top of the Agenda). The new Member's representatives are admitted to the Governing Board meeting room and participate thereafter in the normal way as observers, even before the remaining formalities are completed. (In the case of Finland and France this participation privilege was extended not only to the Governing Board, but also to certain other bodies of the Agency because of the participation of those countries and Iceland in the Agency's Gulf Crisis proceedings and follow-up. Since the rationale for participation at that stage is preparation for accepting the current as well as the previously established Governing Board decisions, in earlier cases such observer participation had been limited to the Governing Board).

(k) Provisional Accession. A provisional consent to be bound may be deposited by the new Member immediately or when convenient [I.E.P. Agreement Articles 71.3, 68.2]. This foresees the new Member's immediate, full participation in IEA activities "to the extent possible not inconsistent" [See Article 68.1] with the legislation of the new Member. This step is encouraged particularly when legislative or other national procedures for the definitive instrument of accession would be lengthy. The instrument of provisional accession is deposited with the Government of Belgium as depositary of the Agreement.

(l) Deposit of the Instrument of Accession. This is the definitive consent to be bound (similar to ratification, in effect), also deposited with the Government of Belgium after national legislative and other procedures are completed. The Agreement formally enters into force for the new Member ten days after the instrument of accession is deposited. The depositary gives notice of the deposit to all Members and to the Executive Director.

(m) Governing Board Action on Accession. This is a simple formality which takes place at the first Governing Board meeting following the deposit of the Instrument of Accession. The Board notes the date of entry into force of the Agreement for the new Member and fixes internally for the Agency the official date of membership for the purpose of determining the new Member's contribution to the IEA for the current financial year, and for other purposes.

(n) Scale of Contributions Amendment. When the accession is noted, the Governing Board adopts a new scale of contributions: it adds the new Member's contribution percentage, adjusts the scale (if necessary) for Members to apply during the remainder of the current financial year and makes the necessary arrangements for any resulting increase in Agency resources. (The cases of Finland and France were unusual in that the 1992 scale of contributions was initially adopted not early in the year at the normal time, but only in October 1992 after Finland and France had become Members, so revision of the scale was not necessary) [See IEA/GB(92)34 for background and the decision in IEA/GB(92)45, Item 7].

(o) Accession to the OECD Council Decision. All IEA Members must be parties to the OECD Council Decision on the Establishment of the Agency as well as to the I.E.P. Agreement. (Since Australia, New Zealand and Portugal had participated in the Council Decision at the time of its adoption in 1974 (albeit as passive parties), it was not necessary for them to accede to it as a condition of membership. However, since Finland, France and Greece had abstained from that Decision, and thus were not formal parties to it, each of those countries needed to accede to it in order to complete the membership formalities; they each did so by a written communication addressed to the OECD Secretary-General).

The membership procedures indicated above have the advantage of enabling new Members to become thoroughly familiar with the Agency's structure and practices and with the commitments of Members before their membership becomes effective. The systematic and rigorous nature of the procedure also ensures that the new Members' energy situation becomes well known to the Secretariat and that problems which might make membership difficult or impossible can be resolved. In each case the new Member was able to integrate itself rapidly into the Agency's work. Today most Agency officials and Delegation members can scarcely distinguish the original Signatories from the Members which came later through the accession procedure.

3. Exceptional Situation of Norway

While IEA Members fully participate in the Agency's work and are bound by all I.E.P. Agreement obligations as well as those adopted in Governing Board decisions, the Agency's formal relationship with Norway must be distinguished as a singular one. Though technically Norway is not a

Member (i.e. not a full "Participating Country" in the sense of I.E.P. terminology), with only a few exceptions it participates like a Member in the work of the Agency.

Norway was associated from the outset with the diplomatic process that led to the establishment of the Agency, beginning with its representation at the Washington Energy Conference in February 1974 and continuing in the Brussels ECG negotiation of the legal instruments which established the Agency. Nevertheless, it soon became apparent that despite the broad scope of Norwegian interests which corresponded to those of the other industrial, market economy countries in the OECD, the political conjuncture in late 1974 made it impossible for it to join the Agency as a full Member. Norway could participate in the Agency's energy work generally so long as appropriate provision was made to reflect the particular situation of that country, especially its indigenous oil resources. Especially difficult were the issues of Norway's participation in the Emergency Sharing System and of its taking new commitments under IEA auspices. The resulting differences in the commitments of Norway and IEA Members were so far-reaching that an exception for Norway could not be written into the Agreement or be permitted by way of reservation to it. Norway thus could not be a full Member of the Agency. Yet a way might be found to accommodate Norway's concerns in a separate arrangement which would provide for its fullest possible participation in most aspects of the Program. In the end that was done by means of a comprehensive separate Agreement signed on behalf of Norway and the Agency shortly after the Agency was established.

On the one hand Norway regarded an emergency oil sharing system among important oil consumer countries as a necessary and useful step to meet possible supply crises in the future. It also considered that long-term international co-operation in the field of energy policy would be useful and that it represented a positive way to resolve the problems which nations were facing individually and collectively in this field. There was a wide measure of agreement between Norway and those countries which decided to become Members of the new International Energy Agency. On the other hand, Norway found itself in a special situation compared to the other industrial market economy countries grouped together in the Agency. Full membership in the Agency might not, therefore, be best for Norway, although a special arrangement for its practical participation in the Agency would be useful, and Norway was prepared to enter into a binding agreement to that effect and to undertake the necessary obligations. In an oil supply crisis, Norway would agree, on the basis of its own decision, to take appropriate oil demand

restraint measures and to activate any standby oil production capacity there might be on the Norwegian continental shelf. It would also be prepared to take part in the long-term co-operation which was envisaged in the I.E.P. Agreement and which it believed might be of great international significance. Being both an oil producing country and a country whose economy was strongly integrated with that of the OECD countries, Norway hoped also to play a constructive role in preparing a dialogue with the principal producing countries [IEA/GB(74)9(1st Revision), Item 7].

The Governing Board discussed the question of IEA relations with Norway at its first meeting and "noted the wishes of the Norwegian authorities for a binding agreement to be entered into between Norway and the Agency concerning the participation of Norway in the work of the Agency". The Board then agreed that the Chairman would explore this question with Norwegian representatives in order to develop concrete proposals [IEA/GB(74)9(1st Revision), Item 7].

Negotiations between the Norwegian representatives and the Governing Board Chairman and others on behalf of the Agency began immediately after that meeting and continued until the next Board meeting one month later. By that time the form of the Norway Participation Agreement was sufficiently advanced for draft elements to be submitted to the Board for preliminary review. These draft elements, which would be adopted in the final text, included provision for possible Norwegian participation in emergency oil sharing, for consultations case by case on such participation, for Norwegian adherence to Chapters V to VIII of the I.E.P. Agreement and for provisional application pending the completion of formalities. The Governing Board thereupon noted that there should be an Agreement between Norway and the Agency along the lines of the draft, asked the Secretariat to draft appropriate institutional provisions and called for early responses from Members [IEA/GB(74)11(1st Revision), Item 2]. Further negotiations rapidly produced what came to be the definitive version of the Norway Participation Agreement [IEA/GB(75)9]. The draft Agreement came before the next meeting of the Governing Board on 7 February 1975 when the Board authorized the signature of the Agreement on behalf of the Agency and endorsed the Chairman's statement on the "sui generis" character of that Agreement which was specifically denied the status of a precedent [IEA/GB(75)8, Item 4].

The Norway Participation Agreement was signed on behalf of both parties on the same day. It was quite clear that Norway intended to participate actively in the various activities of the Agency including emergency measures. From the Washington Conference onwards, Norway

valued the emergency program as a way to avoid individual national action based on narrow self-interest that might harm partner countries. It has continued to attach great importance to the cohesion of the IEA group in case of emergency and has endeavored within its means to contribute to such policy cohesion [See IEA/GB(75)8 (Corr 1), Annex II].

The key oil sharing provision of the Norway Participation Agreement is contained in Article 1 which states this:

> The Government shall, in case of emergency involving serious shortage in oil supplies, contribute, by decision of the Government, to a sharing program by adding to normal supplies to Participating Countries of the Agency such additional deliveries as may be obtained from appropriate demand restraint measures and from the activation of any stand-by production capacity that may exist.

This provision reserves to Norway the exclusive decision on whether or not to participate in applications of the sharing programme. When Norway participates, its contribution of oil is to include its normal supplies to IEA countries augmented by additional deliveries obtained by means of oil demand restraint measures and activation of stand-by oil production. This departs from the commitments of Members to activate oil sharing fully under the Emergency Sharing System in application of the I.E.P. procedures and to share available oil without the kinds of source limitations that apply to Norway. Under Article 2 Norway agrees to enter into consultations with the Agency "with a view to specifying its contribution referred to in Article 1 whenever the Agency considers the activation of emergency measures. . .". Under the Governing Board's later "Decision on Institutional Arrangements for the Participation of Norway" (referred to as the "Norway Decision"), adopted on 7 March 1975 [IEA/GB(75)15, Item 10(a) and Annex IV, paragraph 5] the Board decided this:

> In cases of emergency in which Norway decides to contribute to the Agency's oil sharing programme pursuant to Article 1 of the Participation Agreement, the participation of Norway in the work of the Agency under Chapters I through IV (the emergency sharing Chapters) shall be implemented pursuant to further arrangements which shall be adopted by the Governing Board, in the light of the nature and extent of Norway's contribution, after considering the recommendations of the Standing Group on Emergency Questions and in agreement with Norway.

Parallel provision was made in paragraph 4 of the Norway Decision for Norwegian involvement in the Agency's preparatory work on oil emergency responses. By an exchange of letters with the Agency, the Government of Norway gave its agreement to the Decision on Norway [See IEA/GB(75)22, Annexes I and II and IEA/GB(75)25, Item 7].

As a practical matter Norway participates regularly, much in the same way as Members do, in the work of the Standing Group on Emergency Questions, in tests of the response systems and in data reporting to the IEA. For example, Norway adhered to the Agency's important Decision on "Stocks and Supply Disruptions" adopted on 11 July 1984 [IEA/GB(84)27, Item 2(a) and Annex I; IEA/GB(84)42, Item 3(b)(ii)] which, together with the Oil Sharing provisions of the I.E.P. Agreement, constitutes the main framework for IEA response to oil supply disruptions.

In the cases of oil supply disruption which have arisen since the Norway Participation Agreement was entered into, representatives of Norway have participated fully in Agency discussions and preparations, but since the Sharing System has not been triggered up to the date of this writing, there has been no occasion to make the arrangements foreseen in paragraph 5 quoted above. Norway fully participated in the Agency's work on the oil supply situation during the Gulf Crisis in 1990-1991 and on 11 January 1991 it joined with all IEA Members, plus Finland, France and Iceland, in the IEA Co-ordinated Energy Emergency Response Contingency Plan to respond to that crisis. When that Plan was activated on 17 January 1991, Norway announced that the Norwegian contribution would comprise elements of oil conservation and stock draw.

Beyond the foregoing actions related to oil supply disruption preparation and response, Norway's participation in the IEA is almost indistinguishable from that of the regular Members. Under Article 3 of the Norway Participation Agreement, Norway is to "have the obligations and enjoy the rights of a Participating Country for the purposes of the following Chapters of the Agreement on an International Energy Program:

Chapter V:	Information System on the International Oil Market
Chapter VI:	Framework for Consultation with Oil Companies
Chapter VII:	Long Term Co-operation on Energy
Chapter VIII:	Relations with Producer Countries and with other Consumer Countries.

These Chapters represent all of the substantive Chapters of the I.E.P. Agreement with the exception of the Emergency Sharing System contained in

Chapters I to IV inclusive. In fact Norway has participated fully in the Agency's work in all of those Chapters and has adhered specifically to the major Governing Board actions, such as the Long-Term Co-operation Programme [See IEA/GB(76)24, Item 10(a) and Annex II], and the Decision on Group Objectives and Principles of Energy Policy [See IEA/GB(78)32, Item 8 and Annex IV]. The Secretariat has not insisted upon specific adherence by Norway. In the same practice that applies to regular Members, the Secretariat has considered that Norway's participation was assured, where adherence was required, unless a contrary intention was expressed. Norway has thus participated in the consensus procedure of the IEA in the same way that Members have, whether unanimity or majority was required.

Other institutional arrangements for Norway have been made in some detail, on such matters as the invitation to Norway to participate in the Governing Board and subordinate organs, the provision for Norway's contributions to the costs of the Agency to be the same as for Members under the I.E.P. Agreement and the legislative implementation by Norway [Articles 4, 5 and 7 respectively of the Norway Participation Agreement]. In the Institutional Arrangements Decision the practical implications are foreseen in more detail. On the same basis as Members, Norway is entitled to participate in plenary and restricted organs of the Agency, including the right to be represented, to participate in discussions and to make proposals, and to receive agendas and other documents for such meetings [The Norway Decision's provisions on voting and adherence of Norway to Governing Board decisions are discussed in connection with voting generally in the Governing Board in Chapter V, Section A-13 below]. Under paragraph 6 of the Norway Decision, Norway enjoys the right to participate in IEA "special activities" in accordance with Articles 64.2 and 65 of the I.E.P. Agreement, and it regularly does so in the IEA energy research and development Implementing Agreements. Moreover, in the same way as Members, Norway participates in the meetings of all Standing Groups, Committees and other bodies. Norwegians have served the Agency as Vice-Chairman of the Governing Board (Ambassador A. Walther), Chairman of the Committee on Non-Member Countries (Ambassador A. Walther and Ambassador J. Dahl) and the Standing Group on the Oil Market (Mr. G. Vatten). A number of Norwegians have served in the IEA Secretariat, including Ambassador B. Barth as Director of the Office of Oil Market Developments.

The combination of institutional and legal arrangements described above has integrated Norway into the IEA without risking a potential weakening of the basic elements of the Emergency Sharing System. The

provisions needed by Norway were included in a separate international agreement without directly affecting the I.E.P. Agreement, and the rest of the terms of participation, parallel to the obligations and rights of Members, were arranged in a fashion which ensured that Norway would be a Member in all but name. In time Norway has become for the most part indistinguishable from regular Members. It has been increasingly identified with the Agency and included in official and unofficial references to "IEA Countries".

4. Federal States

Federal states have presented a number of IEA relationships questions, typically the relations between the Agency and the constituent states of a federation and with the federal state as such. The Contracting Parties to the I.E.P. Agreement — and thus the Members of the Agency — are currently all "states" in the international law sense, that is to say, under generally accepted definitions: recognized persons of international law having a permanent population, a defined territory, government, sovereign independence and capacity to enter into relations with other states [See Brownlie, *Principles of Public International Law*, 4th Ed. 1990 p. 72, and authorities cited]. The I.E.P. Agreement Signatories (the original sixteen Members) were characterized as "States" in Article 1.2 and in Article 67. All clearly qualified as "states" in the international law sense, as have all Members who have since joined by accession (they are so characterized in Article 71.2).

The only potential exception under the two IEA legal texts is the European Communities [*European Union*; this terminology is discussed in Section D-3 below], which are not regarded as a state in the traditional international law sense. They do enjoy international legal personality, and by virtue of Article 210 and the other provisions of the Treaty of Rome, they hold the power to enter into relations with states and international organizations. Under I.E.P. Article 72.1 and Council Decision Article 3 the Communities are granted the right to accede to those two instruments, but have not done so. While the Communities may be characterized as a "Regional Economic Integration Organization", as they are in the European Energy Charter, rather than "states" in the international law sense, they are the only non-state entity qualified by the IEA texts to accede to the I.E.P. Agreement and the Council Decision. However, the Communities are in a singular situation with respect to the Agency [See Section D-3 below], and need not be considered as a Federal state for present purposes.

Nothing in the I.E.P. Agreement makes any specific distinction between federal and unitary states in their relations with the Agency. All I.E.P. commitments thus run to the national states themselves as Members of the IEA without formal exception for internal political unit relationships. Indeed the obligation of Members under Article 66 to "take the necessary measures, including any necessary legislative measures, to implement this Agreement and decisions taken by the Governing Board" would require Members to take any legislative measures necessary to remove any internal federal arrangements which might stand in the way of the implementation commitment. This corresponds to the general rule which is formulated in Article 27 of the Vienna Convention on the Law of Treaties: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

The formal relation of "states" to the Agency is not changed by either of the two geographical references which are contained in the I.E.P. Agreement. The first of these is Article 17.2 which provides for allocation of oil to take place when the selective trigger shortfall in oil supplies is "in a major region of a Participating Country whose oil market is incompletely integrated"; but since that "major region" does not necessarily correspond to a federal component, this Article does not bear on the federal state question. The second geographical reference is in Article 70.1 which deals with the application of the Agreement to territories for which the Member is responsible, a matter which also falls away from the federal-unitary state distinction.

Almost one-third of the IEA Members have a federal structure: they are Austria, Australia, Belgium, Canada, Germany, Switzerland and the United States. The pertinent question to be asked is whether or not the federal structure of those states has had any material bearing upon their relationship to the Agency. None of those federal states lodged formal reservations to the I.E.P. Agreement at the time of their signature or deposit of the consent to be bound, but Canada and Australia made declarations touching on the federal question [For fuller discussion of the situation of these Members, see Chapter III, Section F above]. At the time of joining the Agency, it was clear that both Canada and Australia intended to apply the I.E.P. Agreement to the extent that it was not incompatible with their respective constitutional systems, which are federal. However, since this was not considered to exclude or modify in any way the legal effects of the Agreement itself, no formal reservation was made. The Agency is thus entitled to look to each national Member state as the entity responsible for meeting the responsibilities of Members and as the point of contact in relations with the Agency.

While it must be concluded that all I.E.P. commitments are fully binding on all Members without exception for federal states and without modification by virtue of Members' declarations and other statements, all Members' constitutional limitations and requirements affect the policies they pursue and the commitments they are prepared to take under IEA auspices. This is as true for unitary as it is for federal states. However, for federal states there do arise further potential questions about relationships. Where Members with a federal system have constituent states holding exclusive or concurrent power over energy resources or extensive legislative powers in the energy field, it goes without saying that the national state IEA Member takes those elements into account when it considers commitments made in the Agency. This was the case, for example, for the IEA Long-Term Co-operation Programme (the "LTCP"). First Canada and then Australia voiced constitutional questions about accepting the LTCP. Neither could accept Chapter V of the LTCP which is entitled "Legislative and Administrative Obstacles and Discriminatory Practices" and contains commitments, among others, for IEA Members not to afford to nationals of other IEA countries "less favorable treatment than that afforded to nationals of their own countries, in particular with regard to energy investments, the purchase and sale of energy, and the enforcement of rules of competition". For both countries there were constitutional considerations as well as policy reasons for their inability to accept Chapter V. Canada needed to address the question of its provinces which had constitutional responsibilities for energy resources within their boundaries, which had the effect of restricting that Member's actions on energy investment, production and marketing policies. Australia had both constitutional and policy questions concerning Chapter V of the IEA's Long-Term Co-operation Programme.

In measures like the LTCP which contain new commitments, all IEA Members, whether federal or unitary states, remain free to participate or not, and the Members are entitled to consider structural, legal or policy elements in reaching their conclusions. With respect to measures which concern the management of the I.E.P. or contain only recommendations or actions on procedural questions on which a Member might theoretically be outvoted by a majority under Article 61, federal states would not seem to risk serious constitutional problems. Up to the present time, the failure of some Members to accept an action for constitutional reasons has perhaps given rise more to policy disappointment on the part of the other Members and the Secretariat than to serious operational difficulty for the Agency.

In addition to such questions about the ability of federal states to take action in the IEA that unitary states may take with relative constitutional ease, there are other federal-state problems, some with practical or operational implications. Clearly the constituent states of a federated Member do not have the right of representation separate from that of the Member itself. There are no known cases where such representation has been sought or has been considered by an IEA body. Only the national state of the federation is recognized as the Member. However, nothing would prevent the national state from taking into its delegations to IEA meetings officials of the several states of a federation, and they can be permitted to speak, but only as national rather than constituent state representatives. Constituent states are not qualified as such to submit official documents to IEA bodies, but state documents may be submitted by Members as part of the national submission. Particular state concerns are regularly considered in IEA body discussions; in the case of the United States, for example, oil problems of Alaska and California receive specific attention at times. State taxation of energy is not ignored by the Agency, nor are state energy policies and legislation; innovative environment work in California is a good example of this. Constituent states have contributed to work under energy R & D Implementing Agreements, and there is no formal reason why a state could not be designated by the Member to serve as a Contracting Party in those Agreements if the occasion should arise. On staffing questions, the Member is the sole official contact point, but energy experts eligible for IEA appointment have been hired from state institutions, in much the same way as they have from public and private institutions, companies and other entities.

On a less formal basis, there are many IEA activities in which the constituent states actively participate, particularly those states which have developed energy policy programmes or structures. In some sectors, mutually beneficial "working relations" between the state authorities and the IEA Secretariat have developed. Under national mechanisms or sponsorship, those relationships have been quite extensive in some sectors. With respect to the IEA Emergency Sharing System, for example, the California Energy Commission has participated extensively in several of the Allocation Systems Tests. In the IEA energy policy country reviews there is considerable interaction between the Secretariat and the constituent states. IEA review teams at times interview state energy officials on the implementation of relevant national and state activities. The Secretariat is thus enabled to report and advise on particular questions which arise in the federal state relationships in the energy sector, with a view to the effective reporting on the country review. More broadly speaking, there is a

well developed intellectual exchange between the state officials and the Secretariat, including advice to the Secretariat on experience in the states and the development of approaches to problems, such as energy security and environment issues, demand side management and resource planning. The states also seek information from the Secretariat in many sectors of the work of the Agency. These exchanges take place by personal contacts, visits to the IEA offices, missions by members of the Secretariat, and participation in IEA conferences and working groups by state officials who have on occasion given papers, chaired sessions and presented keynote addresses.

This being said, it must be recalled that in relation to the IEA only the Member is the responsible party. If measures implementing Agency requirements are to be established under state auspices in a Member country, the Member is required to ensure that this is accomplished, for the IEA does not look to the individual states. Thus Members cannot satisfy IEA commitments by delegating responsibilities to their constituent states, because a failure of performance in such cases would remain the responsibility of the Member. The states have important roles to play in the overall IEA process, but the procedures applicable to federated Members have been respected in IEA practice.

5. Territorial Changes: Germany

Territorial changes of Members have not presented a major problem for the IEA. Normally in international organization practice, changes in a Member's territory are recognized without difficulty if the change takes place peacefully with the consent of the affected population, without question of violation of international law and without substantial international opposition. For the IEA there were no institutionally significant territorial changes until the unification of Germany on 3 October 1990, and the enlarged Germany has since been fully accommodated in the IEA [See Chapter III, Section J above].

6. Policy Considerations and Recent Developments

The membership policy of the Agency in the period up to the time of the dramatic changes in Central and Eastern Europe in the early 1990s was simple and straightforward. All of the Members were themselves industrial, market economy countries with democratic political systems; they have sometimes been characterized as the principal oil consumers who grouped together to enhance their energy security and to co-operate on a broad

range of energy policy questions of interest to them. There was no expectation or perceived need to enlarge that membership beyond the major industrial oil consumer group which also constituted the membership of the OECD. This notion of Agency membership was institutionalized from the outset by the limitation of access to the Agency to Members of the OECD [See Sections 1 and 2 above for references to the texts]. In 1974 the limitation of membership to OECD Members who were willing and able to join the IEA eliminated without question the command economy countries of Central and Eastern Europe and elsewhere, as well as the developing countries and others. There had never been any question of widening the scope of the IEA membership to include any of the oil producer countries grouped in OPEC. The scope for enlargement beyond the original sixteen Members was accordingly quite limited, and this carried the advantage of maintaining the IEA as a coherent group focused on energy policy and operational questions of importance to the entire membership in a context where each Member's political, economic and energy outlook had strong points in common with that of all other Members of the Agency.

As a consequence IEA membership questions were readily manageable during the period up to the 1990s. The manifest policy was to bring into the Agency *all* of the OECD's twenty-four Member countries if possible and as soon as practicable. Efforts were regularly made to ease the way for the eight OECD Members which were not original IEA Members. While some required only a brief period to complete policy consultations before taking the formal steps (New Zealand and Greece), others found in time their energy situations and policies evolving more closely to those of IEA countries (Australia and Portugal), and for still others hesitations associated with political perceptions related to the IEA eventually gave way in the evolving context of international relations and the role of the Agency (Finland and France). They were all encouraged to join the Agency, and the Secretariat saw that its role was to be as forthcoming and as helpful as possible in the membership process outlined above in Section A-2.

During that period of almost twenty years, there were a few contacts on membership questions by non-Members from outside of the OECD group, but the fixed policy limiting membership to OECD countries gave others little basis for encouragement. New policy considerations and opportunities later brought about a reconsideration of that approach, at least in the abstract, as Central and Eastern European countries as well as a number of rapidly industrializing non-OECD countries in Asia and Latin America began to express interest in establishing closer relations with the Agency. The IEA response was to review the wide scope of issues associated

with the relations with non-Members and to offer an enlarged range of activities carried out directly with interested non-Member countries [See Section D below]. Review of membership policy was not excluded from this process of re-evaluation.

At the IEA Ministerial Level meeting held on 4 June 1993, Ministers noted that the Agency's pursuit of energy security had been enlarged to include "more intensive contacts with Non-Member countries" and that one of the reasons for these contacts was that:

> A growing number of non-Member countries are reaching a stage of transition or development that is drawing them closer to the OECD world and prompting collaboration between them and the IEA [Communiqué, IEA/Press(93)8, p. 9].

Collaboration between the Agency and a number of non-Member countries continued to grow throughout the year 1993, leading to a systematic assessment of those relations by the Secretariat in the autumn of that year. The Secretariat noted that the Agency can serve as a policy adviser for non-Member countries through a number of institutional mechanisms and by other means which include special energy seminars, workshops, surveys, policy dialogues, selective participation in certain IEA meetings and participation in IEA energy R & D Implementing Agreements, all in accordance with IEA rules and policies. In developing those relations the Agency has also considered the potential for future extended membership of the Agency. Korea, Mexico, The Czech Republic, Hungary and Poland might be potential candidates for membership of the IEA [See IEA/GB(93)47]. At its 19 October 1993 meeting, the Governing Board noted the Secretariat's assessment document and "endorsed the selective and balanced approach of the Secretariat in its work with non-Member countries" [IEA/GB(93)57, Item 4].

B. Obligations of Members

1. Commitments Directly Under the I.E.P. Agreement

Among the most important sets of relationships in the IEA is the body of reciprocal legal and political commitments which Members have taken with each other. These commitments appear above all in the International Energy

Program which is contained in a multilateral international agreement, the I.E.P. Agreement to which twenty-two state parties are now bound by their signature or accession and consents to be bound. With Norway, which participates under other but mostly parallel arrangements, the total is twenty-three. In addition to institutional arrangements and formal provisions, the I.E.P. contains a body of obligations binding directly on the Member governments of the Agency in accordance with the international law of treaties.

The international legal obligations arise in accordance with Articles 26 and 27 of the Vienna Convention on the Law of Treaties which provide that:

Article 26
Pacta sunt servanda

> Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27
Internal law and observance of treaties

> A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

The I.E.P. Agreement obligations of all Members include the basic elements of the IEA Emergency Sharing System and other provisions bearing directly upon the implementation of the System:

(a) Stocks. There is an emergency reserve commitment for each country to maintain stocks at a level sufficient to sustain consumption for at least 90 days with no net oil imports [See Articles 2-4].

(b) Demand Restraint. Each country is required at all times to have ready a program of contingent oil demand restraint measures enabling it to reduce its oil consumption to the 7%, 10% or higher level as required by the I.E.P. [See Article 5].

(c) Activation. When the requisite oil supply reductions occur, each country is obligated to implement mandatory demand restraint measures, to reduce consumption by the amounts required under the I.E.P. (7%, 10% or more as the case may be) and to carry out the allocation of oil [See Articles 12-17].

(d) Allocation. When the System is activated, each country is required pursuant to Article 6 to "take the necessary measures in order that allocation of oil will be carried out" pursuant to the relevant Chapters of the I.E.P. [See Chapters I to VI inclusive].

(e) Emergency Meetings. Representatives of all IEA governments are required to meet to consider issues raised by an emergency oil situation; following the making of the emergency finding by the Secretariat, the Governing Board is required to meet within 2 to 6 days [See Article 19].

(f) Information. Members are required to establish an information system on the general situation of the oil market and for emergency situations. Each country is required to make available to the Secretariat on a regular basis:

- information on the international oil market and activities of oil companies, on specific subjects set forth in Article 27 and as decided by the Governing Board.
- all information necessary to the efficient operation of emergency measures; the country will ensure that oil companies operating within its jurisdiction make such information available to it [See Articles 32 and 33].

(g) Framework for Consultation with Oil Companies. Members are obligated to establish within the Agency a permanent framework for them to consult with and request information from individual oil companies on all important aspects of the oil industry [Article 37].

(h) Long-Term Programme. Pursuant to Article 41, Members will undertake national programmes and promote the adoption of co-operative programmes to reduce over the longer-term their dependence on imported oil.

(i) Relations with Producer and other Consumer Countries. Members undertake to "endeavor to promote co-operative relations with oil producing countries and with other oil consuming countries" and accept a number of commitments to that end [Articles 44-48].

(j) Carry Out Binding Decisions of Agency Organs. Decisions adopted pursuant to the I.E.P. Agreement (subject to Articles 61.2 and 65) are generally "binding on the Participating Countries" [See Article 52.1]

and must be carried out by them in good faith; this applies to decisions of the Governing Board as well as to the decisions of any other IEA organ by delegation from the Governing Board.

(k) Financial Contributions. Each country has accepted the legal obligation to make its contribution to the common expenses of the Agency which are shared on the basis of a scale calculated according to the principles and rules applicable to the OECD scales of contributions [See Article 64].

(l) Legislative and Other Measures. Each country has agreed to take "the necessary measures, including any necessary legislative measures, to implement this Agreement and decisions taken by the Governing Board" [See Article 66].

(m) Support for Actions Required of the Governing Board. Each Member country, being a Member of the Governing Board, is required to give its support to measures which the Governing Board is required to take under the I.E.P. Agreement.

(n) Agency Support and Development. Going beyond the specific obligations referred to above, each Member country has taken the commitment, inferred from I.E.P. provisions in the aggregate and from the responsibilities generally resulting from Agency membership, to endeavor in a constructive and co-operative spirit to support and develop the Agency as required to realize its objectives.

The foregoing compilation indicates the principal types of inter-governmental obligations found in the I.E.P. Agreement itself. As refined in the Agreement and supplemented by Governing Board decisions, they constitute legally binding promises which each Member has given to each other Member of the Agency. A number of those commitments, such as those relating to staffing, facilities, infrastructure and financing, have as their object the normal functioning of the Agency itself. They also include the broad commitment of each Member to carry out its I.E.P. obligations in a constructive and co-operative spirit, a vitally important commitment which is difficult to define precisely. The foregoing commitments contained in the I.E.P. Agreement are supplemented by other obligations, at times in more precise terms, affecting Members' readily identifiable energy interests, especially those resulting from Governing Board decisions.

2. Binding Decisions of the Governing Board

In the IEA, Members take commitments not only in the I.E.P. Agreement, as indicated above, but also by decisions of the Agency's Governing Board and other organs by delegation from the Board. The IEA is one of the relatively few international organizations which have been granted broad powers to make decisions legally binding on their Member countries. These powers extend not only to institutional questions, but also to a wide range of substantive matters falling within the competence of the organization. The OECD is another such organization, and is so empowered under Article 5 of its Convention. In the case of the IEA, this power is derived from the I.E.P. Agreement and is recognized in the Council Decision on the Establishment of the Agency. In the I.E.P. Agreement, Article 51 grants the Governing Board full authority to "adopt decisions and make recommendations which are necessary for the proper functioning of the Program." The binding character of those Governing Board decisions is provided in Article 52.1:

> Subject to Article 61, paragraph 2, and Article 65, decisions adopted pursuant to this Agreement by the Governing Board or by any other organ by delegation from the Board *shall be binding on the Participating Countries* [Emphasis added; the exceptions are discussed in Chapter V, Section A-16 below where this subject is considered further].

In contrast, Article 52, paragraph 2 provides that "Recommendations shall not be binding".

The OECD Council Decision contains parallel language in Article 4, which states that "A Governing Board . . . shall have the power to make recommendations and to take decisions which shall, except as otherwise provided, be *binding* upon Participating Countries. . . " [Emphasis added]. That language follows Article 5(a) and (b) of the OECD Convention which provides the basis for the Council Decision on this point. When decisions are made in conformity with the I.E.P. Agreement, they too have binding effect in international law, not only under Article 52 of the Agreement but also under the terms of the Organisation's Convention pursuant to the rule of *pacta sunt servanda*, Article 26 of the Vienna Convention quoted above.

Although the Governing Board's power to make binding decisions is a broad one indeed, in practice the Board has employed its powers more often to make declarations and recommendations than to adopt formal and binding decisions creating international obligations of Members. Some of the major instances in which the Governing Board has applied the binding decision power on substantive energy questions are the following:

(a) The Decision on the International Energy Program, of 18 November 1974 [See Chapter II, Section C-7].

(b) The Programme of Long-Term Co-operation on Energy (the "LTCP") [IEA/GB(76)5, Item 2; LTCP Chapter I, paragraph 1; Chapter references in this paragraph are to LTCP Chapters]; the LTCP obligations to promote conservation, including group objectives [Chapter II]; accelerated development of alternative sources of energy, including the conduct of periodic reviews of national programmes and policies, co-operation on specific energy sectors and on energy projects; a general measure of co-operation known as the Minimum Safeguard Price [Chapter III]; energy research and development [Chapter IV]; provisions on "identification and removal of legislative and administrative measures which impair the achievement of the overall objectives of the Programme"; and, in a limited fashion, a commitment to apply legislative and administrative measures "in such a way as not to afford to nationals of other Participating Countries less favorable treatment than that afforded to nationals of their own countries, in particular with regard to energy investments, the purchase and sale of energy, and the enforcement of rules of competition" [Chapter V].

(c) The Emergency Management Manual (EMM) [IEA/GB(76)24, Item 3(d)]. Though the EMM does not change the I.E.P. Agreement, it does contain extensive provisions refining and developing the Emergency Sharing System (but not other oil supply disruption responses) within the terms of the Agreement and in a manner consistent with it. Some of those provisions are stated in mandatory terms and create legal obligations of Members. Perhaps the most far reaching of these is the decision that Members must take mandatory "Type 3" allocation actions in cases provided in the EMM; that is to say, that Members may be legally required by a "finding" made by an IEA body (the SEQ Emergency Group) to ". . . instruct the company owning the oil as to its disposition. . . " [See EMM, 4th Ed. 1982, p. 32, Step 9 (iv)].

(d) The IEA "Co-ordinated Energy Emergency Response Contingency Plan". In the 1990-1991 Gulf Crisis, the Governing Board adopted this Plan in legally binding form for use in anticipation of an oil supply shortfall in the event of hostilities in the Gulf. In the 11 January 1991 Conclusions the Board "adopted" the Plan and agreed, upon notification by the Executive Director [IEA/GB(91)1, Item 3(b) and Annex paragraph (c)] that:

> . . . each IEA Member country, as well as Finland, France and Iceland, would begin implementation of their commitments under paragraph (a) above.

This was confirmed at its 28 January 1991 meeting, when the Board

> **Decided** that the co-ordinated energy emergency contingency plan, adopted at its 11th January 1991 meeting and which makes available to the market 2.5 million barrels of oil per day, would remain in effect and that it would continue to be implemented flexibly in close consultation with the Executive Director [IEA/GB(91)3, Annex, paragraph (a)].

The legally binding decisions of the Governing Board are further discussed in Chapter V, Section A-16 below.

3. Other Actions of the Governing Board

Under a number of grants of powers and responsibilities, the Governing Board is empowered to take a wide range of actions, binding as well as non-binding actions, in the legal sense. These are found in the specific mandates conferred upon the Governing Board in the I.E.P. Agreement and in the broad scope of "action" stated in the Article 51 mandate. As noted in Chapter V, Section A-16 below, "action" is a subjective term which leaves to the Governing Board the decision as to the type of "action" it will adopt; it is not limited to the "decision" and "recommendation" actions referred to in Article 51.1. The form most often utilized by the Governing Board is the adoption of "Conclusions": the overall outcome of Governing Board meetings is recorded in documents entitled "Conclusions", usually without clear distinctions among "decisions," "findings," "recommendations," "declarations" and other actions. Sometimes the specific action is stated as a "Conclusion" (as in "the Governing Board concluded that . . ."). Hence, it has been necessary to examine the action in context to determine from the language used whether the intent is to create a binding obligation in the legal sense or to take a political commitment or other action. In fact the Governing Board has at one time or another used all of those action formulations, sometimes with the intent to create legal obligations, and sometimes with the intent to establish political commitments.

Yet the ostensibly softer political commitments can sometimes be as far reaching as legal commitments or even more significant in terms of the

outcome. Political actions often have the advantage of being more acceptable than legal commitments, and Members find they can at times proceed further along a political path toward greater commitment than they could with a legally binding commitment. Problems of a "least common denominator" level of agreement and the need to comply with constitutional requirements may be less far-reaching or avoidable for political rather than legal commitments. The rhetoric that can be used in political commitments may also be more effective in moving governments and populations toward mutually desired objectives than could be the case with legal obligations. Where the sanction of legal obligations is perceived as being mild or perhaps illusory in practice, some will find little advantage in expressing actions in legal form, especially if the price is a reduction in the scope or intensity of the action in question.

4. Commitments Under Other Agreements

A few legal or operational obligations established before or after the creation of the IEA and taken by Agency Members in other agreements may also bear upon IEA relationships. These include the OECD Convention generally and its Supplementary Protocol No. 1 concerning the Commission of the European Communities (concluded before the IEA was established), and the IEA Agreement with Norway, concluded afterwards. Separate commitments may also be seen in the authorizing process for IEA Implementing Agreements and the direct participation of Members as Contracting Parties in those Agreements. Members' obligations under other agreements like the United Nations Charter, the General Agreement on Tariffs and Trade (GATT) and the European Communities (European Union) Treaties can also have an indirect effect upon how IEA Members apply policies with respect to the IEA, but this is not the place to consider those subjects.

The fact that all IEA Members are parties to the OECD Convention has implications for the IEA because of the broad economic scope of the OECD Members' obligations under the Convention and because all IEA Members agreed to the OECD Council Decision bringing the IEA into the OECD "as an autonomous body within the framework of the Organisation" [C(74)203(Final), Article 1]. The applicable OECD Convention provisions include Article 1 (broad economic policy aims of the Organisation), Article 2 (the economic policy obligations of Members) and Article 3 (commitments of Members on information, consultation, co-operation and co-ordinated action). A provision on the participation of the Commission of the European Communities derives as well from the OECD Convention, and

specifically from Supplementary Protocol No. 1 which provides that the Commission "shall take part" in the work of the Organisation. Reference was made to that provision in the Agency's letter inviting the Commission to take part in the work of the various bodies of the Agency [See Section D-3 below].

In only one instance to date has the Agency entered into a formal international agreement, and that was the Agreement with Norway on the participation of that country in the Agency [on this subject generally, see Section A-3 above]. The Agreement on Norway establishes special rules for Norway's possible participation in the IEA Sharing System and contains a number of other commitments and rights of Norway and of the Agency. Norway enjoys the rights of Members in respect of Chapters V through VIII of the I.E.P. Agreement, i.e. on the subject of information, oil company consultation, long-term co-operation and relations with producer and other consumer countries [Article 3], and the Agency has the corresponding obligations. The Agency is also required to invite Norway to participate in the work of the Governing Board and its subordinate organs and to determine in agreement with Norway appropriate institutional provisions for the implementation of the Agreement. All of those provisions, while nominally taken as commitments of the Agency, represent as well from an operational standpoint obligations which must be respected by the Members of the Agency.

Finally, there are operational obligations of Members derived from the process of authorizing IEA energy R & D Implementing Agreements and there are legal commitments for Members which participate as Contracting Parties in those Agreements. The Governing Board authorizes each Implementing Agreement by approval of the "Explanatory Note" submitted to it by the Secretariat for approval. Those approval decisions in the context of the Guiding Principles for R & D [Annex II to the Long-Term Programme] do not contain commitments to participate in particular Implementing Agreements or to finance or otherwise directly support the particular projects, but they do carry the commitment to provide general support in the Member's country (for example in the selection of participants) and indirectly through the Agency in the development, negotiation and operation of the projects, including the support of the IEA R & D and Legal Offices, participation in the IEA review process and so forth.

Moreover, in many of those projects Members participate directly in the name of the government, the responsible ministry or other governmental agencies. Under the Implementing Agreements in those cases, governments are directly obligated to participate in the project in accordance with the applicable terms, which often entails research and development, infor-

mation exchange and financing commitments, not to the Agency or its Members, but to the other participants in the Implementing Agreement.

5. Flexibility and Waiver of Rights Under the I.E.P. Agreement

It is a frequent and understandable assumption that "rules are rules" or that institutional legal commitments are taken to ensure a high level or 100 per cent compliance. That is usually the outcome. Yet experience in the formulation of rules and their application, sometimes in unforeseen circumstances, leads to the conclusion that, rigid as rules do at times appear, there are acceptable ways of making them adapt effectively to an ever changing reality. Indeed, that has been the Governing Board's fundamental approach since the Agency was first established. The Board might be expected to approach such questions pragmatically, with less interest in conserving abstract textual purity than in finding solutions to textual problems in a workable and mutually acceptable way.

This can be done through a number of instrumentalities, such as by amendment of the I.E.P. Agreement [See Chapter III, Section K above] or by interpretation [See Chapter III, Section M] when the conditions for those procedures are present. In the case of the I.E.P. Agreement, there are two other available procedures: (1) use of the flexibility built into the Agreement, and (2) the waiver of rights under general international law, when the conditions for those procedures are present.

Flexibility is introduced formally in the general scope of Articles 51 and in the limited area of oil emergency measures by Article 22 of the I.E.P. Agreement which confer far-reaching powers on the Governing Board:

Article 51.2

> The Governing Board shall review periodically and take appropriate action concerning developments in the international energy situation, including problems relating to the oil supplies of any Participating Country or Countries, and the economic and monetary implications of these developments.

Article 22

> The Governing Board may at any time decide by unanimity to activate any appropriate emergency measures not provided for in this Agreement, if the situation so requires.

These are quite broad and flexible grants of power made necessary by the difficulty of amending the Agreement formally in an emergency or indeed at any other time. It took fourteen months for the Agreement initially to enter into force in January 1976 [See Chapter III, Section G], and to obtain formal amendments rapidly enough to be effective in an emergency would seem most difficult or impossible. But the two quoted provisions were designed to permit the IEA to respond effectively and rapidly under changing circumstances either in an oil supply emergency or otherwise, without the need to await the lengthy process of amendment. An important example of the Governing Board's rapid and flexible response capability is found in the Decision on Stocks and Supply Disruptions adopted in 1984 [IEA/GB(84)27, Item 2(a)(ii) and Annex I].

In addition to these textual provisions, there is the possibility under general legal practice for Members to agree by consensus not to object in appropriate cases to special arrangements in application of the spirit or the letter of the Agreement, or to waive their rights to insist on strict compliance with it. This process can be characterized as "acquiescence" (express or tacit), "waiver", or "interpretation", but whatever it might be called (and the Governing Board has yet to characterize it), the Board has found that this process for flexibility serves a useful purpose. For example, when all IEA Members agree in practice not to object to the absence of a required action, tacit or explicit waiver of rights under the I.E.P. Agreement is a legally proper procedure. Over the years waivers have been tacitly or explicitly agreed many times in the Governing Board. Some examples of waiver or acquiescence in important sectors follow:

(a) Stocks.

- **Austria and Turkey.** Those Members were allowed several years of acquiescence in their non-performance of the emergency reserve commitment, from the outset on 18 November 1974 [IEA/GB(74)9 (1st Revision), Item 4(b) and (c)(1)].
- **1980 Ministerial Decision.** IEA Ministers agreed that governments would, in a equitable manner, take measures which included provision that "Reduction in stocks below the I.E.P. 90-day emergency level might be considered in countries with particular difficulties" [9 December 1980, IEA/GB(80)97, Item 2(f) and (g)(i)].
- **Arrangement for Iceland.** The Governing Board agreed to an arrangement for the membership of Iceland (which in the end did not materialize). Under that arrangement, however, Iceland would have

requested a five year period of adjustment to increase oil reserves gradually under favorable conditions, and the Board expressed the view that it would see no difficulties in noting that statement without contradiction in connection with Iceland's possible accession [20-21 April 1982, IEA/GB(82)44, Item 6(b) and Annex II].

- **Stocks Elements Deadlines.** The deadline for fixing the extent to which the elements in I.E.P. Article 3.1 (stocks, fuel switching and standby production) may satisfy the emergency reserve commitment has been waived by acquiescence from 1975.

(b) Base Period Final Consumption (BPFC), an Element of Calculation in the Emergency Sharing System.

- **Calculation Period.** The change in BPFC from the last four quarters with a delay of one quarter (Article 18.1) to the most recent four quarters was made possible after tacit waiver of the deadline set in Article 18.2 (providing for such action by 1 July 1975). The new calculation would be made and applied pursuant to Article 22 [13-14 March 1980, see IEA/GB(80)21, Item 10; EMM, 4th Ed. 1982, p. 14].
- **Sweden.** Change in the BPFC rule for Sweden was made by waiver to take account of special supply problems of Sweden in the winter time [30 March 1979, see IEA/GB(79)14, Item 2(h); EMM, p.14].

(c) Selective Trigger.

"Selective trigger" situations arise when any Member (and not necessarily the Member group as a whole) sustains an oil supply reduction sufficient to activate the Emergency Sharing System. In a number of those situations (particularly in 1979-1981), the trigger finding was not made, and the Sharing System was not activated; activation can be treated as having been waived by the countries concerned for failure to object or to seek Board action under Article 21.

(d) Waiver of Time Limits.

A number of deadlines in the I.E.P. Agreement have been waived (or treated as being indicative only), in particular the important time limit of 1 July 1975 for adopting the Long-Term Programme (later adopted in 1976); other deadlines have also been waived, including those contained in Articles 3.2 (stocks), 18.2 (BPFC) mentioned above, and various provisions of the Annex to the I.E.P. Agreement.

(e) Rules of Procedure.

Article 50.2 requires rules of procedure, but such rules have not been adopted on a systematic basis to the present day. Hence the right to have such rules in the usual form has been waived [See Chapter V, Section A-8 below].

(f) Management Committee Meetings.

Article 53 and other Articles provide for Management Committee meetings, but separate meetings of the Management Committee have been waived from the outset of the Agency by decision of the Governing Board to have its meetings deemed to be joint meetings of the Governing Board and the Management Committee [See Chapter V, Section A-20 below]. This resulted from the presence in the Governing Board of the high level representation from capitals, initially foreseen for the Management Committee.

(g) Standing Group on Producer and Consumer Relations.

This Group, by acquiescence, has not met for a number of years, despite Article 58.1 and other provisions; by Governing Board acquiescence the Committee on Non-Member Countries has replaced it in practice.

(h) Decisions Concerning the Secretariat.

Article 59.4 requires the Governing Board to take "all decisions necessary for the establishment and the functioning of the Secretariat", but this rule has been waived. Many of those decisions at the administrative level are taken in practice by the OECD in place of the Governing Board.

(i) Voting.

- Despite the voting requirements of Article 61, the Governing Board almost always acts by consensus, not by formal vote. The formal voting rules are waived by that procedure.
- Article 62.6 requires the Governing Board to review annually the number and distribution of voting weights. By waiver and acquiescence there has never been a review or a change in voting weights since they were established in 1974 (except as necessary to accommodate new Members).

(j) Financial Contributions.

Article 64.1 of the I.E.P. Agreement required the Governing Board to review the scale of contributions after one year. Rights of Members to have this review have been waived; the IEA has never conducted such a review.

(k) General Review of the I.E.P. Agreement.

A general review after 1980 is required by Article 74, although no such review has been held, and the corresponding rights under this Article have been waived in practice up to the present date.

Thus, it may be concluded that under established Governing Board practice, the Agency retains at its disposal adequate means to apply, adapt, soften or avoid unwieldy or rigid rules under the I.E.P. Agreement when that flexibility is necessary in order to realize the purposes of the Agency and the outcome is supported by a consensus of the Members.

This being said, the Members' obligations remain a vital element of the I.E.P. Agreement, in part because they are essential to the Emergency Sharing System, but also because they form the operational basis for the other energy policy and institutional provisions of the Agreement. The relations these obligations create among the Members, and between Members and the Agency itself, are indispensable to the realization of the objectives of the Agency's founders.

C. The IEA as an Autonomous Agency of the OECD

1. The IEA-OECD Legal Relationship in General

A wholly different and additional set of IEA relationships has been established in order to provide the IEA with an institutional "home" and the necessary logistical support for it to carry out its functions. This has been realized in the relationship of the IEA to the OECD, in which the Agency retains its full autonomy, and in which each contributes to, and benefits from, the other.

The OECD's association with the IEA began well before the actual establishment of the Agency. It began with strong OECD representation at

the Washington Energy Conference and at the Energy Co-ordinating Group (ECG) negotiations on the I.E.P. Agreement in 1974, where OECD representatives made significant contributions to the IEA concept and to the structure and formal terms of the instruments establishing the Agency.

Co-operation between the two organizations commenced immediately upon the establishment of the Agency. The contributions of the IEA's staff made it possible to expand the OECD's work on the initial long-term energy assessment (published by the OECD under the title *Energy Prospects to 1985*), on energy statistics, economic analysis and environment work, while the IEA programme in those sectors was enriched by contributions from the OECD. Moreover, the OECD assisted from the beginning in providing sophisticated and effective logistical support in accordance with arrangements between the two organizations.

The institutional relationship between the IEA and the OECD is governed by the I.E.P. Agreement, by the Council Decision on the Establishment of the Agency and by the decisions of the Governing Board and of the Council. Broadly stated, the I.E.P. Agreement governs the IEA Members' obligations and the substantive work of the Agency in the energy field as well as the structure and operational rules of the Agency, while the Council Decision is concerned with the internal relations between the Agency and the OECD and related procedures. The terms of the Agreement and the implementing actions of the Governing Board provide the final and overriding authority for Agency powers and responsibilities. The I.E.P Agreement, essentially the founding document of the Agency, stands quite independently as a treaty under international law, without depending upon the Agency's relationship with the OECD in so far as its legal effect is concerned. Had the OECD not succeeded in arranging for the Agency to be lodged in that Organisation, the Agreement would have been sufficient to establish the Agency under international law, and that indeed was foreseen in the Brussels Energy Co-ordinating Group negotiations before it was clear that the OECD could take the decisions necessary to lodge the Agency in that Organisation. In the negotiation stage, moreover, the autonomous status of the IEA in the OECD was an often stated objective.

The importance of the I.E.P. Agreement in achieving the objective of autonomy derives not only from the formal legal independence of the Agency, but also from the completeness of the Agreement in defining the elements of the Agency and the details of the Program it established. As will be seen throughout this work, the Program is fully defined in the I.E.P. Agreement which provides, moreover, the exclusive mechanism for the

further development, adaptation and modification of the Program. The Agreement contains numerous provisions which are totally at variance with the corresponding OECD rules which could not be applied to the Agency if it were to realize its objectives. There is no hint of legal or operational dependence of the Agency on the OECD for any of these important elements. Nor does the I.E.P. Agreement define or even suggest the relationships between the two organizations beyond the statement of intention that the organs of the IEA be created within the framework of the OECD and that other Members of the OECD may desire to join the Agency [See the Preamble], and beyond brief references to the OECD principles and rules about scales of contributions [Article 64.1] and to the requirement of OECD membership for accession to the I.E.P. Agreement [Article 71.1]. There is no other reference to the OECD in relation to the IEA's programme, external relations, budgets, personnel, operations, procedures or other questions.

When the Council Decision on lodging the Agency in the OECD was adopted, the I.E.P. Agreement had been fully negotiated but not yet signed. The two-step procedure calling for adoption first of the OECD Council Decision and then the signature of the I.E.P. Agreement was a practical measure reflecting the fact that the Agreement as negotiated might need modification, for example in the preambular paragraph cited above, if the OECD Council were unable to act. There could be other anomalies as well, such as the provisions in Article 64.1 on use of the OECD principles and rules for the scale of contributions and in Article 71 for accession to the Agreement by OECD Members. Because of the OECD rule of unanimity and the assumption that certain OECD Members would not be able to participate at the outset, it could not be known with certainty in advance of that Decision whether the Decision could be taken at all, and if so, what its precise terms would be. As it turned out, the Decision was adopted without substantial amendment in the form in which it had been negotiated among the Agency Participating Countries at the ECG meetings in Brussels [See Chapter II, Section C-5 above].

In the end there was no difficulty in making the final arrangements for the establishment of the Agency within the OECD. Both the OECD Council Decision and the I.E.P. Agreement called for some adjustment of expectations by the Organisation and by the Agency countries. The practical arrangements for the limited integration of the two institutions, carried out in a spirit of mutual co-operation, have made possible the development of a harmonious relationship which has proved to be advantageous both to the Agency and the OECD country groups.

The formal relationship between the two organizations is expressed succinctly in Article 1 of the Council Decision as follows:

> An International Energy Agency . . . is hereby established *as an autonomous body* within the framework of the Organisation [Emphasis added].

This meant that for some purposes the Agency would be considered a part of the OECD, able to avail itself of the legal personality of the OECD and other OECD arrangements when required, although the Agency would retain under the I.E.P. Agreement a measure of independent legal personality in international law to be employed as the Governing Board might direct. At the same time the IEA could make use of OECD services, and the OECD could similarly call upon the IEA in accordance with the terms of the Council Decision and upon the decision of the OECD Council and the IEA Governing Board. On programme matters, the IEA is fully autonomous, as will be seen below.

For the most part the relations between the two organizations have been harmonious. The legislative arrangements described in this Chapter clearly give priority to IEA autonomy. When the rules are quite specific, there has been little difficulty. When they are more general, as for the financial and personnel sectors, problems have arisen and might arise again. There is continuing need for understanding and co-operation on both sides of this equation in order to avoid possible confrontations of executive heads or legislative bodies of the two organizations, confrontations which both sides have been able to avoid during the period covered by this history of the IEA.

2. Programme Autonomy of the IEA

The programme autonomy of the Agency is assured by legal and institutional provisions concerning the Governing Board. The I.E.P. Agreement gives full power over the programme to the Governing Board, subject only to the provisions of the Agreement itself. Moreover, Article 4 of the Council Decision provides, in terms parallel to the OECD Council's own powers under the OECD Convention, that the Governing Board

> composed of all the Participating Countries of the Agency shall be the body from which all acts of the Agency derive, and shall have the power to make recommendations and to take decisions

> which shall, except as otherwise provided, be *binding* upon Participating Countries, and to delegate its powers to other organs of the Agency. The Governing Board shall adopt its own rules of procedure and voting rules [Emphasis added].

Article 4 thus contains the OECD Council's recognition of the power of the IEA Governing Board to make binding decisions. More specifically, Article 6(a) provides that "The Governing Board shall decide upon and carry out an International Energy Program for co-operation in the field of energy . . ." for specified aims and ". . . may adopt other measures of co-operation in the energy field which it may deem necessary and otherwise amend the Program by unanimity, taking into account the constitutional procedures of the Participating Countries". Indeed, on 18 November 1974, the Governing Board adopted the "Decision on an International Energy Program" which adopted the entire Program as internal IEA legislation and thus established within the Agency all the provisions of the Agreement concerning the Agency's powers and autonomy [See Chapter II, Section C-7 above].

The recognition of the Agency's powers within the energy field is a complete one in the sense that it coincides with the Council's own powers in that field. That recognition extends to procedural matters as well. Since the OECD Rules of Procedure contain references to unanimous voting and other provisions which would be inconsistent with the I.E.P. Agreement, there was recognition in Article 4 of the Council Decision that the Governing Board could adopt its own rules of procedure and voting rules, a further measure to ensure the autonomy of the Agency. Possible later action by the OECD Council, such as decisions conferring additional responsibilities on the Agency, might impinge on the Agency's autonomy. However, such decisions can be made only upon the proposal of the Agency [Council Decision, Article 6(b)]. Nor could the Council amend that Article or any other provision of the Council Decision protecting the autonomy of the Agency without the consent of the Agency's Member countries, because as a practical matter the twenty-three IEA countries in the twenty-four Member Council could block the decision in that body under its rule of unanimity. Thus the Program autonomy of the IEA is assured by practical as well as legal provisions.

There is no provision either in the OECD Council Decision or in the I.E.P. Agreement for the IEA Programmes of Work to be controlled by, or subject to co-ordination under the authority of the Council or any other body outside of the IEA. Once adopted by the Governing Board, the IEA Programmes of Work are transmitted to the Council for information only;

they are not adopted by the Council. In the execution of its Programmes of Work the IEA also enjoys full autonomy. There are no provisions in the I.E.P. Agreement which make any Program elements or operational instrumentality subject to OECD control or influence. For example, the IEA enjoys full autonomy in matters of external relations [See Section D below]. Neither the I.E.P. Agreement nor the Council Decision links in any way the Agency's decisions on external relations to those of the OECD. From the outset, the Agency could not have carried out its functions as respects non-Members if its full autonomy in this and other sectors had not been firmly assured.

However, there is provision in Article 8 of the Council Decision for the Governing Board to report annually to the Council on the activities of the Agency and to submit other communications to the OECD Council upon its request or upon the initiative of the Board. The mission of the annual reports is solely to transmit information. In practice the annual reports are prepared in the IEA Secretariat (formerly by the Office of Legal Counsel; more recently by the Public Affairs Office). The reports are submitted for the Governing Board's approval before they are submitted to the Council. There has seldom been any substantial comment on the report. In the Council the report is introduced by the IEA Executive Director or other senior official of the Agency who then responds to any questions about the work of the Agency during the period under review.

Information has also been exchanged from the early days of the Agency to 1990 at meetings of the OECD's Committee for Energy Policy, when the IEA usually made reports on the activities of the Agency. Since the early 1990s this Committee has not met because of IEA membership changes, and at this juncture it seems unlikely that there will be further need for that Committee to meet again. Its mandate is expected to be reviewed in the course of 1995. In any event, neither the Council nor the Committee has ever received a mandate to co-ordinate or govern IEA work. Their operational functions have been limited in effect to liaison. Article 63 of the I.E.P. Agreement envisages the possibility of establishing appropriate relations between the IEA and other international organizations and others, but it contains no provision for co-ordination or subordination of the IEA's Programme.

The need for IEA autonomy was clearly understood by the Agency's founders in 1974. At that time sixteen Members of the OECD were the founding Members. There remained eight other OECD countries, Australia, France, Finland, Greece, Iceland, New Zealand, Norway and Portugal, which did not immediately join the IEA. Under these circumstances, the

Agency needed full autonomy within the OECD because of the theoretical power of even one of those eight countries to interfere with IEA measures under the normal OECD rules if they were made applicable to IEA actions. But the problem was more than the understandable concern over such institutional and legal exposure. There was also the question of representation and operational perspective. The founders wished to ensure that the major actions of the Governing Board, particularly operational decisions and actions on energy policy questions, remained in the hands of high-level government experts who came from ministries or government departments directly responsible for those matters, rather than OECD Delegations which often lacked comparable energy specialization expertise and found their efforts necessarily spread widely over a broad spectrum of OECD responsibilities. There was also concern about ensuring the autonomy of the IEA Secretariat, which would be headed by an Executive Director who would bring high expertise and recognition in the energy field and be directly responsible to the Governing Board. Autonomy was also necessary to ensure the integrity of the special procedures and readiness required for meeting the operational responsibilities of the Agency. Over time, of course, some of the institutional and legal risks diminished as more OECD Members joined the Agency. By mid-1992 all other OECD countries except Iceland had joined the Agency, making the membership of the two institutions all but congruent. As a consequence, the problem of direct Council interference with the IEA has almost entirely disappeared, but the need for autonomy continues for the purpose of ensuring appropriate representation from capitals, voting rules for rapid decision-making, the autonomy of the Executive Director and the Agency's procedures and readiness as the Agency responds to the ever changing energy environment [See Chapter VII, Section B for further consideration of IEA Programmes of Work]. Today the need for IEA programme autonomy is as much a matter of concern as it was when the Agency was founded in 1974.

3. Financial Autonomy of the IEA

The I.E.P. Agreement confers upon the Governing Board plenary powers over the financing of the Agency and its financial administration. In practice the financial operations of the Agency have been conducted within the administrative framework of the OECD. The Agency accordingly uses the OECD financial services, but the Governing Board's powers extend fully over the entire range of financial affairs of the Agency.

Pursuant to Article 64.1 of the I.E.P. Agreement, the expenses of the Agency are to be shared by Members pursuant to a scale of contributions established according to the OECD rules adopted for that Organisation in 1963 [C(63)155(Final)]. For the IEA the rules for elaborating the scale of contribution can be amended only by the Governing Board, acting by unanimity [Article 64.1]. They are not subject to formal amendment by the OECD without explicit or tacit acceptance by the Governing Board.

The I.E.P. Agreement places upon the Governing Board alone the responsibility for making financial regulations for the Agency [Article 64.3], but the Board has used this power sparingly. As a matter of convenience and ease of administration, the Board has permitted the OECD Financial Regulations to be applied by the OECD in the transactions which it carries out for the Agency. However, the Board could at any time adopt Financial Regulations for the IEA or make other decisions of a like nature, and those actions would displace any inconsistent OECD rules, regulations and practices. In several instances the Council Decision itself has made the displacement explicit, as for voluntary contributions and special activities for which the need for displacement was foreseen at the outset [See Council Decision, Article 10(c) and (d) and the second paragraph of the Preamble].

After referring to contributions, special expenses, financial regulations and adoption of the Budget, Article 64 of the I.E.P. Agreement provides this in its paragraph 4

> The Governing Board, acting by majority, shall take all other necessary decisions regarding the financial administration of the Agency.

Those provisions of the I.E.P. Agreement confer the widest powers concerning financial questions on the Governing Board; the Council Decision recognizes that Agreement (including its financial provisions) in the fourth paragraph of the Decision's preamble. The IEA autonomy assured in Article 1 of that Decision and in the Board's adoption of the I.E.P. Agreement as a Program decision (under Article 6(a) of the Council Decision as well as other powers) thus combines with the quite independent I.E.P. Agreement provisions to give the Governing Board full power over all financial questions, including autonomy from the OECD Financial Regulations and other financial actions as well as other operations, should the Governing Board choose to exercise its powers.

The autonomy of the Agency in respect to decisions on the Agency's Budget warrants special mention. Under OECD procedures, the Budget of the Organisation is adopted by the unanimous decision of the Council.

Unanimity is required even for programmes limited to, and financed by a group not comprising all Member countries of the Organisation. Since the budget power could be applied in a way that was inconsistent with the wishes of the Agency countries, provision had to be made for the adoption of the IEA Budget by means of a procedure which would effectively exclude the vote of other countries and confirm the Budget decision which could be made by majority in the Governing Board. That was done by a provision in the Council Decision that the Governing Board would

> . . . submit the annual and other budget proposals of the Agency to the Council for adoption by agreement of those Participating Countries of the Agency which voted in the Governing Board to submit the proposals to the Council [Article 10(b)].

By that provision, the non-IEA Members of the OECD transfer power over the Agency part of the OECD Budget. This makes possible the adoption of the Agency Budget within the OECD Budget and retains Agency country control over Agency Budget decisions. Thus, the OECD Members not then Members of the IEA agreed in effect to a form of perpetual abstention from voting in cases affecting the Agency's Budget. Because of the importance of Agency autonomy, the adoption of some such provision in the Council Decision was an indispensable condition for the agreement to establish the Agency within the OECD.

In practice the financial co-operation between the competent OECD offices and the Agency has been quite beneficial to the IEA. The OECD provides assistance in the preparation and presentation of IEA Budgets, makes all staff payments, reviews contracts in the OECD Contracts Committee, and negotiates and makes contracts for supplies and other routine matters having no particular energy significance (normally the Agency staff itself negotiates and prepares the contracts which do have energy significance). OECD auditors examine IEA financial transactions carried out by the OECD and on two occasions to date they have conducted broader audits of the IEA in accordance with OECD practice and with the agreement of the Governing Board [See Chapter VII, Section K below]. With the exception of voluntary contributions and special activities, most of the routine financial administration of the Agency is conducted by OECD financial staff pursuant to OECD rules. In the application of those rules, the OECD staff exercises judgement whenever possible in line with known IEA policies and procedures. On the whole this arrangement has proven to be quite workable with a minimum of friction or difficulty; it has the distinct advantage that the IEA avoids the dedication of its

resources to routine financial administration and the duplication of effort in a sector which has little policy impact on IEA operations [See Chapter VII below for further consideration of budget and finance questions].

4. Autonomy in Personnel Questions

The Agency's autonomy in personnel questions is assured by provisions in the I.E.P. Agreement as well as by the general autonomy provision of Article 1 of the OECD Council Decision and the general provisions on the Secretariat contained in Article 7 of that Decision. Parallel to the Agency's financial administration, the Agency follows OECD personnel rules and practices generally and for reasons of convenience, but the Governing Board has in a number of situations developed its own rules and practices, and remains free to do so as a function of the Agency's autonomy.

Article 49.3 of the I.E.P. Agreement under the rubric "Institutional and General Provisions" states that

> The Agency shall have a Secretariat to assist the organs mentioned in paragraphs 1 and 2.

(The organs are the Governing Board, a Management Committee, the Standing Groups, and other organs established by the Governing Board).

Unlike most international agreements establishing an organization, the I.E.P. Agreement confers on the Secretariat far-reaching operational responsibilities in the Emergency Sharing System, including the making of the trigger decisions activating and deactivating the System and the performance of certain legal obligations. For that purpose, of course, the Secretariat needs the utmost autonomy. In order to ensure that autonomy, the I.E.P. Agreement provides this:

Article 59.3

> In the performance of their duties under this Agreement the Executive Director and the staff shall be responsible to and report to the organs of the Agency.

Article 60

> The Secretariat shall carry out the functions assigned to it in this Agreement and any other functions assigned to it by the Governing Board.

Article 59.4

> The Governing Board, acting by majority, shall take all decisions necessary for the establishment and the functioning of the Secretariat.

The Agreement also provides that "The Secretariat shall be composed of an Executive Director and such staff as is necessary" [Article 59.1] and that the Executive Director shall be appointed by the Governing Board [Article 59.2].

The foregoing provisions constitute a complete system for the autonomous Secretariat, regulating its composition and providing specific directions concerning its establishment, functioning and duties as determined solely by the Agreement and the Governing Board. These are the priority provisions which govern relations between the IEA and the OECD on personnel questions and give meaning to the Council Decision provisions on this subject.

The relationship between the two organizations on personnel matters parallels those relations on financial questions discussed above. The I.E.P. provisions are paramount. In one case the Council Decision sets out a derogation from OECD rules [Article 7(c)] on consultants. However, the general autonomy provision of Article 1 applies to personnel as well as to other matters.

The relevant personnel provisions of the Council Decision are as follows:

Article 7

> (a) The organs of the Agency shall be assisted by an Executive Director and such staff as is necessary who shall form part of the Secretariat of the Organisation and who shall, in performing their duties under the International Energy Program, be responsible to and report to the organs of the Agency.
> (b) The Executive Director shall be appointed by the Governing Board on the proposal or with the concurrence of the Secretary-General.

Paragraph (a) generally tracks the corresponding parts of the I.E.P. Agreement quoted above, except for the provision that the Executive Director and the staff shall form part of the Secretariat of the Organisation. Their autonomy from the OECD in matters of substance remains quite clear. In paragraph (b) the role of the Secretary-General in the

appointment of the Executive Director does not appear in the I.E.P. Agreement. Those provisions were added to ensure that the Secretariat would, in the absence of Governing Board decisions to the contrary, enjoy the status of OECD staff for purposes of remuneration and benefits, privileges and immunities and general administration, and to ensure that the Executive Director would be appointed upon the proposal of the Secretary-General or with his concurrence. The effect of those provisions was to adopt for the IEA the general staff rules and regulations, and the instructions and procedures of the OECD for appointments, rights and duties, benefits, discipline and so forth, unless the Governing Board should adopt other provisions under the autonomy power and the I.E.P. Agreement provisions quoted above.

The Governing Board regularly exercises its powers over the Secretariat with respect to substantive matters. At its first meeting, for example, the Board agreed [IEA/GB(74)9(1st Revision), Item 9] that

- The IEA staff should be free to work on Agency priorities, and the Budget should reflect this element.
- The Governing Board should consider arrangements for staff to be aligned in the Secretariat to correspond with the Standing Groups.
- The Executive Director could begin exploring for staff with a view to obtaining the high quality staff needed as quickly as possible.
- The Budget Committee should consider staff priority needs for the Agency to become operational.

Throughout the history of the Agency, the Board has continued to make decisions on the structure and composition of the Secretariat, to give instructions to the Secretariat on work to be carried out and to set priorities. One may take a recent Governing Board meeting as a current example. At its December 1991 meeting the Governing Board [IEA/GB(91)79, Items 5-7]:

- requested the Secretariat to continue IEA activities with respect to the former Soviet Union, including the follow-up mission next year, and to report further on this subject at the Governing Board's next meeting [Item 5(a)(ii)];
- noted the readiness of the Secretariat to continue to respond to the Czechoslovakian request for assistance in making preparations for possible oil supply disruptions [Item 5(b)];

- authorized the Executive Director to carry out a programme of co-operative activities with the Republic of Korea [Item 5(e)(ii)];
- instructed the Executive Director to circulate to all Delegations of Member countries requests for Associate participation in IEA R & D Implementing Agreements in accordance with the Guiding Principles [Item 5(f)(c)(i)];
- requested the Secretariat to develop further the concept of the TIES proposal (IEA/OECD Technology Information System) [Item 6(c)], subsequently bearing the name of Greenhouse Gas Technology Information Exchange "GREENTIE";
- in connection with the 1992 Budget, endorsed the Executive Director's efforts to keep Delegations informed as to professional staff recruitment, invited the Executive Director to keep Delegations and relevant bodies informed of consultancy projects and costs related thereto, and carried over authorizations to the Executive Director concerning commitment of funds in the event of activation of the Emergency Sharing System and concerning the recruitment of "project staff" [Item 7(m),(n),(p) and (q)];
- requested the Secretariat to support the three Baltic countries as set forth in the letter from the Danish Government [Item 11(b)(ii)].

In practice the OECD regime has been applied successfully to the IEA with a minimum of difficulty, thanks to a considerable measure of understanding and flexibility on both sides. In only a few cases has the Governing Board adopted its own measure at variance with the corresponding OECD measure to legislate on staff policy and procedure. At its first meeting, the Board appointed Mr. Ulf Lantzke as Executive Director in accordance with Article 7 of the OECD Decision, upon the proposal of the Secretary-General. However, OECD procedures concerning the duration of his term of office were set aside. Since no duration was fixed, he served in effect at the pleasure of the Board, as does Mrs. Steeg as Executive Director under a later and parallel decision of the Governing Board [See Chapter VI, Section E-4].

At its second meeting, the Board decided to freeze certain posts and authorized the IEA Committee on Budget and Expenditure to "unfreeze any or all of these posts upon satisfactory demonstration of need by the Executive Director" [IEA/GB(74)11(1st Revision), Item 5(e)]. At that time the Board also adopted the IEA "three year appointment policy" by inviting

the Executive Director to recruit mainly government officials for the A-grade posts and to recruit this staff on a fixed term basis (staff members currently having indefinite appointments with the OECD would retain them) for, in principle, approximately three years with necessary flexibility in duration on a case by case basis [Item (f)].

In addition the Governing Board has made key decisions concerning the level of the post of Executive Director and has fixed the Executive Director's terms of employment quite independently of the OECD [See Chapter VI, Section E below].

Over the history of the Agency there have been only a few areas in which the IEA and the OECD have differed on questions of personnel administration. One of these is the role of the OECD Staff Boards in recruitment matters. The IEA has considered that it alone was qualified to set recruitment standards, while at times the OECD Boards have tended to apply to IEA cases the standards employed for the OECD. By and large questions of this kind have been resolved by accommodation. The OECD understands that in recruiting staff the IEA must consider the operational nature of IEA work and the absence of career opportunities in the Agency. The Agency's appointment of "project staff" to regular staff posts after a period of testing has at times been questioned by the OECD. Yet the IEA has accepted the OECD procedures for regrading posts and other procedures which sometimes have run against the direction of preferred IEA policy. On such issues both the OECD and the IEA staffs have successfully avoided confrontation or submissions to decisional bodies, and accommodations have been found.

The basis of co-operation between the IEA and the OECD on personnel matters is the provision of administrative support to the IEA by the OECD without interference by OECD procedures. That basis of co-operation was essentially the bargain that was made to bring the Agency into the OECD in the face of opposition by some Governments precisely on this point of autonomy in personnel matters. Since the making of policy is the prerogative of the Agency under the governing texts, problems for the IEA have arisen when the OECD has sought to move beyond administrative support to including the IEA within the scope of its personnel policies. Such questions are to be resolved by the Governing Board in application of its personnel powers and the rules of autonomy. Autonomy in personnel questions is further discussed in Chapter VI below.

D. Competence in External Relations

1. General Purposes and Powers

The Agency's control over its operations extends beyond programme and administration to include its control over the Agency's external relations. It was absolutely clear from the outset of the developments leading up to the formation of the IEA [See Chapter II above] that the new Agency would have to be deeply involved in external relations across the entire spectrum of the Agency's functions. There was never any thought that the oil consuming countries grouped together in the Agency could isolate themselves in formal or operational terms from the rest of the energy consuming and producing world. Co-operation in energy was seen not only as co-operation *among* Agency countries themselves, but also as co-operation *between them* and the Agency as an international institution on the one hand, and the rest of the energy world on the other. This broad concept of co-operation was explicitly stated in the Communiqué of the Washington Energy Conference on 13 February 1974, in the early preparatory stages of the Agency [See Chapter II, Section C-2 above]. Participants "agreed that there was need to develop a cooperative multilateral relationship with producing countries, and other consumer countries that takes into account the long-term interests of all" [paragraph 14]; in that context they also referred to the role of the international oil companies, initiatives in the United Nations, the consumer and producer country conference, and consultations with developing countries and other consumer and producer countries. All of these references indirectly found their way into the I.E.P. Agreement which, *inter alia*, states the founders' objectives concerning international energy relations and provides the broad institutional framework for such co-operation with other countries and organizations.

The co-operation objective appears in quite comprehensive terms in several paragraphs of the Preamble to the I.E.P. Agreement [paragraphs 3-5] whereby the Members state that they are

> DESIRING to promote co-operative relations with oil producing countries and with other oil consuming countries, including those of the developing world, through a purposeful dialogue, as well as through other forms of co-operation, to further the opportunities for a better understanding between consumer and producer countries,
> MINDFUL of the interests of the other oil consuming countries, including those of the developing world,

DESIRING to play a more active role in relation to the oil industry by establishing a comprehensive international information system and a permanent framework for consultation with oil companies.

The absence of an adversarial approach towards other areas of the world is apparent in Article 11 of the Agreement, which makes it clear that IEA countries do not intend "to seek to increase, in an emergency, the share of world oil supply that the group had under normal market conditions". More specifically: "Historical oil trade patterns should be preserved as far as is reasonable, and due account should be taken of the position of individual non-participating countries". The Agency's approach would thus be one of fairness and constructive co-operation in its external relations, as the more specific texts of the Agreement confirm and the actual external relations of the Agency have shown.

The desired co-operation took textual form in the body of the I.E.P. Agreement in a number of specific mandates and in a general grant of external relations powers. The principal specific mandate is contained in Chapter VIII entitled "Relations with Producer Countries and with other Consumer Countries". This Chapter restates the objectives concerning other countries [Article 44] and states the commitments of members (1) to give full consideration to the needs of other consumer countries, particularly developing countries [Article 45], (2) to keep developments under review for that purpose [Article 44], (3) to exchange views on their relations with producer countries [Article 46], (4) to seek opportunities and means of encouraging stable oil trade and secure supplies, (5) to consider other possible fields of co-operation and (6) to "keep under review the prospects for co-operation with oil producing countries on energy questions of mutual interest, such as conservation of energy, the development of alternative sources, and research and development" [Article 47].

Responsibilities in the external relations sector have been conferred on two IEA plenary bodies, first the Standing Group on Relations with Producer and other Consumer Countries [I.E.P. Agreement Articles 44-48 and 58], and later (from 1977 on) the Ad Hoc Group on International Energy Relations [See IEA/GB(77)33, Item 8] which from 1990 has been known as the Committee on Non-Member Countries [See IEA/GB(90)46, Item 6]. These bodies are described more fully in Section D-2 below.

The I.E.P. Agreement was equally specific about relations with oil companies. Chapter VI mandates the establishment within the Agency of a permanent framework for consultations with oil companies and information requests "on all important aspects of the oil industry" [See Article 37]. The

mandate was quickly carried out by Governing Board actions adopted in February 1975 which established the "Procedures for Consultations with Oil Companies" (proposed to the Board by the Standing Group on the Oil Market in document IEA/SOM(75)2, dated 4 February 1975) [IEA/GB(75)8, Item 8(a)]. Those Procedures provided the basis for the many oil company consultations which have since taken place on a regular basis in accordance with Chapter VI of the Agreement. IEA consultations with oil companies on the subject of the oil market and activities of oil companies [called the "General Section of the IEA Information System"; on the oil market and oil company activities, see Chapter V of the I.E.P. Agreement] are provided for in Article 30 "to ensure that the System is compatible with industry operations". That process has been carried out by the IEA Industry Working Party (IWP) established by oil companies for that purpose, working together with the Standing Group on the Oil Market. Moreover, the Standing Group on Relations with Producer and other Consumer Countries was empowered to "consult with oil companies on any matter within its competence" [Article 58.3].

Close contacts with oil companies were also foreseen as part of the IEA Emergency Sharing System, regarding both the Special Section of the Oil Information System (oil emergency information) and the oil Emergency Sharing System. These industry functions have been carried out principally by means of the IEA Industry Advisory Board (IAB) [See Chapter V, Section A-17(d)] and bilateral contacts between the Secretariat and oil company representatives. As respects the emergency oil information system, industry provides its advice pursuant to Article 35, again "to ensure that the System is compatible with industry operations". However, the IAB is also directly involved, in an advisory capacity and on a regular basis, in the development and testing of the Emergency Sharing System. In the event that the Secretariat considers making a Sharing System "finding" which would trigger the Sharing System, "the Secretariat shall consult with oil companies to obtain their views regarding the situation and the appropriateness of the measures to be taken" [I.E.P. Agreement, Article 19.6]. The operational functions of the oil industry are foreseen in Article 19.7 which provides that "An international advisory board from the oil industry shall be convened, not later than the activation of emergency measures, to assist the Agency in ensuring the effective operation of such measures".

Apart from the relatively sharp focus of the foregoing external relations mandates concerning non-Members of the Agency and oil companies, the Agency was granted a far-reaching and all but complete power to enter into the external relations required to realize the objectives of the Agency. This

was established in both the I.E.P. Agreement [Article 63] and in the Council Decision [Article 12]. Thus I.E.P. Article 63 provides this:

> In order to achieve the objectives of the Program, the Agency may establish appropriate relations with non-participating countries, international organisations, whether governmental or non-governmental, other entities and individuals.

This text broadens and deepens the specific mandates found elsewhere in the I.E.P. Agreement. The only practical limitation on the external relations powers of the Agency is that the powers must be reasonably linked to the achievement of "the objectives of the Program", which means that they must be related, however broadly or narrowly, to international co-operation on energy. A potential second limitation might be seen in the language referring to "appropriate relations", but that would seem to be only a theoretical limitation because it is subjective in nature and in the last analysis lets the Governing Board make its own judgements. This broad grant of authority was intentionally designed to give the Agency the widest latitude and flexibility in determining the nature, scope and form of its external relations and the identity of the particular parties with which those relations would be entered into. By referring to "the Agency" having such powers, the text leaves open the possibility that the Executive Director might exercise external relations functions independently, which indeed the Executive Director does, subject to the overall control of the Governing Board which retains the ultimate responsibility in this and other sectors.

The Agency exercises its external relations powers, it should be added, in complete formal autonomy from the OECD. Neither the I.E.P. Agreement nor the Council Decision links in any way the Agency's external relations powers to those of the OECD. Whereas the OECD may need Council authorization to act externally, no such Council action is necessary to authorize IEA external activities and indeed none has ever been proposed or considered in IEA bodies. Although the I.E.P. Agreement Article 63 text is parallel to Article 12 of the Council Decision, the I.E.P. text stands alone in establishing a full and sufficient external relations power, and the Council Decision text serves only to ensure that there is no doubt about the powers of the Agency *vis-à-vis* those of the OECD Council and the Secretary-General. Thus the Agency's power over external relations does not depend upon action by the OECD Council, but may be freely exercised by the Agency under its own responsibility.

The I.E.P. Article 63 grant of external relations powers, supported by the specific I.E.P. Agreement mandates referred to above, is the formal source of competence for most Agency relations with others. It provides the basis for the Agreement with Norway [See Section A-3 above], for IEA relations with the oil producing countries and with other oil consuming countries, and for the enhanced relations in recent years with the Central and Eastern European countries, Korea, Mexico and other countries, as well as the United Nations, the World Bank, the Latin American Energy Organization (OLADE), the Asian Development Bank, other international organizations and a multitude of other entities and individuals. The particular status of the European Communities (European Union) within the Agency is described in Section D-3 below in this Chapter, and the Agency's relationship of autonomy with the OECD is described in Section C immediately above.

In addition to the other provisions on the Agency's relations with OECD discussed above, Article 9 of the Council Decision states that "The Agency shall co-operate with other competent bodies of the Organisation in areas of common interest. These bodies and the Agency shall consult with one another regarding their respective activities". That co-operation has been quite extensive and successful in practice. For the IEA it has involved the Governing Board, the Standing Groups and Committees; and for the OECD, the Council, the Executive Committee in Special Session, bodies of the OECD Nuclear Energy Agency, the Environment Committee and others. When those relations have concerned substantive questions rather than formal housekeeping questions, they have been regarded as "external" to the IEA (in the sense that they do not impinge on the Agency's autonomy), despite the fact that the IEA was established administratively as part of the OECD formal structure.

Since the world developments in the early 1990s have brought about a decided widening in the scope of IEA activities with Central and Eastern Europe and with a number of countries in other parts of the world seeking closer relations to the Agency, the external relations powers of the Agency are an increasingly important part of the institutional tools which enable the Agency to carry out its broad objectives as set forth in the I.E.P. Agreement.

2. Committee on Non-Member Countries (NMC)

Initially the Agency's relations with non-Members were developed in the Standing Group on Relations with Producer and other Consumer Countries, pursuant to Chapter VIII and Article 58 of the I.E.P. Agreement, in preparation for the operational decisions to be taken by the Governing

Board. Under Article 48, the mandate of the Standing Group was to examine and report to the Management Committee (in practice the Governing Board and the Management Committee meeting together at Board level) and "to carry out the functions assigned to it in Chapter VIII and any other function delegated to it by the Governing Board". The Standing Group was to "review and report" on any matter within the scope of Chapter VIII, and to "consult with oil companies on any matter within its competence" [Article 58].

After the Standing Group had operated several years under this mandate, the Governing Board considered that it needed direct advice from Members' officials who were directly responsible in their capitals for international energy relations and it realized that the Standing Group was not always best suited to meet that need. The Board then decided in June 1977 to establish an informal Ad Hoc Group on International Energy Relations, initially chaired by Mr. R. A. Burrows (United Kingdom) and often called the "Burrows Group" at the time, as a result. The mandate of the Ad Hoc Group was "to report to the Governing Board on international energy relations and to carry out such other functions as may be assigned to it by the Governing Board" [IEA/GB(77)33, Item 8]. Once the Ad Hoc Group began to meet, its suitability as the general forum was apparent, with the consequence that meetings of the Standing Group were no longer necessary. The functions of the Standing Group were thereafter fully taken over by the Ad Hoc Group, now called the Committee on Non-Member Countries. The Standing Group continues to exist formally under Article 49.1 of the I.E.P. Agreement, and for many years the Chairman of the Committee on Non-Member Countries was also elected Chairman of the Standing Group. Although it has fallen into disuse and serves no discernible current purpose, the Standing Group may be abolished only by formal amendment of the Agreement, a procedure which has not been considered necessary or desirable. The general and more or less permanent mandates of the Standing Group and the Committee are set forth in the OECD's document "List of Bodies of the Organisation -Mandates - Membership-Officers", updated annually [See also IEA/GB(89)36, Item 5].

By and large these IEA external relations bodies have carried out their work under their broad mandates and have reported confidentially to the Governing Board (often in private, evening or mid-day sessions limited to Heads of Governing Board Delegations). The Board's Conclusions on those reports have usually been limited to simply "noting" the reports (without recording specific findings or agreed actions), or occasionally to making slight shifts in emphasis in the Committee's work.

One important case in which the Governing Board's Conclusions went beyond a simple noting or shifting of emphasis was the text adopted on 11 May 1992 [IEA/GB(92)25, Item 5] on the basis of the Secretariat's document entitled "Participation by Non-Member Countries in the Activities of the IEA" [See IEA/GB(92)18/FINAL] and the Executive Director's Introduction to this subject [Annex to IEA/GB(92)25]. The preparation of this Secretariat document was one of the outcomes of an informal "IEA brainstorming session" held in Rueil-Malmaison outside of Paris in March 1992 on non-Member questions of current interest and concern. Even before that time it had become clear that familiar but far-reaching changes in the world were bringing about significant changes of emphasis in energy policies [IEA/GB(92)25, Annex]. As stated by the Executive Director, such far-reaching changes included "globalisation of energy markets, the evolving position of oil producers", the increasing role of developing countries in energy demand, and "the political and economic changes in Central and Eastern Europe and the CIS, and, last but not least, the growing focus on the relationship between energy and environmental policies". Accordingly, energy security concerns were refocused to recognize the growing importance of non-Member countries (NMCs), and this led in due course to the Board's adoption, in May 1992 as an interim decision, of new and elaborate "IEA General Policy Guidance" and "Guidelines for Areas of NMC Co-operation" and to the Board's reconsideration of the applicable mandates [See IEA/GB(92)18/FINAL].

The General Policy Guidance called for increasing "energy security by initiating or enhancing relations with significant energy consumers and/or producers," and it stated the need for a case-by-case system in the IEA's approach to NMCs that would not limit co-operation solely to NMCs likely to become OECD Members. It recommended that NMC activities be funded within the IEA annual budget allocations, that special contributions for specific, unforeseen activities should continue pursuant to IEA rules, and it stated that the Executive Director would report to the Board as these NMC activities were undertaken. The Guidelines contain mixed elements of mandate and policy, including the following on NMC participation in meetings of IEA bodies:

> For an experimental period, the Standing Groups should decide on the level, frequency, and subjects of NMC participation, subject to the right of any Member country to refer such a decision to the Governing Board. However, participation by a new non-Member country would be a matter for Governing

> Board consideration. The NMC Committee should be regularly informed. Participation by NMCs in IEA meetings should be *ad hoc* and informal. NMCs do not participate in Governing Board or Budget Committee meetings, unless the Governing Board were to decide otherwise. To the extent possible, the number of NMCs invited to an IEA meeting should be kept to the minimum necessary to accomplish the purpose of the meeting [IEA/GB(92)18/FINAL, III. A].

NMC participation in conferences, workshops etc. is also determined on an *ad hoc* basis. Invitations to participate or make presentations in those events are subject to the IEA rule [See IEA/GB(89)42, Item 4(a)] requiring prior approval by the Executive Director and by the Governing Board Chairman [IEA/GB(92)18/FINAL, III. B]. In the same Guidelines, there are also provisions for energy reviews of NMCs when such reviews are included in the Programme of Work or authorized by the Board. Further, the Board authorized NMC "Associate" participation in IEA R & D Implementing Agreements [See IEA/GB(91)79, Item 5(f)], and the Board provided for intensified statistical services with exchanges on a *quid pro quo* basis when possible, but not for NMC participation in the IEA emergency response systems or for IEA training as a general rule [The foregoing actions were adopted by the Governing Board in reference to Parts II and III of IEA/GB(92)18/FINAL where the full texts are to be found; the Board's Conclusions of May 1992 on those Parts are set forth in IEA/GB(92)25, Item 5(a) and (b)].

At that meeting the Governing Board also made two further decisions on the mandate of the Committee on Non-Member Countries [IEA/GB(92)25, Item 5(d)]:

> (i) The Committee on Non-Member Countries shall, taking into account the views of the Standing Groups and the other committees of the Agency, advise the Secretariat and advise the Standing Groups and other committees of the Agency with regard to non-Member country activities;
> (ii) overall policy guidance and decisions shall continue to be the responsibility of the Governing Board.

In paragraph (e) of these Conclusions the Board requested the NMC Committee to ensure that information on the Agency's activities in this sector is communicated to Members and that Members' views are

communicated to the Secretariat. The NMC Committee is required to report regularly on this subject to the Board.

Moreover, the Secretariat document IEA/GB(92)18/FINAL contained a Part IV entitled "Expanded Role of the NMC Committee", in which it was recommended that the Committee's role be expanded and that it should serve as a consultation point, entailing more frequent NMC Committee meetings and more functions. The NMC Committee would also receive more direct reporting of deliberations and recommendations from the other Standing Groups and Committees; the Delegates meeting in the Committee would need the authority of their governments to make decisions in order for this role of the Committee to be effective. The Committee would enjoy wider review and recommendation responsibilities, and report to the Board as appropriate. Although the Board at its May 1992 meeting did not reach final Conclusions on Part IV, it did note that the role of the Committee "needs to be further developed over time, bearing in mind that specific areas of co-operation with non-Member countries must be integrated into the work of the other Standing Groups" [IEA/GB(92)25, Item 5(c)]. Finally, in paragraph (f) of those Conclusions the Board "noted that this is an interim Decision, which the Governing Board will review in a future meeting."

3. Situation of the European Communities (European Union)

In the wide range of IEA external relations, the European Communities have enjoyed a singular status and have fulfilled important responsibilities which must be considered in this discussion of the Agency's relationships. As indicated above in Chapter III, Section I on the subject of possible accession by the European Communities to the I.E.P. Agreement, the terminology "European Communities" (EC) and Commission of the European Communities is retained in this work, notwithstanding the coming into current usage of *European Union (EU)* following the entry into force of the Treaty on European Union. The reason for this retention of the older terminology is that it is used in the I.E.P. Agreement [Article 72], in the OECD Council Decision [Article 3] and in other applicable IEA and OECD instruments.

The European Communities were involved from the outset in the development of the IEA, particularly with the active participation of the Commission of the European Communities in the Washington Energy Conference and the Energy Co-ordinating Group [See Chapter II, Sections C-2 and C-3 above]. The Commission took part in the work of the Agency immediately upon its establishment, and has continued to do so on a

systematic basis to the present day. At the time of this writing EC relations with the Agency fall into two distinct categories: (1) the current operational relations and (2) prospective changes which could be brought about by the accession of the EC to the I.E.P. Agreement and by associated problems.

The Commission has at all times co-operated with the IEA on the basis of Supplementary Protocol No. 1 to the OECD Convention which provides in effect for the Commission to "take part in the work" of the Organisation. That provision was considered applicable to the IEA as a result of the establishment of the Agency within the framework of the OECD, and that was confirmed to the Commission by the letter of 20 November 1974 from Governing Board Chairman Davignon to the Commission President Ortoli which stated this:

> I have the honour to inform you that, after having discussed the matter, the Governing Board of the Agency, referring to Supplementary Protocol No. 1 to the OECD Convention, which states that the Commission of the European Communities shall take part in the work of the OECD, has instructed me to invite your Institution to take part from now on in the work of the various bodies of the Agency.
>
> This invitation, of course, in no way commits the Community with regard to the decision that it may take on the basis of Article 3 of the Decision establishing the Agency. This Article states that "This Decision will be open for accession by the European Communities upon their accession to the Agreement in accordance with its terms".

[The Board's request is recorded in IEA/GB(74)9(1st Revision), Item 14(b), and the full text of the letter appears in Annex III to that document.]

In practical terms, this relationship with the IEA provides the Commission with the right to have access to IEA meetings (in principle to meetings of all bodies of the Agency except where participation in restrictive bodies would not be appropriate), to receive regularly agendas and other documents distributed to IEA bodies, and to speak and make proposals, but not with the right to vote in those bodies. The Commission does not enjoy the power to prevent the Agency from taking actions wished by its Members, nor does it have any obligation to contribute financially to the Budgets of the Agency, and in fact the Commission has not participated in financing the Agency's expenses. The Commission could theoretically

accede formally to selected Governing Board decisions, if so invited by the Board, but this has not been done, although the Commission has participated informally in a number of Board actions. The Commission's relationship to the Agency is thus tantamount to that of an "active observer", although the official texts do not use that expression.

Under the foregoing arrangements the Commission has been regularly and actively engaged in the work of the Governing Board, the Standing Groups, Committees and sub-groups of the Agency, and notably in a number of specific activities. In the oil emergency sector, for example, the IEA and the Commission have co-operated to ensure that an appropriate interface is made between the IEA Emergency Sharing System and the sharing phase of the EC oil emergency system [adopted by the Governing Board as an amendment to the IEA Emergency Management Manual, 4th Ed. 1982, Chapter C II, paragraph 10, p. 26; see IEA/GB(80)21, Item 10, p. 6; background material is contained in IEA/GB(80)27]. The Commission has issued Treaty of Rome competition clearance letters concerning the rules for co-operation of oil companies working with the Agency on oil emergency questions, and on 12 December 1983 it issued a comprehensive "Decision relating to a proceeding under Article 85 of the EEC Treaty", reproduced in IEA/SEQ(84)62 on that subject. At the time of this writing, the extension of that Decision for a further period of time is under active consideration.

Moreover, the Commission (DG XVII or DG IV or both) has participated in the general preparatory work developing, refining and testing the Emergency Sharing System. Commission monitors have met regularly with the IEA Industry Advisory Board in its advisory functions with the Agency and they have also participated in the Agency's intensive tests of the System. Commission representatives also worked at length with the Secretariat and oil companies in the successful negotiation of the IEA Dispute Settlement Centre Charter and Procedures for Arbitration [See IEA/GB(80)56, Item 8 and IEA/GB(81)75, Item 6, paragraphs (p)-(u)].

On the operational side, the Commission has regularly been active in the Agency's work on energy research and development, participating as a Contracting Party and as an Operating Agent in a number of energy R & D project Implementing Agreements. The Governing Board's Guiding Principles for R and D Co-operation [Annex II to the Long-Term Co-operation Programme, IEA/GB(76)5, Item 2] provides in Article IV(c) that "The European Communities may take part in any programme or project

under the present Decision". In consequence, the Commission (or other EC institution) has participated in some fourteen Implementing Agreements on a variety of subjects. Moreover, in a number of fusion Agreements the Commission has served as the Operating Agent, with broad developmental, administrative and operational responsibilities for the overall project. Since each of the other Implementing Agreements contains a provision permitting the European Communities in effect to "participate in this Agreement in accordance with arrangements to be made by the Executive Committee, acting by unanimity", access of the Communities to the projects and programmes established in those Agreements is also assured. In addition, the Commission has been active in all of the other sectors of the Agency's work, e.g. in long-term co-operation, in the oil market, in IEA relations with non-Members and in statistics.

The second aspect of EC participation in IEA affairs lies in the power of the Communities to accede to the I.E.P. Agreement as provided in Article 72 of the Agreement:

1. This Agreement shall be open for accession by the European Communities.
2. This Agreement shall not in any way impede the further implementation of the treaties establishing the European Communities.

Article 3 of the OECD Council Decision on the Establishment of the IEA also provides for the right of the Communities to accede to that Decision. Accession to both instruments would be necessary to complete the formalities.

During the I.E.P. Agreement negotiations in Brussels the question of a possible conflict between the I.E.P. Agreement and the Treaty of Rome was raised. Although no specific conflict was foreseen, Article 72 was included in the I.E.P. Agreement to reduce the risk of conflict and to keep to a minimum any potential EC opposition to the IEA, particularly if one or more EC Member States were not to participate in the Agency. At the time when steps were being taken to establish the Agency, EC accession to the I.E.P. Agreement was not considered likely, but Article 72 was added to anticipate the possible convergence of energy policies of the EC Member States and their possible future representation in whole or in part by the Communities. The possible accession of the European Communities to the I.E.P. Agreement is considered further in Chapter III, Section I above.

4. Capacity to Enter into International Agreements

One of the most far-reaching means for an organization like the IEA to establish external relations is its conclusion of international agreements (which are treaties under international law) with Member or non-Member governments or other public international organizations. This has been a vital element for other organizations as well as for the IEA [See generally the Report of the International Law Commission on the Work of its Thirty-fourth Session, ORGA 34th Sess., Supp. No. 10 (A/37/10) on the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations", and particularly the commentary on Article 6 entitled "*Capacity of international organizations to conclude treaties*"].

In the case of the IEA, the international agreement power has been employed to enable the Agency, quite independently of the OECD, to make the complex arrangements for the participation of Norway in the work of the Agency. Under those arrangements, most of the elements of IEA membership became applicable to Norway, while the special situation of Norway could be given institutional and legal recognition to the satisfaction of both Norway and the Agency. The mutual commitments could be taken in a legally binding way in much the same fashion that IEA Members took commitments under the I.E.P. Agreement. In the future, this power of the Agency to enter into international agreements may well become even more important, in that it may facilitate possible relationships with non-Member countries, with other public international organizations and with other entities.

The international agreement (or "treaty") power of international organizations is specifically recognized in Article 6 of the Vienna Convention on international organization treaties, cited above (while that Convention had not entered into force at the time of this writing, it is expected to do so in due time, and in any case Article 6 may be considered to state a customary rule of law fully effective without the Vienna Convention). Article 6 provides that "The capacity of an international organization to conclude treaties is governed by the rules of that organization". Article 2.1(j) of that Convention defines "rules of the organization" to mean "in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization". In the case of the IEA, the international organization treaty power is supported by all of those elements, i.e. by the constituent instrument (the I.E.P. Agreement), by decisions of the Governing Board and by the established practice of the Agency.

The I.E.P. Agreement provision governing these relationships is Article 63, quoted fully above in Section D-1. "In order to achieve the objectives of the Program", Article 63 authorizes the Agency to "establish appropriate relations" with, *inter alia*, non-participating countries and governmental international organizations, which are enabled by international law to enter into international agreements. IEA authority extends to the making of international agreements in the name of the Agency when, in the view of the Governing Board, that would be an "appropriate" relation. In the case of Norway, the Governing Board implicitly made that characterization when it authorized the Chairman of the Governing Board and the Executive Director to sign the Agreement with the Government of Norway on behalf of the Agency [IEA/GB(75)8, Item 4(c)]. That authorization was immediately acted upon the same day it was granted, and in effect it was confirmed by the Board when it adopted implementing measures at its next meeting [IEA/GB(75)15, Item 10(a)]. Thereafter the Agency consistently applied the Agreement with Norway in accordance with its terms, and thereby it has continuously reconfirmed the decision to enter into the international agreement.

The IEA also develops and administers the energy R & D Implementing Agreements, which have numbered about sixty in the course of the Agency's first twenty years. Although the Agency is not a formal party to those international agreements (because they are decentralized, and the Agency can fulfill its functions for them without becoming a formal party), the Agency is integrated into the process of the management as well as initiation and development of them, with continuing political, operational and depositary responsibilities. Possible participation by the Agency itself as a formal Contracting Party in Implementing Agreements has been considered, but so far this has not been deemed necessary for programme purposes. In the meantime, however, participation by the Agency as a Contracting Party has not been excluded, and it could be carried out if it were found necessary or desirable from a programme standpoint.

The history of the Agency thus confirms the authority conferred upon the Agency by the I.E.P. Agreement for the IEA to enter into international agreements when, as provided in Article 63, this is done "In order to achieve the objectives of the Program" of the Agency.

Internal Structure of the IEA

This Chapter begins a systematic examination of the internal structure, procedures and related aspects of the IEA. It takes up the main IEA organs, beginning with the Governing Board, the Agency's supreme institutional organ. It continues with the Standing Groups and Committees, all viewed from a structural and procedural standpoint.

A. The Governing Board

1. Function and Competence

The Governing Board is the supreme institutional organ of the International Energy Agency. As stated in Article 4 of the OECD Council Decision on the Establishment of the Agency, the Governing Board ". . . shall be the body from which all acts of the Agency derive". Although the I.E.P. Agreement does not formulate the Board's functions in those exact terms, the specific grants of power made to the Board in the Agreement, considered in the aggregate, lead to the same general conclusion. The Governing Board has the last word on matters of Agency policy, the commitments of Member countries made under IEA auspices, the internal organization and the operations of the Agency, the admission of new Members and external relations. The Board appoints the Executive Director and adopts the annual Programmes of Work and Budgets of the Agency. It provides the institutional mechanism for the convergence of Members' energy policies, and for Members to reach agreements on energy policy, to exchange views, to establish co-operative activities and projects and to take formal international commitments in the energy sector. Viewed from within the Agency, the Governing Board is the source of ultimate authority for the activities of the Agency, the Standing Groups, the Committees and the Secretariat. Together with the Executive Director, the Board provides the

highest IEA leadership and direction. The Board also constitutes the regular meeting place for Ministers and other high level officials with energy policy decision responsibilities, and is seen in the energy policy world as the most convincing and effective platform for propagation of the energy policy views of the Member countries of the Agency. The more particular functions of the Governing Board will emerge from the detailed examination of the Board's competence and operations which follows.

The competence of the Governing Board is stated in two different fashions in the I.E.P. Agreement, broadly in comprehensive grants of power and specifically in respect to many particular questions. The broad provisions are contained principally in Articles 50-51, as follows:

Article 51.1

> The Governing Board shall adopt decisions and recommendations which are necessary for the proper functioning of the Program.

Article 51.2

> The Governing Board shall review periodically and take appropriate action concerning developments in the international energy situation, including problems relating to the oil supplies of any Participating Country or Countries, and the economic and monetary implications of these developments. In its activities concerning the economic and monetary implications of developments in the international energy situation, the Governing Board shall take into account the competence and activities of international institutions responsible for overall economic and monetary questions.

Competence to make *binding* decisions is specifically provided in Article 52.1, and the non-binding effect of recommendations is stated in Article 52.2. The Board's competence to "establish any other organ necessary for the implementation of the Program" is found in Article 49.2. Power to adopt rules of procedure for itself and subordinate bodies is provided in Article 50.2, while power to elect its Chairman and Vice-Chairmen appears in Article 50.3, and the power to delegate any of its functions to other organs, in Article 51.3.

More or less parallel provisions are found in the Council Decision, in Articles 4 and 5 on general competence: the Governing Board is to be "the body from which all acts of the Agency derive", and it has the power to

make recommendations and binding decisions, to delegate its powers to other organs, to adopt its own rules of procedure and voting rules, and to "establish such organs and procedures as may be required for the proper functioning of the Agency". Article 6(a) provides that

> The Governing Board shall decide upon and carry out an International Energy Program for co-operation in the field of energy, the aims of which are: . . . (in sum, emergency self-sufficiency in oil supplies, demand restraint measures, emergency oil allocation, an information system on the international oil market, long-term co-operation and consumer/producer relations).

Then there follows a statement of general power, framed in terms different from those appearing in the I.E.P. Agreement. At the end of Council Decision Article 6(a) the following appears:

> The Governing Board may adopt other measures of co-operation in the energy field which it may deem necessary and otherwise amend the Program by unanimity, taking into account the constitutional procedures of the Participating Countries.

In addition the I.E.P. Agreement contains many specific directions to the Governing Board, which carry with them the corresponding competence in a wide variety of subjects. The leading specific I.E.P. provisions include the following:

Raising the stock commitment to 90 days	Article 2.2
Elements of stock commitment	Article 3.2
Recommendations on effectiveness of stock measures	Article 4.2
Recommendations on demand restraint	Article 5.3
Recommendations on countries' measures for allocation and their effectiveness	Article 6.3
Decisions on practical procedures for oil allocation and participation of oil companies	Article 6.4
Decisions on the group's share of world oil supply, historical patterns, etc.	Article 11.2
Decisions on "base period" questions	Article 18.2
Decisions on activation of the oil Sharing System	Article 19.3
Decisions on measures to meet the situation of stock draw down obligation reaching 50%	Article 20.3

Decisions on emergency findings	Article 21.4
Decisions on other emergency measures	Article 22
Decisions on deactivation	Articles 23 and 24
Decisions on the General Section of the Information System	Articles 27.1(j), 29.2 and 31.2
Decisions on the Special (Emergency) Section of the Information System	Articles 34.2 and 36
Decisions on procedures for consultations with oil companies	Article 37.3
Decisions on the long-term co-operation	Article 43.1
Decisions on producer/consumer relations	Article 48.2
Appointment of the Executive Director	Article 59.2
Decisions on the Secretariat	Article 59.4
Voting	Article 61.2
Relations with other entities, etc.	Article 63
Adoption of scales of contributions	Article 64.1
Decisions changing principles and rules for scales of contributions	Article 64.1
Decisions on financial administration	Article 64.4
Termination of the I.E.P. Agreement	Article 69
Decisions on accession to the I.E.P. Agreement	Article 71
Amendments of the I.E.P. Agreement	Article 73
Decisions on I.E.P. Agreement Annex questions	Annex, Article 9

Questions of competence have seldom arisen during the operations of the IEA, doubtless because the general grants of power are quite comprehensive in scope, and the Board has wished to avoid having its deliberations diverted from questions of substance. In a few cases the specific grants of power with time limits have given rise to discussion about the extent of Governing Board power *after the time limit has passed*, for example in the case of the numerous 1 July 1975 I.E.P. deadlines for action on measures which could not be completed during the Brussels negotiations on the I.E.P. Agreement. One example of that problem which gave rise to discussion in IEA bodies was the adoption of the Base Period Final Consumption decision foreseen in Article 18.2 to be adopted not later than 1 July 1975. The IEA's Legal Counsel gave an opinion to the effect that this date was not meant to contain a limitation of power but was intended rather as a target to stimulate rapid action. Thus the Legal Counsel's opinion stated that with respect to the 1 July 1975 date in the Agreement, in this case "It was adopted, in view of the perceived urgency in 1974, more as an indicative

target than a period for lapse of authority" [See opinion annexed to IEA/GB(80)9]. This important conclusion seemed to be accepted by most of the Board (and had been so accepted in the Standing Group on Emergency Questions), but in the end Article 22 was employed to reach the same result in the adoption of the Base Period proposal in 1980, well after the lapse of the 1975 deadline [See IEA/GB(80)21, Item 10]. After the deadline had passed, authority for the action to be taken could be found, as in the case cited, in other authorities contained in the I.E.P. Agreement. In other cases when the Board had taken an initial decision *before* the deadline, the Board has acted after the deadline has expired to modify or complete the decision. Sometimes the Board has acted *after* the deadline without specifying the authority on which the action was based, in effect treating the deadlines as indicative and not as a time limit on competence [See the decision adopting the Long-Term Co-operation Programme IEA/GB(76)5, Item 2]. This flexibility has been applied to permit the IEA to act in cases which might otherwise require the Board to employ the heavy procedure for amending the I.E.P. Agreement, which the Board has never had to do in such circumstances.

2. Composition

As the highest ranking body of the IEA, the Governing Board is composed of "one or more ministers or their delegates from each Participating Country", in accordance with Article 50.1 of the I.E.P. Agreement. Norway also participates in the Governing Board pursuant to Article 4 of the Agreement with Norway and the Decision on Institutional Arrangements for the Participation of Norway [the arrangements with Norway are discussed in detail in Chapter IV, Section A-3 above]. In practice the Board is considered to be composed of IEA Member countries and Norway, and not individual representatives [Article 4 of the Council Decision thus provides for "A Governing Board composed of all the Participating *Countries*. . ." Emphasis added]. This is in keeping with the broad and unusual powers conferred upon the Governing Board by the I.E.P. Agreement, powers over oil supply shortfalls and Members' energy policies generally, and with the Board's power to make decisions which are legally binding on Member countries. Accordingly, the Board speaks for the Members rather than for the individual representatives; decisions are binding upon states rather than upon the participating individual representatives. In consequence, Members' representatives change, sometimes from meeting to meeting, but the membership

of the country remains constant. New Members immediately become members of the Governing Board as a legal result of their accession to the I.E.P. Agreement.

3. Meetings at Ministerial and Official Levels

Article 50.1 of the I.E.P. Agreement provides that the Board shall be composed of "one or more *ministers* or their delegates" [Emphasis added]. At the outset the Board was expected to meet less frequently than has proved to be the case, and the more or less routine work at Board level was to be carried out by the Management Committee. However, it was soon apparent that the Board would have to meet quite frequently, at the rate of about one meeting every month during the first year or so, and that the Management Committee's work would in fact have to be carried out by the Board itself meeting at the level of high officials rather than Ministers [This distinction in meeting level is developed further in Section 7 below].

As a consequence, Ministerial Level meetings were to be convened only on occasion of special events, such as an oil supply disruption (the Iranian Revolution and Iran-Iraq War period 1979-1981), the adoption of major policy decisions or the need to give significant new directions to the Agency's work. In each case the Board at official level has made the decision whether or not to convene the Board at Ministerial Level [See for example the convening of the 1993 Ministerial, IEA/GB(92)45, Item 8].

At the fourteen Ministerial meetings convened up to 1994, virtually all Members were represented by Ministers, usually from Ministries or government departments responsible for energy, foreign affairs, economics or industry, and sometimes by two or more Ministers from those sectors. In addition to Ministers, delegations to those meetings usually included, the high officials from capitals who ordinarily represented the Member at official level meetings and members of the OECD Delegation, usually the Permanent Delegates and the Energy Advisors.

At Ministerial Level meetings the Governing Board has taken a number of particularly significant actions on policy, legislative or institutional questions which were prepared by the Governing Board at official level and were ripe for decision by Ministers. Those actions included the following:

- **1977 Decision on Group Objectives and Principles for Energy Policy,** providing for an upper limit on oil imports of the Group in 1985 and for comprehensive Principles for Energy Policy [IEA/GB(77)52(1st Revision), Item 2(c), and Annex].

- **1979 Decision Confirming the Board's Action on the Oil Market Situation in 1979,** on the reduction of IEA oil demand by 2 million barrels per day (about 5 per cent of oil consumption), and the extension of that decision into 1980 [IEA/GB(79)32, Item 3(d) and (f)].
- **1979 Decision Adopting the Principles for IEA Action on Coal,** in order to promote coal production, use and trade as a means of reducing dependence on oil [IEA/GB(79)32, Item 4 and Annex I].
- **1979 Decision on 1980 Targets and 1985 Goals,** including policy action to restrain demand in 1980, to limit Members' respective oil imports to meet specific 1980 Targets and 1985 Goals [IEA/GB(80)2, Item 3 and Annex I].
- **1980 Arrangements for Yardsticks and Ceilings and Decision on Adjustment of Yardsticks and Ceilings,** in order to monitor progress and to adjust ceilings and goals [IEA/GB(80)49, Item 3(a) and Annex II].
- **1980 Decision on Consultations on Stock Policies,** in order to strengthen measures for dealing with short-term market disruptions [IEA/GB(80)49, Item 3(a) (iii) and Annex III].
- **1980 Measures on Draw of Stocks and Discouragement of Undesirable Purchases of Oil and Decision by the Governing Board for Correcting Imbalances,** with estimate of total demand reduction and commitment of all IEA countries to contribute to carrying out the measures [IEA/GB(80)97, Item 2(g) to (m) and Annex I].
- **1980 Lines of Action for Energy Conservation and Fuel Switching,** setting forth the necessary actions for energy demand management [IEA/GB(80)97, Item 4(b) and Annex II].
- **1983 Agreement on Obtaining Gas Supplies from Secure Sources,** on avoidance of undue dependence on any single source of gas imports and to obtain future gas supplies from secure sources [IEA/GB(83)35 (1st Revision) paragraph 9].
- **1985 Conclusions on Conservation,** identifying types of desirable actions to assist in achieving greater energy efficiency [IEA/GB(85)46, Annex I, Chapter I].
- **1985 Recommendation on Energy and the Environment,** establishing lines of action to advance objectives of both energy and environmental policy [IEA/GB(85)46, Annex I, Chapter III].
- **1987 Decision on Maintenance of Stock Levels,** concerning levels of oil stocks to be made readily available to governments [IEA/GB(87)33, Annex, paragraphs 17-23; see also IEA/GB(89)36, Annex, paragraph 4(a)].

- **1989 IEA Ministerial Pledge on the Environment,** including the commitment to pursue in Ministers' respective policies a number of stated environmental considerations [IEA/GB(89)36, Item 2(b) and Annex, paragraph 4(d)].
- **1991 Ministerial Recommendation on Emergency Oil Stocks,** on government control of emergency industry oil stocks and/or the increase of government owned or controlled stocks, on the IEA stock commitment and on exceeding the commitment [IEA/GB(91)46, Annex, paragraph 6].
- **1993 Ministerial Action on Shared Goals,** a statement of the shared goals that will provide a basis for IEA Members to develop their energy policies [IEA/GB(93)43, Item 3(a) and Annex].

These are examples of the types and significance of policy and legislative action taken in Ministerial Level meetings. Most frequently Ministers make, as might be expected, policy statements which are set out in the Communiqués or Conclusion documents. Typically, Ministers assess the short and medium energy market situation with particular attention to sectors requiring special policy actions at that time. Ministers also review the work of the Governing Board at official level and assess the performance of Member countries in meeting their political and, when appropriate, legal commitments under the IEA system. Often Ministers review energy policy concepts about to enter the Agency's programmes, and give impetus to future policies, programmes and priorities for IEA activities. Much of this is preliminary in character, leading to Secretariat analysis, consideration by the appropriate Standing Groups and finally submission of proposals to the Governing Board, either at Ministerial or at official level, to take actions which have direct policy, legislative or institutional impact.

As might be expected, the Governing Board meets more frequently at official level (about ten official level meetings to each Ministerial). When it does so, the Board holds institutional and legal powers which are in formal terms identical to those applicable to Ministerial Level meetings, but those formal powers are often exercised with potentially less political impact, since "official level" means at less than Ministerial Level of representation, as will be seen below in Section 7. Most of the routine business of the Agency is conducted at official level meetings. However, the Board has on numerous occasions adopted at that level actions of quite far-reaching political as well as legislative and institutional impact, including:

- **Decisions on Membership in the Agency,** beginning with New Zealand in 1975 [IEA/GB(75)8, Item 3] and most recently for France in 1991 [IEA/GB(91)45, Item 2].

- **Decisions Establishing Industry Advisory Bodies,** such as the oil Industry Advisory Board (IAB) in 1975 [IEA/GB(75)8, Item 5 and Annex III, p. 19]; and the Coal Industry Advisory Board (CIAB) in 1979 [IEA/GB(79)49, Item 5, and Annex].
- **1976 Decisions Increasing Members' Emergency Oil Reserve Commitment to 90 days,** providing for specified annual increases until the 90 day level would be fully reached in 1980 [IEA/GB(76)53, Item 2(b)].
- **1976 Decision Adopting the IEA Long-Term Co-operation Programme,** the comprehensive programme for long-term energy policy and other arrangements [IEA/GB(76)5, Item 2].
- **1976 Decision Approving the Emergency Management Manual (EMM),** containing detailed provisions implementing the IEA Emergency Sharing System, [IEA/GB(76)24, Item 3(d)].
- **1977 Decision Adopting the Preliminary Guidelines for Collaboration on Energy R & D between the IEA Countries and Developing Countries,** on policies and procedures for this collaboration [IEA/GB(77)23, Item 4(b) and Annex].
- **1979 Decision Adopting the IEA Action on the Oil Market Situation in 1979,** containing the agreement of Members to reduce demand for oil by about 2 million barrels per day or about 5 per cent of current consumption [IEA/GB(79)8, Item 3(a) and Annex III].
- **1980 Decision Adopting the Charter of the International Energy Agency Dispute Settlement Centre,** providing a system of arbitration for oil companies co-operating with the Agency's Emergency Allocation System [IEA/GB(80)56, Item 8 and Annex].
- **1981 Decision on Preparation for Future Supply Disruptions,** improving procedures for dealing with oil supply disruptions, and recognizing the need to respond to supply disruptions of less than seven per cent provided in the I.E.P. Agreement [IEA/GB(81)86, Item 2(b) and Annex I].
- **1984 Decision on Stocks and Supply Disruptions,** on stockdraw procedures to be employed in response to oil supply disruptions [IEA/GB(84)27, Item 2(a)(ii) and Annex I].
- **1988 Conclusions on Coal,** on the assessment of the coal situation and coal policy recommendations [IEA/GB(88)14, Item 2(a)(ii)(C) and Annex I].
- **1988 Decision Adopting the "CERM Operations Manual-Consultations on Co-ordinated Emergency Response Measures",** providing procedures for CERM type operations in cases of oil supply disruptions [IEA/GB(88)25, Item 2(b)(ii)].

- **1990 Actions on Relations with European Economies in Transition,** adopting a Programme of Work Concerning Energy Policy Contacts with European Economies in Transition [IEA/ GB(90)22, Item 3(b)].
- **1990-1991 Actions on the Gulf Situation,** various preparatory decisions and recommendations in anticipation of further IEA actions [IEA/GB(90)24, 27, 32, 39, 46].
- **1991 Decision on the Co-ordinated Energy Emergency Contingency Plan in the Gulf Situation,** adopting the IEA response Decision of 11 January 1991 [IEA/GB(91)1, Item 3 and Annex], continued in effect by the Governing Board on 28 January 1991 [IEA/GB(91)3, Item 2 and Annex] and terminated by the Board on 6 March 1991 [IEA/GB(91)19, Item 3(d)].
- **1991 Actions on the Gulf Crisis: Assessment and Lessons for IEA Emergency Preparedness,** assessing favourably the response of the Agency and endorsing the Conclusions of the Standing Group on Emergency Questions on this subject [IEA/GB(91)79, Item 4].
- **1991 Actions on Arrangements for Co-operation with Non-Members,** including the former Soviet Union; the Czech and Slovak Republic; the European Energy Charter; the IEA Experts Seminar among Energy Exporters and Importers; Korea; and the Associate Participation in IEA R & D Implementing Agreements [IEA/ GB(91)79, Item 5].
- **1992 General Policy Guidance and Specific Guidelines for Areas of Co-operation with Non-Member Countries,** as set forth in Parts II and III of IEA/GB(92)18/FINAL, on IEA policies for co-operation with non-Member countries, and decision on the mandate of the Committee on Non-Member Countries [IEA/GB(92)25, Item 5(b)].
- **1993 Action Effecting the Withdrawal of an Entity Designated by the Former Yugoslavian Government from an IEA Implementing Agreement,** and conclusion that the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY) had brought about the extinction of the Board's invitation to the SFRY [IEA/GB(93)11, Item 6].
- **1993 Agreement to Hold a Special Informal Meeting ("Brainstorming Session") at Ministerial Level on Energy and the Environment,** and to hold the meeting in March 1994 in Switzerland [IEA/GB(93)65, Item 3].

The range of Governing Board actions at official level is much broader than the foregoing indication of major policy, legislative and institutional measures would suggest. Among the most important functions are its

convening the Ministerial Level Board meetings, fixing the agendas and preparing the way for Ministerial actions, all extending beyond administration to influence directly the substantive outcome of the meetings of Ministers. Most of the routine administration, housekeeping and detailed policy work of the Agency has also been carried out in the official level meetings.

The Governing Board meeting at official level also takes responsibility for convening and fixing the dates and agendas of its own meetings. It decides upon its own procedures consistent with the I.E.P. Agreement, determines the use of languages in the IEA, and deals with a host of financial and programme questions, including the adoption of the annual Programmes of Work and Budgets of the Agency as well as any supplementary budgets, audit authorizations and other budgetary questions. At official level meetings the Board fixes the scale of contributions of Members each year and decides other financial questions for the IEA, including the acceptance of voluntary contributions. At those meetings the Board also elects its own and Ministerial Chairmen and Vice-Chairmen as required, as well as the officers of each of the Standing Groups and Committees and members of the Coal Industry Advisory Board (CIAB). At official level, the Board decides upon questions of the admission of new Members and relations with non-Members, approves the annual IEA activities reports of the Board to the OECD Council, consults on the security clearance of IEA staff holding sensitive positions in the Secretariat, authorizes IEA conferences, seminars, workshops, experts meetings and like events which have an official IEA connection. Further typical subjects of the Board's action at official level are participation of the Agency in politically sensitive outside conferences and events, authorization of arrangements for the periodic Allocation Systems Tests (ASTs) of the IEA Emergency Sharing System and the Co-ordinated Emergency Response Measures (CERM) tests, authorization of IEA publications, and approval of R & D collaborative projects to be carried out under IEA auspices and the continuation of those projects. Not the least of those functions is the amendment of the I.E.P. Agreement. All of the amendments so far in the history of the Agency have been related to the admission of new Members and have been made by the Governing Board at official level.

4. Informal Meetings

Actions on matters of particular political sensitivity are taken at times by the Governing Board at informal meetings or during informal breaks in the course of regular meetings. This practice began during the I.E.P. Brussels

negotiations in 1974, when Energy Co-ordinating Group (ECG) Chairman Davignon convened heads of delegations regularly to work informally during breaks in the regular meetings. This ECG format was transported fully intact to Paris at the outset of the IEA and it has continued ever since under Board Chairman Davignon and his successors. Typically the Executive Director has brought together the Chairman and a group of Heads of Delegations in the evening immediately preceding the Board meeting, and the breaks on meeting days have become informal meetings. These meetings have been attended on the Secretariat side only by the Executive Director, the Deputy and the Directors or other officers whose presence was necessary. These meetings provided discreet opportunities for exchanges of information and views on such international energy relations questions as OPEC actions, developing country energy relations, the situation of Eastern European and other non-Member countries, arrangements with new Members, as well as the election of officers of the Board, Standing Groups and Committees, other personnel matters and the more sensitive aspects of the items on the meeting agenda.

In addition there have been a number of informal "non-meetings" designed to provide a suitable forum for free discussion and "brainstorming" on particular topics or for development of suggestions on activities or future directions of the Agency. Particular topics have included the Long-Term Co-operation Programme, the Action on Coal, oil import yardsticks and objectives, the 1984 Oil Stocks Supply Disruption Decision, producer/consumer supply and demand, energy and the environment, and relations with non-Member countries. Most often those informal meetings have been conducted in the Paris region but away from the IEA premises, rarely in the normal IEA meeting facilities in Paris. Sometimes the outcomes of these meetings have been reported to the Board at official level which noted the report [See e.g. IEA/GB(90)22, Item 3(a)and IEA/GB(92)17, Item 3(a)]. The "non-meetings" have not been regulated or made the subject of explicit Governing Board decisions. They have been held when they are found to be useful. When suggestions have been made for informal meetings on a particular topic, the arrangements were then developed informally, and references to the outcome of those meetings as such sometimes found their way into the Board's formal Conclusions [e.g. IEA/GB(92)17, Item 3] and at other times they did not.

On 19 October 1993 the Governing Board at official level agreed, for the first time, to an informal *Ministerial Level* meeting, to be conducted as a "brainstorming session" on energy and the environment issues. Upon the invitation of the President of Switzerland, the Board decided that the

informal Ministerial meeting would be held at Interlaken, Switzerland in March 1994 [IEA/GB(93)65, Item 3].

5. Place and Frequency of Meetings

Aside from lodging the IEA within the OECD administrative framework in Paris, there is no reference in either the I.E.P. Agreement or the Council Decision about the possible location of meetings or other operations of the Agency. Since the OECD is an important meeting and Secretariat centre, the OECD relationship doubtless created an expectation that the Agency would use OECD meeting facilities in Paris. That indeed has been the case, for almost all meetings of IEA bodies, including the Governing Board, have taken place in Paris.

In 1975 this question arose in the Board following concern about convening IEA meetings away from Paris and it gave rise to objections based on cost and convenience to Delegations and to the Secretariat based in Paris. That led to the Governing Board Conclusion

> that meetings of the Governing Board and the other bodies of the Agency should normally be held in Paris; before convening a meeting elsewhere, the Chairman concerned shall consult with the Executive Director on the necessity for holding the meeting elsewhere and the budgetary implications of the decision [See IEA/GB(75)54, Item 8(3)].

This formulation took into account the corresponding provision of the OECD Rules of Procedure [Rule 4 b)] which requires the Secretary-General's approval for meetings away from Paris, while the IEA Governing Board Conclusion, using the language of recommendation and consultation, is potentially more flexible.

Since adopting the IEA conclusion quoted above, the Governing Board itself has met once in Brussels [June 1975, see IEA/GB(75)58] and in Tokyo [April 1978, see IEA/GB(78)18] and the Board is expected to meet in Kyoto, Japan in April 1994 [See IEA/GB(93)57, Item 11; IEA/GB(93)65, Item 10]. Except as noted above, the practice has been for IEA Governing Board, Standing Group and Committee official meetings to be held in Paris. Only rarely have they been held in Paris away from OECD headquarters, and that when the sole facilities available were those of the host government or of other organizations located in that city. The Industry Advisory Board (IAB), on the other hand, has met regularly at sites away from Paris as arranged by the oil companies represented on the IAB.

Although the many Executive Committees established under IEA energy R & D Implementing Agreements have met frequently away from IEA headquarters in Paris (they often meet for programme reasons at various locations in the countries of participants), those Committees are not official IEA bodies. They operate under their own rules and are free to meet wherever they wish. The Agency does not bear any of the costs of such meetings other than the cost of having the IEA Secretariat represented when an IEA presence is appropriate.

The frequency of Governing Board meetings depends upon the work of the Agency and the need to bring together the Ministers or officials. There have been no decisions fixing meeting calendars or the frequency of Governing Board meetings either at Ministerial or official level. In 1977 there was a strong suggestion that the Ministers should meet annually for the purpose of acting on the results of the annual reviews of the Decision on Group Objectives and Principles for Energy Policy [See IEA/GB(77)33, Cover Note, paragraph 4 and Annex II to the Conclusions, draft paragraphs (c) and (e)(1)]. In the Board's final Conclusions on that Decision [IEA/GB(77)53], there was no reference to the timing of Ministerial Level meetings of the Governing Board. Meeting fourteen times in all, Ministers have tended to meet regularly every two years to give Ministerial impetus and direction to IEA work, and they meet when special circumstances require more frequent meetings, as they did in the period 1979-1982. But it was not necessary for Ministers to meet during the Gulf Crisis of 1990-1991 when major Governing Board action was taken at official level meetings. A Ministerial Level meeting was foreseen but did not take place until after the IEA Co-ordinated Energy Emergency Contingency Plan on the Gulf Crisis was completed in 1991.

At official level there has been a wide range in the frequency of Board meetings over the years. Meetings were held most often during the early formation period of the Agency, for example fourteen meetings in 1975, nine meetings 1976. Recently the number of meetings per year (including Ministerial Level Meetings) has varied from four to eight. The average up to the present time is seven meetings per year.

There is, however, a minimum number of meetings necessary to satisfy the IEA's normal institutional requirements. The Governing Board must in practice meet early each year to adopt the scale of contributions, to elect officers and to approve the annual report of the Board to the OECD Council for the previous calendar year, and to conduct general business as well at these meetings early in the year. In the autumn meeting of each year the Board has adopted the practice of approving the directions of work

contained in the draft Programme of Work and instructing the Budget Committee on the preparations for the draft Budget for the following year, which must be done at about that time to maintain the Programme of Work and Budget adoption schedule. Then in December of each year the Board has convened, often for multiple purposes, but also to take the necessary formal action of adopting on time the final Programme of Work and Budget for the following year. While some of those actions could be taken by the written procedure, the Board has preferred to consider these questions in full meetings (the adoption of scales of contributions has been the only exception). In practice the Board has always found it necessary to meet more often than this notional minimum would suggest.

6. Convening Meetings

There are no specific provisions in either the I.E.P. Agreement or the rules adopted by the Governing Board concerning the competence to convene the Governing Board either at Ministerial or official level, and there is nothing about the procedure to be followed. However, the Governing Board's power to adopt its own rules of procedure [See Article 50.2] clearly indicates that the convening of Board meetings falls within the Governing Board's powers.

In practice the Governing Board itself has fixed the Board's meeting dates. That has been virtually always the case for Ministerial Level meetings, the convening decision being taken by the Board at official level as part of the preparation for the Ministerial. For example, the Board at official level on 22 October 1992 decided to hold the next Ministerial Level meeting on 4 June 1993 [IEA/GB(92)45, Item 8]. Official level Board meetings have been usually convened by decision taken at the previous meeting at that level. Thus the Board normally has fixed at each meeting the date of the next meeting and recently it has tended to decide or indicate the probable date of its following one as well. When it was not possible to fix the date of the next meeting, the Board has left the question open for determination by agreement between the Chairman and the Executive Director.

Since there are no rules about dates or frequency of meetings, the Board normally enjoys complete discretion in convening its meetings. However, this is subject to important exceptions arising from the operation of the IEA emergency response systems, which can trigger Board meetings in cases of supply disruptions. Article 19.1 to 19.3 inclusive provides, in effect, that the Board shall meet within six days after the Secretariat makes a finding of an Emergency Sharing System oil supply reduction as described in Article 19.1. Parallel meeting requirements are contained in Article 20

for cases of continuing severe crises (requiring a meeting within seven days), and in Article 21 upon a request by any Member to the Secretariat to make a finding of a selective trigger oil supply shortfall affecting one or more countries. When the Secretariat makes a later finding that the shortfall level has fallen below the applicable activation level, the Governing Board is similarly required to meet within seven days, this time to consider deactivating the System [Article 23].

Two decisions of the Governing Board on oil supply disruption responses have also specifically foreseen the "prompt" convening of the Board. In the 1981 "Decision on Preparation for Future Supply Disruptions" [IEA/GB(81)86, Annex I, paragraph 3], the Board decided that in the event of a supply disruption

> The Governing Board will meet promptly at the appropriate level to consider and decide upon what action, if any, is necessary to meet the situation as it exists so as to avoid serious economic damage, should the assessment of the situation indicate that this might otherwise occur.

The Governing Board's July 1984 "Decision on Stocks and Supply Disruptions" [IEA/GB(84)27, Annex I, paragraph 8] provides the following more specific formulation:

> The Governing Board will meet promptly at the appropriate level upon the call of the Chairman of the Governing Board when he determines that a supply disruption involving a significant net loss of world oil supplies, after taking into account estimated excess production and facility capacity available, exits or is imminent . . .

7. Representation

Representation in the Governing Board is open to Member governments only, except for the rare cases of observers whose status and representation are discussed below [See Section A-10]. Questions about the identity, role or level of representatives have never been specifically addressed by the Governing Board. Clearly for Ministerial Level meetings the competent Minister or Ministers have been expected to attend personally and usually do. The Delegation lists have been communicated by Delegations to the Secretariat, and in addition to the Ministers the lists normally included the OECD Permanent Delegates, other members of the OECD Delegations and

representatives from capitals. There being no formal accreditation procedure, each Member has remained free to designate the representatives it wishes, and the Delegation statement to the Secretariat has been taken as sufficient, the statement usually designating the official Delegate and an alternate. Access to the meeting rooms is strictly limited to the designated representatives and other authorized persons. For meetings of the Governing Board at official level, essentially the same procedure has been followed.

While Members are free to designate whomever they wish as representatives, there have been informal discussions about the official levels and particular affiliations of representatives. Members are expected to be represented in the Board whenever possible by high level officials from capitals, by individuals at Assistant Secretary or Director General or comparable civil service levels of responsibility. There have been inquiries about Members bringing into their Board representation individuals employed by energy companies, but such designations have been discouraged and it is believed that they have never materialized. This has been in keeping with the notion that "official level" means government officials who carry public sector responsibilities at policy making level.

8. Rules of Procedure

The Governing Board is empowered by Article 50.2 of the I.E.P. Agreement, as set forth below, to adopt its own rules of procedure:

> The Governing Board, acting by majority, shall adopt its own rules of procedure. Unless otherwise decided in the rules of procedure, these rules shall also apply to the Management Committee and the Standing Groups.

In the Council Decision this is expressed in Article 4 in the following terms: "The Governing Board shall adopt its own rules of procedure and voting rules". With respect to the OECD Decision, the intention was to avoid the application of the OECD Rules of Procedure (which had been viewed as being heavy in their application, and which clearly could not apply to IEA operations). Most of the OECD Rules of Procedure could not by their terms apply to the IEA without causing conflicts with the I.E.P. Agreement or the Council Decision, for example conflicts over the rules concerning the convening of meetings, the alteration of the date of a meeting, the place of meetings, the admission of observers, agendas, officers, acts of the Organisation, subsidiary bodies, languages, and records and documents. The specific provisions for IEA

rules of procedure and the inclusion of many procedural provisions in the I.E.P. Agreement ensured that there could be no question about whether the OECD rules would apply in the absence of Governing Board action: the IEA provisions were considered to pre-empt the field. OECD rules would not apply unless specifically adopted by the Governing Board.

The intention of the founders was to continue in the IEA the simplicity and operational efficiency that had characterized the 1974 Brussels ECG negotiations on the I.E.P. Agreement. The ECG itself did not apply formal rules of procedure but worked in an informal manner adapted to achieve rapid results in setting in place the Emergency Sharing System and IEA institutions before further oil supply disturbances might arise.

On 18 November 1974, at the Governing Board's first meeting, which immediately followed the signature of the I.E.P. Agreement, the Board decided to defer the preparation of formal rules of procedure and to proceed in a flexible way designed to assure maximum operational efficiency and simplicity [IEA/GB(74)9(1st Revision) Preliminary Matters, paragraphs (b) and (d)]. The Board also decided to deem its meetings *joint* meetings of the Board and Management Committee (i.e. to avoid having separate meetings of the Committee) and to dispense with formal minutes in the absence of a decision specifically requesting the preparation of minutes. On rules of procedure and manner of proceeding the following language was adopted:

> (b) preparation of formal rules of procedure would be deferred until the organs of the Agency gained working experience on which the rules could be predicated.
> (d) the Board would seek to proceed in a flexible way assuring maximum operational efficiency and simplicity.

The question of rules of procedure was subordinated to the concern for the Agency's operational requirements for flexibility, efficiency and simplicity. As an operational Agency, the IEA required more flexibility than the OECD. Thus the IEA could not afford to dedicate Delegation and staff resources to the development of an unnecessary system of procedural rules which might lead the Board into unproductive procedural debates about adopting, interpreting and applying the rules.

The procedural rules the Agency actually needed were already contained in the I.E.P. Agreement itself, e.g.:

Governing Board composition	Article 50.1
Election of Chairmen and Vice-Chairmen of the Board	Article 50.3
Binding character of decisions	Article 52.1

Non-binding character of recommendations	Article 52.2
Management Committee and Standing Groups: composition, functions, rule on convening meetings, election of officers	Articles 53-58
Voting rules: three differently defined majorities and unanimity, applications to particular subjects	Articles 61-62
Procedures for activating the Emergency Sharing System	Articles 19-21
Creation of other organs	Article 49.2
Delegation of power	Article 51.3
Budget submission and adoption	Article 64.3
Special activities: abstention, information and special voting procedures	Article 65

During the period since the I.E.P Agreement was signed, there have also been a few new rules adopted by the Governing Board, such as the rules quoted above in this Section, rules on languages, rules on the frequency and place of meetings, on documents and access to IEA meetings. A number of procedural provisions governing specific subjects are found in the Security Principles and Procedures as well as in the comprehensive programme decisions; examples of such provisions include those for the Long-Term Co-operation Programme of 1976 (LTCP), the Emergency Management Manual (EMM), the Dispute Settlement Centre (DSC), the 1981 Decision on Preparation for Future Supply Disruptions and the 1984 Decision on Stocks and Supply Disruptions.

In a few instances Delegations to the IEA have informally raised the question of whether the Agency should not, like the OECD, have more systematic and complete rules of procedure. This type of question was logically raised in the context of a specific Delegation need for earlier distribution of Agendas or other meeting documents. In each of those cases the Secretariat has given the necessary explanations or informal assurances to the satisfaction of the interested Delegations. Because of the specialized application of many of the rules in the programme and other decisions mentioned above, there has never been a call for a general codification of the rules.

The Governing Board is, of course, required to apply the procedural rules established in the I.E.P. Agreement. The Board otherwise remains free to apply or not to apply or to modify rules which the Board itself establishes. In short, apart from I.E.P. requirements the Board is master of its own procedures and may proceed case by case as it finds appropriate to meet the needs of situations as they arise. This it has done throughout the

history of the Agency. The IEA's early concepts of flexibility, efficiency and simplicity have continued to govern its approach to this subject, and they have contributed substantially to the effectiveness and success of the Agency.

9. Closed and Open Meetings

Meetings of the Governing Board have always been held in private without the press or the public. In a number of instances the Board has arranged for the presence of representatives of the press immediately *before* the meeting starts, particularly for television and still photography when the meeting would attract substantial press and public interest. After the few minutes required to complete their work, the members of the press left the room; after security officers confirmed that no unauthorized persons remained in the room, the meeting commenced. Although it lies within the powers of the Governing Board to open a meeting to the press or public, this has never been done in the history of the Agency up to the present time. Provision has been made for specific observers to attend meetings of the Governing Board, but that requires a Governing Board authorization which is seldom granted. The Executive Director is also authorized to admit persons to meetings of the Governing Board, as will be seen below [See Section A-10 below].

The formal basis for the closed meetings of the Governing Board is found in the IEA Security Principles and Procedures [discussed in detail below in Chapter VIII, Section B]. Paragraph 10 of the Security Principles and Procedures [IEA/GB(77)12] states the fundamental rule as follows:

> Access to all IEA meetings, whether held in the OECD or elsewhere, shall be strictly limited to authorised representatives of Participating Countries, to Staff and to other persons authorised by the Executive Director.

Concerning meetings held in the OECD — which is the great majority of them — paragraph 8 of the Security document cited above contains the statement that:

> During each meeting OECD security personnel shall provide such coverage as may be required to assure that only persons in possession of appropriate Agency admittance cards are afforded access to the immediate area and admittance to the conference rooms.

When the Board meetings are held outside of the OECD, security measures are the responsibility of the host country, in accordance with paragraph 9 which was applied in the cases of Board meetings in Brussels and Tokyo [See the IEA Security Regulations 1-6 to 1-8 inclusive, adopted by the Executive Director, for further formulations of the foregoing rules].

In practice most members of the Secretariat have not been admitted to Board meetings. Those who need access have been permitted to enter the meeting room when the Board is in session. The great majority of IEA Staff, having insufficient reason to attend, has not been admitted. This practice has been applied both to Ministerial and to official level meetings of the Board and reflects the policy of strictly limited access to Board meetings as well as the sense that the Board may conduct its business more effectively within a compact group.

10. Observers

The Agency has maintained a guarded approach to the question of the admission of observers to meetings of the Governing Board. Although the Agency's broad authority to enter into external relations includes the admission of observers, arrangements for observers are seldom made and only for the most compelling reasons, as will be seen below. The external relations authority is stated in Article 63 of the I.E.P. Agreement as follows:

> In order to achieve the objectives of the Program, the Agency may establish appropriate relations with non-participating countries, international organisations, whether governmental or non-governmental, other entities and individuals [See also Article 12 of the Council Decision where a parallel text appears].

Article 63 gives the Governing Board the widest discretion in determining whether or not to grant observer status and to fix the terms, either by a general rule or an *ad hoc* decision, on which that status might be granted. However, the Governing Board has not adopted general rules on the admission of observers to its meetings, preferring to leave that to *ad hoc* decisions when the question should arise and the circumstances are known. As recently as 1992 the Governing Board considered non-Member country participation in the IEA. At that time in adopting the IEA "Guidelines for Areas of NMC Co-operation" the activities of the Agency, the Board stated that:

> Participation by NMCs in IEA meetings should be *ad hoc* and informal. NMCs do not participate in Governing Board . . . meetings unless the Governing Board were to decide otherwise. To the extent possible, the number of NMCs invited to an IEA meeting should be kept to the minimum necessary to accomplish the purpose of the meeting [IEA/GB(92)25, Item 5(b); IEA/GB(92)18/FINAL, III. A].

Aside from the special situations described below, normally no observers are admitted to the Governing Board meeting room.

The formal rules are silent on the specific subject of observers, except for the participation of the European Communities (European Union) and the Government of Norway. The Communities enjoy a special status in the IEA, not only by virtue of their right to accede to the I.E.P. Agreement under Article 72, but also as a result of the invitation extended to the EC Commission by the Governing Board at its first meeting "to take part from now on in the work of the various bodies of the Agency" [IEA/GB(74)9(1st Revision), Item 14(b) and Annex III]. That invitation was extended with specific reference to Supplementary Protocol No. 1 to the OECD Convention which states that the Commission of the European Communities shall take part in the work of the OECD. Pursuant to that invitation the Commission has regularly attended Board meetings and enjoyed the right to receive Board documents and to speak in Board meetings upon the Chairman's invitation; however, it has not received the right to vote and has no obligation to make a financial contribution to the costs of operating the Agency. No case has been found where the Commission has acceded to decisions of the Governing Board, but that possibility is not excluded by any of the IEA governing texts. Of course the Commission is bound by the outcome of the meeting only if arrangements have been made to that effect, but the EC Member States are bound in the same way as other IEA Members are bound by Governing Board actions. In sum, the role of the Commission might be characterized as going beyond a passive observer status in view of the regular and active participation of the Commission in the work of the Agency on a broad, substantive basis.

Although Norway is considered in most respects as a Member of the IEA, it is not a formal Member in the sense of being a Contracting Party to the I.E.P. Agreement. Norway's extensive but limited participation is fixed under a separate Agreement between the Agency and the Government of Norway [See Chapter IV, Section A-3 above generally on the situation of Norway] and under the Decision on Institutional Arrangements for the Participation of Norway [IEA/GB(75)15, Annex IV], called the "Norway

Decision". Under those two instruments, Norway is certainly more than an observer in the IEA; indeed its status is close to that of a full Member. However, because of its particular juridical status, there is provision for meeting participation by Norway as an "active observer", although that designation has not been officially employed. Paragraph 1 of the Norway Decision provides this:

> Norway shall be entitled to participate, on the same basis as a Participating Country, in plenary and restricted organs of the Agency, including the right to be represented, to participate in discussions, and to make proposals, in plenary or restricted meetings thereof, and the right to receive agendas and other documents for such meetings.

Paragraph 2 of that Decision enables Norway to vote on questions arising under Chapters V through X of the I.E.P. Agreement and which require a majority, and paragraph 3 permits Norway to adhere to any other decision of the Governing Board. Hence it was a natural consequence that Norway should have the broad meeting participation rights set forth in the text quoted above.

Another instance of an established expectation is the admission to Board meetings of representatives of prospective new Members, and this from the time of the Board's invitation to the new Member to accede to the I.E.P. Agreement until the accession formalities are completed. This has been done not on the basis of a formal decision, but by informal arrangement for all new Members. During that observer period they too received all documents and enjoyed the right to attend selected meetings of IEA bodies (but not the Budget Committee). In meetings they attended, observers were accorded the right to speak upon the Chairman's invitation, but without the right to vote. At that stage the new Member was not obligated to make financial contributions. However, once the membership proceedings were completed the new Member was bound by all prior decisions of the Governing Board, including those made during the new Member's period of participation as an observer in the circumstances described above.

Other than for the EC and for Norway, the admission of observers has been arranged on a case by case basis when there have been particularly cogent reasons for doing so. At meetings where the advice of the oil Industry Advisory Board or the Coal Industry Advisory Board has been sought for presentation to the Board, a representative of those bodies has been invited to attend as an observer for the relevant agenda item only.

During the 1990-1991 Gulf Crisis, Finland, France and Iceland, the then remaining OECD countries which were not Members of the Agency, were invited to participate in the Board's preparatory work for dealing with the crisis, and they then joined in the IEA's Co-ordinated Energy Emergency Response Contingency Plan adopted by the Board on 11 January 1991 and activated by the Executive Director on 17 January 1991. In such cases of *ad hoc* participation for limited purposes, the observer received only the documents relevant to the particular agenda item and was admitted only during the consideration of that subject.

Here it should be recalled that in the Board's 1984 Decision on Stocks and Supply Disruptions [IEA/GB(84)27, Annex I], there is provision in paragraph 9 for consultations among Members, *apart* from the Governing Board meeting, to develop response proposals; that consultation is to be open to the OECD Member countries which are not IEA Members. The results of the consultation are reported to the Governing Board which is to take them into account in reaching its overall response decision. There is no specific provision for those OECD Members to participate in the ensuing Governing Board deliberations as observers.

11. Officers and Elections

The offices of Chairman and Vice-Chairmen of the Governing Board are established by a brief passage in Article 50.3 of the I.E.P. Agreement as follows:

> The Governing Board, acting by majority, shall elect its Chairman and Vice-Chairmen.

That is the sole reference in the Agreement to those officers of the Governing Board.

The role of the Chairman is to provide, in conjunction with the Executive Director, policy and institutional leadership to the Agency, to act as a major public spokesman for the Board, to carry out requests by the Board and to direct its meetings. In carrying out the responsibilities of that office, the Chairman acts much in the same way as the chairmen of the governing bodies of other functional international organizations do. The Chairman is in a unique position to take policy initiatives in the meeting process and through normal diplomatic means. In consultation with the Executive Director, the Chairman is empowered to convene Board meetings when the meeting dates have been left open by the Board itself. Of course

the Chairman sets the tone of the meetings, guides the discussions, brings the weight of the office to bear on the process of reaching consensus, rules on procedural questions in the course of the meetings, summarizes the outcome of the meeting on each agenda item as necessary and shares with the Executive Director responsibility for the overall success of the Board's meetings.

Governing Board Chairmen [See Appendix II, Officers of the Governing Board at Ministerial and Official Level, Standing Groups and Committees] are elected as individuals, not as countries. For Ministerial Level meetings, a Minister is elected to serve as Chairman of a particular meeting. Chairmen of the Board at official level have usually been chosen from among senior officials in ministries or government departments responsible for energy policy, frequently the representative of a Member with a large energy economy. Most often they have served as the Head of their Delegation to the Governing Board and thus before taking the chairmanship they were quite familiar with participants, Board functions and practices, and with Agency operations overall.

Although there are no rules governing the term of office, the predominant practice has been for Ministerial Level Chairmen to function as such during the period of preparation of the Ministerial Level meeting, during the meeting itself and afterwards as required to complete the Ministerial Level process. They are not elected specifically for any fixed period, although a Ministerial Chairman has been known to see the policy and diplomatic functions of the office as possibly continuing until the election of the next Ministerial Level Chairman, a view which has not been widely shared in the Agency. The term of office for the Chairman at official level and for the officers of all IEA bodies is normally the calendar year, and it may be renewed.

The Governing Board has not explicitly fixed the number of Vice-Chairmen of the Board at official level, although the actual elections fix the number tacitly. Often there have been up to four Vice-Chairmen, one from North America, one from the Far East, one from a smaller energy economy and at times one from among the OECD Heads of Delegation. In the absence of another officer normally situated nearby, the latter individual has assured the more regular presence of a Vice-Chairman in Paris. The formula is not at all a rigid one, and it has been adjusted as necessary to provide balance.

As appears above in the quotation of Article 50.3, the Chairman and Vice-Chairmen are elected by "majority" in formal rule terms. In fact there has never been a formal election procedure applied for the elections, for in

each case at Ministerial as well as at official level the elections have been made by consensus. Under the formal vote rule of the I.E.P., "majority" means not an absolute majority, but rather an "I.E.P. majority" which, under the complex IEA voting system, consists of "60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast" [Article 62.3; see Section 13(b) below]. The actual elections have been held normally at the informal Governing Board sessions conducted during breaks in the Board's formal meetings, usually in connection with the last meeting of the year preceding the new terms of office or at the first one held in the new year of the terms of office.

The term of office for Governing Board officers, as well as for officers of the Standing Groups and the Committees, is normally the calendar year. This duration is indicated in the election Agenda item which is usually expressed with reference to a specific year: as in 1993 when the agenda item was entitled "Election of Officers for 1993", and the ensuing Governing Board election item recording the outcome bore the same title [March 1993 meeting, IEA/GB(93)11, Item 2]. Moreover, the practice has developed of officers retaining their functions beyond the end of the calendar year when the Board is not ready to act on elections before the end of the year. In those cases the officers have served until their respective successors were elected. Sometimes this was expressly decided by the Governing Board [IEA/GB(80)4, Item 5(c); IEA/GB(77)60, Item 2(a)], while at other times it was done tacitly without a specific decision of the Board and without objection from Members. This interim procedure may be taken as an established practice without the need for an explicit decision by the Board on such prolongation.

12. Agendas

The Governing Board has not adopted specific rules governing its meeting agendas, preferring to leave agenda preparation decisions to the Secretariat and the Board Chairman. Agendas include items foreseen in IEA instruments as well as new subjects and give Members adequate notice of the items to be presented to the Board. A draft agenda for each meeting has been prepared and circulated by the Secretariat.

Each draft agenda has listed the discussion items and identified the action and information documents which are before the Board. For Ministerial Level meetings the draft agenda has been approved by the Governing Board at official level well in advance of the meeting. The draft agendas for meetings at official level have been prepared and issued as far

in advance of the meeting as possible, usually at least two weeks in advance. In a few cases the agendas have been annotated to provide Delegations with further information on the discussion items [See IEA/GB/A(78)1 and IEA/GB/A(92)4/ANN]. When late items were expected (for example new points arising from a Standing Group meeting held immediately before the Board meeting), the draft agenda could be delayed until the new points were known; or if the document was already issued, a revision containing the new points could be distributed. In such cases as soon as practicable the Secretariat notified Delegations informally prior to the issuance of the draft agenda or revision that this would occur. These questions have been considered as matters of judgement left for decision by the Executive Director. Sometimes late items have been subsumed under the category of "Other Business", and this was usually sufficient for formal points which were not apt to give rise to controversy. When those items have raised questions, it has not always been possible to reach agreement, with the result that the discussion on that item would be resumed at a later meeting or the item would be submitted for decision by the written procedure when appropriate. While the problem of early issuance of draft agendas and other meeting documents has occasionally been the subject of discussion, Delegations have understood that in a operational agency like the IEA these problems were bound to arise and have always been handled as expeditiously as possible under the circumstances. In recent years the development of rapid document transmission technology has removed some of the earlier concerns and has permitted greater flexibility when necessary.

Over the years there has been only one known agenda related procedural suggestion by a Delegation which was adopted into IEA practice: the suggestion by some French speaking Delegations to have the draft agendas for official level meetings issued in French as well as English so that they might be more readily usable to a wider group of officials in administrations. The earlier draft agendas had appeared in English only, like most Board documents, but the Secretariat has since issued all agendas in the two languages. (For Ministerial Level meetings, this was not a problem, for all Ministerial documents are issued in English, French and German.)

Most items on the draft agendas have been proposed by the Executive Director. Some were derived from earlier Board instructions for a particular item to be discussed at a designated meeting, often in the form of an instruction to return to an item "at the next meeting of the Governing Board". Some items, such as elections of officers of the bodies of the Agency, the scale of contributions, Budgets, and the annual reports to the OECD

Council, were mandated by the I.E.P. Agreement and must appear on the agendas of meetings held at or about the meeting times which are now customary for those items, but no precise meeting dates were prescribed. The Chairman and any Member may propose items for the draft agendas either orally in an earlier Board meeting or by letter addressed to the Executive Director. Standing Groups and Committees also propose agenda items, usually in the form of reports prepared for consideration by the Board. Additional items can be proposed by participants in the Governing Board meeting, particularly at the time when the Agenda is considered for adoption, but this is a relatively rare occurrence.

It should also be noted that the IEA voting rule for adoption of agendas is not specifically stated in the I.E.P. Agreement or other regulatory instrument unlike the OECD which provides in Rule 14 a) of its Rules of Procedure that agendas be "adopted by a majority of Members represented on the body concerned and present". For the IEA the applicable rule is found in I.E.P. Agreement Article 61.1(a) which makes majority voting applicable to, among other matters, "decisions on procedural questions"; this is also the voting rule for the adoption of rules of procedure [See Article 50.2]. The "majority" required, it must be said, is not a simple majority of Members present and voting, but the I.E.P. majority discussed in the Section below on voting. However, the majority voting rule for agendas has never been applied, for the Governing Board has always adopted its agendas by consensus and has never had to proceed to a formal vote on this question.

13. Voting and Consensus

The Agency's voting rules set forth in the I.E.P. Agreement are among the most complex and innovative of any international organization, in that they establish two separate systems of voting weights assigned to the Members and four different voting formulations for unanimity, I.E.P. majority and two special majorities. Those provisions bear little if any resemblance to the voting rules of any other international organization. Yet these IEA rules have rarely been directly employed in the sense of having a recorded vote on an issue decided by the Governing Board. In the Agency's first year or so, there were a few cases in which a vote count was commenced by the Chairman who enquired country by country about the Members' votes. However, that process ended when the Chairman sensed midway through it that the sufficient majority favoured the proposal, and rarely has there been a vote formally announced or recorded. In connection with the adoption of

the Emergency Management Manual in 1976 a majority vote was recorded in a footnote to one paragraph of the Conclusions [IEA/GB(76)24, Item 3(a)]:

> This paragraph was adopted by a majority vote pursuant to Articles 6.4 and 62.3 of the I.E.P. Agreement in which all Participating Countries of the Agency voted in favour except Italy, which opposed it, New Zealand, which expressed a réserve d'attente, and Norway, which due to its special relationship with the Agency did not participate in the vote.

In the early years of the Agency, there were also a few individual Member's votes or abstentions noted at a Member's request in the Governing Board meeting Conclusions, and a few cases in which the Board recorded an agreement on the non-applicability of designated parts of a decision to particular Members.

More recently in the December 1993 meeting of the Governing Board, there was minority opposition to the adoption of parts of the draft Conclusions on the annual IEA Programme of Work and Budget for 1994. In its Conclusions on this question [IEA/GB(93)65, Item 2], the Board:

> (b) noted the reminder by the Chairman of the Governing Board that the 1994 Budget of the Agency is to be adopted by a majority as defined in Article 62(3) of the Agreement on an International Energy Program;
> (c) noted the statements of the representatives of Australia, Canada and New Zealand that they could not accept the 1994 Budget as it was proposed, but also the statement of the Chairman of the Governing Board that the requisite majority supported the 1994 Budget as proposed.

Again the Chairman sensed that the requisite majority favoured the adoption of the measure, and he announced that the Conclusions were adopted "by majority" without a formal vote or an explicit statement of "yea or nay" from each Member. The Conclusions simply recorded that the actions appearing in the paragraph in question were taken by the Board "acting by majority" [IEA/GB(93)65, Item 2(f)]. Aside from this and the few other cases mentioned above, the elaborate IEA voting arrangements have not been applied directly by the Board or any other organ of the Agency, although at times the rules have surely carried a discreet but powerful influence.

Instead of using the voting rules, the Governing Board has acted on the basis of consensus. In the interest of the integrity and reliability of the Emergency Sharing System and to maintain a confrontation free atmosphere generally in the Agency, it became necessary for the IEA to employ all available means to avoid situations in which disputes might arise under that System or during consideration of other issues. The most important of those means was the practice of substituting consensus for formal voting procedures (without amendment of the Agreement or other formal arrangement). Consensus reduced the possibilities of polarization and isolation of the minority, made workable compromises possible, and enhanced the atmosphere of co-operation in the general interest. The successful application of the consensus procedure also provided a remarkable means for strengthening institutional development overall.

In practice the Governing Board has endeavoured to reach a consensus on virtually *every* agenda item. Typically, at the close of the Board's discussion of a particular point, when the Chairman sensed that there was majority support for a measure requiring majority, he announced his proposed Conclusions which were deemed accepted by consensus in the absence of objection. On measures requiring unanimity, the Chairman proceeded in essentially the same fashion when he sensed no apparent objection. The announced Conclusions were then taken to represent the decision of the Board by consensus. Where there was disagreement, the foregoing process as well as direct negotiations were undertaken until a consensus solution was found, at times even in later meetings. In majority vote cases, the disagreeing party or parties, if less than a sufficient number to block the majority, were persuaded to accept by consensus what would be unavoidable if the Board went to a vote. In cases where the minority was sufficient to block the action and if successive efforts failed to bring about a consensus or produce a majority, the matter eventually had to be deferred or dropped. In cases requiring unanimity, either the disagreeing party or parties were brought around to the dominant view, or arrangements were made to permit them to opt out of the decision by agreement of the others under Article 61.2(a), or the matter again eventually had to be deferred or dropped. In these difficult situations the spirit of IEA co-operation usually prevailed, and an appropriate accommodation was found.

Consensus, as applied in the IEA, has been understood to mean the absence of a serious objection or reservation which would lead a Delegate to insist upon a formal vote (without hope for accommodation) at the moment when the Chairman announces his proposed meeting conclusions. This corresponds to the Rules of Procedure of the Conference on Security and Co-operation in Europe of 1974 (the Helsinki Process) which provided the

following definition in paragraph 4: "Consensus shall be understood to mean the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question" [Rules of Procedure of the Final Recommendations of the Helsinki Consultations, Helsinki, 8 June 1973].

Viewed in this light, the importance of the underlying "passive" or "unapplied" IEA formal voting system should not be underestimated. It does represent the law of the Agency on the subject of voting. The institutional force of none of the voting rules has been lost through the use of consensus. Each Member remains entitled to invoke the applicable voting rule at any moment it might find convenient. On issues requiring unanimity under the I.E.P. Agreement, each Member must remain quite free to decline to be bound by measures it does not support. On majority vote questions, each Member must remain equally free to call for an announced and recorded vote if it so wishes. Since those rights remain fully viable under the IEA voting system, the system can be invoked at any time and must then be applied, however strongly the tradition of consensus and co-operation might militate against it. Nevertheless, a Member which might request a vote risks disturbing the consensus procedure that has proven to make such a valuable contribution to IEA harmony and effectiveness.

The importance of the voting system persists for other reasons as well. As the foregoing discussion suggests, it will be clear that the system plays a tacit role even when it is not specifically invoked. Since the Members know when unanimity or majority voting rules are applicable, they do not persist in positions which are unlikely to attract support sufficient to meet the requirements of the applicable rule. Thus there is no need for a Member specifically to invoke a rule for it to be applied tacitly by the Chairman or other Members. This process helps the Agency avoid or minimize the open disagreements, polarization and confrontation which at times have been observed in other organizations.

Another important element of the voting system is that it constitutes the indispensable link between the Members' political, economic and social views on the one hand, and the Agency's formal decisions on the other. The voting rules must be satisfied in one fashion or another for the Agency to be able to act as required by the I.E.P. Agreement or upon proposals of Members or the Secretariat. If the Agency should fail to do so by virtue of openly divided votes and concomitant procedural controversy, there could be a substantial risk of the Agency's losing its credibility as a reliable oil emergency response organization and as an effective centre for general co-operation on international issues of energy policy and operations. Thus it is understandable that such strong efforts have been made in the Agency to

ensure that the voting system is employed smoothly and in a constructive manner to help bring about agreement among the Members.

A few words may now be said about the origin, structure and application of each of the IEA's four formal voting rules: unanimity, I.E.P. majority, First Special Majority and Second Special Majority. Since the technical voting rules set forth in the I.E.P. Agreement change when Norway participates in Governing Board actions, the voting rules applicable when Norway participates will also be considered.

(a) Unanimity

Unanimity is clearly the simplest of the four IEA formal voting rules. Article 62.1 states that

> Unanimity shall require all of the votes of the Participating Countries present and voting. Countries abstaining shall be considered as not voting.

"Unanimity" thus means the positive votes of all Members present; abstentions do not defeat unanimity. In other words, a negative vote has the effect of a veto, but absence or abstention would not.

Unanimity is required in all cases expressly providing for it in the I.E.P. Agreement, as well as for all decisions which impose new obligations not already specified in this Agreement. It also applies to a category of "other decisions" for which there is no provision for decision by majority or special majority in the Agreement, the "other decisions" category providing the fall-back rule to be applied in a fail-safe fashion where the Agreement is silent. In the Agreement, unanimity is specified for particular subjects only in a few cases:

- Article 22: activation of appropriate emergency measures not provided for in the Agreement.
- Article 27.1(j): additions to the list of subjects relating to oil companies operating within their jurisdictions on which Members are to report information to the Secretariat.
- Articles 62.5 and 62.6: changes in voting weights referred to in Article 62.2 upon changes of membership or review of the number and distribution of the voting weights.
- Article 64.1: changes in the scale of contributions to the IEA.
- Article 73: amendment of the I.E.P. Agreement.
- Annex, Article 7: changes in the definition of the reference period mentioned in Article 2, paragraph 1 of the Agreement, concerning the maintenance of emergency reserves.

Over the years the Board has taken a number of decisions to which the rule of unanimity was applicable. New commitment decisions included, for example, the Long-Term Co-operation Programme of 1976, and the Gulf Crisis Co-ordinated Energy Emergency Response Contingency Plan of 1991. There have also been changes in voting weights upon the admission of new Members and other amendments to the I.E.P. Agreement. Although unanimity was required in each of the foregoing cases, there was no discussion of the voting rule in the Governing Board and there was no reference to the applicable voting rule or explicit finding of unanimity recorded in the decisions or relevant Board conclusions. Indeed the record of each of those decisions is silent on the subject of the applicable voting rule.

Although the principle of "one country one vote" was abandoned in the I.E.P. Majority and the First Special Majority, as will be seen below, it was retained in all of the cases requiring unanimity. That principle was derived from the traditional doctrine of "sovereign equality of states" which is applied almost uniformly in the OECD and for many key decisions in a number of other international organizations. It reflects the importance Members attach to the retention of sovereign authority over those particular matters specified and over new international obligations. Although in the IEA sovereign authority is safeguarded in the cases calling for "unanimity", it is clear that the founders wished to limit the cases in which a Member might enjoy a power of veto over Governing Board action. [The IEA founders' intentions concerning the voting system appear in the "Secretariat Notes on IEP Voting Concepts" attached to the Executive Director's letter of 25 February 1991 to Heads of Delegations of IEA Participating Countries, IEA/OLC(91)51; parallel background information was circulated by the Executive Director to Heads of IEA Delegations in 1980, IEA/ED/80.107].

(b) I.E.P. Majority

For the I.E.P. majority, which is a complex rather than a simple majority, the rules become somewhat more difficult to follow, chiefly on account of the weighted voting. Stated in abbreviated form, the I.E.P. majority requires the affirmative vote of at least one-half of the Members voting, provided that those Members hold at least 60 per cent of the total voting power (the combined voting weights) explained below. The brief text on majority is set forth in Article 62.3 :

> Majority shall require 60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast.

Three "general voting weights" (GVW) were assigned equally to each Member country in order to provide a measure of equality among all Members. Thus when fifty per cent of the GVW are cast, it simply means that one-half of the Members have voted. This would normally mean twelve out of the twenty-three Member countries not counting Norway (the effect on voting of Norway's special status is discussed below in this Section). When the necessary majority gives favourable support to a Board action, it is clear that the adopted decision is binding upon the entire membership, including a dissenting minority. That result is not only inherent in the concept of majority voting; in the IEA it follows directly from Article 52.1 which states that ". . . decisions adopted pursuant to this Agreement by the Governing Board or any other organ by delegation from the Board shall be *binding* on Participating Countries" [Emphasis added].

"Majority" has been applicable in many Governing Board decisions actually taken. In addition to the cases in which majority is expressly provided for in the Agreement, Article 61.1 divides majority vote questions into three categories:

- decisions on the management of the Program, including decisions applying provisions of this Agreement which already impose specific obligations on Participating Countries;
- decisions on procedural questions;
- recommendations.

In addition to the application of the I.E.P. Agreement to decisions on management, procedure and recommendations, virtually every Chapter of the Agreement specifies particular decisions, too numerous to enumerate, which are to be made by majority. This is true even for the Emergency Sharing System Chapters which reserve certain especially sensitive matters to special majorities or unanimity. Also included are most of the decisions concerning the development of the Emergency Sharing and Information System, the framework for consultation with oil companies, and institutional matters such as elections, delegations of power, creation of new organs, establishment and functioning of the Secretariat, adoption of the Budgets as well as other financial matters and new membership invitations.

The structure of the I.E.P. majority voting rules must be reviewed with reference to the voting weight chart contained in Article 62.2 of the I.E.P. Agreement as amended in 1992 as follows:

Article 62.2

When majority or special majority is required, the Participating Countries shall have the following voting weights:

	General voting weights	Oil Consumption voting weights	Combined voting weights
Australia	3	1	4
Austria	3	1	4
Belgium	3	1	4
Canada	3	5	8
Denmark	3	1	4
Finland	3	1	4
France	3	6	9
Germany	3	8	11
Greece	3	0	3
Ireland	3	0	3
Italy	3	5	8
Japan	3	14	17
Luxembourg	3	0	3
The Netherlands	3	1	4
New Zealand	3	0	3
Portugal	3	0	3
Spain	3	2	5
Sweden	3	2	5
Switzerland	3	1	4
Turkey	3	1	4
United Kingdom	3	6	9
United States	3	44	47
Totals	66	100	166
With Norway	3	0	3
Totals with Norway	69	100	169

In adopting those voting arrangements, the IEA departed from the traditional principle of "one country one vote" which could not be applied in the Agency because it failed to reflect the different magnitude of the interests of Members in the decisions to be taken in the Agency. Nor could it reflect the relative ability of Agency countries to shape the actions that they might take individually if the Agency had not been established. Hence a system of voting weights designed to reflect those considerations was devised.

The voting weights employed in the IEA for the I.E.P. majority and the First Special Majority reflect two major considerations: (l) an element of equality, and (2) an element of relative oil consumption. The juridical equality of each Member of the Agency is reflected in the general voting weight (GVW) schedule in the first numbered column of Article 62.2 above, in which three weights are allocated equally to each Member whatever the size of its economy or the importance of its oil consumption. That provides an equal minimum voting strength for each Member, amounting in the aggregate to about forty per cent of the total voting weights. The totals for each Member are called combined voting weights (CVW) and appear in the last column of the chart; they reflect the oil consumption element as well. They represent in each case the sum of each Member's general voting weights (GVW) and oil consumption voting weights (OVW).

Each Member's oil consumption is represented in a separate scale of oil consumption voting weights (OVW), the second numbered column in Article 62.2, on a proportionate basis. The OVW were based upon a calculation which first considered each Member's consumption of oil products in 1973 (excluding bunkers). Those numbers were converted in each case to a percentage figure which represented each country's proportion of the oil consumption of the group as a whole. The resulting percentage figures were then rounded to the nearest whole number and adjusted to 100 by subtracting one OVW for the country with the percentage figure furthest removed from the next whole number or by adding one OVW for the country closest to the whole number, as required. That calculation led to a total oil consumption voting weight (OVW) of 100 distributed on a proportionate basis among IEA Members. This calculation process, beginning with the sixteen founding Members of the Agency, has been repeated with the necessary adjustments upon the admission of each new Member, leading to the current text of Article 62.2 above, upon the admission of France in 1992.

The 1973 oil consumption values adopted initially in 1974 (as the latest then available) still provide the statistical basis for these calculations. Although Article 62.6 foresees periodic reviews and amendments in consequence of changes in Members' oil consumption since 1973, there has never been a request for the review, and none has taken place officially. From time to time the Secretariat has informally recalculated the OVW on the basis of updated numbers to see whether significant changes have occurred, but so far none has seemed sufficiently sizeable to warrant an official review. Members too, it should be noted, have doubtless preferred to keep the whole question of formal voting in the background. Had the Board been using a formal majority vote procedure with updated OVW, it is

not believed that any applicable oil consumption voting weight changes would have altered any decision of the Governing Board.

There were specific objectives reflected in the particular requirements of the I.E.P. majority, but not stated in the Agreement. Sixty per cent of the combined voting weights (CVW) translates into 102 CVW (101.4 out of a total of 169) held by at least 50 per cent (or twelve) Members when they all vote. That formulation was intended to reflect the intentions of the framers of the I.E.P. Agreement who wished to ensure that, in the balance between the European Communities' Member States as a group and the United States, neither would be able alone to command a majority or block a majority.

Although the EC now includes the minimum number of countries for the I.E.P. majority (twelve Member States), the EC countries' total CVW would not reach the required level of 102; indeed the maximum it could currently reach would be 66 CVW, which means that other countries' support would be required, the exact number depending upon the CVW of the others. Even with the future addition of all those IEA Members which, at the time of this writing, are engaged in the process of joining the EC, the EC Member States would not then command in the aggregate the necessary 102 CVW. Yet the United States is in a weaker position than the EC, because the United States could never alone attain a majority, since it constitutes by itself only one of the required twelve countries. The United States would always need at least eleven other countries to join it to reach the I.E.P majority, while the EC would need fewer other countries.

The founders' other intention concerning balance in the majority voting system was to ensure that neither the EC Member States nor United States should be enabled, acting alone, to block a majority. A blocking majority could be achieved by a group composed of at least one-half of the total Members plus one, or by 40 per cent of the CVW plus one, thereby rendering it impossible for the others to meet the I.E.P. majority definition. In the light of the evolution of the IEA as well as EC membership, the foregoing questions have remained under review in the Agency in order to ensure that the founders' intentions continue to be respected.

(c) First Special Majority

In addition to the I.E.P. majority concept, there are two I.E.P. "Special Majorities" which require greater support, for a few important questions under the Emergency Sharing System. They appear in I.E.P. Agreement Article 62.4 as "Special Majority" with two different voting formulas and descriptions of the decisions to which they apply, separated in sub-paragraphs (a) and (b) of paragraph 4. To simplify references, the

sub-paragraph (a) voting formula is designated here as "First Special Majority", and the sub-paragraph (b) formula as "Second Special Majority", although those formulations do not appear as such in the Agreement.

Simply stated, the First Special Majority is similar to the I.E.P. "majority", discussed above, but it is more demanding. The First Special Majority requires the affirmative vote not of one-half of the twenty-three Members, but rather seventeen of them (or about 75 per cent of the entire membership, not merely 75 per cent of those voting). This majority is stated in Article 62.4(a) of the Agreement as:

> (a) 60 per cent of the total combined voting weights and 50 general voting weights . . . .

The few cases to which the First Special Majority applies are enumerated in Article 62.4(a). They are: decisions to increase the emergency reserve commitment (Article 2.2), decisions *not* to activate the general trigger (in cases of an oil supply shortfall suffered by the group, Article 19.3), decisions on the measures required under Article 20.3 in extended emergencies, decisions to maintain emergency measures under Article 23.3 and decisions to deactivate the general trigger (Article 24). The only decisions actually taken under the First Special Majority have been those on the increase of the emergency reserve commitment pursuant to Article 2.2 (from 60 to 90 days); in that decision, it should be noted, there was no reference to the voting rule or to the specific finding of the requisite majority [IEA/GB(76)53, Item 2(b)]. The other kinds of First Special Majority decisions have not been necessary because, up to the present time, there has not been a Secretariat "finding" or Governing Board decision to begin the emergency sharing process to which that Special Majority would apply.

For both Special Majorities the underlying concepts were altogether different from those of the other I.E.P. voting rules and they have had to be adjusted to maintain the original intention in the course of the IEA membership changes. The principal role of the First Special Majority was to protect the Secretariat's general trigger finding, and the high majority of about three-quarters of the Members was required to reverse it. The trigger is thus protected by a rule which ensures its integrity unless approximately 75 per cent of the Members (currently seventeen Members) holding at least 60 per cent of the CVW register their opposition to it. In effect that means that only the other 25 per cent of the Members plus one would be necessary to block the reversing action in the Board; or, said differently, 25 per cent of the Members plus one Member can protect the trigger against the rest of the

membership. This was part of the non-political approach to the oil emergency trigger finding. The finding would be made by the Secretariat on the basis of factual rather than political determinations. While there would remain the possibility of political reversal, that could occur only with the support of a very large majority (75 per cent) of the Members. The intention underlying this majority was that neither the EC countries as a group nor the United States would be able to block the general trigger without substantial support from other Members, and that clearly remains the case today with seventeen Members' votes being required. While the EC countries could prevent the blocking action from taking place and thus ensure the protection of the trigger finding without support from others, the United States would need a number of other Members to join it to prevent the blocking action. Under present membership numbers, any six Members joining together could prevent blocking action. In sum, the seventeen Members required to block constitute a large majority which may be difficult to obtain in cases of disagreement. If that majority is not obtained, the trigger finding is protected, and the Emergency Sharing System is activated in the absence of other possible Board actions which also require this high Special Majority.

(d) Second Special Majority

The Second Special Majority is the most demanding of the three majorities. It requires the affirmative vote of nineteen IEA countries, that is, all but three Members; this is expressed in Article 62.4(b) as "57 general voting weights . . .". The Second Special Majority is to be applied only to the cases specified in this Article: decisions not to activate the selective trigger (Articles 19.3 and 17, a shortfall for one or more individual countries, but not for the group as a whole), decisions to maintain those measures (Article 23.3) and decisions to deactivate those measures (Article 24). Since these selective trigger questions have never arisen, the Governing Board has yet to have the occasion to apply the Second Special Majority rule.

The voting rule applicable to the Governing Board's decision to block the selective trigger measures or to deactivate them is the IEA's most demanding voting requirement, other than unanimity. The underlying intention initially was to require all but two Members to join in a decision to block the selective trigger; this trigger required special protection because it applied when only one or a few countries were affected by an oil supply shortfall, as was the case of the embargo imposed on a few countries in the 1973-1974 crisis. In these situations the other Members might have less direct economic or political interest in making the necessary sacrifices to

apply the Emergency Sharing System. Of course there had to be the possibility of an intervening political decision to block the system, but only if this extraordinarily high majority favoured the blocking action, initially all but two, and now all but three of the Members. As the Agency's membership grew, it became inherently easier to take blocking action, since there were more and more Members among which the affected country could find two others for the necessary support to prevent the blocking action. In consequence, with the membership of Portugal in 1980 the Board decided to move from an "all but two" (expressed as N-2 in IEA documentation) to an "all but three" (N-3) affirmative voting requirement to block the selective trigger. Viewed from the standpoint of an individual country (or small group of countries) suffering an oil embargo or other oil supply disruption, that country and any three other Members could prevent the blocking decision from being taken. In order to give continuing effect to the founders' intentions, the current N-3 concepts would again have to be reexamined, and possibly increased to N-4 if there should be further substantial increases in IEA membership.

This elaborate voting system, designed to protect the varied interests of IEA Member countries in the different situations outlined above, has quite adequately met the needs of the Agency in its formative years. The majority voting rule has in many instances enabled the Governing Board to reach decisions which might not have been possible if unanimity had been required. Since these decisions are taken "next door" to the OECD Council, where unanimity is the general rule, the immense operational advantages of majority voting have been apparent. While many other organizations often apply majority voting rules, they commonly lack the competence to make the binding substantive decisions which the Agency's Governing Board is empowered to make. Still, the most significant element of the IEA system in practice is clearly the use of consensus (which is preferable to forcing matters to formal vote) and the highly developed sense of co-operation among Members in their approach to decision making. Against the background of the Agreement's formal voting rules, the Board's practical approach enables it to move expeditiously in dealing with sensitive political subjects which might otherwise prove difficult to manage in a multilateral institution.

(e) Norway and IEA Voting

The special status of Norway warrants attention here because some of the foregoing voting rules have varied slightly when Norway has participated in Governing Board decisions. Norway's special status is reviewed generally in

Chapter IV, Section A-3 above. Norway is not a full IEA "Participating Country" in the sense of the I.E.P. membership provisions. Norway co-operates in the IEA in much the same way as full Members, but this status derives from the Agreement between the IEA and Norway, concluded on 7 February 1975 [IEA/GB(75)9]. That Agreement leaves largely to later decisions and consultations the possible contributions of Norway to the emergency sharing process [Articles 1 and 2], but provides for Norway to have the rights and obligations of Members under Chapter V on the Information System on the International Oil Market, Chapter VI on the Framework for Consultation with Oil Companies, Chapter VII on Long-Term Co-operation on Energy and Chapter VIII on Relations with Producer Countries and with other Consumer Countries.

Article 5 of the Agreement with Norway provides for appropriate institutional provisions to be determined in the future. Voting questions obviously arise for Norway under the Emergency Sharing System when Norway participates and for the large number of decisions taken under I.E.P. Chapters V to VIII inclusive as well as potentially on the institutional decisions taken by the Governing Board under Chapter IX. These have been developed in the Governing Board's "Decision on Institutional Arrangements for the Participation of Norway", adopted in March 1975 [IEA/GB(75)15, Annex IV], referred to as the "Norway Decision". That Decision refers to three different categories of voting decisions:

(1) Decisions to be taken by majority on the scales of contributions and all other majority vote matters arising under Chapters V through X of the I.E.P. Agreement;
(2) Decisions to be made under the Chapters I to IV inclusive (emergency sharing provisions), except for decisions taken in the emergencies themselves;
(3) Decisions taken in the course of emergencies in which Norway decides to participate.

There is also provision for full participation of Norway in special activities under Articles 64.2 and 65 of the I.E.P. Agreement which in effect confer voting rights with respect to those activities [Norway Decision, paragraph 6].

In the first case listed above (majority voting), which arises regularly through Norway's participation in the daily life of the Agency, the Norway Decision sets out quite clear and directly applicable rules. Thus paragraph 2 of the Norway Decision (as amended to date) states that:

> The Governing Board shall take decisions as to changes in the scale of contributions to the budget under Article 64.1 of the I.E.P. Agreement, *and all other decisions* arising under Chapter V through X of the I.E.P. Agreement which require a *majority, as if*
> (a) Norway were deemed to be included in the list of Participating Countries set forth in Article 62, paragraph 2, and to have three general voting weights and three combined voting weights;
> (b) The total number of general voting weights and combined voting weights set forth in Article 62, paragraph 2, were deemed to be 69 and 169 respectively" [Emphasis added].

The foregoing provisions of the Norway Decision brought into operation a significant change in the IEA voting system, not in the form of an amendment to the I.E.P Agreement, but by means of a voting arrangement among the Members. Amending the Agreement would have been too burdensome and time consuming a procedure to present a practical solution, if an alternative could be found. The alternative was a voting arrangement by which the Governing Board agreed that in the circumstances described in paragraph 2 of the Norway Decision, the Board would act "*as if*" Norway were included in Article 62.2 of the I.E.P. Agreement. In practice, Norway has participated like a full Member in Governing Board actions taken in the situations described in paragraph 2. There has never arisen a question of whether the Norway rule was critical to any particular Board decision to which paragraph 2 of the Norway Decision was applicable.

For all decisions other than those foreseen in paragraph 2, an additional rule was necessary to preserve the right of Norway to participate or not in Governing Board actions requiring *unanimity*. The opportunity afforded Norway to adhere to those decisions is provided in the Norway Decision as follows:

> Norway may adhere to any decision of the Governing Board to which paragraph 2 does not apply, and shall not be bound by any such decision to which it does not adhere.

Under that formulation Norway is free to join in a decision requiring unanimity, but Norway is not empowered to prevent the Members from taking a decision by unanimity.

The participation of Norway in decisions on the Emergency Allocation System decisions was left "to arrangements which shall be adopted by the Governing Board after considering the recommendation of

the Standing Group on Emergency Questions and in agreement with Norway" [Norway Decision, paragraph 4]. This applies to the participation of Norway under Chapters I through IV of the I.E.P. Agreement "other than in cases of emergency"; that is, paragraph 4 applies to the Board's many decisions further developing and testing (but not actually applying) the Emergency Sharing System. Here the practice has varied somewhat over the years. Norway adopted the practice of announcing its adherence to particular decisions, and there were a number of footnotes in the Board's Conclusions to that effect. This turned out to be a heavy procedure not particularly favoured by Norway and awkward both for Norway and the Agency. The practice then developed for the Secretariat to assume that Norway was adhering to those Emergency Sharing System decisions in the absence of a stated objection by Norway, but that procedure has not been formalized by the SEQ recommendations and Board decisions foreseen in paragraph 4.

In an actual emergency, the modalities of participation of Norway are left to much the same procedure that is described above for decisions on the development of the System, but the Governing Board is to take into account the specific nature and extent of Norwegian contribution, as provided in paragraph 5 of the Norway Decision:

> In cases of emergency in which Norway decides to contribute to the Agency's oil sharing programme pursuant to Article 1 of the Participation Agreement, the participation of Norway in the work of the Agency under Chapters I through IV shall be implemented pursuant to further arrangements which shall be adopted by the Governing Board, *in the light of the nature and extent of Norway's contribution*, after considering the recommendations of the Standing Group on Emergency Questions and in agreement with Norway [Emphasis added].

In the procedures that the Secretariat expects to follow in an I.E.P. emergency leading up to the activation of the Emergency Sharing System, there is provision for early consultation with Norway on the questions of the nature and extent of the Norwegian contribution and the modalities of its participation. Up to the time of this writing, it has not been necessary to enter into such consultations and the question of modalities has thus not arisen. Norway did of course participate fully in the Governing Board's decisions on the 1990-1991 Gulf Crisis, but those decisions were taken under the Board's general powers and not under Chapters I through IV of the I.E.P. Agreement,

so the question of arrangements for participation in the Emergency Sharing System never arose. The Board made no specific reference to the voting arrangements in its Conclusions on the Gulf Crisis decisions.

14. Abstentions

Abstentions are explicitly recognized in the I.E.P. Agreement, and they are employed as a normal procedure in most deliberative bodies. The function of abstention under the I.E.P. Agreement is to permit a Member to avoid direct participation in a decision, yet be bound by it, a process which can carry substantial political advantage and facilitate decision making. The institutional situation of abstention varies somewhat between the various IEA voting rules, although the outcome for each is similar.

Abstention in cases requiring unanimity is specifically foreseen in Article 62.1 of the I.E.P. Agreement in the following terms:

> Unanimity shall require all the votes of the Participating Countries *present and voting. Countries abstaining shall be considered as not voting* [Emphasis added].

Textually this means that absent or abstaining Members cannot prevent a unanimous decision being taken by the rest of the Members. Hence there is no veto effect. To carry out a veto, the Member would have to appear and cast a negative vote. The implication is that the abstaining Member is nevertheless bound by the decision in accordance with its terms. In order for the decision not to be binding on the absent or abstaining Members, the decision would have to contain language to that effect. There is in fact specific authorization for that "contracting out" procedure in Article 61.2 which states that decisions requiring unanimity may provide:

> (a) that they shall not be binding on one or more Participating Countries.

In other words, unless the decision adopted by the other Members specifically provides for the decision *not* to be binding on the absent or abstaining Members, the decision is binding on them in the same way that it is binding on the others. This reflects the intention of the founders to avoid selective participation of Members in difficult decisions to be taken by the Board. Members were not to have *à la carte* service in the absence of the agreement of the other Members. In practice this type of "contracting out" has been used sparingly and reluctantly, and only in unavoidable cases like

the non-application of Chapter V of the Long-Term Co-operation Programme to Canada [See IEA/GB(76)5, Item 2(m)] and Australia [See IEA/GB(79)8, Item 2(b)] under special circumstances.

For the I.E.P. majority situations, abstention is indirectly foreseen in the reference in Article 62.3, the majority voting provision, to "60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast", which implies that some of those voting weights may not be cast and that such abstentions would not prevent the majority from otherwise being achieved. Obviously for the minority and any absent or abstaining Members, the decision voted by the majority is binding. There is no specific provision for a "contracting out" in majority vote cases, unlike the provision for unanimity quoted above, but that might nevertheless be realized by specific provision in the text of the decision itself.

For the two Special Majorities, there is no provision for abstention and no reference to any percentage of Members "voting" or of "voting weights cast" in the governing texts. The required votes for adoption in each of those cases are absolute and not relative to votes cast. Hence once the required votes are cast for the Special Majority, the measure is adopted notwithstanding whatever negative votes might be cast or whatever number of Members might be absent or abstain. Here again the decision is fully binding on those countries despite their opposition or non-participation.

15. Written Procedure

There have inevitably arisen in the IEA, as in other organizations, occasions where a question requires prompt decision during the intervals between meetings, and yet the question does not warrant advancing the next meeting or calling a special meeting of the responsible body. For the IEA it soon became apparent that a solution to this problem would be necessary to avoid the alternative of accepting at times undue delay in Governing Board actions or the expense of a special meeting.

In a few cases the Governing Board foresaw that this type of problem would arise in relation to an Agenda Item on which the Board was close to agreement or to which Members could agree only a*d referendum*. In those cases, when early confirmation was expected, the Board simply decided that in the absence of objection within a specified period, the proposal would be taken as adopted. One early and important use of this procedure was the adoption of the Long-Term Co-operation Programme in the Governing Board's Conclusions of 29-30 January 1976 [IEA/GB(76)5, Item 2] where the Board:

(a) reached agreement on the Long Term Co-operation Programme (the "Programme") [IEA/GB(75)81(3rd Revision)], to which no Delegations raised objections, and on the texts, as prepared in the Governing Board, of the Conclusions relating thereto.

(b) noted in respect of the Programme the "réserve d'attente" of Japan and Spain, the agreement *ad referendum* of the United Kingdom, and the need for further discussions with New Zealand before its decision on the Programme will be transmitted to the Board.

(c) decided that this agreement will be deemed to be a formal decision of the Governing Board when those countries referred to in paragraph (b) above, which indicated that they would give their formal consent thereto in a short period of time, have done so . . .

Thereafter the condition stated in paragraph (c) was satisfied by the transmittal of the necessary formal consents of the three countries mentioned. That was done by 8 March 1976 which became the effective date of the Programme.

On the second occasion on which this type of procedure was adopted [See IEA/GB(76)13, Item 2], the Board left open the drafting of a new version of the IEA Security Principles and Procedures at the close of its discussion and "requested the Secretariat to prepare, on the basis of the discussions in the Board, a new version of that document for distribution to Delegations". The Governing Board then

(b) decided that in the absence of objection from Delegations to the new version of the document within 15 days after the document is distributed to Delegations, the new version shall be deemed to be adopted by the Governing Board.

Subsequently, the Board explicitly noted that the revised document "was adopted by the Governing Board as of 12th April, 1976" [IEA/GB(76)24, Item 7]. In recent years the Board has not found the need to employ that type of procedure, but might be expected to do so again if the occasion should arise.

However, the Board has employed on many occasions the more formal "written procedure" which involves the submission to Members' representatives to the Governing Board, by mail or other current means of

communication, of the specific proposals for adoption by the Board. It was proposed that the action be taken, not in the Board's following meeting, but in the interim by means of passive acquiescence within a specified period, in practice 21 days after dispatch of the communication. At the close of the 21 day period (and sometimes after the passage of a few extra days of grace), the Secretariat acts on the decision and later presents the decision to the next meeting of the Board for *recording* (as the decision is already officially taken) in the Conclusions of the Board. The written procedure has been applied numerous times on various subjects, including the acceptance of voluntary contributions and grants, the election of members to the Coal Industry Advisory Board (CIAB), the adoption of the scales of contributions of Members and the authorization of Associate participation in energy R & D Implementing Agreements of applicants for that participation. This procedure, initiated sometimes at the request of the Governing Board, sometimes upon the initiative of the Secretariat, may be taken as established IEA practice.

The initiative for the formal written procedure came first from the Governing Board in 1980 during discussion of a voluntary contribution by a Member country, the acceptance of which requires Governing Board approval [See Council Decision, Article 10(c)]. The Board then requested the Secretariat to submit a proposal for a more flexible procedure for handling Members' proposals for making grants [IEA/GB(80)69, Item 9] which led the Board to decide, with respect to voluntary contributions or grants to be included in the Agency's Programme of Work and up to an amount not exceeding FF 250,000, that:

(a) the Executive Director shall circulate to all Participating Countries information on the source, destination and amount of any offer of a voluntary contribution or grant together with his proposal to accept or refuse such offer;
(b) the proposal made by the Executive Director shall be regarded as accepted by the Governing Board, and such acceptance shall be recorded in the Conclusions of a subsequent Meeting of the Board, unless a Participating Country expresses reservations about the proposal to the Executive Director within 21 days following circulation of the proposal [See IEA/GB(80)86, Item 5].

At the time of this writing, the written procedure has been employed on twenty occasions for the acceptance of voluntary contributions and

grants. By 1991 the FF 250,000 amount had been overtaken by inflation, so the Board increased the ceiling to FF 500,000 where it remains at the present time. In December 1993 the Governing Board adopted a parallel procedure for the acceptance of voluntary contributions and grants, without reference to the amount, for the joint IEA/OECD study on energy and environmental technologies to respond to global environmental concerns [IEA/GB(93)65, Item 6(a)(ii)].

The written procedure has also been employed many times for the election of members of the Coal Industry Advisory Board (CIAB), first pursuant to a Board request in 1982 [IEA/GB(82)92, Annex III, paragraph 2], and thereafter in 1985, when the Board decided:

> To request the Executive Director to circulate to all Delegations, as the need may arise from time to time, a document containing, together with the Executive Director's recommendations, the names of additional individuals proposed by a Government or by the Executive Director for membership of the Coal Industry Advisory Board. Such individuals shall be considered as appointed by the Governing Board if, within 21 days, no Delegation requests that this item be placed on the Agenda of the Governing Board. CIAB members approved under this procedure shall be recorded in the Conclusions of the next Meeting of the Governing Board [IEA/GB(85)53, Annex IV, paragraph 3].

The Secretariat has utilized the CIAB procedure when it would not be convenient to await the next meeting of the Board for the election to take place. In effect this provides a workable solution to the problem of proceeding with the election of candidates proposed after one Board meeting when the CIAB would meet before the next Governing Board meeting.

Scales of contributions is another subject on which the Board and the Secretariat have often found the written procedure to provide a convenient solution to an awkward problem. The scale of contributions has always been a non-controversial matter for which the proposals were developed by the OECD statistical staff who prepared the scales for all of the OECD. The problem of timing of the decision arose when the OECD scales were ready for adoption and the staff was ready to call in the contributions for the OECD before the next IEA Governing Board meeting which would normally adopt the IEA scale. The written procedure has been used in these circumstance in order to enable the OECD to call up all the contributions together.

When this problem was foreseen in December 1985, the Board "agreed that the Governing Board would fix the Scale of Contributions to the 1986 Budget of the Agency by the written procedure", without defining the precise procedure to be followed [IEA/GB(85)56, Item 3]. Following the adoption of the decision by the absence of response to the Executive Director's circulated proposal, and after the contributions were being called up pursuant to that decision, the Board "recorded its agreement on the Scale of Contributions to the 1986 Budget of the Agency set forth in the Annex to document IEA/GB(86)13" [See IEA/GB(86)15, Item 4(d)]. Thereafter, the Secretariat sometimes took the initiative to employ the written procedure in parallel circumstances, and the Board subsequently in all cases recorded the outcome for the scales applicable in 1987 [IEA/GB(87)29, Item 5(c)], 1988 [IEA/GB(88)14, Item 4(b)], 1989 [IEA/GB(89)11, Item 5(c)] and 1990 [IEA/GB(90)10, Item 4(b)].

In 1991 the Governing Board established a system of Associate participation in the IEA's energy R & D Implementing Agreements for Non-Members of the OECD and for international organizations in which those countries participate. The authorization for each case is subject to the agreement of the Governing Board. The Board also decided that its final decisions to authorize such participation would be taken by the written procedure [IEA/GB(91)79, Item 5(f)(c)]. That procedure has been applied for Israel and Malaysia [IEA/GB(92)17, Item 4(c)], Israel [IEA/GB(92)45, Item 7(e), Poland [IEA/GB(93)11, Item 7(b)], and for Korea and Russia [IEA/GB(93)57, Item 9(c)].

The written procedure has thus proven itself in practice to be a helpful tool in providing decisions on short notice when necessary between meetings. It has been used principally on non-controversial, formal type questions on which the Board would be expected to act favourably (and usually without discussion) if presented to a regular meeting. The Secretariat has avoided the use of this procedure when there might be a risk of disagreement on the substance or a question about the appropriateness of the use of the procedure itself, for a single negative response for whatever reason by any Delegation would interrupt the procedure. Under these circumstances it is not surprising that there has never to date been a negative response or failure in the use of the written procedure.

16. Effect of Actions: Decisions, Recommendations, Declarations, Conclusions and Others

The principal aid in understanding the effects of Governing Board meeting outcomes, whatever they might be called, is the I.E.P. Agreement itself,

which refers to "decisions", "recommendations" and "actions", in some cases without guidance as to the precise meaning of those terms as employed.

Article 51.1 states in sparing terms that:

> The Governing Board shall adopt *decisions* and make *recommendations* which are necessary for the proper functioning of the Program [Emphasis added].

And Article 51.2 provides that:

> The Governing Board shall review periodically and take appropriate *action* concerning developments in the international energy situation . . . [Emphasis added].

In Article 52 there is some help on the question of binding effect. It states that "*decisions* adopted pursuant to this Agreement by the Governing Board or by any other organ by delegation from the Board *shall be binding on the Participating Countries*" [Emphasis added], but nothing is said about their being binding on the Secretariat (which of course they are), nor does the text define the term "decision". If decisions are binding, the text also states in Article 52.2 that "Recommendations shall not be binding". Nothing is said about the nature or effect of the "actions" which the Board is empowered to take pursuant to Article 51.2 quoted in part above. Nor does the Agreement state whether the notion of "binding" means "politically binding" or "legally binding" although many decisions are doubtless binding in both senses and some may not be legally binding at all. Recommendations are not legally binding, at least not in the same sense as decisions are, but are doubtless binding in the political sense. There is thus little guidance in the Agreement on how to look at the context in which a measure is acted upon by the Board. Often there is silence about the "intent" of the Members acting in the Board and the effect that the choice of particular words is intended to produce, irrespective of whether a measure is called officially a decision or a recommendation. Hence the proper application of the rules quoted above requires careful analysis and judgment.

(a) Political Commitments

Most of the commitments taken by IEA Members in the Governing Board, aside from internal financial, administrative, housekeeping and procedural

matters, fall into the category of "political commitments" taken without the Members' intention to bind themselves legally under the rules. These include virtually all of the Ministerial Communiqués, much of the Long-Term Co-operation Programme, the Principles of Energy Policy, the IEA Action on Coal and the IEA Shared Goals, as examples. Legally binding measures include part of the Long-Term Co-operation Programme, many of the decisions taken for the Emergency Sharing System and internal financial, administrative, housekeeping and procedural decisions. A closer look at the conceptual background will indicate how difficult it is at times to apply the distinction between legal and political commitments.

The formal distinction between these two important types of commitments may, for the purpose of aiding the analysis of choices in the IEA, be considered in terms of three elements:

- the nature of the commitment as an expression of the relations being entered into;
- the form in which the commitment is taken; and
- the consequences (or more formally, the sanctions) of the commitment.

A political commitment may be characterized as a statement of intention or expectation that, without assuming a legal obligation, one or more Members will pursue defined policy lines regarding a given subject matter. The element of commitment is achieved by communication of the policy statement among the governments sharing the commitment or its announcement to other Members or to the public. A political commitment creates what is sometimes characterized as a "moral obligation" (as distinguished from a more formal legal obligation) of the participating governments to carry out the stated policy lines in good faith. However, the participating governments retain the legal power to adopt other — and inconsistent — policy lines, and they are always free for that purpose to invoke the provisions of their respective national law.

The nature of an international commitment is normally determined by the form in which it is taken. A political commitment may be taken by any means which communicates the policy statement in a *less* than legally binding form, and this is usually done by the adoption of declarations or the issuance of communiqués, diplomatic exchanges, press statements and other forms of announcement. In international organizations, political commitments are often taken by declarations or by decisions which implicitly or explicitly indicate that the action is intended to be political

rather than legal in nature or by the adoption of measures clearly characterized as recommendations by the organization's governing body. As a procedural matter there is normally no need for parliamentary consultation or any treaty "consent to be bound" procedure for the adoption of a political commitment.

While international law does not provide formal sanctions for political commitments as defined above, informal sanctions may have a considerable impact. A principal informal sanction is the inherent and reciprocal benefit of the announced policy lines. Governments which have accepted political commitments must also be responsive to the need to retain the respect of other governments and public opinion as well as to retain credibility for the system, which may be strongly influenced by the good faith implementation of the commitment while it remains viable. Moreover, if an institutional policy review procedure is applicable, as in the IEA country reviews, the process of review and announcement or publication of the results may also act as an effective but informal sanction to the commitment.

In the IEA a number of different formulations have been employed to adopt political commitments. Unless a clear intent to take a legal obligation was indicated, the assumption was normally but not always that a political commitment is intended. Consequently, a measure called a "recommendation" or a formulation (whatever it might be called) whereby the Board "recommends", "urges", "wishes", "expects", "aims to", "considers that Members might" or employs other words to the like effect would state a political commitment, as would a formulation tending to state a fact, like "it is important to" or tending to make a hortatory statement like "Members should" or "Members ought to" or "it will be desirable for Members to" and similar formulations. Thus it will be seen that one key might be the title of the measure, but another might be the verb that is employed in the formulation. The formulation "recommends that Members should" is readily distinguishable from "agrees that Members shall", the former normally indicating a political commitment and the latter a legal commitment. The political context and the degree of abstraction of the formulation are also helpful elements. Highly abstract and broad general statements are normally indicative of a political rather than a legal intention, as is the use of emotive language ["Ministers expressed abhorrence at the continuing ecological effects . . ."; see IEA/GB(91)46, Annex, Communiqué, paragraph 8].

In the 1991 IEA Ministerial Communiqué there were a number of examples of formulations which demonstrate the range of possibilities for making political commitments. In addition to the formulation at the end of

the preceding paragraph, examples included the following: "Ministers attached particular importance to", "Ministers concluded that", "Ministers recognized that", "Ministers stressed that", "Ministers welcomed", "Ministers reconfirmed their commitment that", "Ministers agreed that contacts should be", "Ministers recommended that Member countries", "Ministers urged all IEA countries to", "Ministers encouraged Member countries", "Ministers, therefore, underscored", "They pointed out that", "Ministers recognized that . . . will be required in many Member countries", "Ministers invited Member countries", "Ministers agreed that . . . will be required", "They therefore urged greater use of", "Ministers agreed that it was essential to", "They agreed the IEA should", and "Ministers undertook to continue to co-operate". In none of those cases was there any indication of intent to be legally bound. Not only the language employed but also the context clearly indicated that only political commitments were intended. Similar formulations with like effect are found in the 1993 Ministerial Communiqué [IEA/GB(93)43, Item 3 and Annex].

A problem often arose when the Governing Board wished to state a commitment in apparently legally binding terms for added rhetorical effect, but in fact did not intend to make a legal commitment. This occurred at times with the use of the words like "decides", "agrees" or "undertakes" or "Members shall". Sometimes an explicit denial of legally binding effect resolved the question, in cases such as the following:

> The October 1977 Ministerial Decision on "Group Objectives and Principles for Energy Policy" was adopted as a "decision" with formulations like the Governing Board "agreed" and "IEA countries will" which would denote legal obligations. However, the Governing Board's Conclusions clarified the legal situation in a paragraph in which the Board "agreed that although the Decision on Group Objectives and Principles for Energy Policy *does not establish legally binding commitments*, the Governments of Participating Countries express their firm political determination that, taking into account their individual energy circumstances, they will give effect to this Decision in carrying out their policies" [IEA/GB(77)52, Item 2(d); Emphasis added].
>
> The March 1979 "Action on the Oil Market Situation in 1979" in which the Board "adopted" the measure which contained a number of commitments in statements that the Board "agreed",

which on their face indicated the taking of legal obligations to carry out the terms of the measure; in order to counter that outcome, the Board's Conclusions on this item stated that "in doing so [the Board] agreed that although *the Governments of Participating Countries were not thereby establishing legally binding commitments,* they were expressing their firm political determination to give effect to this Action" [See IEA/GB(79)8, Item 3(a); Emphasis added].

The October 1980 "Measures Agreed by IEA Member Countries" raised a parallel problem because this text also used a softening formulation; here the legal problem was considered when the Board agreed that "Governments understand that no change in legislation or regulations is required, but that the result indicated is to be achieved by use of political influence in order to convince market participants within their jurisdictions that the behavior indicated is called for by the situation" [See IEA/GB(80)61, Item 2(c)].

The December 1980 Ministerial "Decision by the Governing Board for Correcting Imbalances" was adopted by language stating: "The Governing Board *DECIDES that*" and "Each government will" act as stated. Under the rubric "*Legal Aspects*", however, the decision softened the legal effect by stating that "Governments agree to look into aspects of their legal situation which relate to the implementation of this decision, with a view to improving its efficiency and effectiveness" [See IEA/GB(80)97, Item 2(g) and Annex I], thereby leaving a question as to the intention.

In other cases of apparently legally binding decisions, Conclusions or other actions, when no legal clarification is made by the Governing Board, it is necessary to determine the legal effect by interpretation. So far in the history of the IEA, the Governing Board has not discussed this interpretation question directly.

(b) Legal Commitments

Aside from deciding upon a host of internal matters of finance, administration, housekeeping and procedure, the Governing Board has

employed its legally binding decision powers moderately. Legal decisions have the advantage of greater inherent formality as well as the benefit, at least theoretically, of qualifying for the application of sanctions under international law. However, governments are often reluctant to take legal commitments because they might have to satisfy more demanding internal legal procedures and because of the risk that agreement of Members might be more difficult to obtain for legal rather than political commitments. The latter consideration sometimes translates into the need to adopt a *lower* common denominator and the need to weaken the measure's substantive application in order to reach agreement. Moreover, sometimes a measure that begins as a legal commitment in the negotiation stage can be finally acceptable only as a political commitment. Sometimes a political commitment expressed in rhetorical rather than legal language by Ministers can have a greater substantive impact. Hence despite the loss of legal formality and status, the gain can be more extensive substantive reach and stronger rhetoric. When the political will is present, there may ultimately be greater advantage in the political rather than the legal approach. This has often been the outcome for the IEA and explains why there are relatively few legally binding substantive energy policy decisions, despite the number of actions which appear to be legal decisions on account of their form. As seen above, some of those decisions have been adopted in the end as political decisions with little or no substantive legal effect.

A legal commitment is one which goes beyond political intention and expectation to include an undertaking not only to carry out the adopted policy lines, but also to refrain from any policy measures inconsistent with them. In adopting legal commitments, governments accept obligations under international law which are formally binding upon them in accordance with their terms, in the sense that an international treaty or agreement is binding under the rules of international law, for the legally binding force of a Governing Board decision is derived from the powers conferred upon the Board by a treaty, i.e. the I.E.P. Agreement. A legal commitment would, in the language of the Vienna Convention on the Law of Treaties, be "binding upon the parties to it and must be performed by them in good faith" [Article 26], and a party to a legal commitment "may not invoke the provisions of its internal law as justification for its failure to perform a treaty" [Article 27].

International legal obligations are normally taken by treaty or by other formal agreement, but in the IEA legal obligations may be taken by governments in the form of Governing Board decisions, pursuant to

Article 52.1 quoted above. When the appropriate intent and form of decision are present, the legal commitment is derived from Article 52.1, which in turn derives its legal authority from the international treaty rules mentioned above. To adopt a legally binding commitment, the Governing Board must employ language which conveys legal commitment, such as a statement that "Members shall", "must", "agree" (or some such formulation which expresses the intention to make binding promises). It comes as no surprise that the IEA rule for adopting legal obligations not already specified in the I.E.P. Agreement requires the action to be taken by unanimity under Article 61.1(b) [See Section A-13]. As a formal matter, Members' internal law may require that legal obligations be referred to national legislative bodies or comply with other consent to be bound procedures.

The sanctions applicable to legal obligations normally include all of the sanctions of political commitments, supplemented by the sanctions of an obligation under international law. Theoretically in particular cases there may be greater political and moral force to the sanction of legal obligations, and in appropriate cases formal sanctions and procedures which the international system attaches to legal obligations may also be invoked, although nothing of this sort is known to have occurred with respect to a legal commitment taken in the IEA.

None of the legally binding decisions taken by the Governing Board has recited specifically or otherwise indicated that the decision was being taken pursuant to Article 52.1, which makes them binding. However, there are many substantive energy policy decisions which may be considered legally binding decisions under the I.E.P. Agreement, and a few of them are given below.

In the 1976 Long-Term Co-operation Programme [IEA/GB(76)5, Item 2], the following provisions were adopted in legally binding form:

- Chapter I, paragraph 1: "The Participating Countries . . . agree to implement a Programme of Long-Term Co-operation on energy".
- Chapter II, paragraph 1: "The Participating Countries shall establish national programmes and undertake co-operative activities in energy conservation".
- Chapter II, paragraph 2: "The Participating Countries shall establish conservation objectives for the group . . . ".
- Chapter II, paragraph 3: ". . . Participating Countries agree to conduct within the Agency periodic reviews of their national programmes and policies relating to conservation".

- Chapter III: includes parallel and more extensive provisions in which Members "agree" to actions concerning the development of alternative sources of energy.
- Chapter III D, paragraph 1: ". . . the Participating Countries shall, as a general measure of co-operation ensure that imported oil is not sold in their domestic markets below . . ." a specified price.
- Chapter IV: broad commitments whereby ". . . Participating Countries agree . . ." to actions in the R & D field.
- Chapter V, paragraph 1: ". . . Participating Countries . . . shall work towards the identification and removal of legislative and administrative measures which impair the achievement of the overall objectives of the Programme".
- Chapter V, paragraphs 2 & 3: "Participating Countries shall use their best endeavours . . ." to afford IEA country nationals no less than national treatment and to refrain from introducing legislation or administrative regulations which would prevent them from doing so.

In the Emergency Management Manual there are a number of legal commitments taken by Members with respect to the procedures for carrying out the Emergency Sharing System. Perhaps the most significant of these commitments is the decision that Members take "Type 3" mandatory supply actions in certain situations [See Emergency Management Manual (EMM), 4th Ed. 1982, p. 32 Step 9 iv)]:

- If a country has an allocation right, but the oil that could be used to meet such allocation right is under the control of another country (e.g. oil in onshore storage on its territory), then that other country *must instruct the company owning the oil as to its disposition under the IEP Agreement* . . . [Emphasis added].
- If the oil concerned is under the control of the company involved (e.g. oil at sea), a final instruction to that company would have to be made by the government having jurisdiction of that company.

In the 1990-1991 Gulf Crisis, the Governing Board adopted in legally binding form a "Co-ordinated Energy Emergency Response Contingency Plan" for use in anticipation of an oil supply shortfall in the event of hostilities in the Gulf. In the 11 January 1991 Conclusions the Board "adopted" the Plan and

> (c) **Agreed** that upon notification by the Executive Director, after prompt and wide-ranging consultation with Member

governments, of the need to activate the contingency plan, each IEA Member country, as well as Finland, France, and Iceland, would begin implementation of their commitments under paragraph (a) above (where the commitments are described) [IEA/GB(91)1, Item 3(b) and Annex paragraphs (a) and (c)].

This was confirmed at its 28 January 1991 meeting when the Board :

(a) **Decided** that the co-ordinated energy emergency contingency plan, adopted at its 11th January 1991 meeting and which makes available to the market 2.5 million barrels of oil per day, would remain in effect and that it would continue to be implemented flexibly in close consultation with the Executive Director [IEA/GB(91)3, Item 2(b) and Annex].

In addition to these substantive energy policy and operational decisions, the Board has adopted many other legally binding decisions each year in the sectors of finance, administration and housekeeping and on procedural questions. These more or less internal operating actions are usually stated with such formulations as "the Governing Board decided", "adopted", "agreed", "concluded", "instructed", "requested", or "endorsed", and they appear as "decisions", "conclusions" or other actions. Usually the context makes the legally binding intent clear, as for example the decision each year "fixing" the Members' scale of contributions [See e.g. for the 1993 scale IEA/GB(93)11, Item 7(d)].

Problems of interpretation do arise when a measure is adopted in language which could be employed to express either a political or a legal commitment. Indeed, this problem can arise even when the language standing alone would seem rather clear, as in the case of actions called "decisions". Most decisions can be taken as legally binding under Article 52.1 quoted above, but not all. When the context indicates a political rather than a legal intent, even the word "decision" loses its legal power and the action becomes a political decision, as when the Board would "decide to recommend" or "decide that Members should" (or adopt other formulations to that effect). This has occurred a number of times. For example, in connection with the phased increase in the emergency reserve commitment in 1976 from 60 to 90 days, to take place over a three to four year period, the Board

decided that, in order to avoid an adverse impact on the oil market of the incremental oil demand for stock building,

> Participating Countries *should* ensure that the build-up of emergency reserves is spread as evenly as possible over the period . . . [Emphasis added; IEA/GB(76)53, Item 2(b)(4)].

What started there as a "decision" in a legally binding sense, ends as a "recommendation" by the use of the word "should" as the final operative term.

With some expressions, however, ambiguity is inherent, as when the Governing Board "concluded" or "adopted an action" or simply "noted" written or oral material. Unless the Board itself clarifies its intent, as it did in the case of the March 1979 Action and parallel cases cited above in Section 16(a), there is need for interpretation. Since the Board's discussions have rarely provided substantial guidance, for the measures have been adopted usually without discussion of this question, that leaves the general context as the chief aid in determining intention in practice. In cases where the Board "noted" a document or particular formulation or discussion, that could mean simply that the Board acknowledged being so informed or that a discussion took place, without further institutional consequence. However, the term "noted" could also mean more, for instance in cases where the noted material contains statements of the Executive Director's intent to carry out specific actions. "Noted" then normally means "approval" or "authorization" or at least "acquiescence" in the described actions. In any of these ambiguous situations, when questions arise it would always be open to the Board itself to make a follow-up clarifying decision, but to date the Board has not had occasion to do so.

(c) Recommendations

In formal terms an IEA Governing Board "recommendation" involves both legal and political commitments, although the political element clearly predominates. The I.E.P. Agreement authorizes the Board to make recommendations *by majority* [Article 61.1(a)] and states that "Recommendations shall not be binding" [Article 52.2], although they are clearly applicable in accordance with their terms to Members which opposed the measure as well as to those which supported it [Emphasis added; See Section A-13 above]. In the OECD this non-binding sense of the word "recommendation" is expressed in Rule 18 b) of the Rules of Procedure as follows: "Recommendations of the Organisation . . . shall be submitted to the Members for consideration in order that they may, if they consider it opportune, provide for their implementation". In the IEA recommendations are "not binding", in the sense that they establish no legal obligation to carry

out the terms of the recommendation or to achieve its objectives. However, there is an implied commitment, particularly for those supporting the adoption of the recommendation, to make *some* effort toward achieving the measures' objectives, including where appropriate to submit the measure to their competent national authorities. At a minimum there would be an implied commitment not to oppose implementation of the recommendation and not to obstruct the implementation efforts of other Members.

There is no particular magic in the language which might be employed to adopt recommendations, and whatever language conveys the notion of recommendation is sufficient. Although the measure could be clearly designated as a "Recommendation", the Board's Conclusion usually has stated simply that the Board "recommends" a particular line of action. In Ministerial Communiqués, there have been passages framed specifically as recommendations, as in the 1991 Ministerial meeting when "Ministers recommended that Member countries with stock obligations strengthen, where necessary, government control over emergency industry stocks and/or increase government-owned or controlled stocks" [IEA/GB(91)46, Item 3, Annex Communiqué, paragraph 6]. There were many recommendations adopted by the Governing Board at official level during the 1990-1991 Gulf Crisis. For example, the Board on 11 January 1991 [IEA/GB(91)1, Annex]:

> (f) **Recommended** that oil companies continue to draw on their commercial stocks, that governments and consumers maintain and intensify their conservation efforts, and that oil companies and consumers exercise restraint in purchases, in order to reduce uncertainty and volatility in the world oil market.

Of course any other formulation which carries a hortatory sense, like the Board "urges", "invites", "requests", "aims to", "expects" or which states that Members "should" or "ought to" would normally carry the status of a recommendation unless the context or other indications clearly disclose a different intention.

Formal sanctions cannot be invoked for a Member's failure to carry out a recommendation, but such failure could trigger a review procedure or lead to the adoption of other measures which might be employed to mobilize political responses of the other Members. Therefore, it cannot be said that a Member which fails to carry out a recommendation, even a Member in the minority opposing it, would necessarily find itself altogether free from the risk of adverse consequences.

17. Creation of Other Organs

In addition to the Governing Board which is the supreme organ of the Agency, the I.E.P. Agreement [Article 49.1] also established the Management Committee and the four Standing Groups on Emergency Questions (SEQ), the Oil Market (SOM), Long-Term Co-operation (SLT) and Relations with Producer and other Consumer Countries (SPC). While these are the sole organs established directly by the I.E.P. Agreement, and they may be abolished or modified only by amendment of the Agreement, there is a provision in the I.E.P. Agreement empowering the Governing Board to establish *other* organs and to delegate functions to them.

Those powers are stated briefly in Articles 49.2 and 51.3. After referring in Article 49.1 to the organs identified above as being directly created by the I.E.P. Agreement, Article 49.2 states that:

> The Governing Board or the Management Committee may, acting by majority, establish any other organ necessary for the implementation of the Program.

While no further mention need be made of the Management Committee in this Section (for its meetings have been merged into those of the Board; see Section A-20 below), the Board has availed itself of this power to establish a few additional organs and has delegated functions to them in accordance with Article 51.3 which provides that

> The Governing Board, acting by majority, may delegate any of its functions to any other organ of the Agency.

The organs which have been established under the foregoing powers are the following:

- The Committee on Budget and Expenditure (BC), and its Open Ended Working Group.
- The Committee on Energy Research and Technology (CERT), known earlier as the Committee on Energy Research and Development (CRD) and first established as the SLT Sub-group on Research and Development.
- The Committee on Non-Member Countries (NMC), known earlier as the Ad Hoc Group on International Energy Relations (AHGIER).
- The [Oil] Industry Advisory Board (IAB), its Subcommittees and its Ad Hoc Group, the Industry Supply Advisory Group (ISAG).

■ The Coal Industry Advisory Board (CIAB) and its Special Committee.

In establishing these new organs the Governing Board is not constrained, under the authorities cited above, as to the function, composition or duration of the "other organs", for all those questions are left to the discretion of the Governing Board. Aside from the IAB, the CIAB, their subordinate bodies, and the *ad hoc* groups and working parties referred to below, the organs created by the Board are plenary bodies of the Agency, composed of all its Members or open to them and without any limitation on the duration of the organ. Typically their mandates were fixed initially on a broad substantive basis covering the sector referred to in the name of the organ, supplemented with specific requests for reports or other actions from time to time, as for the Standing Groups. In addition, there have been important groups and working parties established by the Standing Groups and Committees themselves.

(a) Committee on Budget and Expenditure (BC)

The first organ created by the Governing Board was the Committee on Budget and Expenditure, established at the Board's first meeting on 18-19 November 1974

> (a) . . . to advise the Governing Board on financial administration of the Agency and to give its opinion on the Annual and other budget proposals submitted to the Governing Board [See IEA/ GB(74)9(1st Revision), Item 12(a); anticipated in the Council Decision, Article 10(a)].

The Board also instructed the Committee to "establish a small working group which the Executive Director could consult regarding expenditure necessary in the fulfilment of the tasks of the Agency" [IEA/GB(74)9(1st Revision), Item 10(b)(6)], which has not been convened for many years.

The Committee has met regularly in accordance with its mandate, usually twice each year, in the summer and autumn. The working group, known as the "Open-ended Group" has met informally on a few occasions at the request of the Executive Director to consider particular financial or administrative questions.

(b) Committee on Energy Research and Technology (CERT)

The work of the Committee on Energy Research and Technology was initially carried out by the Standing Group on Long-Term Co-operation

(SLT) pursuant to its mandate provided in Article 42(c) of the I.E.P. Agreement and to specific mandates adopted by the Board. The SLT was assisted by its Sub-Group on R & D which also received direct mandates from the Board [See IEA/GB(75)17, Item 2(c) and Annex III]. However, in less than a year of R & D work in the SLT, it became clear that the R & D work warranted the establishment of a Committee devoted principally to R & D with high-level specialist R & D representation in place of the SLT's much broader long-term energy policy responsibilities. In order to meet those concerns the Governing Board established the Committee on Energy Research and Development on 20-21 December 1975 with a specialized R & D mandate [IEA/GB(75)94, Item 7, Annex II]. The Preamble to the decision referred to the Board's desire "to establish a body of adequate status to be responsible for energy research and development". The new Committee would ensure co-ordination through "regular consultation and collaboration" with the SLT [paragraph (b)] and would report to the Governing Board, as appropriate, but not less than once a year, "in conjunction with" the SLT [paragraph (f)].

As the scope of the Committee's work included broader issues of energy technology, and not merely energy research and development, it became necessary to reflect that development in the name of the Committee. On 20 March 1992, the Governing Board changed the Committee's name to the "Committee on Energy Research and Technology" (CERT) [IEA/GB(92)17, Item 8(b)].

(c) Committee on Non-Member Countries (NMC)

IEA work in the field of relations with non-Member countries was initially assigned to the Standing Group on Relations with Producer and other Consumer Countries, as provided in Articles 44-48 of the I.E.P Agreement. After a few years it became apparent that a more suitable representation could be arranged more easily through meetings of an *ad hoc* nature, and for that purpose the Governing Board on 27-28 June 1977:

> (a) established an informal Ad Hoc Group on International Energy Relations . . . to report to the Governing Board on international energy relations and to carry out such other functions as may be assigned to it by the Governing Board [IEA/GB(77)33, Item 8].

This action also carried the advantage of showing more clearly in its name the actual role of the Group. After the Ad Hoc Group was created, there

was no need for the Standing Group to continue to meet, for its functions were fully and effectively assumed by the Ad Hoc Group, and it ceased to meet thereafter. The Standing Group still exists under the I.E.P. Agreement (a formal amendment would be required to remove it institutionally), and for a number of years a Chairman was elected (the same person was elected at the same time as Chairman of the Ad Hoc Group), but the work of the Standing Group as such has remained suspended.

A further name change, designed to reflect the more or less permanent role of the Group and its particular focus on non-Member countries, was adopted in 1990. The Governing Board approved the name change to the "Committee on Non-Member Countries", which it retains to the present day [IEA/GB(90)46, Item 6].

(d) Industry Advisory Board (IAB)

The Governing Board has created two principal industry advisory bodies, which are the Industry Advisory Board (IAB) on oil and the Coal Industry Advisory Board (CIAB), together with their subordinate bodies also created directly by the Board. Unlike the other organs described above, Agency Members are not members of the advisory bodies. In the case of the IAB, there are tight restrictions on the presence of IEA Member country representatives in the meeting room, while there are no such restrictions on access to the CIAB. A third body called the Industry Working Party (IWP) advises the Standing Group on the Oil Market (SOM), but it was not actually established by the Board. The IWP was created by its oil industry members and it is recognized by the Agency. However, it is not an "organ" established by the Agency in the sense of I.E.P. Agreement Article 49.2 and thus it is not taken up further in this Section. It has not been necessary to convene this Group in recent years.

The IAB and its subordinate bodies were created by the Governing Board initially in 1974 in response to Article 19.7 of the I.E.P. Agreement which provides that

> An international advisory board from the oil industry shall be convened, not later than the activation of emergency measures, to assist the Agency in ensuring the effective operation of such measures.

The Industry Advisory Board was formally established on 5-7 February 1975 [IEA/GB(75)8, Item 5, Annex III, a)(12)]. The IAB's function is to provide expert industry advice and consultation on emergency oil sharing

and related questions. This continues on a regular basis with the IAB providing assistance in the further development and testing of the Emergency Sharing System, which is indispensable to the viability of the System. Similarly, in an oil supply emergency, the IAB would provide vital services to the Agency, including industry advice and consultations on the emergency situation. The IAB's Industry Supply Advisory Group (ISAG) would then be responsible for assisting and advising the Agency on the practical operation of the System and on individual oil supply movements [For the IAB's detailed mandate, see also the Emergency Management Manual (EMM), 4th Ed. 1982, p. 58].

(e) Coal Industry Advisory Board (CIAB)

The creation of the CIAB responded to the recognized need "for the establishment of a mechanism for individuals of high standing active in coal-related enterprises to provide advice and suggestions on coal production, trade and utilization and on related subjects". It was established by the Board's decision of 11 July 1979 [IEA/GB(79)49, Item 5(b) and Annex], as was the Special Committee which is the CIAB co-ordinating body. The CIAB provides an independent forum in which leaders of major coal-related enterprises in IEA Member countries meet with Agency officials to give advice on ways to improve production, trade and use of coal. The CIAB also assists the IEA "in the practical implementation of the Principles for IEA Action on Coal". It regularly provides high level, high quality industry advice to the Standing Group on Long Term Co-operation and to the Governing Board at Ministerial as well as official level.

In addition to these permanent organs, from time to time the Governing Board has created *ad hoc* groups or working parties, but they have been few in number and of relatively brief duration. The most important of these was doubtless the High Level Ad Hoc Group created in 1981 by the Board to consider oil supply disruptions and new IEA actions, in response to the institutional concerns encountered in the 1979-1981 Middle East crisis and the resulting oil supply disruptions. On 3 February 1981 the Board, in an unusual action, elected the Executive Director as Chairman and requested the Group "to begin its work in considering short-term measures and to report on the progress of its work to the Governing Board as soon as possible" [See IEA/GB(81)10, Item 5]. The following June, the Ad Hoc Group's work was reported to the Ministerial Level Governing Board meeting which provided guidance for further work [IEA/GB(81)33, pp. 2-4]. An additional report was received by the Board

at official level in November [IEA/GB(81)75, Item 2], and on 10 December the Board adopted the Decision on Preparation for Future Supply Disruptions [IEA/GB(81)86, Item 2(b) and Annex I] which added substantially to the oil supply disruption response capabilities of the Agency.

18. Special Activities

While all Members of the IEA participate in the work of the organs described above and in most IEA programme activities, there was need for an IEA mechanism for activities in which only the Members particularly interested in the activities might participate. The founders of the Agency, having examined carefully the problems in the OECD for a group of less than all of its Members to carry out autonomous programmes (that is, for the IEA itself), were sensitive to the need for the IEA to provide programmes of that kind to be carried out effectively and smoothly without institutional impediments. The purposes of the Agency would be advanced by encouraging as much international co-operation on energy as possible, even when not all of the Members could participate in every effort. There was thus need to avoid the lowest common denominator effect for activities within the scope of the IEA's authority (i.e. limiting activities to those in which all Members were willing and able to participate), especially when some of the Members might not be interested in a particular energy development of intense interest to some of the others, or when some might not be able to participate because of financial or other requirements.

In order for programmes of limited participation to be practicable under the aegis of the IEA, provision needs to be made for

- A group of less than the entire membership to be able to establish, within the Agency's authority, independent activities which they would govern and finance and from which they would enjoy the principal benefits.
- The decision to establish an activity in each case to be made by the actual participants in the activity.
- Such activities not to interfere with the Emergency Sharing System, i.e. with Chapters I to V of the I.E.P. Agreement.
- Members not participating to abstain from voting on the activity and not to be bound by decisions concerning it.
- The Governing Board to be kept informed of the resulting programme activities.

Accordingly, Article 65.1 was added to the I.E.P. Agreement as follows:

> Any two or more Participating Countries may decide to carry out within the scope of this Agreement special activities, other than activities which are required to be carried out by all Participating Countries under Chapters I to V. Participating Countries which do not wish to take part in such special activities shall abstain from taking part in such decisions and shall not be bound by them. Participating Countries carrying out such activities shall keep the Governing Board informed thereof.

To date this provision has been employed only in the field of energy research and development projects and programmes, where it has enabled some sixty activities to be carried out without the full membership's participation, although all Members are entitled to participate with the agreement of the others and are encouraged to do so. None of these activities has attracted the participation of all Members (although some approach full participation), and some have had as few as two participants. The flexibility in this system, moreover, makes it possible for non-Members of the Agency as well to participate, and that process was formalized in the Board's decision on "Associate Participation" adopted in 1991 [IEA/GB(91)79, Item 5(f)].

In each case the Governing Board receives the proposal for the special activity together with a description of the activity, the identification of the expected participants, the expected duration and other information. All proposals which have reached the Board to date have been approved. Typically this is done by a Board Conclusion which states that the Board approves the addition to the IEA areas of research, development and demonstration of *the particular programme or project* "as a special activity under Article 65 of the I.E.P. Agreement" [Emphasis added; see for example, IEA/GB(93)57, Item 9(a) and Annex 2]. The Board's Conclusions in such cases provide the formal link between the Agency and the participants. The Agency becomes involved in the negotiation of the terms of the work to be carried out and in other arrangements, in developing the Implementing Agreement to be entered into by the participants and in the administration and policy aspects of the programme or project once it is under way [For consideration of the expenditure in these cases, see Chapter VII, Section J].

19. Conclusions and Minutes

The essential purpose of Governing Board Conclusions, Minutes and the like is, of course, to make the necessary record of the meeting, in a fashion fully consistent with the operational objectives of the Agency. The record is useful, not only in preserving authoritative evidence of past actions for operational reference, but also in providing a documentary basis for reviewing developments of historical interest, for assessing the performance of Members in carrying out their commitments, and for evaluating the experiences of the Agency. Those texts serve as the authoritative statements of the decisions, recommendations and other outcomes of the Board's meetings, as an essential part of the process for establishing the authoritative texts on such important formal and legal subjects as the commitments of Members (for example, see the Governing Board's actions in the 1990-1991 Gulf Crisis), energy policy declarations and decisions, the terms of membership for new Members, amendments of the I.E.P. Agreement, the mandates of the Standing Groups and Committees, delegations of power, terms of the Charter of the IEA Dispute Settlement Centre and other measures of that kind. In the various forms the Governing Board record takes, it is permanently preserved and it is distributed or made available to all Members to ensure that they all work subsequently with the same documentary background.

(a) Governing Board Meetings at Official Level

The Agency has never considered it necessary to develop a full and complete record of Governing Board meetings, for only the minimum essential record has been required, and that has been done with procedures as sparse and simple as possible, by the use of meeting *Conclusions* rather than minutes. At its first meeting, this approach was reflected in the Board's decisions on flexibility, efficiency and simplicity of IEA operations and procedures, and specifically on the making of minutes of Board meetings [IEA/GB(74)9(1st Revision) Preliminary Matters, paragraph (d); on the subject of operational efficiency generally, see Chapter VIII, Section A below].

Specifically on the question of Minutes the Board decided this:

(c) formal minutes would not be prepared in the absence of a decision specifically requesting the preparation of minutes.

With the exception of the first few Ministerial meetings, the Governing Board has *never* had meeting minutes or summary records prepared. From the outset, the record of official level meetings has been composed of two

elements: the formal Conclusions prepared by the Secretariat for distribution to all Members and the informal handwritten meeting notes taken by the Legal Counsel and retained in the Agency's archives. These have been supplemented by a complete documentary record with copies of all formal Board documents and all Room Documents presented to the Board at each meeting. To those have been added copies of the Secretariat's briefing notes for the Chairman and texts of statements made by the Delegates and the Secretariat when available.

Occasionally there has been a request that a brief statement by the Executive Director or a Delegate be included in a "Minute Note" of the meeting. This has been done on a few occasions by depositing a copy of a Minute Note in the Legal Counsel's official record file for the meeting, or more rarely by discreetly distributing a statement text by letter from the Executive Director, or even less frequently by attaching it to or including it in the distributed Conclusions of the meeting. When individual statements have been included in the Conclusions, this has been associated at times with major decisions giving rise to legal obligations, such as the decisions in connection with the Agreement with Norway [See IEA/GB(75)8, Item 4, Annex II], the adoption of the Long-Term Co-operation Programme [See IEA/GB(76)5, Item 2] and new membership, such as that of Australia [See IEA/GB(79)8, Item 2]. Other than in cases when statements might be required for those kinds of formal reasons, the Agency has discouraged requests for fragmentary additions of "Minute Notes" or of other forms of individual Delegate statements. If any reference was made to them at all, it has been more common for the Board simply to "note the discussion" on a particular point, or if Delegates wished, to note that statements were made by certain Delegates (without reference to the content of the statements) or at most to note a brief summary of the statements; a recent example of the latter procedure is found in a footnote to the Conclusions on the use of the German language in the IEA, in which Delegates for Italy, Japan, Portugal, and Spain reserved the right to raise at a future time the question of the use of their respective languages in the IEA [IEA/GB(91)45, Item 3]. Requested more often during the formative years of the Agency, the inclusion of individual Delegates' statements or references to them has been quite rare in more recent practice.

The fundamental reason for this "sparse record" approach was not only the need to save the time and costs involved in the preparation of minutes (minute writers would have to be employed), and the dedication of meeting time to correcting a detailed record, but also the need for discretion and the policy of encouraging Delegates to speak fully and freely without concerns

about seeing their statements later appear verbatim in Board minutes or digested in summary records. Realization of this objective also required the Agency to avoid recording or making a stenographic record of the Board's deliberations; hence there are no official level Board meeting recordings or other records of that kind [For Ministerial Level meetings, see below].

Conclusions have served to record the formal outcome of the meetings and to provide authoritative texts of the Governing Board's actions, including legally binding decisions and recommendations, without reproducing the statements of the individual participants. They have always been issued as classified documents, although parts are from time to time derestricted by the Board. They have met in the simplest and most efficient way possible the essential requirements for meeting records mentioned above, and have proven sufficient and satisfactory to Delegates and the Secretariat over the years.

Immediately after each meeting, Conclusions have been prepared by the Secretariat for prompt distribution to all Delegations for their review and use. There has been no formalized Conclusion review process. Very rarely, perhaps once every few years in recent times, a Delegate has raised a question about the Conclusions or has presented a modification proposal. In such cases it has been the practice for the Delegate to communicate the question or proposal to the Secretariat orally or in writing. When the Secretariat agreed that the Conclusions should be modified, it prepared and circulated the new text to all Delegations, in the form of a corrigendum or revision, or in some cases awaited the next meeting of the Board to have corrective action taken. If no questions or proposals were presented during the period before the next meeting of the Board at official level and if none appeared during that meeting, then the Agency has taken the Conclusions as being definitively agreed as written and distributed without modification. Any delegate has been free to raise any particular point concerning the Conclusions at any time, either with the Secretariat or directly in the Governing Board, but this has been quite rare. Since 1980 there have been only three corrigenda required, only one since 1987.

At an early meeting of the Governing Board it was understood that the Board did *not* wish to have on the agenda of each meeting an item specifically calling for the review and approval of the Conclusions of the previous meeting. The Chairman indicated that the meetings should not be burdened with that process which had sometimes consumed undue amounts of time in meetings of other bodies elsewhere. Particularly in the IEA Governing Board where governments were frequently represented by high officials from capitals, a Conclusions approval procedure in the meetings would not represent the best use of those Delegates' time. It was considered that an over

abundance of such formal procedural and non-substantive matters in the Board might well provide a major disincentive for the attendance of those high officials whose direct and full participation was essential to the operational success of the Agency. Hence Governing Board agendas have never contained such an item, and virtually no Board time has been lost in redrafting or disputing the texts of past Conclusions.

In many cases the Secretariat includes draft Conclusions in the meeting documents, providing in that way for Delegations to see the drafts in advance. For the most sensitive and at times difficult agenda items, it was often impossible or unproductive for the Secretariat to seek to foresee the outcome before the Board deliberated, and no draft Conclusions were offered. The Board has also at times arranged for the preparation of draft Conclusions in the course of the meeting itself, for consideration by the Board and agreement before the end of the meeting. In view of the Board's confidence in the Secretariat, however, even this safeguard procedure was seldom used, and then usually in the interest of speedy action when the Conclusion might immediately be made public or be used as a basis for action or public statements, as was the case for the Board's Conclusions on the 1990-1991 Gulf Crisis [See for example, IEA/GB(91)1, Item 3(c) and Annex].

In the early years of the Agency, there were a few instances when questions were raised about the meeting Conclusions. On several occasions when numerous or far-reaching changes were being considered, the Board requested the Secretariat to present redrafted Conclusions to the next meeting of the Board, and amending decisions were made accordingly. This occurred in the second and third meetings of the Board in 1974 and early 1975; and in its third meeting, the Board delegated Conclusions agreement powers for that meeting to the Standing Groups and thus avoided dedicating more Board time to that subject. Indeed, the Board itself did not turn to it again [See IEA/GB(75)8, Item 2; IEA/GB(74)11(1st Revision), Cover Note].

(b) Ministerial Level Meetings

For Ministerial Level meetings the record procedures have been more comprehensive, yet changing over the years. The Ministerial Level meetings have been electronically recorded by OECD services in the same way as the OECD Ministerial meetings are recorded. Copies of the Ministers' complete statements were usually made available to Delegations and the Secretariat either during or shortly after the meeting. Any statements which were not made available in that fashion were collected by the Secretariat directly from the Delegations concerned in order to make a complete record, whenever possible.

Following each of the first two Ministerial Level meetings, the Secretariat prepared and distributed a comprehensive Record containing summaries or the full texts of statements. For the first Ministerial held on 27 May 1975, Conclusions were integrated into the Record [IEA/GB(75)37] and issued as a separate document as well [IEA/GB(75)36]. They were later adopted as modified by the Governing Board at official level [See IEA/GB(75)69, Item 6]. A parallel procedure was adopted for the second Ministerial meeting held on 5-6 October 1977 [The Record for that meeting is set forth in IEA/GB(77)50(1st Revision) and the Conclusions as adopted by the Board at official level appear in IEA/GB(77)52(1st Revision); see IEA/GB(78)5, Item 2]. The practice of preparing formal full records of the Ministerial meetings was found to be unnecessary in view of the availability of the Communiqués and Conclusions, and was accordingly not followed thereafter.

The main outcome of each Ministerial meeting has been the Communiqué. It has always been seen by Ministers and was subject to amendment by them before the close of the meeting. Sometimes the Ministers have wished to have rather elaborate Conclusions prepared in parallel with the Communiqué, and these have also been submitted to Ministers for amendment or approval in the same way. For Ministerial Conclusions in recent years, the more common procedure has been for the Secretariat, after the meeting, to prepare brief formal Conclusions recording the adoption of the Communiqué and the instructions of Ministers on actions to implement the decisions contained in the Communiqué [See the 1993 Ministerial Conclusions, for example, IEA/GB(93)43, Item 3].

Each of the Communiqués has been derestricted and distributed immediately after the meeting to the press and public. The Conclusions of Ministerial meetings, like the Conclusions of other Board meetings, have been classified and are not made available to the press and public. Once issued, the Ministerial Conclusions are distributed to Delegations in the normal way.

20. Management Committee

As originally established in the I.E.P. Agreement, the Governing Board was expected to meet at Ministerial Level for the conduct of major IEA business [Article 50], and the Management Committee would be composed of "senior representatives" of governments [Article 53.1] to carry out "the functions assigned to it in this Agreement and any other function delegated to it by the Governing Board" [Article 53.2]. The Management Committee was to function principally to prepare business for the Ministerial Board, to act as a senior intermediary body between the technical Standing Groups and the

Ministerial Level Governing Board and to carry out a number of tasks in accordance with the Agreement or by delegation from the Board. The Committee was also empowered to "examine and make proposals to the Governing Board, as appropriate, on any matter within the scope of this Agreement" [Article 53.3], to be convened upon the request of any Member [Article 53.4], to elect its Chairman and Vice-Chairmen [Article 52.5] and to elect the Chairmen and Vice-Chairmen of the Standing Groups [Article 54.2].

The most specific role of the Management Committee as provided in the Agreement was to receive reports from the Standing Groups and to make proposals to the Governing Board on subjects specified in the Agreement. Those subjects include the following:

Article 4.2:	Effectiveness of Members' emergency reserve measures
Article 5.3:	Members' demand restraint programs and measures
Article 6.3:	Members' allocation measures
Article 11:	Historical oil trade patterns
Article 18.2:	Base period final consumption
Article 19.2:	Activation and the finding
Article 20.2:	Measures to meet the necessities of the situation
Article 21.3:	Member's request for a finding
Article 23.2:	Deactivation
Articles 29.2 and 31.2:	General information section
Articles 34.2 and 36:	Special information section
Article 37.3:	Consultations with oil companies
Article 43.1:	Long-term co-operation
Article 48.2:	Relations with producers and other consumers
Articles 55-58:	Reports from Standing Committees
Annex:	Emergency reserves and other subjects appearing in the Annex to the I.E.P. Agreement.

At the first meeting of the Governing Board, however, it became apparent that the business of the Agency would require more constant high level attention than Ministers might be expected to give, and that the Governing Board would have to meet regularly at senior official rather than Ministerial Level for most of its work. Indeed the Board's first meeting, on 18 November 1974, was held at official rather than Ministerial Level, and the first Ministerial meeting did not take place until May 1975 [See Section

A-5 above]. Since the meeting system as originally envisaged could not be expected to work satisfactorily, immediately at its first meeting the Governing Board had to find a new meeting arrangement. On that occasion, the Governing Board [IEA/GB(74)9(1st Revision) Preliminary Matters]:

> (a) agreed that until further decision its meetings would be deemed to be joint meetings of the Governing Board and the Management Committee of the Agency.

This solution satisfied the I.E.P. Agreement requirement of consideration in the Management Committee as well as in the Governing Board of many of the issues listed above. It also permitted the Board to function regularly and effectively at official level with Delegates of Ministers, reserving Ministerial Level meetings to special occasions. Thereafter, each of the Board meetings except Ministerial Level meetings, has been convened as a joint meeting of the Governing Board and the Management Committee. The Management Committee itself has never been convened separately.

B. The Standing Groups

1. Function and Competence

Article 49.1 of the I.E.P Agreement provides that the Agency shall have the following "organs": a Governing Board, a Management Committee and Standing Groups on: Emergency Questions (SEQ), the Oil Market (SOM), Long Term Co-operation (SLT) and Relations with Producer and other Consumer Countries (SPC). Although the Governing Board may establish other organs necessary for the implementation of the Program [Article 49.2], and has done so [See Section C below], additional *Standing Groups* as such have not been established. Since the four Standing Groups were created by the I.E.P. Agreement and not by the Governing Board, the Standing Groups enjoy "treaty status" and a mandate provided broadly in the Agreement rather than by the Governing Board. Those organs and the others specified in Article 49.1 were also integrated into the Agency's internal system by means of the Board's 1974 Decision on the Program [See Chapter II, Section C-7 above] which provides in paragraph 2 that:

> The organs provided for in the Program are hereby established as organs of the Agency; they shall carry out their responsi-

bilities in accordance with the procedures set out in the Program and shall take decisions, recommendations and other actions as provided therein.

The function of the Standing Groups has been essentially to carry out the mandates given to them respectively in the I.E.P. Agreement and Governing Board decisions, as discussed below, but more broadly speaking the principal function of the Groups has been to prepare reports and make proposals to the Governing Board, the action organ of the Agency. Decisions, recommendations and other actions have been almost always taken by the Governing Board rather than the Standing Groups, although some delegation of powers has been made to them from time to time. Since the Board has been composed principally of high officials (or Ministers) with political or broad technical responsibilities, there was need for expert level preparation in the Standing Groups for Governing Board actions. In the Standing Groups that preparation has consisted usually of initiating proposals, researching, studying, debating, refining and drafting them into Governing Board formulations with preliminary political as well as technical expertise. Consensus building for proposals has been also an important Standing Group function, since a well prepared and politically sound body of proposals carrying general acceptance at the Standing Group level has been best situated for achieving Governing Board acceptance in the final stages of the IEA decision process. In all of this work, it will be recalled that the Standing Groups have been regularly assisted by the Secretariat of the Agency [See Chapter VI below], and indeed the provision of such assistance is one of the principal functions of the Secretariat [See I.E.P. Agreement Article 49.3].

Delegation of power of decision or other decisive action to the Standing Groups is foreseen in the I.E.P Agreement Article 51.3: "The Governing Board, acting by majority, may delegate any of its functions to any other organ of the Agency", but actual delegation of powers to the Standing Groups or their sub-Groups or to the Committees is uncommon in IEA practice. Two outstanding examples of delegation are (1) in 1976, the delegation of power of decision on Type 3 actions under the Emergency Sharing System to the SEQ Emergency Group, a Sub-Group of the Standing Group on Emergency Questions (SEQ); and (2) in May 1992 the partial delegation of authority on certain non-Member relations questions to the Standing Groups and deferral of action on possible additional delegations of power to the Committee on Non-Member Countries.

The SEQ Emergency Group power delegation appears in the Emergency Management Manual (EMM) 4th Ed. 1982 p. 32, in connection with

the emergency allocation of oil. In advanced stages of Agency response under the Emergency Sharing System (ESS), actions in addition to the voluntary co-operation of participating oil companies might become necessary to meet countries' supply rights under the System. The additional actions are called "Type 3" in ESS terminology and include "direct instructions from governments to Reporting Companies," [as described in EMM Section C.III. 5, Step 9, p. 32]. Under Step 9, where the *SEQ Emergency Group* (SEQ-EG) considers such mandatory action by companies to be necessary, that Group makes the decision which creates the obligation of the competent Member governments to issue the appropriate company instructions. Although these are among the most far-reaching and innovative categories of decisions which the Agency can make, no Governing Board intervention in the process is specifically foreseen, and the SEQ-EG's decisions by delegation are final and binding on the Members concerned.

In the May 1992 general consideration of the participation of Non-Member countries (NMCs) in the activities of the Agency, the Governing Board reserved general control over policy guidance and decisions, and specifically reserved power to decide on the participation by new non-Member countries, but made an important delegation of power to the Standing Groups as follows:

> For an experimental period, the Standing Groups should decide on the level, frequency, and subjects for NMC participation, subject to the right of any Member country to refer such a decision to the Governing Board.

These decisions were contained in IEA/GB(92)25, Item 5(b) and referred to the proposals made in IEA/GB(92)18/FINAL p. 4. The delegation of authority was narrowly framed, was subject to a specific Governing Board override, and was accompanied by a decision to defer consideration of a still further expansion of the power of the NMC, thus reflecting a continuing policy of caution by the Board in making significant delegations of powers to the Standing Groups and Committees of the Agency [For delegation of power to the Committee, see Section C-1 below].

The formal competence of the Standing Groups appears in three different types of formulations, two in the I.E.P. Agreement text, and the third in decisions of the Governing Board. The basic grants of competence are contained in Chapter IX of the Agreement, largely in parallel fashion for each of the Groups. Thus Articles 55, 56, 57 and 58 provide that the SEQ, the SOM, the SLT and the SPC shall respectively:

- Carry out the functions assigned to them in the applicable Chapters of the Agreement [Chapters I-V and the Annex for the SEQ, Chapters V and VI for the SOM, Chapter VII for the SLT and Chapter VIII for the SPC].
- Carry out any other functions delegated to them by the Governing Board.
- Review and report to the Management Committee (in practice to the Governing Board) on any matter within the scope of the applicable Chapters.
- Consult with oil companies on any matter within its competence (for the SEQ, the SOM and the SPC).

Quite numerous and far-reaching functions are specifically assigned to the various Groups under the Agreement Chapters referred to in the preceding paragraph. Some of the most significant of these functions can be mentioned in passing, however. Thus, the SEQ regularly reviews and reports on Members' emergency oil stock measures and related questions [Article 4 and Annex], on demand restraint programmes and measures [Article 5], on allocation measures [Article 6], on computation elements such as the "base period" [Article 18] and on the Special (Emergency) Section of the Oil Information System [Articles 34-36]. The SOM reports on the various elements of the General Section of the Oil Information System [Articles 29-31] and of the Framework for Consultations with Oil Companies [Articles 37-40]. The SLT was given a broad mandate in Chapter VII to examine and report on "co-operative action" in the Long-Term energy field [Article 42] and it did that comprehensively by developing and presenting the Long-Term Co-operation Programme, which itself contains additional standing mandates of the SLT. Finally, the Producer-Consumer Group was given a mandate to examine and report on the broad range of matters described in Chapter VIII on that subject, matters which are now within the general competence of the Committee on Non-Member Countries. The broad mandates have always been considered to cover the entire scope of the sector assigned to each Standing Group and to include the important function of making action proposals. Discussions about the substantive scope of the competence of the Groups are not known to have arisen often or to have presented problems for the Standing Groups in carrying out their tasks.

As noted above, there were a number of specific Governing Board instructions and requests to each of the Groups for specific tasks to be carried out. These instructions and requests, foreseen and authorized by Articles 55-58, have appeared frequently in the history of the Agency,

sometimes in more or less standing order form, at other times on an *ad hoc* basis for particular work to be done. The various standing mandates tend to be collected in the OECD "Bodies of the Organisation", a document produced annually to disseminate information about current mandates, membership and officers.

The *ad hoc* type mandates have been more frequent, to the extent that each Governing Board meeting might well be expected to adopt one or more instructions or requests to Standing Groups for particular work to be reported to the next or later meetings of the Board. Much of the current work of the Standing Groups as well as the Committees has been mandated in that fashion.

2. Procedures

Although the Standing Groups' general rule on procedures is to follow the parallel rules of the Governing Board in most cases, some procedural aspects of the Standing Groups should be mentioned. Under Article 50.2 the Board was empowered to adopt its own rules of procedure, but has elected not to do so in a systematic fashion. In referring to rules of procedure adopted by the Board, Article 50.2 states that "these rules shall also apply to the . . . Standing Groups". Hence the Standing Groups are to follow procedures appearing in the Agreement and decisions of the Governing Board for itself (applicable by analogy as appropriate) or directed specifically to the Standing Groups, although decisions of that kind are rarely adopted. One noteworthy example of this procedure occurred at its first meeting when the Board decided that the Standing Group Chairmen "would organise their Standing Group meetings in a flexible fashion and might meet as required in capitals" [IEA/GB(74)9(1st Revision), Item 8(b)]. In 1992 the Governing Board adopted Guidelines for the participation of non-Member countries (NMCs) in IEA meetings, and for the Standing Groups decided that:

> For an experimental period, the Standing Groups should decide on the level, frequency, and subjects of NMC participation, subject to the right of any Member country to refer such a decision to the Governing Board. However, participation by a new non-Member country would be a matter for Governing Board consideration. The NMC Committee should be regularly informed. Participation by NMCs in IEA meetings should be *ad hoc* and informal [IEA/GB(92)25, Item 5(b); IEA/GB(92)18/FINAL, Part III A].

Aside from the above considerations, however, the Groups have remained free to organize their work as they find necessary or convenient.

The composition of each Standing Group is to be "one or more representatives of the Government of each Participating Country" [Article 54.1]. In practice this representation is assured either by officials from Members' capitals or by members of the country's OECD Delegation; there has been a greater tendency for members of Delegations to act in the Standing Groups than in the Governing Board. The Chairmen have been selected usually from among officials based in capitals, often from among the Members' Governing Board representatives; this has added weight to the deliberations of the Groups and has ensured strong representation of the Standing Groups in the Governing Board when it considered and acted upon reports and recommendations from them. The Chairman and Vice-Chairmen have been elected under the Management Committee's powers, but in practice by the Governing Board, as individuals and not as countries, usually with an eye to the individuals' experience, to the respect accorded to them by Members, and to geographical distribution in a broad and flexible fashion. Under Article 54.2 of the I.E.P. Agreement, those elections have been made by "majority" in formal terms, but by consensus in practice.

In the conduct of meeting deliberations and decisions, the Standing Groups follow the Governing Board's practices, whether contained in formal rules or not. This applies to voting and consensus as well as to other procedural questions. Like the Board, the Groups have acted usually by consensus. There has not been a recorded or formal vote of a Standing Group in memory; but there have been divided views, reservations or objections which could be made known to the Governing Board when considering a report or other communication from a Standing Group. When there have been questions which might be decided by a Standing Group vote, the voting rule would be the same as for the Governing Board, that is majority as provided in Articles 61 and 62 of the I.E.P. Agreement on procedural and management questions, and unanimity on new commitments of Members, but questions of this kind are not known to have arisen in any of the Standing Groups.

The types of actions to be taken by the Standing Groups depend upon the applicable mandate. Normally the Groups make reports, recommendations or proposals or simply inform the Board on the subject of reports, but in cases of delegation of powers the actions could take the form of binding decisions [as in the case of the SEQ-Emergency Group adopting binding Type 3 decisions, described in Section B-1 above]. When competence has been delegated by the Governing Board, a Group can take any decision

which the Governing Board was entitled to make itself pursuant to the I.E.P. Agreement [See Article 51.3]. The nature and form of the Standing Group's action can thus be controlled by the Governing Board, or within the Board's own limits, it can be left to the Standing Group to determine.

Sub-Groups may be created by the Standing Groups to assist in their work. At its first meeting the Governing Board specifically authorized the Standing Groups to "set up working parties composed, as a general rule, of interested members" [IEA/GB(74)9(1st Revision), Item 8(b)]. The latter procedure has been employed for each of the three currently established Sub-Groups. The SLT created the three Sub-Groups which exist at the time of this writing, that is, the Sub-Group on Accelerated Development of Alternative Energy Sources (inactive), the Sub-Group on Conservation, and the Nuclear Sub-Group (inactive), each of which acts pursuant to the specific mandate adopted by the SLT [The current mandates are found in the OECD "Bodies of the Organisation" document]. The Nuclear Sub-Group displaced the former Sub-Group on Enriched Uranium Supply and the Ad Hoc Group on Emergency Sharing of Natural and Enriched Uranium and Uranium Services. Energy Research and Development work in the IEA was initially carried out in the SLT Sub-Group on Research and Development until the Governing Board created a Board Committee for that purpose, the Committee now known as the Committee on Energy Research and Technology (CERT). The procedures for Sub-Groups have followed the rules applicable to the Standing Group; the Chairman has been elected by the Standing Group, but the election could be left to the Sub-Group itself. In the case of the Nuclear Sub-Group mandate, there is provision for the Sub-Group to co-operate with the OECD Nuclear Energy Agency (NEA) and to maintain contact with other bodies of the Agency concerned.

Over the years the Standing Groups have provided the vehicle for the technical background work necessary for the Agency's political decisions to be undertaken on a sound basis and with as much political consensus as possible. The heart of the IEA work has taken place often in the Standing Groups which gave indispensable support to the Governing Board and thereby contributed generally to the stature of the Agency.

C. The Committees

While the IEA Standing Groups discussed above were each created by the I.E.P. Agreement, the Committees of the Agency have been creations of the

Governing Board, acting under Article 49.2 which provides that the Governing Board ". . . may, acting by majority, establish any other organ necessary for the implementation of the Program". The Committee mandates have been determined by the Governing Board which is free to adopt, modify or abolish them at any time, while the basic mandates of the Standing Groups as set forth in the Agreement could not be modified or abolished without amendment of the Agreement. This procedural distinction between the two types of IEA organs could theoretically have an effect on their respective status, for the Standing Groups are "treaty creations", and the Committees are "Governing Board creations". However, in practice no such distinction has been made, and for one organ (the Committee on Non-Member Countries), the Committee has in effect displaced the Standing Group and enjoys a higher operational status in practice [See Section B-1 above]. The Committees have carried out in their respective sectors very much the same functions as the Standing Groups do in theirs, and there has been little or no operational reason to distinguish between them. Hence the distinction has been largely an historical and formal one without practical significance.

1. Function and Competence

The Governing Board has established three permanent and plenary Committees of the Agency: the Committee on Non-Member Countries (NMC), the Committee on Energy Research and Technology (CERT) and the Committee on Budget and Expenditure (BC). The function of the Committees in their respective fields, which are largely separate from those of the Standing Groups, is to examine, study and report on matters which come before them, as is the case for the Standing Groups in their respective fields. Each of the Committees enjoys the competence conferred upon it by the Governing Board decision establishing the Committee and by later Board actions assigning functions, giving instructions or making requests to the Committee.

Under Article 51.3 of the I.E.P. Agreement, the Governing Board may delegate functions not only to the Standing Groups [See Section B-1 above], but also to the Committees. The Board has done this recently, for example, by delegation to the Committee on Energy Research and Technology (CERT). In October 1993, the Governing Board amended the "Guiding Principles for Co-operation in the Field of Energy Research and Development" to delegate to the CERT the power to approve the participation of "Sponsors" in Energy R & D collaborative project Implementing Agreements. Special rules govern the

qualification and selection of "Sponsors"; they do not become full Contracting Parties to those Agreements, but they participate in accordance with particular terms and conditions under IEA/GB(93)57, Item 7 and Annex I]. In December 1993, the Board made a further delegation of function to the CERT, in agreeing that the Committee "will determine how the IEA portion of a joint IEA/OECD study on energy and environmental technologies to respond to global environmental concerns should be conducted" [IEA/GB(93)65, Item 6(a)(i)].

The history of IEA bodies dealing with non-Member relations is outlined in Chapter IV, Section D-2 above. The current mandate of the Committee on Non-Member Countries (NMC) is also described in that Section. Briefly stated, the Committee is the successor to the Ad Hoc Group on International Energy Relations, and its function is "to report to the Governing Board on international energy relations and to carry out such other functions as may be assigned to it by the Governing Board" [IEA/GB(77)33, Item 8(a)]. In 1992 the Governing Board decided [IEA/GB(92)25, Item 5(d)] that:

(i) the Committee on Non-Member Countries shall, taking into account the views of the Standing Groups and other committees of the Agency, advise the Secretariat and advise the Standing Groups and other committees of the Agency with regard to non-Member country activities;
(ii) overall policy guidance and decisions shall continue to be the responsibility of the Governing Board.

and the Committee at the same time was requested [Item 5(e)] to:

(i) ensure that, on a timely and regular basis, information on the Agency's non-Member country activities is communicated to Member countries, and Member country views are communicated to the Secretariat;
(ii) report regularly to the Governing Board on the foregoing subject.

At that time the Board also noted, with respect to the possibly expanded role of the Committee [See IEA/GB(92)18/FINAL, Parts IV and V], that "the role of the Committee on Non-Member Countries needs to be further developed over time, bearing in mind that specific areas of co-operation with non-Member countries must be integrated into the work of other Standing Groups".

The second IEA Committee charged with programme activities is the Committee on Energy Research and Technology (CERT). In adopting the decision on the establishment of this Committee, the Governing Board explicitly expressed its desire "to establish a body of *adequate status* to be responsible for energy research and development" [Emphasis added; see IEA/GB(75)94, Item 7 and Annex II, Preamble]. The Committee's terms of reference, as established by the Governing Board in 1975, can be summarized as follows: to submit to the Board an energy R & D strategy and to oversee its implementation, to ensure consultation and collaboration with the SLT and close co-ordination between the R & D strategy and the Long-Term Co-operation Programme, to carry out periodic reviews of relevant national programmes, to identify opportunities and promote collaboration among Members, to report to the Governing Board as appropriate and at least once each year, and "to carry out such other functions as may from time to time be delegated to it by the Governing Board" [The relevant texts are collected annually in the OECD "Bodies of the Organisation" document].

While the Non-Member and CERT Committees mentioned above have broad policy functions in their respective sectors, quite like the Standing Groups do in theirs, the Committee on Budget and Expenditure (BC) has the relatively narrow focus its name suggests. A separate budget committee for the Agency was considered at the outset to be essential to the proper financial administration of the Agency and to reflect its unique operational character. A committee apart from the OECD Budget Committee was found best suited to reflect those objectives and to ensure undiluted attention to the Agency's financial business and the special problems of dealing with operations which the Agency might be called upon to undertake, and those considerations were reflected in Article 10(a) of the OECD Council Decision. At its first meeting the Governing Board [IEA/GB(74)9(1st Revision), Item 12]

(a) established a Committee on Budget and Expenditure to advise the Governing Board on financial administration of the Agency and to give its opinion on the Annual and other budget proposals submitted to the Governing Board.
(b) instructed the Committee on Budget and Expenditure to convene its first session no later than 9th and 10th December, 1974.

The Budget Committee's work is described in Chapter VII, Section E below.

2. Procedures

The Governing Board is empowered to fix the procedural rules of the Committees, but in practice it has seldom done so. The procedural situation of the Committees is much like that of the Standing Groups [See Section B-2 above]. The Committees have not often confronted procedural questions. When they have done so, the rules established for the Governing Board and the Standing Groups have been applicable, and the general approach to the conduct of meetings in the Governing Board provided indirect guidance to the Committees as well as to the other organs. Aside from specifying work to be done and at times fixing deadlines for it, the tendency of the Board has been to leave to each body of the Agency the responsibility for making its own procedural decisions.

The Secretariat

The IEA Secretariat may be regarded as the centre of the visible, tangible and permanent presence of the Agency. The Secretariat consists of approximately one hundred forty members stationed in OECD premises in Paris. Members of the Secretariat are chosen from highly qualified personnel from IEA Member countries. Their function is not to represent their countries in the Agency, but to carry out the tasks of the Secretariat in an impartial way under the authority of the Executive Director, without seeking or accepting instructions from their governments or from any other external source. In the IEA system the Executive Director and Deputy also form part of the formal "Secretariat"; they are subject to the same rule of impartiality and with responsibility solely to the organs of the Agency, principally the Governing Board, in which all IEA Members are represented.

Briefly stated, the role of the Secretariat is to carry out the tasks assigned to it in the I.E.P. Agreement and in Governing Board actions. This authority is quite specific and far-reaching in certain cases; for example, it is the Secretariat that makes the "finding" which could trigger the oil Emergency Sharing System. This authority extends broadly across all sectors of the Agency's responsibilities. The more general tasks of the Secretariat include the exercise of energy policy leadership in conjunction with the Governing Board and the Members, the initiation of policy directions, the preparation and presentation of action proposals to the organs of the Agency, and the provision of factual and policy research, analysis, and preparation of reports and other documents for those organs. The Secretariat is charged as well with representation of the Agency in external relations, general logistical support and the execution of instructions of the Governing Board. These and other functions are described in more detail in Section E below in relation to the Executive Director, who bears the highest responsibility for the work of the Secretariat. References to the Secretariat's work in greater detail will have been noticed in the foregoing Chapters and will be seen constantly in the Chapters that follow. The breadth of the

Secretariat's functions and expertise are apparent in the organization chart of the Secretariat which is contained in Appendix V below.

The IEA Secretariat was established within the mainstream concepts of international organization secretariats, with a few variations occasioned by the particular tasks of the IEA in carrying out its operational responsibilities. This may be seen particularly in the Members' agreement to lodge the Secretariat administratively, subject to the Board's override power, in the OECD Secretariat which is an important representative of that mainstream.

A. Powers of the Governing Board

As the servant of the Member countries, the Secretariat is subject to control by the Governing Board in accordance with the I.E.P. Agreement. Article 49.3 provides that "The Agency shall have a Secretariat to assist the organs mentioned in paragraphs 1 and 2 [of that Article] (virtually all the organs of the Agency). The governing Agreement provisions are Articles 59 and 60 which provide in their entirety as follows:

SECRETARIAT

Article 59

1. The Secretariat shall be composed of an Executive Director and such staff as is necessary.

2. The Executive Director shall be appointed by the Governing Board.

3. In the performance of their duties under this Agreement the Executive Director and the staff shall be responsible to and report to the organs of the Agency.

4. The Governing Board, acting by majority, shall take all decisions necessary for the establishment and functioning of the Secretariat.

Article 60

The Secretariat shall carry out the functions assigned to it in this Agreement and any other function assigned to it by the Governing Board.

Under these provisions, the powers of the Board with respect to the Secretariat are

- To appoint the Executive Director.
- To take all decisions necessary for the establishment and the functioning of the Secretariat.
- To assign functions to the Secretariat.

In the aggregate, these powers constitute plenary power of the Governing Board on this subject, limited only by the specific provisions elsewhere in the Agreement on particular actions of the Secretariat (for example with regard to the Emergency Sharing System).

The Governing Board has exercised the Executive Director appointment power on the two occasions when the question has presented itself [See Section E-2 below] and has regularly and systematically assigned functions to the Secretariat [See Section E-1 below]. In addition to the personnel decisions contained in the annual Programmes of Work and Budgets of the Agency [See Section B below], from time to time the Governing Board has exercised the direct power to make decisions on the administrative functioning of the Secretariat. At its first meeting, for example, the Board agreed [IEA/GB(74)9(1st Revision), Item 9] that

- The IEA Staff should be free to work on Agency priorities and the Budget should reflect this element.
- The Governing Board should return to the question of a joint Staff for the IEA and OECD Energy Directorate.
- It would consider arrangements for Staff to be aligned in the Secretariat to correspond with the Standing Groups.
- The Executive Director could begin exploring for Staff with a view to obtaining the necessary high quality Staff as quickly as possible.
- The Budget Committee should consider Staff priority needs for the Agency to become operational.

At its second meeting, the Board again took a number of important decisions concerning the Secretariat [IEA/GB(74)11(1st Revision), Item 5]. One of the most far-reaching was the approval of the concept of a "Combined Energy Staff" by which (1) the Agency Staff would serve both the IEA and the OECD on energy questions and (2) the OECD would make a corresponding financial contribution to the IEA Budgets, an arrangement that continued in effect until the end of 1993 [Item 5(b); this subject is

examined in detail in Section D below]. In 1974 the Governing Board also adopted the first structural organization of the IEA [Item 5(c); the first IEA organization chart] and noted Executive Director Lantzke's assurance that he would "only recruit very high quality staff even if this may result in a delay in filling some posts" [Item 5(d)]. At that time, the Board also adopted a "three year appointment policy" by inviting:

> the Executive Director to recruit mainly government officials for the A-grade posts and to recruit this staff on a fixed term basis (staff members currently having indefinite appointments with the OECD would retain them) for, in principle, approximately three years with necessary flexibility in duration on a case by case basis [Item 5(f)].

The Governing Board's decisions adopting the extraordinary elements of the appointments of the Executive Director and Deputy Executive Director are described respectively in Sections E-5 and F-4 below. More recently, in connection with the 1994 Budget, the Governing Board continued the regular practice of endorsing the Executive Director's efforts to keep Delegations informed as to professional Staff recruitment and invited the Executive Director to keep Delegations and relevant bodies informed of consultancy projects and costs related thereto [IEA/GB(93)65, Item 2(f)(viii) and (ix)].

B. Establishment of the Secretariat

The Secretariat has taken organizational form and substance in the Programmes of Work and Budget decisions, initially in the decision for 1975, and thereafter in decisions adjusting the organization of the Secretariat. These decisions determine the structure of the Secretariat with the distribution of Staff among the various Offices, Divisions and other units, as well as the number of Staff and their respective grades.

The first comprehensive organization of the Secretariat as established in 1974 has varied only modestly over the years, the structure remaining essentially as foreseen at the outset. Significant additions include the Office of Energy Technology and Research and Development, the Economics, Statistics and Information Systems Office, the Public Affairs Advisor and Staff, and the Energy and Environment Division. There have also been

various name changes of Offices and Divisions, as well as the shifting of Divisions among Offices and the creation of new Divisions [See annual Programme of Work and Budget documents for records of the foregoing]. In the 1993 Budget decision, for example, the following adjustments in organization took place: the Economics, Statistics and Information Systems Office was formed with separate Divisions for the three sectors covered by that Office, the Office of Oil Markets and Emergency Preparedness was formed with two Divisions covering those sectors and the Office of Non-Member Countries was established with two geographic Divisions [See IEA/GB(92)53, Item 6 and documents cited]. The authorized manning of the Secretariat has grown modestly from about 92 in 1975 to 140 in 1994, in about the same proportion as the growth in IEA membership over the same period.

The current organization of the Secretariat, set forth in Appendix V hereto, was initially patterned in line with the Standing Groups and the Committees, with the Secretariat sectorial Offices and Divisions being at times identifiable with the corresponding organs of the Agency; that pattern has largely continued. The sectorial Offices all work on a horizontal basis as well, serving other sectors when that would be necessary. The Office of the Executive Director, including the Deputy Executive Director and the units comprising the Legal Counsel, Public Affairs and Administration, serve all sectors of IEA work as does the Economics, Statistics and Information Systems Office.

In addition to the regularly established permanent Secretariat members, the Agency requires specialized support for particular projects and functions, which is provided in the form of "Project Staff" and Consultants. The appointments in these categories of Staff are tailored to meet special and sometimes non-recurring needs. The appointment of Project Staff is authorized each year by the Governing Board in the Budget decision, under the basic pattern established in 1987. In the Budget decision for that year the Governing Board [IEA/GB(86)45, Item 2(j)(vi)]

> (vi) authorized the Executive Director, until such time as the Board should reach a different decision, to continue recruitment of personnel "project staff" under the same conditions of employment as permanent staff for a limited period to carry out specific projects related to the Agency's Programme of Work, which appointments should not exceed the duration of the respective activities. The Executive Director will inform the Budget Committee or its open-ended Working Group of developments in this area.

Although on one occasion a Project Staff member was specifically authorized by the Board for an identified project (a special advisor for three years to work on certain environment related projects), the Board has given a continuing authorization in general terms, stating that the Board "carried forward its previous authorizations to the Executive Director, until such time as the Board shall reach a different decision, with respect to the recruitment of Project staff" [See e.g. IEA/GB(92)53, Item 6(o)]. Pursuant to such authorizations Project Staff have served in many of the units of the Secretariat, each appointed in the same fashion and with generally the same terms and conditions as other Staff, but only for a fixed term, often for one or two years. This process has permitted a flexible approach to shorter term Staff needs, while providing Staff Member status to the individual when that status is indicated. In other cases, often for highly specialized shorter-term projects for which Staff Member appointment as Project Staff would not be necessary, the appointment of consultants may be made, and this has become a regular and indispensable procedure for the Agency (they are appointed under the OECD Regulations, Rules and Instructions for Council Experts and Consultants).

Project Staff and consultants have been appointed in most sectors of the Agency's responsibilities. In 1994 for example Project Staff and consultants were engaged in work on specialized issues in energy and the environment, energy supply and demand technical analysis, jobs and energy, efficiency and environment, energy diversification and security, the coal information system, oil markets, IEA institutional history, non-OECD energy data, energy technology collaboration, certain technology priorities, market deployment of new technologies, technology outreach to non-Member countries, technologies for energy end-use efficiency, energy analysis related to non-Member countries and regional integration. In each year's Budget documents, the Secretariat lists the principal projects which are expected to be carried out during the year by Project Staff and consultants [For 1994, for example, see IEA/GB(93)63, Attachment B, p. 21].

As a result of the administrative arrangements made between the IEA and the OECD, the Agency has not been required to build up an extensive logistical Staff of its own. OECD Staff provide the Agency with support for routine aspects of publications, personnel administration, financial affairs, conference services, document reproduction and distribution, translation and interpretation, purchasing, building administration and mail. Although the key elements closest to IEA policy on those logistical functions are managed within the IEA, the bulk of the routine functions are carried out by OECD rather than IEA personnel.

C. Relation to the OECD

The administrative integration of the IEA Secretariat into the OECD was one of the principal reasons for the decision of the founders to lodge the Agency in the OECD as an autonomous Agency [See Chapter II, Section B-2 above]. That was one of the arrangements which enabled the Agency to commence operations immediately without the relatively slow start-up that would have ensued from the need to create all the Secretariat support services from point zero, as would have been the case if the alternative of a wholly separate and independent Agency had been adopted. Subject to the Governing Board's override responsibility, the IEA Staff accordingly became members of the OECD Secretariat from the outset, and those who transferred directly from the OECD were immediately set in place with all the necessary administrative elements already arranged.

On the OECD side the formal action for these arrangements was contained in the Council Decision which provides in Article 7 that

Article 7

(a) The organs of the Agency shall be assisted by an Executive Director and such staff as is necessary who shall form part of the Secretariat of the Organisation and who shall, in performing their duties under the International Energy Program, be responsible to and report to the organs of the Agency.

(b) The Executive Director shall be appointed by the Governing Board on the proposal or with the concurrence of the Secretary-General.

(c) Consultants to the Agency may be appointed for a period exceeding that provided in Regulation 2(b) of the Regulations and Rules for Council Experts and Consultants of the Organisation.

As a consequence, all IEA Staff have been appointed administratively as OECD Staff Members and in accordance largely with established OECD procedures and terms of employment, although the principal assessment of the qualifications and suitability of all IEA Staff candidates rests with the Agency. The Agency fixes the job description with technical advisory assistance from the OECD, performs the substantive interviewing and makes the formal proposal. OECD personnel appointment review procedures are followed as a normal safeguard, for the IEA did not wish to

duplicate them. Upon the completion of these procedures, the OECD Staff appointment follows in due course.

Under their OECD appointments, the IEA Staff are subject to the OECD Staff Regulations, Rules and Instructions, as are OECD Staff serving in other sectors. IEA Staff are thus bound by OECD duties of impartiality and independence. Under Regulation 2 a), "The duties of officials of the Organisation are international in character"; under 2 b), "Officials shall neither seek nor accept instructions from any of the Members of the Organisation or from any Government or authority external to the Organisation"; and under 2 c), "Officials shall carry out their duties and regulate their conduct bearing always in mind the interests of the Organisation". The governing provisions also treat comprehensively and systematically such matters as Staff loyalty, rights of association, discretion and intellectual property, privileges, immunities and protection, appointment, posting and termination, salaries, allowances and benefits and general employment conditions and procedures. As OECD Staff Members, IEA personnel are covered by the privileges and immunities applicable in accordance with the legal texts. In utilizing the OECD personnel system in the foregoing fashion, the Agency was saved the burden of developing a separate and largely parallel system. The OECD personnel system, together with other support services, was offered ready-made to the Agency during its start-up period. In turn the Agency was able to offer the OECD enhanced Secretariat service in place of the Organisation's previous general energy work, under arrangements which led almost immediately after the Agency was established to the creation of the "Combined Energy Staff". IEA and general OECD energy Secretariat work has been successfully organized under those arrangements to the present day (recent changes in financing the Combined Energy Staff are described in following Section).

D. Combined Energy Staff

1. Establishment

When the Agency was founded in 1974 the relations between the IEA and the OECD were carefully considered and arranged as described in Chapter IV, Section C above. Effective programme and financing autonomy of the IEA was a prime concern of the founders, and that was achieved. The OECD Secretary-General (as well as the IEA founders) were also concerned

about energy work continuing in the OECD because only sixteen of the twenty-four OECD Members were initially Members of the IEA, and the continuation of OECD energy work for the other eight countries, including France, was essential. That work was to be carried out mainly in the new Committee for Energy Policy which was established with that function in mind [See Section D-2 below], but substantial Staff support had to be dedicated broadly in one fashion or another for OECD energy work to be carried out efficiently and without duplication.

There were essentially two alternative solutions to the problem of continuing energy work in the OECD once the autonomous IEA was established. The first was to maintain a separate OECD energy Staff, in addition to the IEA Staff which was expected to grow rapidly in numbers and expertise. The second was to integrate the two into a single "Combined Energy Staff". The latter solution was recommended by the IEA Secretariat to the Governing Board at its first meeting on 18 November 1974 [IEA/GB(74)6, Annex I, paragraphs 5 and 8] which decided to return to this subject at its next meeting held in the following month [IEA/GB(74)9(1st Revision), Item 9(b)]. At the second meeting, when the Board had the IEA Budget Committee's favorable recommendation on the Combined Energy Staff proposal [IEA/BC(74)1, paragraph 3], the Board formally approved the concept of a Combined Energy Staff and transmitted it to the OECD Council for adoption as part of the Agency's 1975 Budget proposal [IEA/GB(74)11(1st Revision), Item 5(b)].

The rationale for the Combined Energy Staff proposal showed benefits both for OECD Members and IEA Members. It provided a greater amount of Secretariat energy expertise to all OECD Member countries, at no additional expense under Part I of the OECD Budget, and it met the needs of the Agency, by combining the permanent Staff posts then allocated to the OECD Energy Directorate under Part I of the OECD Budget with posts to be created under Part II of the Budget by the IEA. For both the OECD and IEA unnecessary duplication of staffing was avoided. The Combined Energy Staff was thus a concept of merger of the old (the OECD energy staff), with the new (the additional staff which would have to be engaged to perform the new IEA Secretariat functions). They would both be merged into the Combined Energy Staff under the responsibility of the IEA Executive Director.

The number of posts to be financed under Part I worked out to be thirty-nine. That financing was arranged in the 1975 Budget and was standardized in the 1976 IEA draft Budget document with this statement [IEA/GB(75)83, Annex III, pp. 39-40]:

> As in 1975, it is proposed that the 1976 Budget for the International Energy Agency, including the costs of the Combined Energy Staff, be approved in its entirety, and that Member countries of the Organisation be invited, as for the 1975 Budget, to finance under Part I of the Budget of the Organisation an amount corresponding to the emoluments for 39 permanent staff positions; the actual amount to be financed under Part II of the Budget of the Organisation to equal the excess of the total Agency Budget over the amount financed under Part I.

This financing arrangement was followed each year afterwards without difficulty until questions about its suitability arose in 1992 when Finland and France joined the Agency, leaving Iceland as the only OECD country not a Member of the IEA. By that time the basis of calculation of Part I and Part II contributions for IEA on the historical basis was almost identical and the costs to all Members were becoming almost the same whether they were maintained in the old pattern or were all merged into the IEA Budget under Part II. In the course of the OECD Auditors' examination of IEA finances for 1991, questions about the continuing soundness of the foregoing financing were raised with the Agency [Enquiry Berthe/IEA Executive Director CC 92/07, 22 June 1992] and later in the Auditors Report [See IEA/BC(92)6]. The Executive Director's reply of 17 July 1992 to the Auditors [IEA/ED(92)123], prepared in consultation with the OECD Budget and Finance Directorate, noted that for this financing arrangement the relevant ". . . policy decision does not lend itself to orthodox budgetary analysis". Citing the governing legal texts, the reply concluded: "Thus, a decision to modify the level of financing of a portion of the Agency's Budget under Part I would have to be taken by the IEA Governing Board and proposed to the Council for adoption at the appropriate time".

Considerations which tended to favor the merger of Part I funding into Part II included the following [See Memorandum Bamberger/Steeg, 1 October 1992 and Annex]:

- With France now an IEA Member, there seemed to be little reason to maintain Part I, especially with the inactivity of the Committee for Energy Policy (which presumably would be allowed to terminate upon the expiration of its mandate on 28 April 1995 or could be terminated earlier if that should be desired) and the OECD Secretariat proposals to abrogate all the remaining Council Decisions dealing

with energy questions; with these actions in place all OECD work on energy (other than the Nuclear Energy Agency (NEA) work) would fall squarely and exclusively on the IEA, and this would need to be recognized as such in the IEA Part II Budget.

- With the decline in Part I funding as a percentage of the total funding for the Agency over the years and the increase in IEA membership to all but one OECD Member, the level of the Part I contribution could be viewed as excessive.
- The funding merger would end the anomaly of continuing Part I on thirty-nine posts which had little or no bearing on the situation of the Agency and its relation to the OECD, and it would end the administrative effort required to develop and operate two separate funding systems each year.
- By the removal of the Part I contribution, the IEA would have the political advantage of being further protected against dependency on OECD procedures; no part of IEA funding would remain subject even to a theoretical veto in the Council (as minimal a risk as that might be).
- There would not seem to be any anomaly in the financial consequences of the merger, for none of the Members would pay more or less than before (except for the slight increases to make up the loss of the small contribution from Iceland).

One possible disadvantage of the merger could not be ignored. If there should be in the future new OECD Members which do not join the IEA, the problem of these countries paying a fair share could arise again; however, the thirty-nine post scenario would certainly seem anomalous to these countries, and if partial funding under Part I should become necessary, a new basis of calculation would have to be developed in any case.

On balance the case for making the change seemed stronger than the case for the traditional approach. In June 1993 the Secretariat distributed an IEA Budget Committee document [IEA/BC(93)6], concluding on the basis of further analysis of this question that "The situation to which the Part I energy funding was addressed has essentially ceased to exist" [at p. 2] and noting the intention of the Secretary-General in the OECD 1994 Programme of Work and Budget to eliminate the Part I funding of the thirty-nine posts. The Secretariat invited the Committee to recommend to the Board for 1994 and subsequent years to finance the IEA Budget in its entirety by Part II "subject to a parallel decision of the OECD" and to consider whether the mandate of the Committee for Energy Policy "should be terminated or allowed to expire" [at p. 3]. The Budget Committee gave

a favourable response [IEA/BC(93)7, Item 2(v)], on which the Governing Board in turn acted at its October 1993 meeting, in agreeing

> that the Budget of the International Energy Agency in 1994 and subsequent years will be financed in its entirety under Part II of the Budget of the Organisation, subject to a parallel decision of the OECD [IEA/GB(93)57, Item 3(b)].

That decision was given effect in the Governing Board's decision on the 1994 Budget [IEA/GB(93)65, Item 2(f); IEA/GB(93)63, Attachment B and Corrigendum], and the Agency's 1994 Budget was adopted without provision for the Part I contribution from the OECD. The financing of the Agency's entire Budget was provided under its own Part II Budget.

2. Services to the OECD

In 1974-1975 the Combined Energy Staff, in addition to its Agency functions, took responsibility for all of the general energy policy and statistical support services previously carried out by the energy Staff of the OECD. The OECD general energy Staff was brought into the Combined Energy Staff, leaving the OECD without support Staff in the general energy field except for the Nuclear Energy Agency Staff which was not directly affected by the transfers. As part of the overall arrangements, the Combined Energy Staff fulfilled the general energy functions which had previously been carried out under the authority of the Secretary-General but which now came within the responsibility of the IEA Executive Director as head of the Combined Energy Staff. The integration of the former OECD energy personnel and the newly recruited IEA personnel into a single Staff was made without any distinction between the two groups of individuals. No member of the Staff was assigned to work particularly on OECD matters or IEA matters, and no member of the Staff was identified as assigned to one of the thirty-nine Combined Energy Staff posts financed overall by the OECD by means of Part I of the OECD Budget. This arrangement was thus fully successful from the standpoint of personnel management. Consequently, when the thirty-nine post arrangement was abolished in the 1994 IEA Budget, there was no perceptible change in the working arrangements and individual outlooks of the members of the Combined Energy Staff.

The Combined Energy Staff from the outset has provided a variety of functions for OECD in the energy field, and continues in 1994 to do so. The Executive Director, with support from the Deputy, has served the

OECD as the Co-ordinator of Energy Policies for the Organisation as a whole. In that capacity the Executive Director regularly advises the Secretary-General, as well as the Council, the Executive Committee in Special Session and other bodies of OECD, on energy policy and related questions. For Ministerial Level meetings of the Council the Executive Director provides draft Communiqué language and general background on energy policy. Energy policy and technical advice have been provided by the Staff, as appropriate, to all parts of the OECD Secretariat, and particularly to the Economics and Environment Directorates, the Nuclear Energy Agency and the Centre for European Economies in Transition. The Combined Energy Staff took over the OECD Energy Statistics publications which then appeared under the following new titles: *Energy Statistics of OECD Countries, Annual Oil and Gas Statistics, Quarterly Oil Statistics* and *Electricity Supply Industry* (the latter was last published in 1978, and re-started in 1992 as *Electricity Information*).

The Combined Energy Staff has also provided general Secretariat services for the OECD Committee on Energy Policy, created by the Council on 29 April 1975 [The mandate is set forth in C(76)91(Final)]. This Committee was created to absorb the functions of the former OECD Energy Committee, the Oil Committee and its High-Level Group, and to provide an OECD-wide forum on "all energy resources" not only for Members of the IEA, but in particular for the eight OECD Members which did not participate in the Agency at the outset, the number which is now reduced to one (Iceland). The Committee was mandated as well to "promote the co-operation of Member countries in the field of energy policy", "undertake regular reviews of the longer-term prospects of the energy markets of the world", "review the energy situation in its national and international aspects", and "undertake the responsibilities of the former Oil Committee under the Recommendation of the Council of 29th June, 1971, on Oil Stockpiling and the Decision of the Council of 14th November, 1972, on Emergency Plans and Measures and Apportionment of Oil Supplies in an Emergency in the OECD European Area". The Committee was expected to oversee the other energy acts of the OECD which were then still in effect, for none had been abrogated by virtue of the establishment of the Agency, and indeed none was abrogated by the Council until 1992.

During its period of activity the Committee performed useful work as a forum for the non-Members of the IEA. On a number of occasions France and the other non-Members of the IEA made important presentations on energy developments in their own countries; and all were kept systematically informed by the Combined Energy Staff of the work of the

Agency and were provided with an opportunity to put questions to the Executive Director and other senior members of the Staff.

The Committee for Energy Policy met once or twice a year during its period of activity from 1975 until the early 1990s when its meetings no longer seemed necessary, thanks to the accession of Finland and France as IEA Members. As the number of OECD Members participating in the Agency increased over the years, the practical utility of the Committee diminished. It has not met at all in the period 1991-1994 to the time of this writing, but of course still exists on the books of OECD. Its mandate extends to 28 April 1995, by which time it will be necessary to review the question of extending the life of the Committee, unless the Committee should be terminated at an earlier date [See the Budget Committee's recommendation that this be considered [IEA/BC(93)7, Item 2(v)].

In the summer of 1992, the OECD Secretariat undertook a review of possibly obsolete Council Acts in order to consider which ones might be retained for inclusion in a collection of viable Acts and which ones might be abrogated as obsolete. The Combined Energy Staff was requested to review the historic energy Acts dating as far back as 1962, including the Oil Apportionment Decision, the Oil Stockpiling Recommendation mentioned in the Energy Policy Committee mandate described above, and seven other Council acts dealing with a variety of energy subjects. The Staff analyzed each of those Acts and recommended that they could all be abrogated as supplanted by IEA instruments, as outdated or as unnecessary. The Staff recommendations [Set forth in IEA/GB/RD(92)125.3] were noted by the Governing Board on 15 September 1992 [See IEA/GB(92)36, Item 6(b)]. The Council Acts in question were then abrogated by the Council on 10 November 1992. As a result of this action, the only remaining substantive energy actions of the OECD Council were those pertaining to the Nuclear Energy Agency. All other general energy legislation was then gathered under the responsibility of the IEA, and the corresponding Secretariat work was concentrated in the Combined Energy Staff under the leadership of the Executive Director.

E. The Executive Director

1. Functions

The constituent instruments of most international organizations make only a few specific references to the functions of the executive head. Most of the

principal functions of that office are "inherent powers" derived by inference from the designation of the executive head, whose title may be "Executive Director" (as for the IEA), "Secretary-General" (as for the U.N. and the OECD) or "Director General" (as for the General Agreement on Tariffs and Trade (GATT) and many U.N. Specialized Agencies). This is also the case of the IEA, for which no specific definition of the Executive Director's functions is found in the formal texts.

There was no attempt in either the I.E.P. Agreement or the Council Decision to define the functions of the Executive Director, but the founders' intention to create a mainline public international organization executive head with broad powers in the established pattern was clear. A number of important Secretariat functions were foreseen in specific or general terms [See Sections A and B above], including those specified in the I.E.P. Agreement and those conferred by the Governing Board under Article 60, which refers not only to functions assigned to the Secretariat in the Agreement (which formally includes the Executive Director), but also to "any other function assigned to it by the Governing Board". For the Executive Director as such the only specific function detailed in the Agreement is found in Article 64.3, which states that

> The Executive Director shall, in accordance with the financial regulations adopted by the Governing Board and not later than 1st October of each year, submit to the Governing Board a draft budget including personnel requirements.

Broader functions are derived from the provision that the Executive Director is part of the "Secretariat" [Article 59.1] which has specific and general powers described above in Section B and in this Section. The principal function of the Executive Director under those provisions is to take part in the work of the Secretariat and to *direct* that work, whether it is specified in the I.E.P. Agreement or assigned to the Secretariat by the Governing Board. It hardly needs mentioning that such functions carry political as well as operational and administrative responsibilities. Surely one of the most important functions of the Executive Director is to direct the making of the Secretariat "findings" which trigger the IEA Emergency Sharing System under Articles 19.1, 20.1 and 21.1 of the I.E.P Agreement; this function is one of the most innovative features of the IEA system because it delegates unprecedented power to the Executive Director.

Overall, the Executive Director's function is to provide *leadership and direction* on energy policy, on IEA programme activities and on institutional

development and operations. Within the general mandate of the Agency, the Executive Director is directly and personally engaged, with support from others in the Secretariat, in developing energy policy initiatives on a broad range of energy problems of interest to Member countries, in advising and when necessary in mediating to help Members arrive at the most propitious policy conclusions. The Executive Director's initiatives have encompassed most of the major developments in the Agency over the years, including the refinement of the oil Emergency Sharing System and the CERM arrangements, the testing of the response systems, and the specific responses to the 1979-1980 crisis and to the Gulf Crisis in 1990-1991. The Executive Director's initiatives have also extended to a wide range of energy policy activities, involving: the encouragement of a broad *mix* of energy policies and participation in policy adjustment activities; the development of long-term energy policies, the energy country reviews in IEA, the use of coal, natural gas and nuclear as well as non-conventional sources of energy, the support of energy conservation and efficiency, of R & D policies and co-operative arrangements, of energy and the environment; and participation in the Agency's work on oil markets, on energy publications, information systems and services. Currently the Executive Director is personally engaged as well in policy initiatives being drawn from the 1993 Ministerial meeting of the Governing Board and from the 1992 reassessment of world energy conditions and of the future role of IEA in the new energy environment. These initiatives cover the entire range of IEA activities; in the early 1990s they have placed renewed emphasis on energy and the environment and on relations with non-Member countries, particularly those in Central and Eastern Europe, Asia and Latin America.

These efforts merge with the Executive Director's function of providing programme leadership, which involves the transformation of policy concepts into detailed activities of the Agency, its organs and the Secretariat to bring about the realization of the policy objectives. The Executive Director's work is heavily committed to those transformations, to formulating them in a coherent, realistic and politically acceptable fashion. The result of this process each year is the establishment of the draft Programme of Work of the Agency which contains the systematic description of those activities and indicates the estimated Staff resource levels as well as the corresponding budgetary requirements [See Chapter VII, Section B below]. This part of the Executive Director's functions responds to the Article 64.3 text quoted above. When approved by the Governing Board, the Programmes of Work contain the Board's instructions concerning the work to be performed by the Secretariat under the

responsibility of the Executive Director in the course of the year, and the Budgets contain the corresponding authorizations for the receipt and expenditure of income of the Agency and for related financial and personnel arrangements for the same period.

The Executive Director provides institutional leadership both within the Agency and to the outside world. Part of that function is to develop and maintain effective relations with Member governments, with their Ministers responsible for energy, with Governing Board members, with Delegations in Paris and with high level administration and legislative authorities in capitals. This directly engages the Executive Director in diplomatic work on sensitive issues with these public authorities. Another part of the Executive Director's institutional leadership is the cultivation of appropriate relations with energy industry representatives, particularly in the petroleum and coal sectors which are represented in IEA industry consultative bodies [See Chapter V, Section A-17(d) and (e) above], and with high officials of the OECD and other international organizations active in areas of IEA interest.

Those representational functions are complemented by the Executive Director's public relations functions, principally the presentation of IEA policies, views, and developments to a wider audience by means of public appearances. The Executive Director regularly participates in press interviews and conferences on television and radio, as well as in energy conferences and other events sponsored by the Agency or convened under the auspices of other institutions active in the energy field. The Executive Director regularly visits Member countries for public relations purposes. Such public appearances provide opportunities to promote a better understanding of the IEA and of the policies pursued and endorsed by Member countries. The Executive Director has come to embody the Agency overall, to be its principal and most authoritative spokesperson, and to be recognized as one of the leading world authorities on international co-operation in the field of energy. The Executive Director's leadership has consequently had a significant impact on the development of energy policies both in Member countries as well as in the Agency itself.

The internal management and operation of the Agency also falls within the Executive Director's principal responsibilities. This includes daily management functions, and the making of those personnel policy and hiring decisions which in the end determine the composition of the Secretariat and the quality of its work. Responsibility extends as well to the organization of IEA meetings and conferences, to the preparation of agendas and meeting documents, to the assistance to Delegations in the

course of meetings, to the provision of advice and to the co-ordination of the work of the various Standing Groups and Committees and Offices of the Secretariat. The Executive Director also serves as the official depositary of the IEA R & D Implementing Agreements (upon designation in each Agreement by the Contracting Parties) and carries out for those Agreements the depositary functions provided in Article 77 of the Vienna Convention on the Law of Treaties. The Executive Director is thus responsible for the Secretariat functions which are associated generally with international organizations, except that most of the routine personnel, finance and other general service functions for the IEA are carried out by the OECD Secretariat on behalf of the IEA and not by the IEA Secretariat itself.

From time to time the Governing Board also confers upon the Executive Director specific tasks which complement the functions provided in the I.E.P. Agreement and the "inherent" functions of the office. Some particular functions assigned to the Executive Director have been the following:

- In the 1990-1991 Gulf Crisis, preparation for Governing Board actions, including monitoring and preparation of steps and instruments for implementation of co-ordinated measures [IEA/GB(90)27, Annex, paragraph (c)]; and the dissemination to the public of information on the oil market developments "in order to improve the understanding of the oil supply and demand situation, thereby reducing public apprehension and misunderstanding" [IEA/GB(90)39, Item 2(c)].
- In the 1990-1991 Gulf Crisis, the responsibility for activating the Co-ordinated Energy Emergency Response Contingency Plan, committing Member countries through a combination of stockdraw, demand restraint and other measures to make available to the market 2.5 million barrels of oil per day [IEA/GB(91)1, Annex, paragraph (c)]; (the Executive Director did in fact activate that plan on 17 January 1991; on 28 January 1991 the Board continued the plan in effect and requested the Secretariat and two Standing Groups to "continue to monitor closely the oil market situation and the implementation of the contingency plan" [IEA/GB(91)3, Annex paragraphs (a) and (d)]; the Board terminated the plan on 6 March 1991 [IEA/GB(91)19, Item 3(d)].
- In the event of an oil supply disruption, the responsibility for initiating consultations among Member countries and for activation of the submission of Questionnaires A and B for the receipt and use of oil emergency data [Decision on Preparation for Future Supply

Disruptions, IEA/GB(81)86, Annex I]; (the Executive Director activated the Questionnaires at the outset of the Gulf Crisis in 1990 [IEA/GB(90)24, Annex paragraph (g)].

- In 1981, the Chairmanship of the High Level Ad Hoc Group on New IEA Actions [IEA/GB(81)10, Item 5].
- On the occasion of each request for membership in the IEA, responsibility for examining the terms and conditions of membership in the Agency with governments which had expressed interest in joining the IEA (two recent examples are France [IEA/GB(90)27, Item 5] and Finland [IEA/GB(90)32, Item 4]; that responsibility was also carried out in the earlier membership exercises).
- In 1992, providing the Governing Board with "a paper with conceptual and procedural propositions for participation by non-Member countries in the activities of the Agency" [IEA/GB(92)17, Item 3(b)].
- The authority to publish documents under the authority of the Executive Director at the expense of the Agency [See recent examples IEA/GB(92)17, Item 6(a)(ii); IEA/GB(89)54, Item 4(a)].
- The engagement, on behalf of the Agency, in various diplomatic and programme activities with a number of non-Member countries [See for example IEA/GB(91)79, Item 5].
- In 1991, providing the Board with a paper containing a suggestion as to how the IEA and the OECD might provide institutional support to the European Energy Charter; [See IEA/GB(91)65, Item 4(c)].
- On the occasion of each Ministerial Level meeting of the Governing Board, preparation and revision of policy documents for the meetings of the Governing Board [See for example IEA/GB(93)26, Items 4-7 and IEA/GB(93)35, Items 3 and 4].

The importance of the Executive Director's daily contribution to the overall effectiveness and standing of the IEA cannot be overestimated.

2. Appointment

There are two formal texts which contain the rules for the Executive Director's appointment, the I.E.P. Agreement and the OECD Council Decision. Article 59.2 of the I.E.P. Agreement provides simply that

> The Executive Director shall be appointed by the Governing Board.

The OECD Council Decision provides additional guidance in the following terms of Article 7(b):

> The Executive Director shall be appointed by the Governing Board on the proposal or with concurrence of the Secretary-General.

The OECD Council formulation was used in the appointments both of Dr. Ulf Lantzke at the first meeting of the Governing Board on 18 November 1974 [IEA/GB(74)9(1st Revision), Item 2] upon the proposal of the Secretary-General, and of Mrs. Helga Steeg on 15 May 1984 [IEA/GB(84)16, Item 3(a)], upon the proposal of the Chairman of the Governing Board and with the concurrence of the Secretary-General. In the interim between the departure of Dr. Lantzke and the arrival of Mrs. Steeg, the functions of the Executive Director were carried out by the Deputy, J. Wallace Hopkins, "on an Acting basis" [IEA/GB(84)15, Item 2(d); IEA/GB(84)16, Item 3(d)] which did not constitute a formal appointment as Executive Director (for that, the participation of the Secretary-General would have been required under Article 7 of the Council Decision quoted above).

In the case of Dr. Lantzke, the appointment was made with immediate effect, and he accordingly entered officially upon his duties in the course of the meeting in which he was appointed. Since Mrs. Steeg was not immediately available at the time of her appointment to take up her duties in Paris, the Board decided that "The date on which Frau Steeg will take up her duties remains to be decided in discussions between her and the Chairman of the Governing Board" [IEA/GB(84)16, Item 3(a)]. The date she and the Chairman decided upon was 1 July 1984. By letter dated 15 June, the Secretary-General confirmed her appointment as Co-ordinator of Energy Policies for the Organisation as a whole. She was welcomed as Executive Director by the Governing Board at its next meeting on 11 July 1984 [IEA/GB(84)27, Item 1(b)].

The procedures for developing proposals concerning candidates for the Executive Director post were different in the two cases. Dr. Lantzke had been a member of the German Delegation to the ECG which negotiated the I.E.P. Agreement during 1974. In the course of the ECG period he was appointed Special Counsellor to the OECD Secretary-General on Energy Questions and Director of the Energy Directorate of the Organisation. Thereafter he represented the OECD in the ECG in that capacity. Therefore during the consultations on the appointment of the first Executive Director,

Dr. Lantzke was exceptionally well-known personally as a leading and experienced energy specialist (1) to the ECG delegations in Brussels and (2) to the Governing Board members who were drawn in significant numbers from the ECG. In that process observers soon took it for granted that Dr. Lantzke would be appointed Executive Director.

In the spring of 1984, when Dr. Lantzke approached the time when he wished to relinquish his responsibilities as Executive Director, the Governing Board Chairman, Alan Woods of Australia, began an extensive process of consultation to find the best possible successor. In view of the geographical distances involved, Chairman Woods invited Dr. Lantzke to assist him in the consultations. Dr. Lantzke and the Chairman agreed that the consultations would be guided by the following considerations:

> identification of possible individuals based on qualifications and experience, availability for potential draft and likelihood of consensus being reached on the person in question.

A number of highly qualified persons were considered for appointment. Following extensive interviews and consultations with the governments of all IEA Member countries as well as with the Commission of the European Communities, in the Chairman's view one person emerged as best meeting the criteria summarized above. The Chairman expressed confidence that this person would bring to her work the standing and experience in international affairs which are necessary for acceptance as head of the Secretariat and that her competence would be recognized by the international energy community. The Chairman accordingly proposed the appointment of Mrs. Helga Steeg of Germany as Executive Director, and she was promptly appointed on 15 May 1984 at a special meeting of the Governing Board convened for that purpose. [See Dr. Lantzke's report to the Governing Board (OLC File, Governing Board Meeting, 15 May 1984); trade press coverage of the foregoing process includes Platt's Oilgram News issues dated 27 December 1983 and 27 January, 22 February, 8 March, 15 March, 4 April, 6 April and 16 May 1984].

3. Voting Rule for Appointments

Although the Governing Board has not found it necessary to discuss the applicable voting rule for decisions appointing the Executive Director (because the decisions in the cases of both Dr. Lantzke and Mrs. Steeg were made by consensus), it is clear that under the I.E.P. Agreement the required vote is an IEP "majority" as provided in Article 62.3, i.e. the affirmative

vote of at least half of the Members voting, with at least 60 per cent of the "combined voting weights" (CVW) [See Chapter V, Section A-13 above]. This conclusion derives from I.E.P. Article 59.1 which provides for the "Secretariat" to be composed of the Executive Director and the Staff, together with Article 59.4 which states broadly that:

> The Governing Board, *acting by majority*, shall take all decisions necessary for the establishment and the functioning of the Secretariat [Emphasis added].

Voting on the appointment of the Executive Director could also be characterized as a "management" question under I.E.P. Agreement Article 61.1(a) which provides for such decisions to be decided "by majority". If questions of formal voting should arise on the appointment of the Executive Director, the decisions are clearly to be taken pursuant not to the OECD rule requiring unanimity, but to the IEA rule of majority voting as set forth in the I.E.P. Agreement, and they would nevertheless be expected to be taken by consensus in accordance with the tradition of the Governing Board.

4. Term of Office

There is no specific provision in either the I.E.P. Agreement or the Council Decision fixing the Executive Director's term of office or providing for the term to be fixed. Nor does the Governing Board's policy concerning "in principle" the normal three year duration of staff appointments apply to the Executive Director [See Section G below]. The term of office thus remains within the discretion of the Governing Board, to be determined either in the appointment decisions at the outset or in separate decisions which could be taken at any time in the course of the Executive Director's period of service [this derives from general powers on personnel questions contained in Article 59.4 of the I.E.P. Agreement]. Since an Executive Director appointed without a fixed term of office may be replaced at any time by the Governing Board's appointment of a replacement Executive Director, the term of office may be characterized as "at the pleasure of the Governing Board", and that characterization was made informally by Chairman Davignon at the time of Dr. Lantzke's appointment when the Chairman declined to submit a fixed period term of office proposal (for three years) to the Board. The appointment decision as adopted is silent as to the term of office. Like Dr. Lantzke, Mrs. Steeg serves at the pleasure of the Governing Board under the same type of appointment.

On only one occasion has the Board taken a decision to terminate the functions of a person exercising the responsibilities of the executive head of the Agency, and that was done in connection with the appointment of Mrs. Steeg on 15 May 1984, when the Governing Board concluded that "Until Frau Steeg takes up her duties, Mr. J. Wallace Hopkins will continue to carry out the responsibilities of the Executive Director on an Acting Basis" [IEA/GB(84)16, Item 3(d)]. This formulation provided for the termination of Mr. Hopkins' service in that capacity when Mrs. Steeg would later join the Agency on 1 July 1984. Of course her appointment would have had that formal effect even if the decision had not provided so specifically.

The Executive Director's term of office is also subject to the right of the serving Executive Director to submit a letter of resignation at any time to the Governing Board, although again no specific provision is made on that subject in the two IEA formal texts. Dr. Lantzke exercised the right of resignation in his letter of 27 March 1984 [IEA/ED/84.68] addressed to Governing Board Chairman Alan Woods:

> As we have discussed, I hereby resign as Executive Director of the International Energy Agency, effective 31 March, 1984.

In its meeting on 28 March 1984, the Governing Board in turn accepted Dr. Lantzke's resignation as set forth in that letter. In doing so the Board also "expressed its deep gratitude to Dr. Lantzke for his excellent work as Executive Director since the International Energy Agency was founded in 1974", and "agreed that the Deputy Executive Director, Mr. J. Wallace Hopkins take over the Executive Director's functions on an Acting basis" [IEA/GB(84)15, Item 2(d)].

The Executive Director serves the IEA indefinitely until resignation, replacement or other decision of the Governing Board, although the Executive Director also serves the OECD under separate arrangements which may include different durations. It will be recalled that the two Executive Directors who have served the IEA to date have also served the OECD as Co-ordinator of Energy Policies for the Organisation as a whole (for Dr. Lantzke this position was initially called Special Counsellor to the Secretary-General on Energy Questions and it was set for a renewable fixed period of two years). The Secretary-General's appointment of Mrs. Steeg as Co-ordinator of Energy Policies for the Organisation as a whole was made without reference to a period of time, and she thus serves for an indefinite period [See letter van Lennup/Steeg, 15 June 1984]. However, these OECD appointments are made quite independently of the Governing Board which retains for the IEA full control over the term of office of the incumbent Executive Director.

5. Conditions of Service

In arrangement with the Secretary-General, the Executive Director's rank in the OECD is equivalent to that of Deputy Secretary-General of the Organisation, with terms and conditions of appointment corresponding to that rank [confirmed by letter van Lennup/Lantzke, 17 July 1979, copy in IEA Legal Counsel file]. On 28 July 1975, the Governing Board fixed the Executive Director's salary, allowances and benefits, with reference to those applicable to Deputy Secretaries-General of the OECD, and it allocated the costs one-third to the OECD under Part I of the Budget and two-thirds to the IEA under Part II of the OECD Budget (but beginning with the 1994 Budget none of the IEA funding appears in Part I). These provisions were adopted in detailed terms in a Confidential Annex to the Conclusions of the Governing Board for its meeting of that date. The Secretary-General concurred in those arrangements. Copies of the Confidential Annex were not distributed to Members, but were retained in the Office of the IEA Legal Counsel where they were made available to interested Delegations on request. No action of the OECD Council was necessary, and there was no need to modify any of the OECD's legislative texts to bring about these results.

In the case of Mrs. Steeg, essentially the same procedures were adopted in 1984; her compensation package corresponding to that of her predecessor, with the addition of representational assistance for housing costs. This decision of the Governing Board was, like the 1975 decision for Dr. Lantzke, attached as a Confidential Annex to the Conclusions of the Governing Board meeting, in this case the meeting of 15 May 1984. Again the Confidential Annex was held and made available to Delegations only upon request. Since that time the Confidential Annex has been amended only to bring the representational allowance level into line with current requirements [See Note Scott/Head of Personnel, 9 April 1986, OLC EXD File].

F. The Deputy Executive Director

1. Functions

The functions of the Deputy Executive Director, like those of the Executive Director, were not defined explicitly in the formal texts which established the Agency. Both the creation of the Deputy Executive Director post and the definition of the Deputy's functions were undertaken directly by the

Governing Board. Serving naturally as the number two official of the Agency, the Deputy acts in the place of the Executive Director during periods of absence and assists the Executive Director in all of the functions of that office. The Deputy has responsibilities for the day-to-day management of the Secretariat (the Combined Energy Staff) and at times has served additionally as the director specifically in charge of particular Offices of the Agency. In assisting the Executive Director, the Deputy provides support in all the sectors of the Executive Director's responsibilities [See Section E-1 above] and also undertakes particular functions and missions as requested. Those particular tasks have included taking the lead in the preparation of policy documents for the Ministerial meetings of the Governing Board, in the preparation of the draft Programmes of Work and Budgets of the Agency, in the representation of the Agency at international conferences on energy and the environment and in the development and execution of the Agency's policies and programmes for the countries of Central and Eastern Europe.

One of the most far-reaching functions of the Deputy is, upon the decision of the Governing Board, to carry out the functions of the Executive Director when the Executive Director is departing, and until a successor can be appointed. This occurred in the case of Dr. Lantzke's departure, when the Board "agreed that the Deputy Executive Director, Mr. J. Wallace Hopkins, take over the Executive Director's functions on an Acting Basis" [IEA/GB(84)15, Item 2(d); IEA/GB(84)16, Item 3(d)]. Mr. Hopkins did so until Mrs. Steeg took up her duties on 1 July 1984.

2. Appointment

Although the I.E.P. Agreement and the Council Decision establish the procedures for appointing the Executive Director [See Section E-2 above], there is no specific provision for procedures to govern the appointment of the Deputy. Since Article 59.4 does provide that "The Governing Board, acting by majority, shall take all decisions necessary for the establishment and the functioning of the Secretariat", the Board itself could take the decision to appoint the Deputy and fix the term of office and other conditions of service, but that was not done in the case of either of the two officers who have held the Deputy post to date, although the decisions on the creation and continuation of the post itself were taken by the Governing Board in the annual budget decisions process.

The appointment procedures for the Deputy Executive Director have evolved as a function of the change in status of the post from an OECD

"classified" post (Grade A-7) at the outset of the Agency in 1974, to a more senior "unclassified" post in 1980. The appointment of J. Wallace Hopkins as the first Deputy on 15 January 1975 was made by the Secretary-General upon the recommendation of the Executive Director, and in accordance with normal OECD procedures. In OECD terms that post carried the OECD designation of "Director", although Mr. Hopkins' official title was Deputy Executive Director of the IEA.

In February 1980 Mr. Hopkins' appointment status was changed to reflect the growth in the responsibilities of his post. Acting after the Executive Director had consulted extensively both with Delegations and with Governing Board members and upon the Executive Director's own recommendation, the Secretary-General decided that the Deputy Executive Director in office (Mr. Hopkins) would "act in that capacity in respect of the co-ordination of energy policies of the Organisation as well as in respect of the Agency". On 18-19 February 1980 the Governing Board noted the Secretary-General's action and noted that the Governing Board Chairman and the Executive Director would contact the Secretary-General concerning the details of that decision. The Board also noted the approximate increase in costs of the decision and accepted the budgetary implications [See Confidential Annex to the Governing Board's Conclusions for that meeting, IEA/GB(80)19]. Those contacts led to the Secretary-General's decision fixing the higher salary, allowances and benefits of the Deputy Executive Director at the levels that apply to the unclassified "Special Counsellors" of the Organisation, although the Deputy Executive Director's official title did not change. Thereafter the Deputy's post was carried in official documents as an "unclassified" one in IEA and OECD practice.

The procedure for appointment of Mr. John P. Ferriter as Mr. Hopkins' successor was substantially similar, but procedurally less complex, because the key relationships had been established in 1980. In October 1988, Mrs. Steeg advised the Governing Board that Mr. Hopkins had recently informed her of his intention to relinquish his responsibilities as Deputy with effect after the 1989 Ministerial meeting of the Governing Board, and that she intended to seek the most highly qualified person as his replacement. Before the December 1988 meeting of the Board, Mrs. Steeg had determined that Mr. Ferriter would best meet that requirement. On 12 December she so informed the IEA Heads of Delegation (not the Governing Board itself, which did not need to act on the proposal) and stated that she would advise Mr. Ferriter of the intention to appoint him at the appropriate time in 1989. The Secretary-General had already agreed that Mr. Ferriter would be appointed, like Mr. Hopkins, as Deputy for Co-ordination of Energy Policies

of the Organisation. Mrs. Steeg would give Mr. Ferriter a "letter of intent" about his later formal appointment so he could look after his personal affairs; it was quite clear that her intention was shared by the Heads of Delegation, and the letter of intent was dispatched on 14 December 1988. Thereafter, in March 1989, Mr. Hopkins gave his resignation with effect on 7 July, and upon Mrs. Steeg's recommendation the Secretary-General appointed Mr. Ferriter as Deputy with effect on 1 July, the slight over lap having been the subject of an informal consultation with the Governing Board.

In sum, this procedure for the appointment of the Deputy Executive Director required no action by the Governing Board, but rather the Executive Director's recommendation to the Secretary-General who in turn made the decision on the issuance of the letter of appointment. The process remains an administrative rather than a political one, and it has proceeded smoothly in the two cases that have occurred to date.

3. Term of Office

Unlike the Executive Director who serves essentially at the pleasure of the Board [See Section E-4 above], the Deputy was appointed in each case for a fixed term, always with the possibility of renewal. Both of the Deputies were initially appointed for three year terms which were renewed successively as appropriate pursuant to OECD personnel rules and practices. The right of terminating the appointment by resignation is not provided specifically in the applicable texts, but of course it is available and it was exercised by Mr. Hopkins.

4. Conditions of Service

The rank of the Deputy Executive Director in the OECD personnel system has not been specified in any formal text but it corresponds to the rank of the OECD Special Counsellor, one rank below the Deputy Secretaries-General and the Executive Director, and one rank above the Directors.

The salary, allowances and benefits concepts for the Deputy remain unchanged since they were established in 1980 (although the actual levels have of course evolved with the periodic adjustments). However, they continue to be fixed at the levels applicable to the OECD Special Counsellors.

G. Staff Policies and Conditions of Service

While the basic framework for staff appointments and conditions of service is provided by the OECD Staff Regulations, Rules and Instructions, the IEA has adopted a number of rules and practices of its own. As noted above, the Governing Board determined early in the life of the Agency that the Executive Director should seek the "high quality personnel he needs" [IEA/GB(74)9(1st Revision), Item 9(d)], and it decided "to recruit mainly government officials for the A-grade posts" on a fixed term basis for "in principle, approximately three years with necessary flexibility in duration on a case by case basis" [IEA/GB(74)11(1st Revision), Item 5(f)]. The only indefinite appointments would be those of Staff who were then holding such appointments in the OECD and who were transferring to the IEA. When no Governing Board directive has been made, the Agency follows OECD policies in this sector. OECD rules refer to giving "primary consideration to the necessity to obtain staff of the highest standards of competence and integrity" [Regulation 7 a)] and to providing, "so far as possible, for an equitable distribution of posts among the nationals of Members of the Organisation, in particular as regards senior posts" [Regulation 7 b)]. Staff are required to possess "the degree of physical fitness needed for their posts" [Regulation 7 c)]. The OECD Staff Instructions also provide that "A person shall not normally be appointed as an official unless he is a national of a Member of the Organisation and is between the ages of twenty-one and fifty-five" [Instruction 107/1]. "All posts in the Organisation shall be open equally to men and women" [Instruction 107/1.1]. OECD rules also provide for fixed term or indefinite appointments [Regulation 9 a)], with fixed term appointments not to exceed five years initially, and contain detailed rules about appointments beyond the initial period [See Regulation 9 b)].

IEA practice falls broadly within all of the foregoing rules and policies. Geographical balance within the Agency overall and within the major parts of the Secretariat has always been an important and regular consideration. Balance reflecting the scope and size of the Member's energy economy and its budgetary contributions is not overlooked, and within the limits imposed by other recruiting norms, an effort is made to have at least one Staff Member appointed from each Member country, but this is not possible at all times. An overriding consideration is always the need to have the highest level of competence. Whatever the geographical balance of the moment might be, countries under-represented one year might well be over-represented the next, so a certain degree of flexibility has been maintained.

There are no posts assigned either formally or informally to any country. Indeed, all vacant posts are open to nationals of all Members at all times.

Up to the present time, all Staff appointments in the IEA have been limited, like those in the OECD, to nationals of OECD Member countries, despite the fact that under the rules cited above, there would seem to be the possibility of appointing nationals of non-Member countries when necessary to obtain specific competencies. The accepted view has been that the Secretary-General was not authorized to recruit Staff who were nationals of non-Member countries, except by derogation granted by the Council. An exception for non-nationals of Members was made in one recent case, following the accession of several OECD non-Member countries to the European Conference of Ministers of Transport (ECMT), which the OECD assists in personnel administration. In 1993 the Secretary-General was authorized to recruit, as officials for the Secretariat of the ECMT, persons who are nationals of any Member country of that Conference. For the IEA, the Governing Board could make its own rules on such personnel policy questions as nationality of Staff, but the occasion for the Board to do so has not yet arisen. Nationals of OECD non-Member countries have at times worked in the Agency as consultants under the more flexible regime applicable to personnel in that category.

The Governing Board's preference for the appointment of government officials has been followed throughout the history of the Agency, but appointment of others has been found necessary at times. Expertise found only in the oil companies has been required for the emergency preparedness and oil market sectors of the Secretariat; persons with public utility expertise have been recruited from that industry for the Long-Term Office. Other non-governmental recruitment sources have included universities, research institutions, consulting firms and individual consultants, law firms, news organizations and other intergovernmental organizations such as the OECD, the European Communities (European Union), NATO and the IAEA. Yet at all times the majority of the IEA professional Staff has been recruited from the government departments or other units of Member governments in keeping with the Governing Board's stated preference, with the advantages of giving those governments a direct presence in the Agency and of giving the Agency a knowledgeable expertise on the IEA in administrations when those Staff Members return to their own countries. In order to make these advantages possible, secondment or detachment of government officers to the IEA has been adopted in a number of cases. Under that procedure, the Staff Member retains the right to return to his or her government employment, but works under IEA loyalty and other rules

during the period of employment with the Agency. While that procedure has been useful for the appointment of officers from Member governments, it has not been followed for Staff recruited from non-governmental sources; those Staff Members are expected to sever all employment relations with their employers before taking up their duties with the Agency.

The IEA practice with regard to the duration of appointments was initiated at the outset of the Agency's operations. A few Staff Members with indefinite appointments transferred from the OECD to the IEA. Most of them retained those appointments throughout their IEA employment, but with the passage of time their number is necessarily a diminishing one. Other newly recruited professional level Staff remain on fixed term appointments throughout their stay in the Agency, and none has received an indefinite appointment which would carry commitments of long-term employment under the applicable OECD rules. IEA policy initially was to limit professional appointments to three years under the Board's decision quoted above, but to do so with flexibility. In more recent years it has become necessary to extend this policy, particularly for senior Staff, in a few cases to as much as six or seven years. Among the objectives of this limited appointment duration policy are (1) the periodic turnover bringing fresh ideas and energy policy views as well as up-dated expertise and enthusiasm into the Agency, (2) the avoidance of an entrenched bureaucracy in the Agency, (3) the rotation of Staff out of the Agency back into their respective administrations on a regular basis, and thereby (4) enhancement of the Members' knowledge about the Agency and the increased usefulness of the Agency to its membership. This policy was not without its counter-balancing costs, however: the financial outlays for frequent Staff removal costs, the time spent by most of the new Staff in adjusting to life in a new country in most cases, and the considerable effort devoted by some during the last part of their Agency period to assure employment after departing from the Agency. While these factors have been recognized when the duration of appointment policy has been applied over the years, the policy has not been changed fundamentally since it was adopted in 1974.

Aside from the exceptions mentioned above, the terms and conditions of service of the Secretariat are largely determined by the OECD Staff system procedures, salaries, allowances and benefits which normally meet IEA requirements satisfactorily. Under OECD Staff Reg 4 b), "All rights, including title, copyright and patent rights in any work produced by an official as part of his official duties shall be vested in or assigned to the Organisation". Waivers of this rule as well as permissions for the publication of information derived from IEA work, for other publications, public acts

and statements, and for other public appearances are subject to decision of the Executive Director, under general powers conferred in Article 59 of the I.E.P. Agreement. Moreover, as OECD Staff Members, the individual Secretariat members enjoy the privileges and immunities of OECD Staff as provided in the applicable legal instruments. They include the protection necessary to guarantee the independence and political neutrality of the Secretariat: immunity from legal process for their official acts, exemption from taxation of their salary and emoluments (or comparable treatment), immunity from immigration restrictions and alien registration, exchange facilities, repatriation facilities in time of international crisis and the right to import their furniture and effects when first taking up their duties, all as provided in the Supplementary Protocol No. 1 to the OECD Convention and other instruments.

Programmes of Work, Budgets and Finance

This Chapter takes up the institutional mechanisms by which the Agency decides each year upon the particular activities it will undertake (the Programmes of Work), the appropriation of the Agency funds for carrying out those activities (the Budgets) and the sources and modalities for obtaining those funds (Finance). The Programmes of Work and Budgets represent the culmination of a year-long process of evaluation, reflection, planning and practical preparations concerning the Agency's operations foreseen for the year ahead. Quite often in this process, innovations are achieved in IEA policies, operations or structures; the importance of such innovations to the realization of IEA objectives and the continuing viability of the Agency cannot be sufficiently underscored.

The Introductory Summary Section which follows describes briefly each of the principal programme, budget and financing mechanisms together with the procedural steps leading up to final decisions.

A. Introductory Summary

While the broad programme of the Agency is set forth in the I.E.P. Agreement, and the Agreement contains considerable detail for certain sectors of that programme, such as the oil Emergency Sharing System, the oil market and the energy information systems, in most other sectors the Agreement provides more a general framework than a body of programme detail. This is particularly the case for long-term co-operation, consultation with oil companies, and international energy relations. Hence it was expressly provided in the I.E.P. Agreement that the Governing Board would adopt programme decisions to complement the Agreement within the limits of competencies conferred by the Agreement, and it was foreseen but not specifically provided that the Governing Board would decide upon specific IEA activities in annual Programmes of Work.

To a large extent, the IEA follows OECD practices in the format and presentation of the annual Programmes of Work and of the corresponding financing arrangements. The Programmes of Work typically set out elements of policy and operational context, summarize the main lines of work as well as organizational and personnel changes and describe in detail the particular activities to be undertaken during the year. The Programmes characterize each activity as "Core" ("central and indispensable") or "Other" ("all additional work") and show the estimated number of Staff months for each activity. The activity descriptions enter into considerable detail and are supported by tabular presentations showing months of effort by Staff and consultants and cross-cutting activities. Although the activities and priorities may be revised in response to changing circumstances and challenges in the course of the year, and IEA Members recognize the need for such operational flexibility, the Programmes of Work provide the best overall statement of IEA activities each year.

The draft Budgets are prepared by the Secretariat as a function of the corresponding draft Programmes of Work, and the two are presented together in a single document. Each draft Budget contains specific appropriations proposed for Staff, operating expenditures, translations, documents and publications, equipment and other expenditures. It also presents in schematic form a summary of the draft Budget proposal compared to the Budget of the previous year, the proposed financing of the Budget and a comparison with the previous year. It sets forth the relevant financial analysis and states the Secretariat's requests to the Budget Committee for particular actions. The draft Budget is accompanied by a manning table showing the proposed individual posts and the structure of the Secretariat. The Agency's annual Budgets began in 1975 at the level of almost FF 22,000,000, and increased over the years with enlarged programmes and increased costs to a total appropriation of FF 136,578,300 (subject to modification) for 1994, slightly less in proportion to the increase in OECD Part I Budgets during the same period.

The arrangements for the financing of the Agency's programmes not only provide the resources that enable the Agency to operate, but also influence the financing priorities as well as the more detailed scope, content and relative timing of Agency operations, through the amounts and particular allocation of funds. Those appropriations have been funded on the income side by the assessed contributions of IEA Members under Part II of the OECD Budget, by voluntary contributions and grants, and by income from the sales of publications and the provision of services. In the years prior to 1994, as will be seen below, a portion of IEA financing was also

provided by all OECD Members under Part I of the Budget of that Organisation.

The financing of the IEA depends heavily upon OECD financial principles and procedures, which in turn reflect the mainstream financing practices of other intergovernmental organizations; these are, of course, subject to the particular rules which apply to the IEA as well as to a broad overriding power vested in the Governing Board. The Governing Board is empowered to adopt financial regulations for the Agency but has not done so in a traditional, systematic form. The Board has adopted a number of independent financial decisions, but when there is no conflict between those Governing Board decisions and the OECD Financial Regulations, the Agency applies the OECD Financial Regulations.

Each year the Board adopts a scale of contributions, which is required by Article 64.1 of the I.E.P. Agreement, and calculated on the basis of principles adopted in the OECD for its scales of contributions. The scales are based mostly on the relative GNP of each Member, subject to a specified minimum and maximum. These scales produce for each Member a contribution rate expressed as a percentage which is applied to the total Budget amount to determine the monetary amount of each Member's assessed contribution. Members are legally obliged to make the contributions assessed by the Governing Board. Those contributions are supplemented by voluntary contributions and grants which constitute a limited but important source of IEA revenue; they are dedicated to specific activities under the Programmes of Work and require Governing Board authorization. The Board accepts the contribution or grant and makes the appropriation of the funds at its meetings or by an approved written procedure. Moreover, there are provisions in Articles 64.2 and 65 of the I.E.P. Agreement that special activities carried out in the IEA by two or more Members be financed in whatever way the participants in those activities agree among themselves, but this type of financing has yet to be employed explicitly in Agency Budgets.

The Governing Board is empowered to make decisions on the Programmes of Work and Budgets, on Members' contributions as well as on all other matters involving the financial administration of the Agency. These decisions are all made formally by majority vote under I.E.P. rules, although in practice the Board acts by consensus on these as well as other questions. Once adopted by the Governing Board, each IEA Budget is incorporated into Part II of the OECD Budget for the year by decision of the OECD Council, under a special formula set out in the OECD Council Decision, providing in effect for the same majority that adopted the Budget

in the Board. These decisions are formally taken by agreement in the Council by the same Members which had voted for them in the IEA Governing Board, thus preserving the Board's autonomy on budgetary questions.

Programmes of Work and Budgets are developed in the course of the year by the Secretariat acting on guidance provided by the Governing Board at Ministerial as well as official level, by the Standing Groups, by Committees, and at times by informal "brainstorming" meetings of representatives of Members and the Secretariat. The draft Budget is prepared by the Secretariat with the collaboration of OECD budget experts and of the Chairman of the IEA Budget Committee. A document containing both drafts is distributed to Delegations early in the autumn of each year and receives first consideration at the next meeting of the Governing Board, which typically comments upon and approves the directions of the work contained in the draft Programme of Work and transmits the document to the IEA Budget Committee with instructions to consider the resources which would be required for the following year. The Committee in turn reports to the Governing Board as requested. Early in December the Governing Board considers the Secretariat's proposals together with the Budget Committee's report and adopts the Programme of Work and Budget for the following calendar year. The Budget is then transmitted to the OECD Council for formal adoption into Part II of the OECD Budget under the IEA Budget procedure mentioned above. The Programme of Work is transmitted to the Council for *information* but not for *adoption*. In the course of the financial year, supplementary Budgets may also be adopted, but for the IEA this has been utilized rarely.

B. Programmes of Work

1. Function

The Agency's operational authority is established in four principal sources: the I.E.P. Agreement, the annual Programmes of Work adopted by the Governing Board, particular programme decisions of the Governing Board in the course of the year, and adjustments that are made to meet current developments. The broad programme of the Agency is set forth in the I.E.P. Agreement in considerable detail as respects the oil Emergency Sharing

System, the oil market and the emergency information sectors, where clear treaty obligations were necessary from the outset. Even in those sectors, however, the specific activities to be undertaken during the year, for example, refining the Sharing System, need to be developed in the annual work programmes. For other sectors of IEA actions, such as long-term co-operation, energy research and development, co-operation with oil companies, relations with non-Member countries, statistics and publications, the I.E.P Agreement contains less detail than was the case for the other sectors, and the programme was all but entirely left to later development by the Governing Board. The Board has developed those sectors in a number of decisions (the Long-Term Co-operation Programme adopted in 1976 is probably the most noteworthy of them), but this was done in broad policy terms which require periodic specification under Agency procedures. The Agreement conferred on the Board not only specific mandates to develop the Agency's programme in most sectors, but also broad authority under Article 51 for the functioning of the I.E.P. Program overall, an authority which the Board exercises in part by means of the annual Programme actions the Board has taken from the outset in 1974. While the I.E.P. Agreement makes no reference to annual Programmes of Work, the intention to establish those programmes was clear, and the OECD Council Decision on the Establishment of the Agency gave the Governing Board a specific program mandate [Article 6].

The Programmes of Work perform a number of vital Agency functions, the most evident being the Board's authorization to the Secretariat to carry out the specific activities described in the Programmes. The Programmes normally contain also the Board's approval of the Secretariat's assessment of the current energy situation, the identification of policies needed to address that situation and the relative but informal priority status of certain activities. In adopting the Programmes, the Board adapts the objectives of the Agency to the current energy situation, guides the Secretariat in emphasizing the particular tasks that warrant attention, and assigns the specific activities to one or another sector of the Secretariat; the Board may note for cross-cutting activities that more than one part of the Secretariat will have responsibilities. Overall, the Programmes broadly describe those IEA activities which will engage the attention of the Secretariat and Member countries throughout the year.

One of the necessary implications of the system of periodic Programmes of Work is the introduction of innovation into IEA policies, structures and operations, a function the Programmes share with the annual Budgets, with *ad hoc* programme decisions of the Governing Board and the

Executive Director. Innovation is a regular part of Programme development, a studied process described below in this Section and in Section B-3 under "Procedure", which provides a systematic opportunity and vehicle for bringing about change. This appeared from the earliest years of the Agency and continues to the present day, whether the innovation originated with the Secretariat, with Ministerial or official level Board meetings, with the Standing Groups and Committees or with the special "brainstorming" meetings of Members' representatives and the Secretariat. More recently another innovation source has been the meetings of Standing Group and Committee officers and the reports of the Chairmen of those bodies to the Governing Board. Worthy proposals eventually find their way into the Programmes of Work, either as initial proposals or as eventual refinements and specifications of the proposals. Some recent major examples of new proposals include the introduction of energy and environment issues and of the Eastern European Economies into the substantive work of the Agency, and the consequential changes in the Secretariat structure required for such work to be more effectively developed and carried out.

Energy and the environment issues present a particularly significant example of the introduction of new programme activities. Environmental considerations have always played a role in IEA work, receiving some specific mention in Article 42.1(b) of the I.E.P. Agreement, but mainly indirect attention in the Long-Term Co-operation Programme adopted in 1976. In the early years the IEA Secretariat maintained substantial but low-profile interest in the subject. Systematic environmental programme efforts increased dramatically in the 1980s. In the 1980-1981 period, co-operation between the Agency and the OECD Environment Directorate was developed in the Programmes of Work [See IEA/GB(80)59, Annex I, p. 13; IEA/GB(81)58, Annex I, p. 6]. By 1985 work in that field was accorded much more visible attention in the text, but at the formal level of only eight Staff months, described in broad statements about the environment programme with little specific activity description [IEA/GB(84)28, Annex I, p. 13]. During this period the Programmes show mainly the maintenance of a "watching brief": monitoring, analysis and policy identification, with little increase in specific dedication of Staff effort to environment questions. The 1985 Ministerial Conclusions on Energy and the Environment found their way into the 1986 Programme, with the statement that special attention to those conclusions will "affect all aspects of the work on energy demand and the future energy mix, but particularly the work on conservation, coal and nuclear energy" [IEA/GB(85)47, Annex I, pp. 12-13]. In the late 1980s and early 1990s the Agency's environment work picked up dramatically. In

1987, "Continued work on the interplay between environmental policies and energy policies" entered the "Main Lines of the Programme of Work", somewhat down on the list [IEA/GB(86)23, Annex I, p. 7], and since then this work has appeared with increasing preeminence in this category of the Programmes. By 1989 the concept of advancing both "energy security and environmental objectives" was clearly stated in the Programme; there was reference to the "broad brush" study as well as to climate change activity; and the Staff months devoted to this sector had doubled, with this work receiving particular attention [IEA/GB(88)24, pp.14 and 19].

The 1990 Programme [IEA/GB(89)44, Annex I] brought still more far reaching developments. The Staff working on environment doubled again, and they were grouped in a Task Force organized in the Long-Term Office of the Secretariat, with 31 Staff months to work on both "Core" and "Other" energy and environment activities. In 1992 environment work was reorganized in a new Energy and Environment Division in the Long-Term Office, with still more Staff. Classified as a "cross-cutting" activity, and the most visible of those activities, environment work was assigned on an "Agency-wide" basis [IEA/GB(91)47, Annex I, pp. 29-30]. Specific activities included the broad brush study, climate change, IPCC participation, the role of industry and an assessment of international legal agreements in this sector. Environment work also appeared specifically or indirectly in most other sectors of the Programme. Later Programmes provided for additional activities such as environment work on transport, electricity, greenhouse gases, and subsidies. As environment work has progressed over the years, the corresponding Programme texts have changed from the early broad statements of concern and objectives (this was also true generally of the Programmes), to more specific programme activities with increasingly detailed descriptions of the work to be carried out. The Programmes of Work provided the vehicle for integrating these initiatives into the Agency's activities in an organized way and for suggesting the appropriate priorities.

Informal expression of priority interests is a noteworthy, if not indispensable, part of the Programmes of Work in general, even if priorities were not mentioned as such, as was the case in the early years of the Agency. The scope for action under the I.E.P. Agreement is so vast that the very mention of a specific activity gives it a *de facto* priority interest vis-à-vis other potential activities not expressly included in the Agreement. Not surprisingly, as the Agency's work progressed in the late 1970s, specific priorities began to emerge in the Programmes of Work. In 1978, the Programme contained a section entitled "Priorities for 1978", which stated this:

> 9. To fulfil its objectives, the Agency must carefully identify the specific issues where it can usefully make an impact in order to avoid dissipation of scarce resources both in national capitals and within the Secretariat. The Agency's work should continue to concentrate on operational, policy oriented aspects of energy having relevance and potential for international concerted action. Issues having only national or regional importance should be referred to other competent bodies [IEA/GB(77)54, Attachment II, Annex I, p. 25].

In the 1978 Programme "priority activities" were identified in the following sectors of IEA energy responsibility: national energy programmes and/or policies, long-term energy policies, oil supply/demand and market structures, R & D, worldwide energy co-operation, public information, data and analysis, and the emergency system.

Priority indications were also the necessary outcome of several changes in presentation of the Programmes over the years. One such development appeared in the practice, begun in 1983, of assigning specified months of Staff work to each described programme activity. In some later Programmes, as in 1985, the distinction was made between "Main Objectives and Priorities", or comparable formulations, and the "Detailed Work Programme" with an indication that certain activities were central and continuing. For example, "Much of the long-term work is ongoing" [IEA/GB(84)28, Annex I, p. 7], while others were less so or not so. In more recent years the formulation "Main Lines of Substantive Work" has been employed to the same effect. In this fashion, groups of priority activities were identified, but without clear indications of which topics could claim absolute priority over other topics in the group. In the 1990 Programme there appeared for the first time the classifications of "Core" and "Other", which were not specifically a statement of priority but permitted inferences about priorities.

Continuing to the time of this writing, priorities and preferences in the Programmes have been indicated by the inclusion of some activities and by silence concerning others, by the relative assignment of Staff months of work for each activity, by the distinction between "Core" and "Other" activities and by the practice of identifying a group of priority subjects or activities in the "Main Lines of Substantive Work". However, these practices preserve the flexibility in the Programme which is constantly required to permit operational adjustment to change. Such a system offers the advantage of highlighting certain items, all or most of which will indeed be given priority, and overcomes the disadvantage of having them subjected

to an artificial exercise in making difficult or impossible comparisons or creating priority scales when none is necessary to achieve the desired programme results.

2. Content and Style

The content and style of the other sectors of the Agency's work have developed in much the same way as those in the environment sector. Overall the Programmes have improved markedly since 1974. The early Programmes were largely about organizational matters and objectives, as might be expected in the early years of any international institution. Quite broad formulations were employed with the expectation that, with the guidance of the Governing Board and the Members' Delegations, the Secretariat would transform those formulations into specific programme activities as each year passed. That proved to be an efficient and workable procedure, particularly for the Secretariat and Delegations close to the work in Paris. However, for Members' authorities not enjoying that advantage, which included energy officials in distant capitals, it was difficult to discern the full nature and scope of the specific activities in which the Agency was engaged and the priorities being applied. Hence there began a process of increasing the "transparency" of the Programmes and Budgets, for the most part a natural process of development as it became more feasible with the passage of time for the Programmes to be written with more specificity.

Over the years, format changes also aided this process of transparency. These changes included the distinction between "Main Lines" of work and the sectorial activity descriptions, the assignment of Staff months by activity, the "Core" and "Other" distinction, the introduction of cross-cutting activities and increased activity detail in the descriptions (eventually more than doubling the length of the Programme). None of these developments was intended to establish formal priorities or other rigidity in the Agency's work and none has done so in fact. It was clearly understood that managerial flexibility needed to be retained in order to meet changes which might be requested or become required as the work was under way. The Executive Director has made these points to the Governing Board on a number of occasions. In the document presenting the 1986 Programme of Work [IEA/GB(85)47, Annex I, p. 6], the Executive Director stated as respects the Programme description that:

> The description which follows presents the work being done by the Secretariat as an integrated and interrelated whole. This reflects the fact that most of the Agency's work is organized and

> performed on a "subject matter" basis, which necessarily means that staff assigned to different offices and divisions very frequently work together regardless of their formal assignments. For example, work on conservation and alternative energy sources, as well as oil market developments, require economic analysis; oil market structures are intimately inter-related with emergency planning, developments in other energy sources and international energy relations; basic service functions such as statistics, public information and legal are involved in every aspect of the work. Thus, the work described below under one heading will in most cases be performed in part under several other headings as well; and the many necessary interactions between different parts of the IEA Secretariat are accepted implicitly and not described explicitly.

In the 1990 Programme document the Executive Director made the following statement on the need for flexibility [IEA/GB(89)44, Annex I, p. 6]:

> In presenting the Programme of Work for 1990, we have endeavored to respond to Member countries' requests for additional detail regarding programme activities, particularly utilisation of staff resources. At the same time, Members must recognise the difficulty of projecting exactly how resources will be employed and the need, therefore, for the Secretariat to retain flexibility to shift resources as circumstances may dictate.

The 1990 Programme of Work has set the pattern of content and style followed since that year, with fuller descriptions, clear designations of cross-cutting subjects and numerous tables making the Programmes coherent and relatively easy to understand and utilize.

3. Procedure

Although the foregoing discussion has touched upon a number of procedures employed in developing the Programmes, the overall procedures merit additional attention. Each yearly Programme begins to take form early in the preceding calendar year. In the first few years of the IEA, the Programmes began life without systematic consideration by the competent Standing Groups and Committees, but the Board decided in 1983 that early consideration should take place in those organs of the Agency before the draft Programme was prepared by the Secretariat [See IEA/GB(83)69, Item 2(d)(ix) and Annex II]. In preparation for such consideration in Agency

organs, the Secretariat formulates and presents its views which are taken up in the Members' discussion. This discussion is taken into account by the Secretariat in the next phase of its work, which is the preparation of the draft Programme document.

The draft Programme is actually the product of a number of different sources. The highest source after the I.E.P. Agreement is the previous Ministerial Governing Board's instructions and other expressions of policy or preference, followed by similar types of actions of the Board at official level. At times this background is supplemented by the contributions of Members' representatives participating in special "brainstorming" discussions, usually organized on a particular topic of current programme interest, such as coal, the environment or non-Member relations. Input from Members may come in a variety of other forms, such as official or unofficial communications orally or in writing to the Secretariat. In turn the Secretariat is another important source of programme suggestions, for the senior sectorial Staff in the Secretariat prepare elements for their respective sectors, taking into account what is known from the other sources. These contributions are forwarded in early summer of each year to the Deputy Executive Director's Office where the preparation of the draft Programme is co-ordinated. The draft is submitted to the Executive Director for discussion with IEA Directors and with the OECD. After receiving the Executive Director's approval, the draft Programme of Work is joined with the draft Budget as a single document for distribution by 1 October of each year as required for the draft Budget under Article 64.3 of the I.E.P. Agreement.

In recent years the Executive Director has met with Energy Advisors in Delegations during this period in order to provide them with an early explanation of the proposals, to enable them to transmit the views of their governments if desired at that early stage, and to have the benefit of an exchange of views which the Energy Advisors could reflect back to their authorities in capitals. This exploratory phase of the process is designed to facilitate the preparations in capitals for the Governing Board's discussion on the draft Programme, which usually takes place at the Board's next meeting in the course of the month of October.

At the October meeting the Board thoroughly discusses the draft Programme. At the conclusion of that discussion, the Board typically notes the document containing the draft Programme of Work, approves "the directions of work contained therein" (thus reserving its final approval to a later meeting when the views of the Budget Committee on budgetary implications would be known), and refers the draft Programme and Budget to that Committee. The Budget Committee considers "the resources

required" for the Budget to fulfill the Programme of Work, "taking into account the Governing Board's discussion of the Programme of Work, and also to carry out the work of the Organisation in the energy field". The Committee is then requested "to convene at its earliest convenience and to submit its recommendations" on the draft Budget to the Board at its next meeting [For a recent example of the pattern of Board conclusions at this stage, see IEA/GB(93)57, Item 3]. These actions usually take place without any significant change in the draft Programme of Work.

At the Governing Board's next meeting, usually in December, the Board has before it the report of the Budget Committee and its recommendations given in response to the mandate mentioned above, as well as the draft Programme of Work and the draft Budget and any proposed modifications to the draft Budget. At this meeting the Programme is officially adopted by the Board, acting in accordance with its procedures. The draft Programme has almost always been adopted on the basis of consensus, without a formally recorded vote, and without discussion of the applicable voting rule. Since the decision adopting the Programme would qualify as a management question, the applicable voting rule would be I.E.P. "majority" under Article 61.1 of the Agreement, the same rule that applies to the adoption of IEA Budgets.

Immediately after the Governing Board acts on the Programme of Work and Budget at its December meeting each year, these documents are transmitted to the OECD Council. This is done typically in the form of a "Note by the Governing Board", briefly recalling the background information and stating, as in the following example for 1994:

> The Agency's Programme of Work [IEA/GB(93)44, Annex I and Corrigendum] is hereby transmitted to the Council *for information*; and the Agency's 1994 Budget [IEA/GB(93)63, Attachment B and Corrigendum] is hereby submitted to the Council for *adoption* [Emphasis added].

For 1994 that statement appeared in document C/PWB(93)94/ADD1 and follows established IEA/OECD practice.

Since the Governing Board's adoption of the Programme Work is dispositive, no further action by the Council is required. For the Budget, however, the Council's decision integrating the IEA Budget into the OECD Budget pursuant to the Council Decision on the Establishment of the Agency is required for formal reasons. IEA Budgets and the special rules for adopting them will be examined in the Section which follows.

C. Budgets

1. Function

Budgets of the Agency serve the principal purpose of providing the financial and operational instruments for realizing the corresponding Programmes of Work. In the course of preparing the Programme of Work the Secretariat also considers the budgetary implications of the Programme and seeks from the outset of the process to plan the two together in a coherent and realistic way. Hence throughout the IEA process of reflection, preparation and adoption of both the Programme and the Budget, the one accompanies the other.

The technical function of the Budget is not spelled out in the I.E.P. Agreement but it is described broadly in Article 10(a) of the Council Decision on the Establishment of the Agency, as follows:

> The budget of the Agency shall form part of the Budget of the Organisation and expenditure of the Agency shall be charged against the appropriations authorised for it under Part II of the Budget which shall include appropriate Budget estimates and provisions for all expenditure necessary for the operation of the Agency.

Since it is ultimately part of the OECD Part II Budget, the Agency's Budget serves the purposes of the OECD Budgets as described in the Organisation's Financial Regulations: to accord "the necessary commitment authority" and to make "the necessary appropriations" for the functioning of the Agency and the carrying out of its activities [Article 3 of the Financial Regulations of the Organisation]. Article 3 defines those terms for purposes of the Regulations in this way:

> . . . the term "commitment authority" means the authority conferred upon the Secretary-General to enter into obligations in the name of the Organisation in the course of the financial year. The term "appropriation" means the sum of money which the Council authorises the Secretary-General to disburse in the course of the financial year in respect of the expenses to which such appropriation relates.

The Budgets also serve less formal purposes for the Agency. They require Members and the Secretariat to reflect thoroughly and carefully upon the right balance of Programme of Work and finance, to join political considerations to the operational and the financial ones, to bear in mind what was done in the current year while considering what might be done in the next year, and to adapt the levels and qualifications of Staff and the structure of the Secretariat (Offices, Divisions and

other units) to ensure that the Agency's work will be done in the most coherent, effective and economic manner possible. On each category of expenditure, the Budget process brings into focus the distribution and levels of expenditure for the current and the coming year and promotes reflection on those details as well as on the broader range of activities contained in the Programme of Work.

2. Content and Style

The draft Budget is a technical and detailed document which has been prepared since the Agency's beginnings by the Secretariat with the extensive assistance of the budget and finance experts of the OECD Secretariat. As a matter of practice, the form of the IEA Budget largely follows OECD requirements outlined in the OECD Financial Regulations. In their basic format and presentation IEA Budgets have changed little since the 1970s when the pattern was established.

Each year the Executive Director's Programme of Work and Budget proposal document contains a draft entry in the Conclusions of the Governing Board stating the action requested, the report of the Budget Committee (Attachment A), the Budget tables and a chart showing the Organisation of the Secretariat [for 1994 this is document IEA/GB(93)63]. The strictly budgetary part of the document (Attachment B) contains technical background information, tabular summaries of proposed appropriations and of proposed financing compared to the previous year, the reproduction of the scale of contributions for the previous year (the scale for the new budgetary year would not be available for a few months into the new year), and a table (Table I) summarizing the proposed authorizations for each Item in the Budget.

The Table I summary is the heart of the appropriation side of the Budget. It shows the authorization levels for the budgetary year and for the previous year (at the prices of the previous year) as well as the increases or decreases in resources required for the new budgetary year compared to the preceding one, provisions for adjustments for the new year and the final appropriations proposed, all set out in separate columns. The active Items contained in the 1994 Budget were: Permanent Staff; Official Travel; Consultants, Project Staff; Meetings, Interpretation; Conferences; Entertainment Expenses; Operating Expenditure; General OECD Administration; Documentation; Translations, Documents, Publications; Miscellaneous and Unforeseen Expenditure; Capital Expenditure; Information Technology Equipment; Security; Public Information; and Relations with European Economies in Transition. Included in Attachment A to the Budget [IEA/GB(93)63] are detailed notes on a number of budgetary questions, a list of consultant/project staff, principal projects, a list of conferences, workshops, and seminars organized or sponsored by the Agency, a schedule of publications compared to the previous year, some sectorial functional descriptions and details of cost elements for the European Economies in Transition Item.

The levels of IEA Budgets have grown steadily since the first full year IEA Budget was adopted for 1975, as shown on the following Table:

INTERNATIONAL ENERGY AGENCY
TOTAL BUDGET LEVELS 1975 - 1994

YEAR	Total Amount of IEA Budget
1975	FF 21, 785, 400
1976	FF 28, 016, 200
1977	FF 31, 473, 200
1978	FF 35, 226, 000
1979	FF 38, 465, 200
1980	FF 43, 929, 000
1981	FF 54, 825, 400
1982	FF 62, 061, 400
1983	FF 68, 349, 200
1984	FF 73, 693, 700
1985	FF 78, 433, 300
1986	FF 82, 942, 200
1987	FF 85, 757, 600
1988	FF 89, 864, 500
1989	FF 93, 835, 500
1990	FF 99, 885, 000
1991	FF 111, 005, 500
1992	FF 125, 414, 800
1993	FF 131, 788, 200
1994	FF 136, 578, 300

The IEA Budget level changes between 1975 and 1993 represent approximately a six-fold increase, resulting from the expansion of IEA activities since the early formation period and the necessity of meeting inflationary increases in costs. This is a little less than the rate of increase in OECD Part I Budgets over the same period (where the increase was from FF 186,005,132 to FF 1,226,997,597). For 1994 and later years this comparison might change as a result of the termination of the former OECD Part I Budget contribution to the IEA, discussed in Section F below.

3. Procedure

The preparation of the draft Budget begins in earnest once the Programme of Work takes form and the probable lines of the future work become clear. Since the Budget contains many technical matters depending in many respects on the OECD budgeting practices on costs, the expertise of the OECD in this field is extensively utilized. The first draft of the Budget is prepared in the IEA Administrative Unit in co-ordination with the Office of the Deputy Executive Director, with broad consultation with the senior officials of the Secretariat and others. Once the Executive Director has approved the draft, the Budget elements are joined with the Programme of Work for distribution to Delegations by 1 October of each year. The draft Budget is then discussed by the Executive Director and by the Energy Advisors in Delegations, at the meetings described above in connection with the Programme of Work.

Careful consideration in the Budget Committee is the next step in this process. At its November meeting, the Committee considers the probable "outturn" of the current Budget. In recent years this discussion has covered not only the situation under particular Budget Items and the income situation, but also any additional appropriation necessary to meet unexpected expenditure in the previous year (such as the extra expenditure incurred as a result of unexpected increase in demand for IEA publications, which has been met for several years by the appropriation of unexpected publication and similar source income). Typically the Committee also comments on the general administration of the Budget, expressing, for example, its "satisfaction" with the "flexibility shown by the Secretariat in adjusting to changing priorities during the Financial Year 1991" [IEA/GB(91)68, Attachment A, p. 5] and its "satisfaction" with the "flexible and cautious management of the Budget during the financial year 1992" [IEA/GB(92)46, Attachment A, p. 5]. Sometimes the Committee makes recommendations to the Board on procedures employed in the

preparation and adoption of the Budgets. In 1983 the Committee made a number of such recommendations, including one for early discussions to take place in the Standing Groups and the R & D Committee (now the "CERT") on their respective work programmes, on priorities, on new activities and activities to be terminated. The Committee also recommended that further programme information be conveyed to it by the Secretariat "with particular reference to the immediate and longer term resource implications of the work programme" [IEA/GB(83)69, Item 2(d)(ix) and Annex II].

The Committee examines thoroughly the draft Budget for the following calendar year, and reports to the Governing Board on a number of technical questions. These questions have included structural changes in the Secretariat, the creation of new Staff positions, the extension of posts of limited duration, the transfer of a post from off-Budget to Budget status, the funding of the Emergency Sharing System in the event of need and a number of other routine or innovative matters contained in the Secretariat's proposals. The Committee also examines the Budget, Item by Item, and records its specific observations and recommendations on such matters as the vacancy rate, information about consultancy projects and costs, income, and financing of capital equipment over several years beyond the budgetary period. Usually the draft Budget is recommended by consensus without substantial change, although at times modifications have been introduced by the Secretariat. It is not unusual, however, for one or more Members to reserve their positions or to request that their respective views be noted in the Committee's Report. The Secretariat often resolves such questions bilaterally with the interested Members and seeks to present as wide a consensus as possible to the Governing Board, which reviews the Committee's Report together with the draft Budget soon thereafter.

The final Budget is adopted by the Governing Board in early December of each year as part of the combined Programme of Work and Budget described above. Following the discussion in the Board, the Budget has been adopted almost always by consensus, although Article 64.3 requires only an I.E.P. majority (60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast; i.e. with the present membership and with Norway voting, at least 102 combined voting weights cast by at least half of the Members). The Governing Board has not proceeded to a full, recorded vote on the Budget. However, the Board adopted the 1994 IEA Budget by the requisite majority rather than by the traditional Agency consensus practice [See Chapter V, Section A-13 above). For the 1975 Budget, the decision was also adopted by majority; in response

to a request to defer the decision, the Chairman asked around the table for Members' views Delegation by Delegation, and announced that the Budget was established as soon as the requisite majority appeared.

The Governing Board then transmits the Budget to the OECD Council for adoption into Part II of the OECD Budget [See for the 1994 Budget, the Note by the Governing Board, C/PWB(93)94/ADD1]; this is a formality, but an important one [The procedure is described above in connection with the Programme of Work]. This is a formality in the sense that the Council takes that decision when the IEA Members who voted for the Budget in the Governing Board also give their agreement to it in the Council [as provided in Article 10(b) of the Decision of the Council on the Establishment of the Agency, discussed below in Section D]. The formal procedure of adoption of the Budget into Part II of the OECD Budget is a necessary consequence of the relationship between the two institutions and of Article 10(a) of the Council Decision on the Establishment of the Agency which makes specific provision to that effect.

The IEA's Programmes of Work and Budgets for each year have always been adopted in final form before the end of the previous calendar year, to enable the Agency in January to get off to a smooth start with its Programme and budgetary appropriations in place and with the necessary financing clearly identified.

D. Governing Board Functions and Procedures

The critical role of the Governing Board in making financial decisions for the Agency has been apparent in the foregoing discussion of this Chapter. The Board's authority in this as well as other sectors is discussed generally in Chapter V above.

In the I.E.P. Agreement broad financial authority is set forth in Article 64 which provides for decisions to be made on the scale of contributions [paragraph 1], for the Board to adopt the Budgets, including personnel requirements [paragraph 3], and for the Board to take "all other necessary decisions regarding the financial administration of the Agency" [paragraph 4]. The authority granted in these provisions is extended by the general power conferred upon the Board to adopt "financial regulations" and by the Executive Director's power to act in accordance with those regulations in submitting a draft Budget to the Governing Board each year [Article 64.3].

The combination of these paragraphs has conferred upon the Governing Board a plenary and autonomous power to regulate the financial policy and administration of the Agency and to make all the appropriate implementing decisions.

The financial autonomy of the Agency in relation to the OECD Council was a paramount consideration and indeed a condition *sine qua non* for the founders of the Agency in deciding to establish the Agency in the OECD in place of setting up an entirely separate institution in another location. Autonomy in financial matters was a particularly important element of the Agency's general autonomy, for the Agency countries required institutional arrangements to enable them to determine those matters alone in the face of an OECD membership then including eight Members which could not immediately join the Agency. This was complicated by the need for the OECD to have the IEA Budget integrated into the OECD budget system which required "mutual agreement of all the Members" of the OECD under Article 6.1, "Unless the Organisation otherwise agrees unanimously for special cases".

While agreement of *all* the Members was and remains the rule for decision in the OECD, the IEA needed the greater flexibility and representation of economic interests afforded by the system of *weighted majority* adopted in Articles 61 and 62 of the I.E.P. Agreement [See Chapter V, Section 13 above). Specifically referring to budgetary and other financial decisions, Articles 64.3 and 64.4 provided for decisions by the I.E.P. "majority". If a majority in the Governing Board adopted an IEA Budget, that decision risked uncertainty in the OECD Council if any IEA country on the minority side of that decision or any of the eight non-Members of IEA were to decline to give its agreement. It could not be entirely excluded that the views of representatives in the Governing Board might differ from those in the OECD Council. To resolve those uncertainties the IEA founding Members proposed to the Council a special formula whereby the Board's decision would be smoothly transformed into an OECD Council decision without concerns about possible disruption. That was done under the "special cases" rule of OECD Convention Article 6.1 [quoted above] in the Council's adoption of the following provision in Article 10(b) of the Decision on the Establishment of the Agency:

> The Governing Board shall submit the annual and other budget proposals of the Agency to the Council for adoption by agreement of those Participating Countries of the Agency which voted in the Governing Board to submit the proposals to the Council.

Under this safeguard provision the budgetary autonomy of the Agency has been successfully preserved since 1974. In December of each year the Board adopts the Budget for the ensuing year, formally by majority and in practice by consensus, and it transmits the Budget to the OECD Council where it is shortly thereafter adopted into the OECD Budget, always without difficulty and often without discussion. That special formula had perhaps the greatest importance for the IEA in its early years, when a number of OECD Members had not yet joined the Agency and they theoretically could have disturbed or blocked the adoption of IEA Budgets in the Council, but there has never been any expression of opposition to IEA Budgets in the Council, and now in the OECD only Iceland is not a Member of the IEA. However, in the event that the future should bring other differences between the OECD and the IEA membership, the procedure for adopting the IEA Budget in the OECD might take on renewed practical significance.

In the Council Decision Establishing the Agency [C(74)203(Final)], the I.E.P. Agreement's broad grant of financial and administrative powers to the Governing Board is fully recognized and is complemented by several provisions in Article 10 relating to OECD procedures. Article 10(a) of that Decision provides for the IEA Budget to be part of the Budget of the Organisation under its Part II. There is also provision for each Agency Member's share in financing to be fixed by the Governing Board and for special expenses incurred in connection with the activities referred to in Article 11 to be shared among the Agency Members "in such proportions as shall be determined by unanimous agreement of those countries". Under Article 10(a) the Board is to "designate an organ of the Agency to advise the Governing Board as required on the financial administration of the Agency and to give its opinion on the annual and other budget proposals submitted to the Governing Board", thus ensuring that the Board will be advised by its own budget committee (the IEA Committee on Budget and Expenditure) rather than by the Budget Committee of the OECD. The Governing Board's power to accept voluntary contributions and grants is expressly recognized in Article 10(c), as is the automatic carry forward of certain special activity appropriations from one financial year to the ensuing financial year [See Article 10(d)].

It should also be recalled that the I.E.P. Agreement confers legislative powers over financial questions solely upon the Governing Board. Although the Board is clearly enabled to delegate powers to other bodies of the Agency [I.E.P. Article 51.3] and to the Executive Director [See Chapter VI, Section E above], the Board has done so occasionally also to the IEA Budget

Committee [See Section E below] and sparingly in a few administrative areas to the Executive Director.

In operational terms the financial administration of the Agency is vested in the Governing Board, assisted by the Committee on Budget and Expenditure where each Member has been represented, and by the Executive Director who brings considerable influence to bear upon the entire financial life of the Agency. This influence is manifest in the Executive Director's proposals to the Board, which are developed with the assistance of the IEA Secretariat and the OECD financial and budgetary experts and others. The Executive Director has always taken a special interest in financial questions and participates directly and actively at each stage of the process leading to the adoption of the Budget and other financial decisions.

E. Committee on Budget and Expenditure (BC)

This Committee, commonly referred to as the IEA Budget Committee, was created by the Governing Board at its first meeting on 18-19 November 1974. Its mandate was foreshadowed by the Council Decision on the Establishment of the Agency [Article 10(a)] which referred to the designation of an organ to advise the Board on the financial administration of the Agency and to give its opinions on Budget proposals. As established by the Governing Board [IEA/GB(74)9(1st Revision), Item 12], the mandate provides specifically for the Committee

> . . . to advise the Governing Board on financial administration of the Agency and to give its opinion on the Annual and other budget proposals submitted to the Governing Board.

The Board also instructed the Committee to "establish a small working group which the Executive Director could consult regarding expenditure necessary in the fulfilment of the tasks of the Agency" [IEA/GB(74)9(1st Revision), Item 10] and the Committee soon did this [IEA/BC(74)1, paragraph 6(5)]. The Board later noted that the Working Group "would not exclude any Agency country which wishes to participate in its work" [IEA/GB(74)11(1st Revision), Item 5(o)]. This Group became known as the "Open Ended Working Group", but it did not play a major role in IEA budgetary developments and has not met as such for many years.

The IEA Budget Committee normally meets twice each year, once in mid-year and again toward the end of the year, usually in November. The main purpose of the November meetings is to give the Committee's opinion on the draft Budget of the Agency and on other matters of current interest. Those meetings are briefly described in Section B-3 above. A few words should now be said about the mid-year meetings, which take up any budgetary question of current interest, as well as two regularly recurring topics: (1) the closing of accounts for the previous year and (2) estimated expenditure under the current Budget. Income and expenditure results are outlined and compared, with a financial statement of the final result for the year. Outcome as respects each Budget Item is shown, as are transfers from one Item to another and the reasons for under expenditure and over expenditure, as the case may be. Review of the estimated expenditure under the current Budget gives the Secretariat an opportunity to report on the financial situation at the mid-year point and gives Delegations an opportunity to review and to comment on the situation at that point, although the data are still necessarily tentative and incomplete. A number of particular and current topics are also normally considered in these meetings, and they of course vary from year to year. In recent years those current topics have included the following, to cite only a few: audits, procedures for acceptance of voluntary contributions and grants, financing of the full IEA Budget under Part II of the OECD Budget, increased transparency of the IEA Budget process and accuracy of information, Secretariat staffing, documentation, use of languages, information on income and impacts of membership changes. Overall, the function of the Committee extends beyond such specifics; it also serves effectively as the forum for full and frank exchanges between the Executive Director and Members' representatives on broader questions of information, expectations and future intentions or wishes on financial, administrative and other aspects of Agency operations.

From the beginning the Budget Committee has worked effectively with a minimum of procedural preoccupations, in keeping with the conduct of business by the Governing Board and the Standing Groups. The mandate of the Committee is silent on the question of procedures, which means the Committee follows the I.E.P. procedures and those employed by the Governing Board, with the remainder to be determined by the Committee itself. The outcome of the Committee meetings is contained in its recommendations and other actions reported to the Board in accordance with the mandate, in its requests to the Secretariat for information or other actions, sometimes expressing views as to approaches to the preparation of

future Budgets, and in its taking note of Secretariat reports and information provided to the Committee. The Committee does not, in the absence of delegation from the Board, make final decisions on the questions before it, and the Board has delegated decision responsibility sparingly [See generally Chapter V, Section C above; for examples, see IEA/GB(75)99, Item 2(d), (l) and (p) concerning the unfreezing of posts and funds as well as the transfers of funds from meetings and interpretation, and IEA/GB(79)49, Item 9(c), concerning an arrangement for the rental of data processing equipment].

Although the Committee is not known ever to have recorded a formal vote, at times there have been expressed individual country views which do not attract a consensus. Those views have sometimes been recorded in the Committee's report to the Board or in other meeting record documents. In fact the Committee concludes on the basis of consensus, with a statement of individual country views or reservations when necessary, a procedure which has been seen as expediting and enhancing the work of the Committee.

F. Members' Financing Obligation

The legal commitment of Agency Members to finance the Agency is clearly stated in Article 64.1 of the I.E.P. Agreement as follows:

> The expenses of the Secretariat and all other common expenses *shall* be shared among all Participating Countries according to a scale of contributions elaborated according to the principles and rules set out in the Annex to the "OECD Resolution of the Council on Determination of the Scale of Contributions by Member Countries to the Budget of the Organisation" of 10th December, 1963 [Emphasis added].

Parallel language appears in Article 10(a) of the Council Decision on the Establishment of the Agency which refers to "all expenditure necessary for the operation of the Agency" and states that "Each Participating Country's share in financing such expenditure *shall* be fixed by the Governing Board" [Emphasis added].

IEA Members' assessed contributions provide by far the largest portion of the Agency's resources. Although the foregoing rule quotations might appear to characterize those contributions as the *exclusive* source of income for meeting operating expenses, that has never been the case. In

fact the Agency has received resources under four different categories: (1) assessed contributions of IEA Members, (2) assessed contributions of OECD Members as a whole until 1994, (3) voluntary contributions and grants, and (4) income from sales of publications and the like as well as income from services and assistance through exchanges in kind.

In 1993 the distribution of income among those sources (including item 3 below which is not counted in the 1993 total in the Table on p. 287 above) may be summarized as follows:

1. Members' contributions	108, 572, 200	81.9 %
2. OECD contributions	18, 216, 000	13.7 %
3. Voluntary contributions	850, 000	0.6 %
4. Income from sales (est.)	5, 000, 000	3.8 %
	132, 638, 200	100 %

Income in the first category is received each year pursuant to the application of the scales of contribution described below in Section G. Income in the second category arose at the outset of the Agency when the IEA took responsibility for most of the OECD's prior activities in the energy field, which benefitted the entire OECD membership of twenty-four countries and not only the IEA's then sixteen Members. In order to fund that part of the Agency's activities beginning in 1975, the OECD agreed to provide from Part I of the OECD Budget the cost of 39 personnel posts. This practice continued each year to 1993. With the inclusion of the entire IEA Budget financing in the IEA Part II Budget in 1994, the practice of OECD as a whole bearing part of that financing disappeared [See generally on this subject, Chapter VI, Section D above].

The third category, voluntary contributions and grants, was not specifically provided for in the I.E.P., but it is part of general international organization practice and was foreseen in the Council Decision on the Establishment of the Agency [See Article 10(c)]. This funding source and the procedures employed in the IEA are discussed in Section H below. In 1992 voluntary contributions and grants for specified programme activities amounted to about FF 5,000,000 representing about four per cent of Agency resources; for 1993 the total was about FF 850,000 representing less than one per cent of total resources.

In the fourth category is found an estimate of the funding from such additional sources as sales of publications (notably the monthly Oil Market Report), and similar transactions such as sales of disks, tapes and other

forms of intellectual property developed by the Secretariat. To this additional category could be added income from services and resources derived from exchanges and other arrangements, there having been personnel exchanges for limited periods with national administrations and exchanges of intellectual property on a mutually advantageous basis. This again is a category not mentioned in the I.E.P. Agreement, although the practice is widespread if not universally applied by international organizations and was specifically foreseen in the Council Decision on the Establishment of the Agency, in Article 10(c) which refers to "payments for services rendered by the Agency".

The foregoing discussion leads to the conclusion that governments are clearly the dominant sources of IEA funding. Though the other sources discussed above are generally favored in IEA practice and are most useful as far as they go, they do not represent a major source of income. Those other sources are carefully scrutinized by the Governing Board, as are the voluntary contributions "in kind" in the form of gratuitous secondment or loan of staff from governments. Board approval is obtained as necessary for additional sources of funding or service. For contributions of additional funds, the Secretariat has in one exceptional case accepted the funds prior to Board authorization, when that was necessary because of a contributor's fiscal year deadline and the Board would not meet before the action had to be taken. But the Secretariat has not been authorized to commit or expend such contributions until the Governing Board has made the formal appropriation decision. In this way the Member governments maintain control over Agency funding without concern that the Agency might receive significant amounts of resources free from Member governments' control over sources and uses.

G. Scale of Contributions

1. Calculation

The question of apportioning the expenses of the Agency among the Members was resolved in accordance with OECD principles and rules. At the Energy Co-ordinating Group which negotiated the I.E.P. Agreement at Brussels in 1974, the founding Members agreed that OECD arrangements should be followed, but there was some thought that Agency expenses should be apportioned not on the OECD formulation utilizing gross national product at factor cost, but rather in proportions more directly related to

energy criteria. The operative text which was agreed in Brussels appears in Article 64.1 of the I.E.P. Agreement:

> The expenses of the Secretariat and all other common expenses shall be shared among all Participating Countries according to a scale of contributions elaborated according to the principles and rules set out in the Annex to the "OECD Resolution of the Council on Determination of the Scale of Contributions by Member Countries to the Budget of the Organisation" of 10th December, 1963. After the first year of application of this Agreement, the Governing Board shall review this scale of contributions and, acting by unanimity, shall decide upon any appropriate changes in accordance with Article 73 [Article 73 deals with amendments to the Agreement].

The principles and rules contained in the 1963 Council Resolution [C(63)155(Final), Annex, as amended by C(87)63(Final)] may be summarized as follows:

- contributions are assessed on the basis of Members' "capacity to pay" as determined with reference to national income statistics.
- this is calculated on the basis of gross national product at factor cost, less 10 per cent for depreciation, utilizing standard definitions, taking the average of the most recent three years for which figures for all Members are available, and using a common currency unit calculated on the basis of the average official rates for those years.
- a scale of "taxable incomes" is determined by deducting $100 per capita from the national income of each Member.
- subject to the adjustments described below, a Member's percentage contribution shall be equal to the "proportion that its 'taxable income' bears to the total 'taxable income' for all Member countries".
- the adjustments are: no country shall pay more than 25 per cent or less than 0.10 per cent of the entire Budget of the Organisation; moreover, the "rate of contribution of any Member country cannot be increased by more than 10 per cent year on year in relative terms, or by more than 0.75 percentage point in absolute terms".

The calculations are explained in OECD Budget Committee document SCB/88.05 dated 22 February 1988. The rule limiting the increases year on year to 0.75 per cent in absolute terms was added in 1987 [C(87)63(Final)]

and it represents the only change made in the OECD principles and rules on this subject since the founding of the Agency in 1974. By agreement in the Council, that change was included in the principles and rules, which were applicable to the IEA. No action by the Governing Board was taken. Although Article 64.1 of the I.E.P. Agreement, quoted above, refers to a review by the Governing Board of the scale of contributions after the first year of application of the Agreement, there has been no request for a review by the Board and none has taken place.

The IEA scale of contributions for 1993 was as follows:

Country	**Scale of Contributions**
Australia	1.89
Austria	1.00
Belgium	1.27
Canada	3.75
Denmark	0.78
Finland	0.84
France	7.59
Germany	10.80
Greece	0.41
Ireland	0.24
Italy	7.32
Japan	22.49
Luxembourg	0.10
The Netherlands	1.89
New Zealand	0.26
Norway	0.68
Portugal	0.35
Spain	3.26
Sweden	1.46
Switzerland	1.59
Turkey	0.78
United Kingdom	6.25
United States	25.00
Total	100.00

The scales produced in application of this system resemble those applicable to other OECD Budgets, although in the early period of the IEA

the percentages for it were larger for all Members except the U.S., which alone qualified under the 25 per cent maximum rule. As IEA membership grew over the years, the scales became progressively closer to the OECD Part I scales. After Finland and France joined the Agency in 1992, there was very little difference (the small remaining difference was due to the fact that Iceland was the only OECD Country which had not joined the Agency). The minimum 0.10 per cent rule has been applied only to Luxembourg. The United States has continued regularly at the 25 per cent level. In 1991 Japan also reached that level but it receded from it on the 1992 scale and it receded still more on the 1993 scale with the membership changes that occurred in 1992. Adjustments in the scales became necessary as a consequence of a substantial change in the extent of a Member's territory, as in the case of Germany upon the accession of the eastern Länder to the Federal Republic [See OECD arrangements on this question, in documents C(92)64 and C/M(92)9/PROV and the decision in C(92)64/FINAL].

2. Membership Changes

When changes in IEA membership occur, it becomes necessary to adjust the scale of contributions from the effective date of the new membership (technically the date on which the I.E.P. Agreement enters into force for the new Member). Two different scales of contributions can then be applicable for parts of the year: (1) the scale initially adopted for the year before the membership change occurs, and (2) a second scale which includes the new Member, for the period between the effective date of the new membership and the end of that year. This was done on the occasion of the first six of the eight new Member arrivals in the IEA up to the date of this writing. In these six cases, since there was no decision to increase the effective total resources of the Agency by the amounts of the new Member's contribution, the new Member's contribution served to decrease the effective amounts of the established Members' contributions for the year.

The other two new memberships, those of Finland and France in 1992, did not fit this prior pattern in all respects. For Finland the Agreement entered into force on 1 January 1992, before the scale for 1992 had been adopted, with the consequence that Finland did not require a second scale. For France, which entered the Agency in mid-year, the pre-existing situation was unusual in that a definitive scale for 1992 had (exceptionally) not been adopted beforehand. Because of increasing IEA activities, for 1992 the Board decided to increase the Agency's resources by the amounts to be contributed

by the new Members, rather than to maintain the resource levels constant and to spread the assessments over the enlarged membership. Moreover, in 1992 the pattern of establishing the scale early in the year (usually in the springtime) was replaced by the decision to fix initially not the actual scale of contributions but the percentages of "Advance Payments of Participating Countries" [IEA/GB(92)25, Item 11, 11 May 1992] without France, pending the later decision on the actual scale when the timing of French membership would be known. In order to avoid the risk of inadvertent over-spending in these circumstances, the Executive Director was committed to adjusting the spending of Budget appropriations accordingly and to delaying the implementation of certain items [statement of Mrs. Steeg to the Governing Board on 9 December 1991; copy on file in OLC records].

If France had not completed membership proceedings in the course of the year, the Advance Payment scale would have been transformed into the definitive assessment scale for 1992, and Members' assessed contributions would have corresponded to the amounts of Advance Payments. In that event the actual spending for the year would have had to be adjusted downward by the amount of the expected but unavailable French contribution, with the practical effect that the resources available to the Agency would have been reduced accordingly. The same problem would arise if French membership were effected *after* the beginning of the next financial year (for the new Member would be assessed only for the corresponding proportion of a normal full year's contribution), unless the arrangements could be made to cover the potential shortfall by voluntary contribution or by other means.

It later developed that French membership became effective on 7 August 1992 and that all of the anticipated additional resources would be available to the Agency. Hence the Governing Board on 22 October 1992 adopted the scale of contributions as such for 1992 for all IEA Members including France, and noted that the percentage amounts were the same as those fixed in the Advanced Payments decision previously adopted by the Board [IEA/GB(92)45, Item 7(a)(ii) and (iii)]. The Board also decided in sub-paragraph (iv) of Item 7 ". . . that the portion of the assessment of France for the Financial Year 1992 that corresponds to the period preceding the entry into force for France of the Agreement on an International Energy Program will be financed by a voluntary contribution for general use under Part II, Section 1 (International Energy Agency) of the Budget of the Organisation for Financial Year 1992" [Background on the 1992 scale of contributions is contained in IEA/GB(92)34]. In the face of a number of uncertainties, the Agency was thus able to absorb the new Members'

contributions smoothly into its total resources, which were accordingly enlarged by the amount of the new Members' contributions without increasing the contributions of any of the other Members.

3. Procedure

The scales of contributions for the Agency have been adopted by the Governing Board by the application of two different procedures, depending on the timing requirements of the moment. When possible the scales have been adopted in Governing Board meetings (except for the first few years when the IEA scales were adopted by the Council together with the OECD scales). At times, however, an IEA Governing Board written procedure was used when the decision had to be made in advance of the next Governing Board meeting, to accommodate OECD procedures for calling up contributions. The written procedure has been used in these circumstance in order to enable the OECD to call up all the contributions together, a convenience to Members as well as to the Secretariat [On the written procedure, see generally Chapter V, Section A-15].

The scale of contributions has always been a non-controversial matter for which proposals are developed by the OECD statistical Staff who prepare the scales for all of the OECD on the basis of the principles and rules and statistical data provided by Members; the IEA Secretariat has not been substantially involved in this process. When the problem of timing the Board's decision on the scale was foreseen in December 1985, the Board "agreed that the Governing Board would fix the Scale of Contributions to the 1986 Budget of the Agency by the written procedure", without defining the precise procedure to be applied [IEA/GB(85)56, Item 3]. Following the adoption of the decision by the procedure as proposed by the Secretariat (the absence by a specified date of a Member's negative response to the Executive Director's circulated proposal), and after the contributions had been called up pursuant to that decision, the Board at its next meeting "recorded its agreement on the Scale of Contributions to the 1986 Budget of the Agency set forth in the Annex to document IEA/GB(86)13" [See IEA/GB(86)15, Item 4(d)]. Thereafter, the Secretariat took the initiative to employ the written procedure in parallel circumstances, and the Board subsequently recorded the outcome for the scales applicable in 1987 [IEA/GB(87)29, Item 5(c)], in 1988 [IEA/GB(88)14, Item 4(b)], in 1989 [IEA/GB(89)11, Item 5(c)] and in 1990 [IEA/GB(90)10, Item 4(b)], on each occasion without difficulty or question of any kind. In 1991 the scales were adopted in the normal way in a meeting of the Board [IEA/GB(91)19,

Item 7(b)], as they were also in 1992 [IEA/GB(92)45, Item 7(a)] and in 1993 [IEA/GB(93)11, Item 7(d)]. This procedure could be simplified if the information needed for calculating the scales were available soon enough to enable the OECD Staff to make the calculations in time for consideration each year in the December Governing Board meeting when the Programme of Work and Budget are adopted.

H. Voluntary Contributions and Grants

1. Authority

The Governing Board's authority to accept voluntary contributions and grants on behalf of the Agency and to appropriate the resulting funds is not specifically mentioned in the I.E.P. Agreement, but in accordance with general international organization practice it is derived from the Board's general powers to finance the Agency's activities. In the case of the IEA those general powers are contained in Article 64.3 (financial regulations) and 64.4 (all necessary decisions "regarding the financial administration of the Agency").

The only textual reference to this question in the constituent documents of the Agency is contained in Article 10(c) of the Council Decision on the Establishment of the Agency which provides this:

> Notwithstanding the provisions of Article 14(b) of the Financial Regulations (of the OECD), the Governing Board may accept voluntary contributions and grants as well as payments for services rendered by the Agency.

OECD Financial Regulation Article 14(b) would not have fit the circumstances of the Agency. If acceptance of an IEA voluntary contribution or grant required a decision by the OECD Council or an authorization by the Secretary-General, application of Article 14(b) could have impaired IEA autonomy. Consequently, Article 10(c) was needed to avoid any possibility that the OECD Regulation applied to the Agency.

2. Description of Contributions

Voluntary contributions and grants have been made for a wide spectrum of IEA activities over the years. While there were no voluntary contributions

or grants prior to 1980, since then their scope, number and importance have grown significantly. The kinds of energy activities for which they have been granted include co-operation with European Economies in Transition, working group activities, data workshop, technology activities, studies, conferences, and publication of conference proceedings. Most of the contributions or grants so far have been made by governments, although, one was made by the Commission of the European Communities (European Commission) and one by the Asian Development Bank. In three cases they were made by non-Members of the Agency, two in 1991 by France for the R & D sector before France became an IEA Member, and most recently (1993) by Venezuela for support of the Energy Working Group of the Co-ordinating Conference on Assistance to the Newly Independent States. In two cases the grants (by Japan and the United States in 1989) were accepted by the Board in the alternative, either by the amount of funds sufficient to cover the cost of a Staff Member or by the secondment of the individual whose costs would be borne directly by the contributor [See IEA/GB(89)54, Item 3(e)].

3. Alternative Financing

The possibility of the IEA receiving voluntary contributions and grants offers a measure of flexibility to the Agency's financing system. In 1991 and 1992 there were devised two alternative approaches to the financing of IEA programme work on the European Economies in Transition (EET), when it appeared that the "zero real growth" policy could otherwise cause a problem for some Members, because additional funding would become necessary. Some IEA countries indicated a preference for making voluntary contributions for that work, while others preferred the traditional means of assessed contributions. For OECD Members which had this same problem, that Organisation proposed to offer them a choice between the two procedures, and that was done by the IEA as well. In the Governing Board's Budget decision for 1991 there was an appropriation of FF 4,725,000 for EET activities [IEA/GB(90)46, Item 3(d)], and the financing of that appropriation was made as follows:

> (ii) with regard to financing this 1991 appropriation, Member countries should be guided by the IEA scale of contributions, as well as by the decision to be taken by the OECD Council with respect to financing of expenditure for co-operation with European economies in transition, the choice of the modalities of their respective contributions being at the decision of the Member countries.

The same question was presented the following year when the Board adopted the 1992 Budget containing the following statement, under the rubric "Total proposed financing under Part II" [IEA/GB(91)68, Attachment B, p. 14]:

> of which FF 5,275,000 shall be financed by member countries' contributions, voluntary contributions or other contributions for Relations with European Economies in Transition (item 20.20 of the Budget).

In this fashion, alternative financing made it possible for Members to choose between the two different modalities in consequence of their respective internal requirements, and for the EET activities to go forward on a sound and workable financial basis during those two years. After the successful application of alternative financing in 1991 and 1992, additional resources became available through the memberships of Finland and France which enabled the Agency to provide for EET funding by assessed contributions. Thus EET activities were financed in 1993 and in 1994 in the normal way by assessed contributions and without the need for alternative financing.

4. Procedures

The procedure initially foreseen for the acceptance of voluntary contributions and grants was for the Board to act on each proposal in a meeting. That procedure was soon enlarged to a two-fold arrangement, with the added possibility of the Board's acting by a written procedure as well. From the time of the first voluntary contribution in 1980 ($30,000 from the United States for a Refinery Flexibility Study), the need for a simple and adaptable procedure was apparent. In accepting that first contribution the Board [IEA/GB(80)69, Item 9(b) and (c)]

> noted the statements made by Delegations with regard to a more flexible procedure for accepting grants, as proposed in document IEA/GB(80)60;
>
> requested the Secretariat to submit to the next Meeting of the Governing Board a new proposal revised in the light of these statements.

In acting on Secretariat proposals for *a written procedure* [IEA/GB(80)86, Item 5], on 21 November 1980 the Board:

decided to proceed as follows as regards any voluntary contribution or grant for the conduct of activities included in the Agency's Programme of Work and up to an amount not exceeding FF 250,000 [Note: the amount was later raised to FF 500,000; see below]:

(a) the Executive Director shall circulate to all Participating Countries information on the source, destination and amount of any offer of a voluntary contribution or grant together with his proposal to accept or refuse such offer;

(b) the proposal made by the Executive Director shall be regarded as accepted by the Governing Board, and such acceptance shall be recorded in the Conclusions of a subsequent Meeting of the Board, unless a Participating Country expresses reservations about the proposal to the Executive Director within 21 days following circulation of the proposal.

By 1991 the limitation of the written procedure to amounts of FF 250,000 needed up-dating, and the Board accordingly increased the limit to FF 500,000, taking into account inflation between 1980 and 1990 [IEA/GB(91)25, Item 4(b)].

During the period between 1980 - December 1993, a total of 36 voluntary contributions or grants were made to the Agency. Of those, 20 were approved by the written procedure, and the balance, in meetings of the Board. Usually the written procedure was utilized in cases of urgency, when a decision needed to be made before the next Board meeting. In December 1993 the Governing Board decided to proceed by the written procedure as regards voluntary contributions for the conduct of a joint IEA/OECD study on energy and the environment, for the first time adopting that procedure without limitation as to the amounts of the contributions [IEA/GB(93)65, Item 6(a)]. In the absence of special circumstances of timing or convenience, the general practice has been for the Governing Board to act on the proposal at a Board meeting.

I. Financial Regulations

The I.E.P. Agreement expressly contemplates the adoption of financial regulations by the Governing Board [Article 64.3], but the Board has not found it necessary to adopt systematic financial regulations in the

traditional form [Cf. the Financial Regulations of the OECD]. In practice the Board has sought to avoid such systematic administrative legislation not only for financial questions, but also for personnel and other sectors where systematic legislation has not proven necessary to the administration of the Agency's operations. The financial provisions of the Agreement itself, the individual Governing Board decisions on such matters from time to time and the backdrop of the OECD Financial Regulations and Rules for most routine questions have obviated the need for the Board itself to embark on the preparation of systematic financial regulations.

The essential "Financial Arrangements" are provided in Article 64 of the I.E.P. Agreement, summarized as follows:

- Scales of contributions are to follow OECD principles and rules, and appropriate changes in the scale are to be made by the Governing Board [paragraph 1].
- Special expenses, those incurred in connection with special activities, are to be shared as agreed unanimously among the participants in those activities [paragraph 2].
- Financial regulations are to be adopted by the Governing Board [paragraph 3].
- The Executive Director is required to submit the draft Budget, including personnel requirements, not later than 1 October of each year [paragraph 3].
- The Governing Board adopts the Budget by majority [paragraph 3].
- All other necessary decisions on financial administration are to be taken by the Board, acting by majority [paragraph 4].
- The IEA financial year is from 1 January to 31 December [paragraph 5].
- At the end of each financial year there is to be an audit of revenues and expenditures [paragraph 5].

Financial matters are also treated in Article 10 of the OECD Council Decision on the Establishment of the Agency :

- The Agency Budget is part of the OECD Budget, Part II [paragraph (a)].
- Members' financing is to be fixed by Governing Board decision [paragraph (a)].
- Special expenses are arranged as in the second item in the above paragraph on elements drawn from Article 64 of the I.E.P. Agreement [paragraph (a)].
- The Board is to designate a budget advisory organ [paragraph (a)].

- IEA Budget proposals are to be adopted by the OECD Council by agreement of the same IEA Members which voted favorably in the Governing Board [paragraph (b)].
- The Board is to accept voluntary contributions, grants and payments for Agency services [paragraph (c)].
- There is an automatic carry forward of certain appropriations for special activities [paragraph (d)].

In addition to these financial administration rules, the Agency has developed, by means of a number of Board decisions a body of more or less permanent procedures and guidance. Most of these decisions are described elsewhere in this Chapter and need only brief mention here. Many of them constitute rules related to or contained in the annual budget decisions of the Governing Board, for which a pattern was established as early as 1975 and 1976. After the draft Programme of Work and Budget document is prepared and circulated each year, a first review takes place in an autumn meeting of the Governing Board, where the draft Programme is fully discussed, and the draft Budget is noted. The practice is then for the Board to "approve the directions of work" and to refer the draft Programme of Work *with* the draft Budget to the Budget Committee "for its consideration of the resources required" for that year's Budget to fulfill the Programme of Work, taking into account the Board's discussion of the Programme, and to carry out the work of the OECD in the energy field. The Committee is then requested to convene "at its earliest convenience" and to submit its recommendations to the Board at its December meeting. In December the Board receives the Committee's report, adopts both the Programme of Work and the Budget, acts on any additional financial or related question submitted to it and transmits the Budget to the Council for adoption in accordance with the Article 10(b) of the Council Decision cited above [For an example of the textual rendering of these actions for 1994, see IEA/GB(93)57, Item 3 and IEA/GB(93)65, Item 2]. This pattern is followed quite rigorously each year and has provided an efficient and effective means for adopting the Budget and for treating related questions. It has not proven necessary to codify any of this practice which thus remains adaptable when that might best serve the Agency's purposes.

This pattern of decisions also contains particular elements which are so regularly adopted without discussion in identical or essentially similar terms that they might be considered tantamount to financial regulations developed by a consistent line of precedents. Until 1994 for example, in each year's Budget decision the Board applied a "single Budget" rule which

provided a safeguard required by the mix of OECD Budget Part I and Part II elements of IEA funding. Any shortfall under the OECD contribution would be funded under the IEA Part II Budget, and the Agency would receive the full funding necessary to carry out the Programme of Work for the year [See IEA/GB(92)53, Item 6(q)]. This was an important "fail-safe" element which ensured the continuity of IEA funding in case the non-Member elements from OECD should not be forthcoming; but in 1994 with the inclusion of all IEA funding in the Agency's Budget this type of safeguard protection was no longer necessary.

Another example of precedent may be seen in the Board's action each year when it notes "that the appropriations are included in a one-Chapter Budget and that transfers of appropriations are subject to normal procedures" which provides flexibility for the Executive Director to make the transfers and to report them to the IEA Budget Committee under the normal procedures [See the example contained in IEA/GB(93)65, Item 2(f)(xiv)]. In still another case each year the Board establishes the "Organisation" of the IEA [See, e.g. the chart and descriptions contained in IEA/GB(93)63, Attachment C, p. 33; the chart is reproduced in Appendix V below] as set forth in the Secretariat's submissions, but invites "the Executive Director to modify it as required within the number and level of permanent posts provided, to meet changing priorities and needs" [See IEA/GB(93)65, Item 2(f)(vii)].

The annual Budget decisions contain a number of routine actions taken without discussion and essentially in the same terms each year, providing other rule-like practices. Thus the Board:

- carried forward its previous authorizations to the Executive Director, until such time as the Board shall reach a different decision, regarding recruitment of project staff [See IEA/GB(93)65, Item 2(f)(xi)].
- carried forward its authorization given to the Executive Director in 1979 [IEA/GB(80)3, Item 2(j)(i),(ii)]:

  A. to commit funds up to FF 5,420,000 (in 1994 prices) in case of activation of the Emergency Sharing System;
  B. when the Board determines that the need has arisen, to request the Secretary-General, in application of Financial Regulation 13(b), to call on Participating Countries to make additional payments to cover such expenditure until such time as a supplementary Budget has been prepared and approved [IEA/GB(93)65, Item 2(f)(x)].

- endorsed the Executive Director's efforts to continue to keep Delegations informed as to professional staff recruitment [IEA/GB(93)65, Item 2(f)(viii)].
- invited the "Executive Director to keep Delegations and relevant bodies informed of consultancy projects and costs related thereto [IEA/GB(93)65, Item 2(f)(ix)].

The Agency also applies the Financial Regulations of the OECD as necessary and as a back-up body of rules applicable when the Governing Board has not acted in the relevant fields. These cover routine matters, which do not have direct implications for the energy policy work of the Agency, including the following: receiving Members' contributions and other revenue, making disbursements, cash management (the IEA does not handle funds directly, other than to pass on any receipts to the authorized OECD officers), most routine purchase contracts, the maintenance of accounts, internal financial control, the audit of accounts, the inventory, and the disposition of property (for which the OECD Secretariat also provides the corresponding operational services). The OECD thus provides to the Agency valuable regulatory and operational services, while the Agency has been able to maintain the regulatory autonomy in the financial sector necessary to carry out its operations efficiently and effectively.

J. Expenditure for Special Activities

Although authority for creating tailor-made financing arrangements for special activities is specifically foreseen in the Agency's constituent documents, and despite early expectations that this would provide Agency countries with an important financial tool, in fact this authority has yet to be employed in IEA Budget practice. The operational mechanism foreseen is found in Article 65 of the I.E.P. Agreement, which provides that any two or more Members may decide to carry out "special activities" (i.e. activities of interest to less than all Members) within the scope of the Agreement (other than those required of all Members under the emergency Chapters). Members not participating in the special activity are to abstain from voting, and the participants in the activity are to keep the Board informed [See Chapter V, Section A-18].

The underlying intention of Article 65 was to permit groups of Members to engage in specialized energy projects which might not attract

the participation of the group as a whole or which might require innovative or other financing arrangements falling outside of the normal IEA financing pattern. The projects would nevertheless be developed under the auspices of the Agency. For example, those IEA Members which were major producers of coal might wish to join together to finance a co-operative project on coal information or research. They might wish to fund that among themselves on the basis of a formula which reflected their respective proportions of the group's coal production, trade or consumption, or on the basis of some other formula which varied from the OECD principles and rules for fixing all Member contributions to the IEA Budgets under Article 64.1 of the I.E.P. Agreement. The key concepts under consideration were flexibility of participation and financing arrangements.

The financing flexibility was specifically provided in the I.E.P. Agreement, Article 64.2, as follows:

> Special expenses incurred in connection with special activities carried out pursuant to Article 65 shall be shared by the Participating Countries taking part in such special activities in such proportions as shall be determined by unanimous agreement between them.

This provision, which has its counterpart in Article 10(a) of the Council Decision on the Establishment of the Agency, would enable the special activities to be carried out within the Agency under decisions of the participants and to be financed and operated under special IEA Budgets adopted by the participants in the activities, with the other IEA Members abstaining from taking part in the decisions and not being bound by them.

The overall purpose of Articles 64.2 and 65 was to establish a project system which would be operated within the IEA much in the same fashion as Part II Budgets are operated in the OECD (including the IEA Part II Budget), with the advantages of flexibility outlined above. The technical distinctions between the two OECD systems and the current practices are set forth in the OECD document "Structure of Parts I and II of the Budget and Financing Arrangements [CES(92)28, of 22 April 1992].

Article 65 authority has been employed many times for the establishment of co-operative programmes and projects in the R & D sector. Over the first twenty years of the Agency there have been some sixty of those Agreements, with about forty-five active at the end of 1993, and more are contemplated. Each of these Agreements has been brought under the auspices of the IEA by a Governing Board decision made pursuant to Article 65.

Many of those Agreements contain innovative and unusual financing provisions of the type foreseeable under Article 64.2 quoted above, but none of them has been financed under that provision as such. Financial contributions under those Agreements have been arranged separately from the IEA. Typically the financing formula has been set forth specifically in the Agreement, or the project Executive Committee was itself empowered to fix the formula, and the financial contributions were made to the project Operating Agent and managed by it without use of IEA or OECD financing mechanisms or administration. This practice may be explained by a number of factors. The participants have preferred to operate directly under the system they adopted in the Agreements. In some cases the financial administration might best be handled by the authorities responsible for operating the project. In most cases the projects have been open from the beginning not only to IEA governments, but also to national agencies, public organizations, private corporations, companies and other entities designated by an IEA Member as well as by the European Communities (European Union). Non-Member countries of the IEA also have participated in some cases, a practice that in the early 1990s appeared to become increasingly important [See Chapter V, Section 15 which describes the written procedure employed for "Associate" participation in the Implementing Agreements]. Neither the designated parties nor the non-Member country parties were clearly covered by the special activities formulation in the I.E.P. Agreement.

While arrangements could theoretically have been made to accommodate those disparate elements under the Article 64.2 concepts, this would have required the adoption of complex mechanisms. So far as can be determined from the record, there have been no serious proposals tending in that direction, doubtless because of the relative ease, simplicity and availability of the more decentralized arrangements adopted within each project up to the date of this writing.

K. Audits

Regular audits of the Agency's financial accounts (revenues and expenditure) would of course be expected as part of a sound financial practice, and provision to that effect was made in Article 64.5 of the I.E.P. Agreement as follows:

> At the end of each financial year, revenues and expenditures shall be submitted to audit.

Those audits have taken place each year since the foundation of the Agency. They are carried out by OECD Auditors pursuant to the OECD Financial Regulations and as part of the routine audit of OECD financial accounts, since the OECD handles all funds which are received or expended on behalf of the Agency. That system has always proceeded smoothly and has ensured the IEA that the objectives of such financial account audits would be realized.

Until 1986 the OECD audits of the IEA were limited to the routine financial examinations described above. For the 1986 Budget, however, the OECD auditors sought to broaden their IEA examinations to include operational efficiency and economy, a practice begun two years earlier in selected parts of the OECD. Operational audits of that kind could extend beyond financial accounts to include such matters as the use of conferences and missions, the disposition of personnel, the use of consultants and auxiliaries, staff overtime, purchase strategies and procedures for material acquisitions, contract payments policies, the implementation of security and other internal rules, the use made of personnel and materials, and other questions of management and operational efficiency. While the Executive Director welcomed that kind of support, the use of OECD auditors presented a number of problems for IEA autonomy and operational independence.

Upon receiving word of the OECD Auditors' wish to conduct an IEA operational audit for the first time, the Executive Director undertook a series of consultations culminating in presentations on these issues to the IEA Budget Committee and the Governing Board in 1986 and 1987. Whether or not such an audit was necessary and whether it should be carried out by the OECD or other auditors designated by the IEA were questions for the Governing Board to decide. The Executive Director's recommendation was that operational audits and any resulting actions should remain under Governing Board control. Such control was important for the following reasons: (1) since OECD auditors were appointed by the OECD Council without IEA participation, those auditors could (and did at the time) include an officer from an OECD country which was not a Member of the Agency, (2) security and confidentiality questions could arise, and (3) under the OECD Financial Regulations the auditors report to the *OECD* Budget Committee, not to the *IEA* Budget Committee, and the OECD Committee in turn transmits the report to the OECD Council, not to

the IEA Governing Board which bears the ultimate responsibility for IEA operations. These procedures could seriously impair the Governing Board's financial control of the Agency and IEA autonomy provided in the applicable legal texts. These procedures failed to reflect the coherent line of authority actually established within the IEA.

Following discussions between the Executive Director and the Secretary-General and deliberations within the IEA Budget Committee and Governing Board, the means were found for the IEA to enjoy the advantage of operational audits without weakening its autonomy. Instead of establishing a separate IEA board of auditors, the IEA would accept the operational audits by OECD Auditors subject to certain safeguard understandings and arrangements. The Agency was assured that the OECD auditors were independent outside experts fully bound to respect established rules of independence from any outside authority and to observe complete discretion. To resolve the procedural problem, the OECD Auditors would transmit their report on the audit to the Governing Board, and the IEA Budget Committee would review the Auditors' Report and provide its comments to the Governing Board. The Executive Director would transmit to the OECD Council the Auditors' Report and inform the Council of any action thereon by the Governing Board. Should the Auditors' Report result in any necessary action to be taken by the Council concerning the IEA, that action would be taken on IEA Budget proposals, with the IEA safeguards for Budget proposals, as provided in Article 10(b) of the Council Decision on the Establishment of the Agency (in which the Council would act pursuant to the agreement of those Agency Members which had voted in the Governing Board to submit the proposals to the Council) [See Section D above for discussion of this procedure]. In that fashion, ultimate control over IEA matters arising out of the Audit would remain vested in the Governing Board.

The Governing Board adopted the corresponding Conclusions on 9 April 1987 [IEA/GB(87)29, Item 4(a)]. The Board noted a statement in support of the "unique and independent nature" of the IEA and noted as well that

> the Audit should not become an exercise in micro-management and that the Executive Director must be allowed flexibility in applying the recommendations of the Auditors' report.

Thereafter the OECD Auditors carried out their first IEA operational audit under the procedures outlined above. In their report, the Auditors made

observations on a few points, notably on the rate of utilization of appropriations, on official travel expenses, on representation expenses and on competitive bidding. The Budget Committee Chairman's Report to the Board noted the Auditors' observations and the Executive Director's responses [IEA/GB(88)16]. Thereafter the Governing Board simply noted that Report and the oral report of the Budget Committee Chairman, there being no need for other formal action to be taken on the Report [IEA/GB(88)28, Item 6(b)].

The OECD Auditors have since carried out a second operational audit, for the 1991 Budget, initiated by a letter from the Chairman of the Board of Auditors to the Executive Director. The Executive Director's reply welcomed this audit, but again registered the points concerning IEA autonomy that were made by the Governing Board in 1987. The exchange of letters was noted by the Board at its meeting on 9 December 1991 [IEA/GB(91)79, Item 10(a); IEA/GB(91)77]. In their Report on the 1991 Budget, the Auditors raised questions about the partial financing of the IEA under Part I of the OECD Budget for 39 Combined Energy Staff posts, a question considered in detail in Section 7 above and in Chapter VI, Section D above, where the outcome of deliberations on this question is described. The Auditors also commented on the improved rate of utilization of appropriations and the problem of increased mission costs. The Auditors' report on the accounts and financial management of the Agency for 1991 was noted by the Governing Board at its October 1993 meeting [IEA/GB(93)57, Item 9(e)].

While the operational audits were being carried out and considered in deliberative bodies during the period 1986-1993, the Auditors continued to carry out each year the routine financial examination of revenues and expenditures in the normal way. Those examinations as well as the operational audits described above have proved to provide valuable support to the Executive Director's administration of the Agency.

General Principles of the Agency

This Chapter is devoted to a number of IEA institutional topics which affect the Agency's work in all sectors and at all structural levels. The first of these is the guiding principle of "operational efficiency", one of the hallmarks of the IEA. That topic is followed by "Security" which has particular importance for the IEA because of the Agency's operational responsibilities in cases of oil supply disruptions and its need to hold and use sensitive data in that and other sectors of its work. Then follows consideration of "Languages" in the Agency, and finally general aspects of IEA documentation, both of which have significant roles in IEA operations.

A. Operational Efficiency

The key rule establishing operational efficiency as the governing IEA maxim was adopted by the Governing Board at its first meeting on 18 November 1974, as follows:

> the Board would seek to proceed in a flexible way assuring maximum operational efficiency and simplicity [IEA/GB(74)9 (1st Revision) Preliminary Matters, paragraph (d)].

This principle was aimed at avoiding undue procedural formality. It found immediate application in the Board's decisions on a number of questions presented at its first meeting. Examples of the application of the opera-tional efficiency principle, in the order in which they occurred, include the following actions of the Governing Board: it deemed its meetings to be joint meetings of the Management Committee and the Governing Board, thus in practice dispensing with that Committee; it deferred the preparation of systematic rules of procedure, which have never been found by the Board to be necessary to its work; it decided to dispense with formal minutes of its

meetings in the absence of a specific decision to the contrary; it decided to use French and German for important documents only, leaving English as the effective working language of the Agency (later modified); it decided to appoint the Executive Director without fixing a specific term of that office.

Throughout the history of the Agency, the operational efficiency principle has also been applied on a continuing basis in a number of notable practices: the general informality of Governing Board procedures, the absence of recorded voting procedures notwithstanding the elaborate IEA voting system, the use of consensus as the sole decision mechanism in practice, the Chairman's declaration of a decision when a majority is found to support a matter requiring majority or other applicable voting requirements are satisfied, the absence of a regular procedure for formal review of the Board's Conclusions of the prior meeting (the Conclusions are presumed approved in the absence of objection at or before the next meeting), the conduct of sensitive business outside of formal meetings and during breaks in the formal meetings, the adoption of the Budget as a single Chapter under OECD rules (which allows for flexibility), the use of informal off-the-record meetings usually away from IEA premises for sensitive questions or briefings, the use of the written procedure for Governing Board decisions when necessary, and the fixing of meeting frequency and duration according to the need to dispose of current business rather than according to a pre-set or arbitrary schedule [For further development of those topics, see Chapter V, Section A above].

The same spirit pervades the Agency's operations in virtually every sector. Particular applications will be noticed in Chapters IV, V, VI and VII above, as well as in the other Sections of this Chapter.

B. Security

The IEA security system was devised during the early years of the Agency principally to safeguard three categories of sensitive information: general oil market data, emergency supply data and political information concerning relations with non-Members. The OECD and other international organizations typically take fully adequate security measures to ensure the security of personnel, the protection of premises and other property as well as a minimum level of information security, and the IEA receives the benefits of such measures by virtue of its relationship with the OECD. However, the operational aspects of the I.E.P. required the Agency to go much further in protecting sensitive information.

One of the main objectives of the IEA was to build a mechanism for increasing the transparency of the oil market, and particularly to ensure that the data necessary to operate the Emergency Sharing System would be available to the Agency in cases of oil supply disruptions. In certain situations that data would necessarily include commercial information from the oil companies co-operating with the IEA, and in particular oil company proprietary and confidential information. In order to enable governments and oil companies to supply the IEA with such data, the Agency needed to offer protection from the disclosure of the data to unauthorized persons and entities. Commercial as well as legal considerations required the establishment of a far-reaching security system in the IEA.

While measures would have to be taken to protect this essentially commercial information, there was also a political factor. Governments needed to exchange sensitive political information with the Secretariat and with their IEA partners in the bodies of the Agency. Sensitive political information would be taken up in the bodies dealing with international energy relations, principally in the Governing Board as well as in the Standing Group on Relations with Producer and other Consumer Countries and its successors in that domain. The Agency would function both as a caucus point and vehicle for exchange of sensitive information on "a purposeful dialogue" and for other forms of co-operation with those other countries as well as among the Members themselves [See I.E.P. Agreement Articles 44 and 46]. The sensitive nature of the information developed or exchanged in this context clearly called for effective measures of information security.

It came as no surprise, therefore, that from the outset of the Agency the I.E.P Agreement contained a number of provisions for information security. Referring to the Information System overall, Article 25.2 the I.E.P. Agreement provides that

> The System shall be operated on a permanent basis, both under normal conditions and during emergencies, and in a manner which ensures *the confidentiality of the information made available* [Emphasis added].

Article 27.3 states that Members are to "provide information on a non-proprietary basis and on a company and/or country basis as appropriate, and in such a manner and degree as will not prejudice competition or conflict with the legal requirements of any Participating Country relating to competition". For the General Section of the Information System, the Standing Group on the Oil Market was required to "work out procedures to

ensure the confidentiality of the information" [Article 30], and the Standing Group on Emergency Questions was required to do the same for the "Special" or emergency Section [Article 35].

The two Standing Groups were specifically directed in the I.E.P. Agreement to report to the Governing Board promptly on those and other elements of the Information System. The Governing Board would make the final decisions regarding information security (for there was no delegation of decision making power), and the Governing Board did so with respect to information security by adopting on 12 April 1976 the "Security Principles and Procedures" of the IEA [See IEA/GB(76)24, Item 7; the full text as amended is contained in IEA/GB(77)12].

Another key reason for establishing and maintaining an adequate security system was the national need for it expressed by senior officials in Member countries. In the United States, for example, those views took the form of legislation that would make the co-operation of U. S. officials and oil companies all but impossible in the absence of an acceptable security system. The *Energy Policy and Conservation Act of 1975 (EPCA)*, as amended, provides authority in section 254(a)(1) and (2)B(ii) [CCH, Energy Management, Vol. 2, ¶ 10,850, 10,881] for the Secretary of Energy under specified circumstances to transmit to the IEA certain sensitive information and data related to the energy industry, in disaggregated form:

> if the President (of the United States) certifies, after opportunity for presentation of views by interested persons, *that the International Energy Agency has adopted and is implementing security measures* which assure that such information will not be disclosed by such Agency or its employees to any person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to void identification of any person from whom the United States obtained such information or data [Emphasis added].

The sanction of EPCA section 254 — and a potentially severe sanction it is — is contained in its paragraph (b) as follows:

> If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that such data or information not be transmitted.

Parallel questions of aggregation and protection of data submitted under the Emergency Sharing System arose from the requirements of the U. S. antitrust regulatory network. For the antitrust defense to be available to participating oil companies, paragraph 5 of the Antitrust Voluntary Agreement and Plan of Action [CCH, Energy Management, Vol. 3, ¶ 15,845] provides for confidential or proprietary information to be transmitted by participating companies to the IEA, when approved by U. S. authorities in writing, only if such information is aggregated or otherwise compiled by the U. S. authorities "or the IEA" to prevent, to the extent possible, the identification of individual company data or information before being disclosed to or exchanged with others in specified circumstances, unless unaggregated information is necessary to develop, prepare or test emergency allocation measures. In an actual emergency such written authorization would also have to be given. During incipient crises, when the U. S. authorities gave their approval for the transmission of such data to the IEA, the approval letter stated the general understanding that the IEA would not ". . . disseminate any disaggregated QA data (i.e. Questionnaire A data, the sensitive data, described further below, provided by co-operating oil companies for use in connection with the IEA's oil Emergency Sharing System) to any other company or to any other person outside the Secretariat" [Letters from the U. S. Department of Energy to IEA Reporting Companies during the 1979-1981 and 1990-1991 oil crisis periods; copies held in the IEA Office of Legal Counsel].

The implementation of these measures discussed above, as well as other requirements during emergencies or tests of the System, require that the IEA security system function at all times. The information security system must therefore be operated regularly even in relatively quiet times, in order to ensure effectiveness when unexpected events might suddenly flood the Agency with sensitive data in need of protection. Still, the operation of the IEA security system is necessary in any case on a regular basis, for sensitive data are almost always present on IEA premises. For example, sensitive political information involving the operations of oil producer countries is often present in connection with deliberations of the Non-Member Countries Committee and with Secretariat contacts with non-Members. However, the systematic presence of individual oil company data during certain periods has presented particular problems of protection. Individual oil company data were provided to the IEA in the late 1970s and early 1980s under a system known at the time as the "Price Register". As received in the IEA, this data was aggregated in such a way that individual company transaction prices could not be determined, under a computer

procedure known as the "Black Box" system which made the individual company data inaccessible. Since the discontinuance of the "Crude Oil Cost Information System" in 1984, sensitive individual company price information has not been collected and thus it has not presented protection problems.

Protection has been necessary for sensitive oil supply information received periodically in the Agency for tests of the IEA Emergency Sharing System (there have been seven tests to date), and in connection with two periods of oil supply disruption (1979-1981 and 1990-1991) when IEA emergency Questionnaires A and B were activated and produced information which proved to be quite useful in coping with the crises. Those Questionnaires call for individual oil company data for periods of five months (the two prior months, the present month and two forward months) on the company's operations in each IEA Member country, as well as detailed information on trade flows to or from some thirty-two non-Member countries. The reported data include indigenous production, imports, exports, stock levels, and changes in oil consumption and crude oil stocks at sea for each period. Those data are submitted by each of the approximately forty companies which have agreed to do so under voluntary arrangements for them to co-operate with the IEA under the rubric of "Reporting Companies". Under Questionnaire B, each IEA Member government supplies parallel data on Non-Reporting companies as well as Reporting companies operating in its territory, and supplies additional stock data as well.

Much of the individual company data supplied under that system is particularly sensitive. It receives the Agency's highest security classification, called "IEA SECRET", described below, and it is protected in accordance with the rules of that classification. Responses to the Questionnaires have been received and held on IEA premises in connection with each of the Allocation Systems Tests (ASTs) since April 1978, that is in ASTs 2 through 7, beginning for each Test with preliminary data transmission tests and continuing during the one to two month period of each Test and thereafter. Full security protection is afforded sensitive test information, even though for test purposes the transmitters of the information are entitled to "disrupt" or "mask" the data in such a way as to make it of doubtful utility to unauthorized persons. Whether the data are actually disrupted or not is unknown, but the mere possibility of such disruption would presumably affect its usefulness outside of the Tests. In the two cases of activation of Questionnaires A and B during actual or potential supply disruptions, during the Second Oil Crisis of 1979-1981 and during the Gulf Crisis of

1990-1991, the actual, undisrupted data were supplied to the IEA in Paris and required full security protection. The security system has been successfully applied as required and without incident.

The IEA security system is operated under the Governing Board's decision entitled "Security Principles and Procedures" [as revised in IEA/GB(77)7; for the full text see IEA/GB(77)12 dated 1 March 1977]. The system was established in order "to safeguard against unauthorised disclosure of sensitive information". In adopting that decision, the Governing Board also recorded in its Conclusions [IEA/GB(77)7, Item 7 (c)-(d)] the Members' agreements concerning security clearances for certain Combined Energy Staff [See Chapter VI, Section D on the Combined Energy Staff], to be effected through equivalent national security classifications and the conduct of security clearance checks. Those security checks are intended to increase the protection of sensitive information to which the Staff Members are given access in the course of their work.

In paragraph 1 of the decision the Executive Director was empowered to adopt Security Regulations of the Agency to implement the Principles and Procedures. The Executive Director carried out that mandate on 1 November 1977 by adopting the Security Regulations of the Agency [IEA/ED(77)398] which define the security obligations of Staff Members, set out detailed information and instructions on the security system and contain examples of appropriate forms. In addition, technical and operational details for the assistance of successive security officers were set forth in an IEA Security Procedural Manual.

1. Brief Description of the IEA Security System

The system contains elements governing document classification and handling, personnel procedures and physical security of the IEA premises, as provided in the IEA legislative instruments described above. The system does not require any initiation or triggering actions to become operative. It is in force and applicable in accordance with its terms at all times.

All official material which requires protection against unauthorized disclosure is classified in one of the following categories [Security Principles and Procedures, paragraph 19-A]:

(1) *IEA SECRET:* All material of a highly sensitive nature, the unauthorised disclosure of which could cause grave damage to the functioning of the OECD, the IEA or the interests of any Member government of either organization.

(2) *IEA HIGHLY CONFIDENTIAL:* All material of a sensitive nature, the unauthorised disclosure of which could cause damage to or seriously prejudice the interests of the OECD, the IEA or the interests of any Member government of either, and which requires special protection and handling and limited access.

(3) *CONFIDENTIAL:* All material of a sensitive nature, the unauthorised disclosure of which could cause damage to or seriously prejudice the interests of the OECD, the IEA or the interests of any Member government of either (Note that this classification corresponds to the OECD classification of the same name).

(4) *RESTRICTED:* All material which is for official use only and which should not be disclosed to the press or general public (Note that this classification also corresponds to the OECD classification of the same name).

(5) *UNCLASSIFIED:* All material which could be released to the press or the general public (Note that this classification includes material not required to be classified under the IEA security system as well as derestricted material. This category corresponds to the OECD classification "For General Distribution").

Classified material received from governments or other sources is assigned an equivalent Agency classification. All sensitive oil company data pertaining to less than three companies are classified "IEA SECRET". The originator of a classified document in the Agency assigns it an appropriate classification at the time the document is prepared. Final classification of "IEA SECRET" or "IEA HIGHLY CONFIDENTIAL" must be made or approved by the Executive Director or by officials specifically designated by the Executive Director. Pursuant to review and re-classification procedures, down-grading may be effected by the official authorizing the original classification, but "IEA SECRET" or "IEA HIGHLY CONFIDENTIAL" material may be downgraded or declassified only by the Executive Director or officials specifically designated by the Executive Director. Such action as respects documents originating from outside the Agency requires the express authority of the originator.

Each document is marked to show its classification clearly. "IEA SECRET" or "IEA HIGHLY CONFIDENTIAL" is so marked at the top and bottom of each page, including the cover, and upon each envelope or file folder. Such material may be reproduced or translated only upon the specific authorization of the Executive Director or of officials specifically designated by the Executive Director, and only within IEA premises. Each copy is numbered, and a distribution list of the strictly limited reproduction

copies is maintained. Within the Agency all "IEA SECRET" and "IEA HIGHLY CONFIDENTIAL" material is maintained in security cover sheets and is stored in locked safes with three-way combination locks, pursuant to the Agency's rules governing physical security. "CONFIDENTIAL" and "RESTRICTED" material is handled in accordance with normal OECD procedures, which means for the IEA that it is held on locked and guarded IEA premises.

"IEA SECRET" documents may not be distributed outside of IEA premises. "IEA HIGHLY CONFIDENTIAL" documents may be distributed outside IEA premises, but only upon the express prior authorization of the Executive Director or officials specifically designated by the Executive Director; such distribution will be made pursuant to the recipient government's agreement to assign the material an equivalent national security classification and to afford such material the same safeguards concerning access, handling and storage that it applies to its own material bearing an equivalent classification.

In practice the "IEA SECRET" classification has been employed sparingly, except for the individual oil company sensitive information (often called "confidential and proprietary information") that was received under Questionnaires A and B during the two supply shortfalls and in connection with the ASTs mentioned above. On those occasions abundant "IEA SECRET" information was present in the Agency, and it was used on a "need to know basis" by selected members of the Secretariat who held the requisite security clearances or for whom the necessary application had been made, and (in the ASTs) also by members of the Industry Supply Advisory Group (ISAG) on a "need to know basis." Such information was never allowed to leave IEA premises, even to be used by the Secretariat for official purposes. Requests to use such information in ISAG briefing sessions away from IEA premises have been denied. While such data can be removed with the permission of the originating company or government, there has been a positive response to the only request made for that purpose to a group of originators, as will be described below. Even when the information has become stale, after being held for some years, the classification is maintained, and the originator's consent would be required for its removal even on a temporary basis. Such data is supplied to the Agency only for the purpose specified by the request, either for an AST or for an actual or potential supply disruption, and the data may not be employed within the Agency for any other purposes.

The only exception to the non-removal rule has been made to satisfy United States antitrust record keeping rules. U. S. companies and their

representatives are required to provide U. S. government authorities with certain information furnished or exchanged in the course of designated IEA activities. Much of that information is furnished directly by the companies concerned, but at times it is convenient for the same data to be supplied from the IEA premises. U. S. antitrust as well as European Community monitors are present on IEA premises during the ASTs and they would be expected to be present as well during activation of the Emergency Sharing System. Monitors have been given access as required by the rules to all information seen by the oil company officers working with the Secretariat. In the course of the ASTs, the Secretariat has permitted the U. S. antitrust monitors to remove under IEA rules certain sensitive information only when required by law. These arrangements have proven to be somewhat burdensome but they have not otherwise presented serious difficulties.

In connection with the 1992 Allocation Systems Test (AST-7), the United States authorities requested copies of written records of *all* AST-7 voluntary offers by IEA Reporting Companies, including the actions taken. Although this request raised a problem of the Agency's release of sensitive information, the IEA established a workable procedure for responding to the request. The U.S. company information presented no difficulty because that information was to be made available to the U. S. authorities in any event by the companies concerned. With regard to non-U. S. company information, the Agency sought and received permission of those companies for the release of the information, and the Agency then released it to U.S. antitrust authorities. This was accompanied by an IEA request that the documents be employed solely for stated antitrust purposes. The documents were classified "IEA HIGHLY CONFIDENTIAL" and were the subject of written requests that the U. S. authorities to assign them "an equivalent national security classification" and to ensure "that they be accorded the same safeguards regarding access, handling and storage as are applied to U. S. material in the equivalent classification category" [Letter Bamberger/Samuel Bradley, 24 May 1993, IEA/OLC(93)72].

The handling of "IEA HIGHLY CONFIDENTIAL" documents has seldom presented difficulties. In fact there have been fewer documents bearing that classification than the other classifications, and they have frequently contained sensitive information of a political nature rather than individual oil company information. Documents bearing this classification are, for the most part treated like "IEA SECRET", documents with one major exception. "IEA HIGHLY CONFIDENTIAL" documents may be removed from IEA premises without the permission of the originator, but special protective rules apply. In fact that distinction was the origin of "IEA

HIGHLY CONFIDENTIAL" as a separate classification, for "IEA SECRET" documents could not be so removed. Under appropriate safeguards, and particularly for political information which might need to be disseminated among Member governments, the "IEA HIGHLY CONFIDENTIAL" classification was invented to make it possible to remove such information from IEA premises with a minimum of difficulty.

CONFIDENTIAL and RESTRICTED information circulates in and out of IEA premises much as it does in the OECD. This information is disseminated outside IEA premises to interested OECD offices and to Member Delegations, or as may be authorized under the rules of the system. Many Governing Board Conclusions have been classified as CONFIDENTIAL, as have many Governing Board, Standing Group and Committee documents. Internal documents of a sensitive nature, such as documents disclosing negotiating positions or other political or operational sensitivities are classified CONFIDENTIAL, but most documents prepared for IEA bodies or for internal purposes are classified simply as RESTRICTED. Indeed, most internal papers bear no official classification at all; however, because of their official nature, they have been regarded as not suitable for dissemination outside of the Agency or for the press. They are thus tantamount to RESTRICTED documents and are handled carefully.

The fundamental rule governing the security responsibilities of all IEA Staff is set forth in the first sentence of paragraph 19 of the Security Principles and Procedures. It provides that "Each Staff member who has knowledge or custody of classified information has a basic responsibility for maintaining its security". The rule is supplemented by the requirement that "Each supervisor has the ultimate responsibility of assuring that all classified information entrusted to his unit is protected" in accordance with the procedures set out in paragraph 19, which include the security classifications, the authority to classify, downgrade and declassify, the marking of documents, the limitation of access to sensitive material, the limited dissemination of classified documents, and rules about their destruction, translations, protection and storage.

Security clearances are required for those Combined Energy Staff Members and for other persons (such as interpreters and translators) assigned to duty with the Staff or to service IEA meetings, who will have access to material classified "IEA SECRET" or will regularly have access to material classified "IEA HIGHLY CONFIDENTIAL". A security clearance will be granted by the individual's national government after a security examination conducted according to the same procedures (including

procedures for obtaining information from other countries) which the government applies for clearances it grants for access to information bearing an equivalent national security classification. IEA Security Regulation 2-5 provides for the clearances to be updated every five years for Staff who continue to have access to sensitive information. Although many IEA Staff will have moved on to other employment during that period because of the Agency's policies on the term of appointments, there have been only a few cases where updating of clearances has been sought.

Members of the Secretariat have not been granted access to "IEA SECRET" or "IEA HIGHLY CONFIDENTIAL" information unless there was in effect a security clearance for the individual (or an appropriate application had been made), and unless the individual had the requisite "need-to-know" and had undertaken a contractual obligation not to reveal the information to unauthorized persons both during and after the Staff Member's term of employment. For "IEA SECRET" information, moreover, the Governing Board is consulted concerning such access by the particular individual.

Clearances have been sought for individuals who hold sensitive posts or may otherwise require access to sensitive information in order to carry out their functions, including Staff Members who may be reassigned to sensitive work temporarily during ASTs or periods of actual or foreseeable oil supply disruptions. After each clearance is received, the individual's name is submitted to the Governing Board for the consultation (for this is done not by post or function description, but for each individual as such). The submissions are usually grouped as a convenience to the Board. In no case to-date has a consultation resulted in a negative response from the Governing Board.

If a national government withdraws a security clearance granted by it, the Executive Director will deny the individual further access to the information. Unauthorized disclosure renders the Staff Member liable to disciplinary measures, including dismissal in appropriate cases under OECD rules and procedures. None of those actions has been necessary up to the present time.

Since security awareness is a matter of training as well as personal integrity, the IEA system requires that *all* persons appointed to the Staff, either temporarily or permanently, regardless of the individual's status regarding access to sensitive information, be provided with a copy of the Security Regulations and be briefed thereon by the Security Officer. Follow-up security briefings are provided to each Staff Member semi-annually. These provide an opportunity to review the basic rules, to

enlarge upon matters of current concern and to provide Staff Members with a regular occasion to raise pertinent questions with the Security Officer.

The physical security of the premises occupied by the Agency (the entire third floor and part of the fourth floor of the OECD building located at 19, rue de Franqueville in Paris) is assured by a single entrance and exit controlled by Agency guards and the premises are further protected by an alarm system. Strict visitor control procedures are employed, including accurate identification, registration and escort while on IEA premises. The escort is responsible for the visitor until he or she leaves the Agency premises or is taken by another escort for further visit of the Agency. The visitor is not to be free to move about the Agency on his own or her own at any time. Security is further assured by a closed-circuit television system for monitoring access to sensitive data areas, and that system can be expanded in an emergency to monitor additional areas in which sensitive documents might be used or stored. Under IEA document security rules IEA guards make daily security checks after normal duty hours of each office on IEA premises to ensure that no classified documents are left unsecured [Security Principles and Procedures, paragraph 5]. The guards secure any exposed material and report to the Security Officer who will recommend any appropriate administrative or disciplinary action regarding the violation. Sensitive material is stored in special safes under the control of responsible officers, while computer security is assured by restricted access, by the use of access codes, and by other measures under the control of the Information Systems Division of the Secretariat. "IEA SECRET" or "IEA HIGHLY CONFIDENTIAL" waste is systematically destroyed, computer material by demagnetizing and paper material by shredding, under supervision on Agency premises.

2. Security During the Gulf Crisis (1990-1991)

Perhaps the most critical period for IEA security occurred during the Gulf Crisis, between August 1990 and March 1991. This was the most recent occasion for the Agency to hold substantial amounts of "live", sensitive data under its responsibility. Questionnaire A and B sensitive data began to be received in the IEA shortly after August 17 when the U. S. Secretary of Energy issued to U. S. Reporting Companies written antitrust clearances for submitting Questionnaire A data to the Agency. All information received by the Secretariat pursuant to the clearances was classified "IEA SECRET" and was handled as such under the IEA security system. This required an

immediate review of the status of security in the IEA and the application of measures required to ensure that sensitive information arriving in the Agency receive the appropriate protection. It had then been almost ten years since a security problem of that magnitude had arisen in the Agency, and during such a long period of relative "normal times" the security system had been accustomed to the long period of reduced risk.

The first step was to increase the Staff's awareness of security problems and of the principles and procedures to be applied. The Security Officer immediately started a new round of rigorous security briefings for all of the Staff and reviewed the Agency's actual practices. The Security Officer made a number of recommendations concerning the strengthening of those practices. For example, some of the key rules, such as the escort rule, had been understood to apply to Delegations only when sensitive information was actually present on the IEA premises. On the recommendation of the Security Officer, the Deputy Executive Director issued an instruction of 12 September 1990 that "all non-IEA personnel, including members of OECD Delegations and participants in Governing Board, Standing Group and other meetings, must be escorted to and from offices visited within IEA" [DED(90)116]. Inevitably when a crisis suddenly arises some of the key Staff will have security clearances granted by their governments and others will not. In the case of those individuals whose clearances had not yet been received, the Deputy Executive Director decided that in order for the Secretariat to do its work in processing and analyzing the Questionnaire A and Questionnaire B data, all of which was sensitive, an interim measure would have to be adopted. Agency Staff holding clearances would be employed as much as possible. For Staff who needed access, but whose clearance had been requested or was being requested from the appropriate national authorities, and had not yet been granted, access would be allowed as required for the Agency to meet its responsibilities, with such Staff to receive special reminders of the responsibilities entailed by such access to sensitive information [DED(90)103, 20 August 1990].

Following the end of the Gulf Crisis military action, the arrival of sensitive data in the Agency terminated upon the Executive Director's decision "to phase out the submission of Questionnaires A and B". Her intention to do so was noted by the Governing Board on 6 March 1991, the day on which the Board terminated the Co-ordinated Energy Emergency Response Contingency Plan [IEA/GB(91)19, Item 3]. Although the sensitive data received in the IEA would continue to be held by it, there was less need for the strict application of the emergency security rules. At the request of two Delegations the Agency reverted to its previous practice in normal times

of permitting OECD Delegation members to visit the Agency without an escort, with the understanding that if a Delegation member were accompanied by others, an escort would be required; and that when sensitive information was being employed in the Agency or in other situations, the Secretariat may be required to reinstate the escort rule for Delegations as well as for other persons. Those decisions were announced promptly by circular to Delegations and the Staff [DED(91)172, 27 August 1991].

3. Policy of Openness

While the IEA's information policies, described above, might be seen as restrictive, there have been compensatory and liberalizing elements applied. The first of these elements is the policy of the Governing Board and the Executive Directors to be as forthcoming as possible with the press. This has been true of the IEA from the outset. The Agency leadership has often met with the press and disclosed important information in public addresses and publications. Members of the Secretariat are encouraged to do the same, and they frequently do so with a minimum of central control, sometimes with manuscript review inside the IEA, and sometimes without.

In addition, recognized academic scholars have been given access to certain sensitive IEA documents (classified CONFIDENTIAL or lower) for purposes of research, analysis and publication. This is done under certain contractual controls, however, to ensure that there is no inadvertent disclosure of more sensitive information. In four cases, university professors or other individuals, who were well regarded and highly qualified to deal with IEA type questions, were given access to Governing Board records, informal notes on meetings and full Agency documentation on subjects relevant to their research. This was done in each case with a written understanding that the researchers would not take away from IEA premises any document or paper made available to them in the IEA, that they would not cite or publish any of them, and that they would provide the Secretariat with a copy of their text for review before the manuscript would be published. In several cases the subsequent review led to Secretariat requests for deletions or modifications, all of which were fully respected.

The Agency has not established a policy on the systematic derestriction of formerly sensitive documents and it has never made blanket derestriction decisions. Often the Governing Board has been asked to derestrict a key decision at the time it is made. That, for example, was the case with the leading Governing Board actions during the 1990-1991 Gulf Crisis when each decision was released to the press on the day that it was

adopted. The derestriction decision is made either in the decision itself or in the Conclusions of the meeting, or in some cases it is too obvious to require explicit reference.

The Secretariat has considered that eventually a way might be found to make the historical archives of the IEA available to responsible scholars on a more regular and systematic basis. The selective access of scholars raises problems for the scholars as well as for the Agency. As a practical matter the Agency has to be selective in order to avoid excessive interference with its work. For the scholars themselves selective access could raise the possibility that their colleagues might not be given access. So far this has presented only theoretical difficulties, but the time may come when historical material which loses its sensitivity could be released more generally. The OECD has embarked on a programme of systematic derestriction (with certain safeguards) after thirty years and it is considering means of organizing archives for systematic scholarly access, at this stage by arrangement with the European University Institute in Florence as depositary. In due time the IEA will be considering the same questions, either in co-operation with the OECD or by other means. Because the IEA holds the highly sensitive information described above, special arrangements would have to be considered in order for the Agency to respect its security rules and to ensure that the sources of sensitive information conveyed to the Agency are adequately protected.

C. Languages

The use of languages in the Agency has been influenced by the I.E.P. Agreement and by Governing Board decisions as well as concerns about the efficiency of operations. Although the English language has been used most extensively as an official and working language throughout the history of the IEA, the evolution of membership in 1991-1992 had a strong influence on increasing the use of French and German.

The I.E.P. Agreement is silent on the question of languages, except for the provision in Article 76 that the English, French and German texts of the Agreement are "equally authentic". For any question of interpretation or application of the I.E.P. Agreement, the texts in all three languages would have to be used in appropriate cases. On a number of occasions when interpretation questions have arisen, the three languages have been employed [See, for example, the Circular Letter of the Executive Director to Heads of Delegations, IEA/ED/80.198, entitled "Procedures for Making the

Finding Pursuant to Articles 19 and 21 of the I.E.P. Agreement", 2 June 1980; IEA/SEQ(79)50]. This corresponds to the common practice under the law of treaties [See Article 33 of the Vienna Convention on the Law of Treaties of 1969].

However, it will be recalled that the language in which the Agreement was negotiated at the Energy Co-ordinating Group (ECG) in Brussels in 1974 was almost entirely English, and that the ECG itself produced an English text only. The I.E.P. Agreement was signed on 18 November 1974 in the English text only, except for the closing attestation which appeared immediately preceding the signatures and for the names of the signatories, which took the form of a fragment in the three languages. The final versions of the French and German texts of the rest of the Agreement were not then in existence. They were prepared as translations of the English original by the French and German units of the OECD translation service, cleared with the Delegations and national authorities of the interested Members, and adopted officially by the Governing Board on 5-7 February 1975 [IEA/GB(75)8, Item 9, Annex V]. Thereafter, whenever the Agreement has been amended, this has been done usually first in the English version only, and the French and German texts of the amendments have been adopted by the Board later [See IEA/GB(76)24, Item 8 (New Zealand); IEA/GB(88)25, Item 5 (Australia, Greece and Portugal); IEA/GB(91)19, Item 2 (Finland); and IEA/GB(91)45, Item 2(d) (France)]. In the latter two cases texts in all three language were adopted at the same time.

Since the founders did not provide in the I.E.P. Agreement for the languages of operation of the Agency, they left this question to decision by the Governing Board, to be adopted as a procedural and administrative or management matter, as in many other organizations. Under Article 50.2 the Governing Board, acting by majority, "shall adopt its own rules of procedure"; unless otherwise provided, those rules would apply to the subordinate bodies of the Agency as well. The rules of procedure language also appears in the OECD Council Decision on the Establishment of the Agency, simply as follows: "The Governing Board shall adopt its own rules of procedure and voting rules" [Article 4]. The IEA founders' intention was to avoid the application of the OECD's Rules of Procedure (which were considered inappropriate to the Agency and could not be applied consistently with the I.E.P. Agreement to IEA operations). OECD Rule of Procedure 27 making English and French the official languages of that Organisation clearly did not apply to the IEA. The I.E.P. Agreement's specific provisions on IEA rules of procedure, as well as the broad management and administrative powers conferred on the Board in Article 51,

ensured that there could be no contention that OECD rules would apply unless the Board itself would adopt parallel rules, which it has not done. The IEA provisions were considered to pre-empt the field [On IEA Rules of Procedure, see Chapter V, Section A-8 above].

The intention of the founders was to continue in the IEA the simplicity and operational efficiency that had characterized the ECG negotiations in Brussels on the I.E.P. Agreement in the course of 1974. Most of the work in Brussels was carried out in English alone. Neither the French speaking delegations (France did not participate) nor the German speaking delegations insisted upon working in their own language in meetings or in documentation.

At the Governing Board's first meeting on 18 November 1974 immediately following the signature of the Agreement, the Board decided to defer the preparation of formal rules of procedure and to "seek to proceed in a flexible way assuring maximum operational efficiency and simplicity" [See Section A above; IEA/GB(74)9(1st Revision), Preliminary Matters, paragraph (d)]. More specifically on languages, the Board

> agreed that for the higher bodies of the Agency German interpretation would be made available and important documents would, as appropriate, be circulated in German as well as French and English [IEA/GB(74)9(1st Revision), Item 14(a)].

The following month the Board again addressed the German language question, this time in the context of the Budget of the Agency, to consider the costs of multiple language usage in the IEA. On that point the Board

> agreed on a preliminary basis that the German interpretation and translation and document costs would be met in accordance with existing OECD arrangements and agreed to review this question after a few months' practice to determine whether these arrangements are sufficient [IEA/GB(74)11(1st Revision), Item 5(n)].

The words "existing OECD arrangements" refer to the Council's Resolution of 3 July 1962 concerning the special German and Italian translation and interpretation services set up within the Organisation "at the request and at the expense of those countries". The costs can be assumed by the Organisation if the translation or interpretation "is of special importance for the success of the activity in question". Also, "In practice, a delegate who wishes to speak in his own language, where it is not one of the two official

languages, may do so provided he (or she) bears the cost of interpretation into one of the official languages, and provided the necessary facilities (interpretation booths) are available at OECD" [See authorities in the OECD Manual for the Guidance of Chairmen of Subsidiary Bodies of the Organisation, pp. 56-57].

At the outset, the foregoing authorities provided the formal basis for IEA practices concerning languages. The ECG concepts of flexibility, operational efficiency and simplicity argued in favor of the use of one language instead of two or three or more, in terms of costs, relatively rapid distribution of documents and dedication of Staff to substance rather than language and other peripheral activities. The image of the Agency as an operational rather than "think tank" type of institution and the perception that all government and industry officials concerned with energy policy could work effectively in English also played a role in maintaining the single language procedure. Financial pressures in a number of governments for zero real growth would mean that any substantial increase in resources dedicated to translations and interpretation would have to come from programme resources and might thus impair the substantive work of the Agency.

It is understandable that under all of these circumstances most IEA documents over the years were produced in English only. The major exception was for Ministerial Level meeting documentation which has always been distributed in the three languages. All other Board agendas and documentation were written in English only as a general rule. In the 1980s there was a request for Agendas to appear in French as well, and that became a standard practice and continues to the present day. Major institutional documents, like the Agreement with Norway, the Long-Term Co-operation Programme, and the Charter of the IEA Dispute Settlement Centre in their final form, appeared in the three languages, but not the Emergency Management Manual. However, the great bulk of Governing Board, Standing Group and other official documents have appeared in English only. None of the IEA R & D Implementing Agreements has been produced in any language other than English up to the date of this writing. Major IEA publications do appear in French as well as in English in the IEA publishing format. Licenses are at times provided for Members or others to publish versions in other languages as well, at the expense and risk of the publisher. For practical reasons, up to the present time, most IEA documents and publications have been drafted and first produced in English. In cases of documents prepared immediately prior to a meeting, there is insufficient time to issue the documents in the normal way, and consequently they appear as "Room Documents" in English only.

English has also been the most widely used language in meetings of IEA bodies and in the Secretariat. French and German interpretation is provided for all Governing Board meetings. For Ministerial Level meetings interpretation in Japanese and other languages is available at the expense of the Delegations requesting those languages. In the Standing Groups and Committees French interpretation is now available and sometimes German as well, following the changes in language policy described below. The Working Parties and other subordinate bodies and informal groups usually work in English only. In the Secretariat there is a growing ability to use French as a working language.

Budgetary provision has had to be made, of course, for translations and interpretation. These provisions have run in the neighborhood of two per cent of recent Budgets. For translations prior to 1992 the budgeted costs incurred were for French translations only; German translation costs were borne entirely by Germany and were not a charge on IEA Budgets. The 1991 and earlier Budgets referred to making the documents available in "both official languages of the Organisation", which was a shorthand reference to French and English, made without the intention of deciding that both were IEA "official languages" in the sense of the OECD Rules of Procedure.

Over the years the French speaking Delegations have expressed interest in the more complete and speedy availability of IEA documents and publications in French. This has proven difficult in practice because there is often a short period of time between the completion of the document in English and the date of the meeting at which it will be considered. As stated in the 1991 Budget, "In these circumstances, the French Translation Service of the Organisation finds difficulty in providing for this timing without impairing its service to the Organisation as a whole. The Agency makes extensive use of outside translators for publications appearing in both official languages" [IEA/GB(90)43, Attachment B, Item 9(b), p. 25]. However, the need for last minute detail and analysis in many IEA operational documents continues to make it impossible as a practical matter to have documents appear in a timely fashion in French and German as well as in English.

The most significant changes in the Agency's language expectations and practices occurred in connection with the membership of France in 1992. Early in the 1991 discussions with French authorities about the possibility of French membership, representatives of France raised the question of the presence of the French language in the Agency. In that context it had to be made clear that French was not an "official language of the Agency" and that the Governing Board would have to examine the question. It soon appeared that Germany, a founding Member, was seeking to advance the use of German

in the IEA and that to some extent the questions of French and German might become linked. This did not escape the attention of the Delegates for Italy, Japan, Portugal and Spain who expressed official interest in their respective languages being employed in the IEA too. After extensive negotiations among the interested Delegations and the Secretariat, compromise solutions to accommodate the main concerns of all sides were arranged.

For the French language, the Governing Board's Decision [IEA/GB(91)45, Item 2(e)] recalled the letter by which France requested accession to the I.E.P. Agreement and the Board's decision to invite it to accede, and it decided the following:

> (i) the French language will be fully employed in all the bodies of the Agency;
> (ii) the implementation of this Decision will be done on a phased basis and its financial implications will be subject to the normal budgetary procedure.

For the German language, the Board recalled the two decisions made by the Board in 1974 on the subject of languages (quoted above) and

> (d) decided that it would be appropriate for the costs of the use of German as defined in paragraph (a) above to be progressively included in the annual Budgets of the Agency, in amounts to be determined by the Governing Board in accordance with the normal budgetary procedures, and asked the Executive Director to present for the Governing Board's consideration a plan that would bring this about without impeding the substantive work of the Agency. [IEA/GB(91)45, Item 3].

The Delegates for Italy, Japan, Portugal and Spain reserved the right to raise at a future time the question of the use of their respective languages in the IEA.

In response to the Governing Board's foregoing decisions on the French and German languages in 1992, the Executive Director proposed an *increase* in real resources for translation costs in 1992 of FF 1,000,000. That was adopted as part of the decision of the Governing Board on the 1992 Budget of the Agency [IEA/GB(91)68, Attachment B, Item 9(b), p. 24]; in the 1993 Budget of the Agency, the appropriation for translations was increased from the enlarged base for 1992 to reflect changes in prices/costs et cetera, but without increase in real resources. That Item was accompanied by a reference to the German and French translation costs for

IEA documents and publications, and included the statement that "Progress has been achieved and efforts will be strengthened in making translations of Agency publications and documents available. However, this goal still proves difficult to reach in some cases due to the pace of the Agency's activities which limits the time available between the distribution of documents and their consideration at Agency meetings" [IEA/GB(92)46, Attachment B, Item 9(b), p. 24]. Similar statements were made in the Budget for 1994, again without there being increases in real resources for translations [See IEA/GB(93)63, Attachment B, Item 9(b) p. 26]. However, a greater number of IEA documents are now produced in French as well as English. The May 1991 Governing Board Conclusions document, which contains the decision on the membership of France was translated and circulated in both languages [IEA/GB(91)45]. The Programme of Work and Budget documents, as well as others, also appear increasingly in both languages.

In some cases, when the Secretariat has circulated to Delegations such lengthy submissions as the French country review submissions to the Long-Term Office, there have been complaints that the untranslated material can not be fully utilized by Delegations and officials in capitals. Under an earlier practice, French language submissions by Belgium and Luxembourg were translated into English at IEA expense, but that practice was discontinued for reasons of cost and utility in 1990. Thereafter those submissions were circulated in French only, and the same was true for the French Delegation's first submissions (1991). In 1992 the practice of circulating submissions was discontinued for cost reasons, but the Secretariat retained the submissions which may be consulted by Delegations on request. The first emergency response preparation review of France was conducted in 1992, which was in a period of transition. The French submission for that review was circulated in both French and English. The review itself was conducted in English only, and the report of the review was circulated in English but not in French.

For the translation and production of IEA publications, in 1992 the French and German authorities submitted to the Secretariat their respective proposals with stated priorities of titles, and the IEA actions have been worked out case by case on a flexible basis in consultations between the Secretariat and the two Delegations.

It is expected that the use of languages in the IEA will continue to evolve in the future on a pragmatic basis in accordance with programme and budgetary considerations, with the objective of making available as much material as practicable in the three languages.

D. Documents

There are few IEA rules on the normal production and distribution of documents, except for the security rules discussed in Section B and for language rules discussed in Section C, above. The I.E.P. Agreement is all but silent on this subject, with the exception of a number of provisions for Standing Groups to report to the Governing Board on various topics. Most of those provisions have already fulfilled their function. They were employed to mandate urgent work and to set deadlines. For example, the provisions of Article 42.1 and 43.1 refer to a "report" from the Standing Group on Long Term Co-operation and for the Board to decide on proposals by 1 July 1975, which was the procedure that led to the adoption of the Long-Term Co-operation Programme. There are more general reporting directions specified in the Agreement, and they have led to the presentation of reporting documents. Article 64.3 calls for the submission of the draft Budget, including personnel requirements, by 1 October each year. Aside from these provisions of the Agreement, there are no fixed rules governing the preparation or submission of documents. The remaining document questions are left to the rules of procedure, financial regulations of the Agency or to other procedures. Since systematic bodies of rules on those subjects have not been proposed or developed, the IEA approach to documentation has evolved informally through the practice of Agency bodies over the years.

Documents intended for submission to IEA bodies are normally prepared by the Secretariat. However, they may be prepared and submitted also by the Chairman of the body, by members of the body or, upon invitation, by such consultative groups as the Industry Advisory Board, the Industry Working Party or the Coal Industry Advisory Board. Normally such documents are submitted to the Secretariat for reproduction and distribution.

On document form, content and timing, the IEA has applied the operational principles laid down by the Governing Board at its first meeting: flexibility, maximum operational efficiency and simplicity, outlined above in Section A of this Chapter. In rushed periods Governing Board documents have at times been produced on the morning of the meeting or in the course of the meeting (in these cases usually as "Room Documents"), giving Delegations and colleagues only a minimum notice before the document was introduced and corresponding proposals were presented for decision. In fact there have been requests from Delegations to allow more time, particularly by Delegations from the countries located the farthest away

from Paris. Before the Agency had completed its first year, the Governing Board considered the "Timely Distribution of Documents" [IEA/GB(75)69, Item 8(b) and:

> noted that many Delegations work under such pressures of time that the Standing Groups and Secretariat should make still greater efforts to distribute documents in time to reach capitals at least 48 hours before the documents are to be discussed in the Governing Board.

In 1982 the Governing Board noted the request by one Delegation for earlier distribution of documents and noted also "the need to balance pragmatically concerns about meeting schedules and timely distribution of documents" [IEA/GB(82)92, Item 3(e)]. Since then there has been no Board action on similar requests made at the level of the Standing Groups or the Budget Committee. By and large the Secretariat gives adequate notice and always seeks to give as much notice as possible. On agendas, for example, new items are not placed on revised agendas at the last moment unless they are considered to be non-controversial or of such overriding importance as to be unavoidable. When that does occur the Delegations are made aware of the problem and have confidence in the Secretariat's judgement that the best will have been made of a difficult situation.

Normally, however, it is possible to provide a more extensive advance view. Draft agendas are prepared a month or so in advance of the meeting and are sometimes available on request (with a caveat as to their preliminary character). Other documents as well are distributed as much as possible in advance, unless it is clear that new elements are to be developed or that the situation treated in the document is likely to change materially. In those cases it would be confusing and cause loss of Delegates' time to have an early version of a document distributed prematurely. By 1991 the application of the OECD's On-Line Information Service (OLIS) and the availability of other electronic transmission systems had removed most of the burden that might otherwise have fallen on Delegations when documents could not be distributed until shortly before a meeting. When late distribution of meeting or other documents cannot be avoided, in appropriate cases the Secretariat makes a rapid special distribution directly to Energy Advisers in Delegations.

Although the OECD has adopted rules governing such questions as the due dates for agendas and documents (whenever possible 15 days in advance in accordance with Rule 12 of the OECD Rules of Procedure; see

OECD Manual for the Guidance of Chairmen of Subsidiary Bodies of the Organisation, pp. 49, 50), the IEA has no such rule and is more flexible both on agendas and other meeting documents. Sometimes effective deadlines are set when an IEA body fixes a day for distributing a document in advance of a later meeting, or when it agrees that a certain question would be taken up on a fixed date on the basis of a paper prepared by the Secretariat, but those measures are tailored to the particular situation and are not at all arbitrary.

From the outset it was clear that the IEA preferred to work under conditions which would produce the most up-to-date information and analyses, even at the cost of not having the documentation in Delegates' hands as far in advance as might be provided in other organizations. The Secretariat seeks to alleviate these problems by distributing "Advance Copies" to Delegations and within the Secretariat at the same time the documents are transmitted to the OECD distribution system. In special cases when a Delegation has a particular interest or time problem the Secretariat has used the fax system to accelerate the process further.

The OECD provides the IEA with a great deal of assistance in the reproduction and distribution of documents. The IEA employs the OECD formats, document code systems and other documentation practices. OECD co-operation in this field is efficient and effective, enabling the IEA to avoid duplication of those functions within the Agency.

A list of the follow-on document codes now in use by the IEA is set forth below, together with an indication of the principal use of each code. Once a document is issued, follow-on documents on the same subject may employ one or more of these codes affixed alongside the initial document code:

- "CORR": means that the document bearing this indication is a Corrigendum which modifies the text in the underlying document; there might be a succession of those codes, like "CORR1", "CORR2" etc; except as so modified, the underlying document remains operative.
- "REV": means the document bearing this indication is a revision intended to replace entirely the underlying document; this may also appear in a series: "REV1", "REV2" etc.
- "ADD": means that the document bearing this indication adds material to the underlying document; this may also appear in a series: "ADD1", "ADD2" etc; in these cases the underlying document remains operative otherwise.

Archive documents in the IEA are held at various locations within the Agency's premises. The Agency holds a partial collection of the Energy Co-ordinating Group (ECG) documents which give the background on the I.E.P. Agreement negotiated in Brussels in 1974. These are derived from the fragmentary documents collected by the Secretariat members who participated in the ECG (Messrs Lantzke, Hopkins, Scott, Sunami and Huggins) and others, and include the entire collection formerly held by the Treaties Section of the Belgian Foreign Ministry which hosted the ECG and those documents preserved by other Belgian Government authorities. At the request of the IEA Legal Counsel, the Belgian Government's holdings were delivered during the 1980s to the IEA, where they are held in the IEA Office of the Legal Counsel. They are nevertheless quite incomplete.

Governing Board records are held in separate files, one for each meeting. These records contain copies of the meeting documents, the handwritten notes of the Legal Counsel who records the Conclusions of the meetings, and related papers; they are held in the Office of the Legal Counsel. A supply of copies of most Governing Board documents is held in the IEA Administration Unit. Documentation for each of the Standing Groups and the Committees is held in the Office of the Secretariat which provides support for the particular body. The IEA archive system and the IEA Library also maintain extensive collections of documents on the IEA premises. It is expected that the major part of significant IEA documents will eventually be placed on CD ROM diskettes and be made available to authorized persons in that format.

References to IEA document rules and practices appear throughout this work. Some of the particular contexts in which material on this subject may be found include: Chapter V, Section A-19 on Governing Board Conclusions and Minutes; Chapter VIII, Section B on Security and Section C on Languages; Appendix III which reproduces the I.E.P. Agreement; Appendix IV which reproduces the OECD Council Decision on the Establishment of the Agency; and Appendix VI which describes the Highlights of Principal IEA Events 1974-1993 and cites each of the IEA's Annual Reports on which that Appendix is based. Volume III of this *History* will contain a collection of principal IEA documents.

End of Volume I.

Membership

1 January 1994

Participating Country	Signature or Accession	Date of Deposit of Consent to be Bound	Date of Entry into Force
Australia	17 May 1979	17 May 1979	27 May 1979
Austria	18 Nov. 1974	30 June 1976	10 July 1976
Belgium	18 Nov. 1974	29 July 1976	08 Aug. 1976
Canada	18 Nov. 1974	17 Dec. 1975	19 Jan. 1976
Denmark	18 Nov. 1974	19 June 1975	19 Jan. 1976
Finland	22 Dec. 1991	22 Dec. 1991	01 Jan. 1992
France	28 July 1992	28 July 1992	07 Aug. 1992
Germany	18 Nov. 1974	20 Oct. 1975	19 Jan. 1976
Greece	25 Sep. 1976*	15 July 1977	25 July 1977
Ireland	18 Nov. 1974	28 July 1975	19 Jan. 1976
Italy	18 Nov. 1974	03 Feb. 1978	13 Feb. 1978
Japan	18 Nov. 1974	30 Apr. 1975	19 Jan. 1976
Luxembourg	18 Nov. 1974	24 Apr. 1975	19 Jan. 1976
The Netherlands	18 Nov. 1974	30 Mar. 1976	09 Apr. 1976
New Zealand	21 Mar. 1975*	29 Dec. 1976	08 Jan. 1977
Portugal	09 May 1980*	29 June 1981	09 Jul. 1981
Spain	18 Nov. 1974	17 Nov. 1975	19 Jan. 1976
Sweden	18 Nov. 1974	18 Dec. 1975	19 Jan. 1976
Switzerland	18 Nov. 1974	08 Dec. 1975	19 Jan. 1976
Turkey	18 Nov. 1974	24 Apr. 1981	04 May 1981
United Kingdom	18 Nov. 1974	30 Oct. 1975	19 Jan. 1976
United States	18 Nov. 1974	09 Jan. 1976	19 Jan. 1976

* Provisional accession.

Norway participates in the Agency under a special Agreement.

The European Communities (European Union) co-operate with the IEA on the basis of Protocol No. 1 to the OECD Convention which provides for the Commission to “take part in the work” of the Organisation.

Officers of the Governing Board at Ministerial and Official Level, Standing Groups and Committees

1 January 1994

Name	Country	Meeting	Dates of Service
GOVERNING BOARD AT MINISTERIAL LEVEL			
Chairmen			
Mr. Günter Rexrodt	Germany	131st Meeting	4 June 1993
Mr. Adolf Ogi	Switzerland	120th Meeting	3 June 1991
Mr. José Claudio Aranzadi	Spain	104th Meeting	30 May 1989
Mr. Marcel Masse	Canada	95th Meeting	11 May 1987
Mr. G. M. V. van Aardenne	The Netherlands	86th Meeting	9 July 1985
Mr. W. F. Birch	New Zealand	75th Meeting	8 May 1983
Mr. Nigel Lawson	United Kingdom	69th BIS Meeting	24 May 1982
Mr. J. L. Carrick	Australia	65th Meeting	15 June 1981
Mr. Charles W. Duncan	United States	61st Meeting	8-9 December 1980
Mr. Otto Lambsdorff	Germany	55th Meeting	21-22 May 1980
Mr. Otto Lambsdorff	Germany	48th Meeting	10 December 1979
Mr. David Howell	United Kingdom	42nd Meeting	21-22 May 1979
Mr. Alastair Gillespie	Canada	32nd Meeting	5-6 October 1977
Mr. Renaat van Elslande	Belgium	9th Meeting	27 May 1975
Vice-Chairmen			
Mr. K. E. Newman	Australia	42nd Meeting	21-22 May 1979
Mr. Stravos Dimas	Greece	42nd Meeting	21-22 May 1979

Name	Country	Dates of Service
GOVERNING BOARD AT OFFICIAL LEVEL		
Chairmen		
Mr. C. W. M. Dessens	The Netherlands	Dec. 1992 - present
Mr. R. Priddle	United Kingdom	Oct. 1991 - Dec. 1992
Mr. G. Chipperfield	United Kingdom	Mar. 1991 - Oct. 1991
Mr. U. Engelmann	Germany	Jan. 1987 - Mar. 1991
Mr. de Montigny Marchand	Canada	Oct. 1985 - Dec. 1986
Mr. P. Tellier	Canada	Jul. 1985 - Oct. 1985
Mr. A. J. Woods	Australia	May 1983 - Jul. 1985
Mr. H. Miyazaki	Japan	Oct. 1980 - May 1983
Mr. N.E.N. Ersbøll	Denmark	Jan. 1979 - Oct. 1980
Mr. D.K. Rohwedder	Germany	Jan. 1977 - Dec. 1978
Mr. S. Davignon	Belgium	Nov. 1974 - Jan. 1977
Vice-Chairmen		
Ms. S. Fallows Tierney	United States	Oct. 1993 - present
Mr. Y. Sato	Japan	Dec. 1992 - present
Mr. A. Walther	Norway	Jan. 1992 - present
Mr. H. Fujii	Japan	Oct. 1989 - Dec. 1992
Mr. J. Easton	United States	Oct. 1989 - Dec. 1992
Mr. H. Owada	Japan	Apr. 1988 - Oct. 1989
Mr. D. Waller	United States	Jan. 1987 - Oct. 1989
Mr. H. Fukada	Japan	Apr. 1986 - Déc. 1987
Mr. G. Jacoangeli	Italy	Mar. 1985 - Dec. 1986
Mr. R. Annerberg	Sweden	Mar. 1985 - Dec. 1991
Mr. W. J. Jenkins	Canada	Oct. 1983 - Apr. 1986
Mr. A. A. Fatouros	Greece	Oct. 1983 - Mar. 1985
Mr. U. Dahlsten	Sweden	Oct. 1983 - Mar. 1985
Mr. P. Subasi	Turkey	Jan. 1982 - Oct. 1983
Mr. U. Engelmann	Germany	Feb. 1981 - Dec. 1986
Mr. R. Hormats	United States	Feb. 1981 - Dec. 1982
Mr. M. Aytür	Turkey	Feb. 1981 - Dec. 1981
Mr. H. Miyazaki	Japan	Feb. 1980 - Oct. 1980
Mr. P. Hunt	Canada	Feb. 1980 - Feb. 1981
Mr. P. Jankowitsch	Austria	Mar. 1979 - Dec. 1982

Name	Country	Dates of Service
Mr. T. Chavarri	Spain	Mar. 1979 - Feb. 1981
Mr. B. von Tscharner	Switzerland	Jan. 1978 - Feb. 1980
Mr. F. J. Vallaure	Spain	Jan. 1978 - Dec. 1978
Mr. N. E. N. Ersbøll	Denmark	Jan. 1977 - Dec. 1978
Mr. C. Bobleter	Austria	Jan. 1976 - Jan. 1978
Mr. T. Hirahara	Japan	Jan. 1976 - Feb. 1980
Mr. P. M. Towe	Canada	Nov. 1974 - Jan. 1978
Mr. D. K. Rohwedder	Germany	Nov. 1974 - Jan. 1977
Mr. Thuysbaert	Belgium	Nov. 1974 - Dec. 1976
Mr. Yoshino	Japan	Nov. 1974 - Dec. 1975

STANDING GROUP ON EMERGENCY QUESTIONS (SEQ)

Chairmen

Mr. H. E. Leyser	Germany	Jan. 1992 - present
Mr. E. Röhling	Germany	Jan. 1991 - Dec. 1991
Mr. W. Pfletschinger	Germany	Jan. 1990 - Jan. 1991
Mr. J. Geerlings	The Netherlands	Jan. 1983 - Dec. 1989
Mr. D. Jones	United Kingdom	Jan. 1978 - Dec. 1982
Mr. P. le Cheminant	United Kingdom	Jul. 1976 - Jan. 1978
Mr. A. A. T. van Rhijn	The Netherlands	Nov. 1974 - Jul. 1976

Vice-Chairmen

Mr. F. Nielsen	United States	Mar. 1989 - present
Mr. P. Oberson	Switzerland	Sep. 1987 - Mar. 1989
Mr. G. N. Currie	Canada	Jan. 1984 - Sep. 1987
Mr. B. Hemborg	Sweden	Jan. 1978 - Dec. 1983
Mr. A. A. T. van Rhijn	The Netherlands	Jul. 1976 - Feb. 1981

STANDING GROUP ON LONG-TERM CO-OPERATION (SLT)

Chairmen

Mr. R. E. Hecklinger	United States	Oct. 1993 - present
Mr. W. Ramsay	United States	Oct. 1989 - Oct. 1993

Name	Country	Dates of Service
Mr. J. Ferriter	United States	Sep. 1987 - Jun. 1989
Mr. A. Larson	United States	Sep. 1986 - Sep. 1987
Mr. A. Wendt	United States	Apr. 1983 - Sep. 1986
Mr. J. Ferriter	United States	Jan. 1982 - Apr. 1983
Mr. E. Morse	United States	Jul. 1980 - Dec. 1981
Mr. P. Borre	United States	Jul. 1979 - Jul. 1980
Mr. G. Rosen	United States	Jan. 1978 - Jul. 1979
Mr. L. Raicht	United States	Jul. 1976 - Dec. 1977
Mr. S. W. Bosworth	United States	Nov. 1974 - Jul. 1976
Vice-Chairmen		
Mr. H. Saeki	Japan	Oct. 1993 - present
Mr. P. Gerresch	Belgium	Mar. 1989 - present
Mr. I. Kashima	Japan	Oct. 1991 - Oct. 1993
Mr. R. Hayashi	Japan	Aug. 1990 - Oct. 1991
Mr. M. Sase	Japan	Sep. 1988 - Aug. 1990
Mr. Y. Ichiryu	Japan	Sep. 1987 - Mar. 1989
Mr. H. D. Kuschel	Germany	Apr. 1986 - Mar. 1989
Mr. Y. Hayashi	Japan	Sep. 1986 - Sep. 1987
Mr. K. Seiki	Japan	Oct. 1984 - Sep. 1986
Mr. T. Yoneyama	Japan	Jan. 1983 - Apr. 1983
Mr. B. D. Nielsen	Denmark	Jan. 1983 - Apr. 1986
Mr. T. Okabe	Japan	Apr. 1983 - Oct. 1984
Mr. R. Anraku	Japan	Feb. 1981 - Dec. 1982
Mr. J. Geerlings	The Netherlands	Jul. 1979 - Dec. 1982
Mr. J. Sawada	Japan	Oct. 1979 - Feb. 1981
Mr. P. Borre	United States	Apr. 1977 - Jul. 1979
Mr. H. Kinoshita	Japan	Apr. 1977 - Dec. 1978

STANDING GROUP ON THE OIL MARKET (SOM)

Chairmen

Mr. M. Cleland	Canada	Mar. 1993 - present
Mr. C. W. M. Dessens	The Netherlands	Oct. 1989 - Mar. 1993

Name	Country	Dates of Service
Mr. K. Eichenberger	Switzerland	Jun. 1985 - Oct. 1989
Mr. G. Vatten	Norway	Jul. 1984 - Jun. 1985
Mr. D. N. Campbell	Canada	Jan. 1982 - Jul. 1984
Mr. E. Becker	Germany	Oct. 1976 - Dec. 1981
Mr. W. H. Hopper	Canada	Nov. 1974 - Oct. 1976

Vice-Chairmen

Mr. J. Brodman	United States	Jan. 1983 - present
Mr. S. Endo	Japan	Mar. 1993 - present
Mr. Y. Kusumoto	Japan	Jan. 1992 - Mar. 1993
Mr. T. Takahashi	Japan	Oct. 1989 - Dec. 1991
Mr. H. Mitamura	Japan	Sep. 1987 - Oct. 1989
Mr. I. Fujisaki	Japan	Sep. 1986 - Sep.1987
Mr. K. Togo	Japan	Jul. 1984 - Sep. 1986
Mr. K. Eichenberger	Switzerland	Jul. 1984 - Jun. 1985
Mr. T. Murayama	Japan	Dec. 1983 - Jul. 1984
Mr. I. Watanabe	Japan	Feb. 1980 - Dec. 1983
Mr. G. Caruso	United States	Jan. 1982 - Dec. 1982
Mr. D. Oliver	United States	Feb. 1980 - Dec. 1981
Mrs. D. E. F. Carter	United Kingdom	Jul. 1976 - Feb. 1980
Mr. R. Priddle	Canada	Jul. 1976 - Feb. 1980

STANDING GROUP ON RELATIONS WITH PRODUCER AND OTHER CONSUMER COUNTRIES (SPC)

Chairmen

Mr. R. Annerberg	Sweden	Mar. 1989 - Mar. 1991
Mr. J. Dahl	Norway	Apr. 1986 - Mar. 1989
Mr. H. C. Posthumus Meyjes	The Netherlands	Oct. 1980 - Apr. 1986
Miss G. G. Brown	United Kingdom	Apr. 1978 - Oct. 1980
Mr. R. A. Burrows	United Kingdom	Mar. 1976 - Apr. 1978
Mr. J. Wilton	United Kingdom	Nov. 1974 - Mar. 1976

Name	Country	Dates of Service

COMMITTEE ON ENERGY RESEARCH AND TECHNOLOGY (CERT)
(formerly COMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT (CRD) and SLT SUB-GROUP ON RESEARCH AND DEVELOPMENT)

Chairmen

Mr. H. Koch	Denmark	Mar. 1991 - present
Mr. K. Yokobori	Japan	Jan. 1990 - Mar. 1991
Mr. P. Dyne	Canada	Feb. 1988 - Dec. 1989
Mr. J. Decker	United States	Jan. 1986 - Feb. 1988
Mr. D. Kerr	United States	Mar. 1979 - Dec. 1985
Mr. R. Thorne	United States	Sep. 1978 - Mar. 1979
Mr. W. Schmidt-Küster	Germany	Feb. 1975 - Sep. 1978

Vice-Chairmen

Mr. T. Murayama	Japan	May 1993 - present
Mr. R. Bradley	United States	Apr. 1993 - present
Mr. K. Shimada	Japan	Jan. 1992 - May 1993
Mr. S. Oshima	Japan	Mar. 1991 - Dec. 1991
Mr. H. Jaffe	United States	Jan. 1990 - Apr. 1993
Mr. S. Oshima	Japan	Mar. 1989 - Dec. 1989
Mr. S. R. Jacobsen	Denmark	Mar. 1989 - Mar. 1991

COMMITTEE ON BUDGET AND EXPENDITURE (BC)

Chairmen

Mr. A. H. F. van Aggelen	The Netherlands	Oct. 1992 - present
Mr. B. Jones	Australia	Oct. 1991 - Oct. 1992
Mr. S. De Loecker	Belgium	Aug. 1990 - Oct. 1991
Mr. G. Zubler	Switzerland	Mar. 1989 - Aug. 1990
Mr. R. McLeod	New Zealand	1985 - 1987
Mr. P. Walker	Canada	1982 - 1985
Mr. R. Layland	Australia	1980 - 1981
Mr. J. M. Boulgaris	Switzerland	1978 - 1980
Mr. F. van Haren	The Netherlands	1976 - 1978
Mr. S. Woollcombe	Canada	1975 - 1976

Name	Country	Dates of Service
COMMITTEE ON NON-MEMBER COUNTRIES (NMC) (formerly AD HOC GROUP ON INTERNATIONAL ENERGY RELATIONS, (AHGIER))		
Chairmen		
Mr. A. Walther	Norway	May 1992 - present
Mr. R. Annerberg	Sweden	Mar. 1989 - May 1992
Mr. J. Dahl	Norway	Apr. 1986 - Mar. 1989
Mr. H. C. Posthumus Meyjes	The Netherlands	Oct. 1980 - Apr. 1986
Miss G. G. Brown	United Kingdom	Apr. 1978 - Oct. 1980
Mr. R. A. Burrows	United Kingdom	Jun. 1977 - Apr. 1978
Vice-Chairmen		
Mr. M. Atkinson	United Kingdom	Mar. 1993 - present

Agreement on an International Energy Program

(As amended to 7th August 1992)

Table of Contents

PREAMBLE 359

Article 1 360

Chapter I

EMERGENCY SELF-SUFFICIENCY 360

Article 2 360
Article 3 361
Article 4 361

Chapter II

DEMAND RESTRAINT 362

Article 5 362

Chapter III

ALLOCATION 362

Article 6 362
Article 7 363
Article 8 364

Article 9 365
Article 10 366
Article 11 366

Chapter IV

ACTIVATION 366

Activation:
Article 12 366
Article 13 367
Article 14 367
Article 15 367
Article 16 367
Article 17 368
Article 18 368
Article 19 368
Article 20 369
Article 21 370
Article 22 371

Deactivation:
Article 23 371
Article 24 372

Chapter V

INFORMATION SYSTEM ON THE INTERNATIONAL OIL MARKET 372

Article 25 372
Article 26 372

General Section:
Article 27 373
Article 28 374
Article 29 374
Article 30 374
Article 31 375

Special Section:
Article 32 375
Article 33 376

Article 34 376
Article 35 377
Article 36 377

Chapter VI

Framwork for Consultation with Oil Companies 377

Article 37 377
Article 38 378
Article 39 378
Article 40 378

Chapter VII

Long Term Co-operation on Energy 379

Article 41 379
Article 42 379
Article 43 381

Chapter VIII

Relations with Producer Countries and with other Consumer Countries 381

Article 44 381
Article 45 381
Article 46 382
Article 47 382
Article 48 382

Chapter IX

Institutional and General Provisions 383

Article 49 383

Governing Board:
Article 50 383
Article 51 384
Article 52 384

Management Committee:
Article 53 384

Standing Groups:
Article 54 385
Article 55 385
Article 56 385
Article 57 386
Article 58 386

Secretariat:
Article 59 386
Article 60 387

Voting:
Article 61 387
Article 62 388

Relations with Other Entities:
Article 63 390

Financial Arrangements:
Article 64 390

Special Activities:
Article 65 391

Implementation of the Agreement:
Article 66 391

Chapter X

FINAL PROVISIONS 392

Article 67 392
Article 68 392
Article 69 393
Article 70 393
Article 71 393
Article 72 394
Article 73 394
Article 74 394
Article 75 394
Article 76 394

ANNEX

EMERGENCY RESERVES 399

Article 1 399
Article 2 401
Article 3 402
Article 4 402
Article 5 402
Article 6 403
Article 7 403
Article 8 403
Article 9 403

Agreement on an International Energy Program

(As amended to 7th August 1992)

THE GOVERNMENTS OF THE REPUBLIC OF AUSTRIA, THE KINGDOM OF BELGIUM, CANADA, THE KINGDOM OF DENMARK, THE FEDERAL REPUBLIC OF GERMANY, IRELAND, THE ITALIAN REPUBLIC, JAPAN, THE GRAND DUCHY OF LUXEMBOURG, THE KINGDOM OF THE NETHERLANDS, SPAIN, THE KINGDOM OF SWEDEN, THE SWISS CONFEDERATION, THE REPUBLIC OF TURKEY, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNITED STATES OF AMERICA,

DESIRING to promote secure oil supplies on reasonable and equitable terms,

DETERMINED to take common effective measures to meet oil supply emergencies by developing an emergency self-sufficiency in oil supplies, restraining demand and allocating available oil among their countries on an equitable basis,

DESIRING to promote co-operative relations with oil producing countries and with other oil consuming countries, including those of the developing world, through a purposeful dialogue, as well as through other forms of co-operation, to further the opportunities for a better understanding between consumer and producer countries,

MINDFUL of the interests of other oil consuming countries, including those of the developing world,

DESIRING to play a more active role in relation to the oil industry by establishing a comprehensive international information system and a permanent framework for consultation with oil companies,

DETERMINED to reduce their dependence on imported oil by undertaking long-term co-operative efforts on conservation of energy, on accelerated development of alternative sources of energy, on research and development in the energy field and on uranium enrichment,

CONVINCED that these objectives can only be reached through continued co-operative efforts within effective organs,

EXPRESSING the intention that such organs be created within the framework of the Organisation for Economic Co-operation and Development,

RECOGNISING that other Member countries of the Organisation of Economic Co-operation and Development may desire to join in their efforts,

CONSIDERING the special responsibility of governments for energy supply,

CONCLUDE that it is necessary to establish an International Energy Program to be implemented through an International Energy Agency, and to that end,

HAVE AGREED as follows:

Article 1

1. The Participating Countries shall implement the International Energy Program as provided for in this Agreement through the International Energy Agency, described in Chapter IX, hereinafter referred to as the "Agency".

2. The term "Participating Countries" means States to which this Agreement applies provisionally and States of which the Agreement has entered into and remains in force.

3. The term "group" means the Participating Countries as a group.

Chapter I

EMERGENCY SELF-SUFFICIENCY

Article 2

1. The Participating Countries shall establish a common emergency self-sufficiency in oil supplies. To this end, each Participating Country shall

maintain emergency reserves sufficient to sustain consumption for at least 60 days with no net oil imports. Both consumption and net oil imports shall be reckoned at the average daily level of the previous calendar year.

2. The Governing Board shall, acting by special majority, not later than 1st July, 1975, decide the date from which the emergency reserve commitment of each Participating Country shall, for the purpose of calculating its supply right referred to in Article 7, be deemed to be raised to a level of 90 days. Each Participating Country shall increase its actual level of emergency reserves to 90 days and shall endeavour to do so by the date so decided.

3. The term "emergency reserve commitment" means the emergency reserves equivalent to 60 days of net oil imports as set out in paragraph 1 and, from the date to be decided according to paragraph 2, to 90 days of net oil imports as set out in paragraph 2.

Article 3

1. The emergency reserve commitment set out in Article 2 may be satisfied by:

- oil stocks,
- fuel switching capacity,
- stand-by oil production,

in accordance with the provisions of the Annex which forms an integral part of this Agreement.

2. The Governing Board shall, acting by majority, not later than 1st July, 1975, decide the extent to which the emergency reserve commitment may be satisfied by the elements mentioned in paragraph 1.

Article 4

1. The Standing Group on Emergency Questions shall, on a continuing basis, review the effectiveness of the measures taken by each Participating Country to meet its emergency reserve commitment.

2. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

Chapter II

DEMAND RESTRAINT

Article 5

1. Each Participating Country shall at all times have ready a program of contingent oil demand restraint measures enabling it to reduce its rate of final consumption in accordance with Chapter IV.

2. The Standing Group on Emergency Questions shall, on a continuing basis, review and assess:

- each Participating Country's program of demand restraint measures,

- the effectiveness of measures actually taken by each Participating Country.

3. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

Chapter III

ALLOCATION

Article 6

1. Each Participating Country shall take the necessary measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV.

2. The Standing Group on Emergency Questions shall, on a continuing basis, review and assess:

– each Participating Country's measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV,

– the effectiveness of measures actually taken by each Participating Country.

3. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

4. The Governing Board shall, acting by majority, decide promptly on the practical procedures for the allocation of oil and on the procedures and modalities for the participation of oil companies therein within the framework of this Agreement.

Article 7

1. When allocation of oil is carried out pursuant to Article 13, 14, or 15, each Participating Country shall have a supply right equal to its permissible consumption less its emergency reserve drawdown obligation.

2. A Participating Country whose supply right exceeds the sum of its normal domestic production and actual net imports available during an emergency shall have an allocation right which entitles it to additional net imports equal to that excess.

3. A Participating Country in which the sum of normal domestic production and actual net imports available during an emergency exceeds its supply right shall have an allocation obligation which requires it to supply, directly or indirectly, the quantity of oil equal to that excess to other Participating Countries. This would not preclude any Participating Country from maintaining exports of oil to non-participating countries.

4. The term "permissible consumption" means the average daily rate of final consumption allowed when emergency demand restraint at the

applicable level has been activated; possible further voluntary demand restraint by any Participating Country shall not affect its allocation right or obligation.

5. The term "emergency reserve drawdown obligation" means the emergency reserve commitment of any Participating Country divided by the total emergency reserve commitment of the group and multiplied by the group supply shortfall.

6. The term "group supply shortfall" means the shortfall for the group as measured by the aggregate permissible consumption for the group minus the daily rate of oil supplies available to the group during an emergency.

7. The term "oil supplies available to the group" means

- all crude oil available to the group,
- all petroleum products imported from outside the group, and
- all finished products and refinery feedstocks which are produced in association with natural gas and crude oil and are available to the group.

8. The term "final consumption" means total domestic consumption of all finished petroleum products.

Article 8

1. When allocation of oil to a Participating Country is carried out pursuant to Article 17, that Participating country shall

- sustain from its final consumption the reduction in its oil supplies up to a level equal to 7 per cent of its final consumption during the base period,
- have an allocation right equal to the reduction in its oil supplies which results in a reduction of its final consumption over and above that level.

2. The obligation to allocate this amount of oil is shared among the other Participating Countries on the basis of their final consumption during the base period.

3. The Participating Countries may meet their allocation obligations by any measures of their own choosing, including demand restraint measures or use of emergency reserves.

Article 9

1. For purposes of satisfying allocation rights and allocation obligations, the following elements will be included:

– all crude oil,

– all petroleum products,

– all refinery feedstocks, and

– all finished products produced in association with natural gas and crude oil.

2. To calculate a Participating Country's allocation right, petroleum products normally imported by that Participating Country, whether from other Participating Countries or from non-participating countries, shall be expressed in crude oil equivalent and treated as though they were imports of crude oil to that Participating Country.

3. Insofar as possible, normal channels of supply will be maintained as well as the normal supply proportions between crude oil and products and among different categories of crude oil and products.

4. When allocation takes place, an objective of the Program shall be that available crude oil and products shall, insofar as possible, be shared within the refining and distributing industries as well as between refining and distributing companies in accordance with historical supply patterns.

Article 10

1. The objectives of the Program shall include ensuring fair treatment for all Participating Countries and basing the price for allocated oil on the price conditions prevailing for comparable commercial transactions.

2. Questions relating to the price of oil allocated during an emergency shall be examined by the Standing Group on Emergency Questions.

Article 11

1. It is not an objective of the Program to seek to increase, in an emergency, the share of world oil supply that the group had under normal market conditions. Historical oil trade patterns should be preserved as far as is reasonable, and due account should be taken of the position of individual non-participating countries.

2. In order to maintain the principles set out in paragraph 1, the Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, shall decide on such proposals.

Chapter IV

ACTIVATION

ACTIVATION

Article 12

Whenever the group as a whole or any Participating Country sustains or can reasonably be expected to sustain a reduction in its oil supplies, the emergency measures, which are the mandatory demand restraint referred to in Chapter II and the allocation of available oil referred to in Chapter III, shall be activated in accordance with this Chapter.

Article 13

Whenever the group sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies at least equal to 7 per cent of the average daily rate of its final consumption during the base period, each Participating Country shall implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 7 per cent of its final consumption during the base period, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9, 10 and 11.

Article 14

Whenever the group sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies at least equal to 12 per cent of the average daily rate of its final consumption during the base period, each Participating Country shall implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 10 per cent of its final consumption during the base period, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9, 10 and 11.

Article 15

When cumulative daily emergency reserve drawdown obligations as defined in Article 7 have reached 50 per cent of emergency reserve commitments and a decision has been taken in accordance with Article 20, each Participating Country shall take the measures so decided, and allocation of available oil among the Participating Countries shall take place in accordance with Article 7, 9, 10 and 11.

Article 16

When demand restraint is activated in accordance with this Chapter, a Participating Country may substitute for demand restraint measures use of emergency reserves held in excess of its emergency reserve commitment as provided in the Program.

Article 17

1. Whenever any Participating Country sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies which results in a reduction of the daily rate of its final consumption by an amount exceeding 7 per cent of the average daily rate of its final consumption during the base period, allocation of available oil to that Participating Country shall take place in accordance with Articles 8 to 11.

2. Allocation of available oil shall also take place when the conditions in paragraph 1 are fulfilled in a major region of a Participating Country whose oil market is incompletely integrated. In this case, the allocation obligation of other Participating Countries shall be reduced by the theoretical allocation obligation of any other major region or regions of the Participating Country concerned.

Article 18

1. The term "base period" means the most recent four quarters with a delay of one-quarter necessary to collect information. While emergency measures are applied with regard to the group or to a Participating Country, the base period shall remain fixed.

2. The Standing Group on Emergency Questions shall examine the base period set out in paragraph 1, taking into account in particular such factors as growth, seasonal variations in consumption and cyclical changes and shall, not later than 1st April, 1975, report to the Management Committee. The Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, shall decide on these proposals not later than 1st July, 1975.

Article 19

1. The Secretariat shall make a finding when a reduction of oil supplies as mentioned in Article 13, 14 or 17 has occurred or can reasonably be expected to occur, and shall establish the amount of the reduction or expected reduction for each Participating Country and for the group. The Secretariat shall keep the Management Committee informed of its deliberations, and shall immediately report its finding to the members of the Committee and inform the Participating Countries thereof. The report shall include information on the nature of the reduction.

2. Within 48 hours of the Secretariat's reporting a finding, the Committee shall meet to review the accuracy of the data compiled and the information provided. The Committee shall report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee, including any views regarding the handling of the emergency.

3. Within 48 hours of receiving the Management Committee's report, the Governing Board shall meet to review the finding of the Secretariat in the light of that report. The activation of emergency measures shall be considered confirmed and Participating Countries shall implement such measures within 15 days of such confirmation unless the Governing Board, acting by special majority, decides within a further 48 hours not to activate the emergency measures, to activate them only in part or to fix another time limit for their implementation.

4. If, according to the finding of the Secretariat, the conditions of more than one of the Articles 14, 13 and 17 are fulfilled, any decision not to activate emergency measures shall be taken separately for each Article and in the above order. If the conditions in Article 17 are fulfilled with regard to more than one Participating Country any decision not to activate allocation shall be taken separately with respect to each Country.

5. Decisions pursuant to paragraphs 3 and 4 may, at any time be reversed by the Governing Board, acting by majority.

6. In making its finding under this Article, the Secretariat shall consult with oil companies to obtain their views regarding the situation and the appropriateness of the measures to be taken.

7. An international advisory board from the oil industry shall be convened, not later than the activation of emergency measures, to assist the Agency in ensuring the effective operation of such measures.

Article 20

1. The Secretariat shall make a finding when cumulative daily emergency reserve drawdown obligations have reached or can reasonably be expected to reach 50 per cent of emergency reserve commitments. The Secretariat shall immediately report its finding to the members of the

Management Committee and inform the Participating Countries thereof. The report shall include information on the oil situation.

2. Within 72 hours of the Secretariat's reporting such a finding, the Management Committee shall meet to review the data compiled and the information provided. On the basis of available information the Committee shall report to the Governing Board within a further 48 hours proposing measures required for meeting the necessities of the situation, including the increase in the level of mandatory demand restraint that may be necessary. The report shall set out the views expressed by the members of the Committee.

3. The Governing Board shall meet within 48 hours of receiving the Committee's report and proposal. The Governing Board shall review the finding of the Secretariat and the report of the Management Committee and shall within a further 48 hours, acting by special majority, decide on the measures required for meeting the necessities of the situation, including the increase in the level of mandatory demand restraint that may be necessary.

Article 21

1. Any Participating Country may request the Secretariat to make a finding under Article 19 or 20.

2. If, within 72 hours of such request, the Secretariat does not make such a finding, the Participating Country may request the Management Committee to meet and consider the situation in accordance with the provisions of this Agreement.

3. The Management Committee shall meet within 48 hours of such request in order to consider the situation. It shall, at request of any Participating Country, report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee and by the Secretariat, including any views regarding the handling of the situation.

4. The Governing Board shall meet within 48 hours of receiving the Management Committee's report. If it finds, acting by majority, that the conditions set out in Article 13, 14, 15 or 17 are fulfilled, emergency measures shall be activated accordingly.

Article 22

The Governing Board may at any time decide by unanimity to activate any appropriate emergency measures not provided for in this Agreement, if the situation so requires.

DEACTIVATION

Article 23

1. The Secretariat shall make a finding when a reduction of supplies as mentioned in Article 13, 14 or 17 has decreased or can reasonably be expected to decrease below the level referred to in the relevant Article. The Secretariat shall keep the Management Committee informed of its deliberations and shall immediately report its finding to the members of the Committee and inform the Participating Countries thereof.

2. Within 72 hours of the Secretariat's reporting a finding, the Management Committee shall meet to review the data complied and the information provided. It shall report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee, including any views regarding the handling of the emergency.

3. Within 48 hours of receiving the Committee's report, the Governing Board shall meet to review the finding of the Secretariat in the light of the report from the Management Committee. The deactivation of emergency measures or the applicable reduction of the demand restraint level shall be considered confirmed unless the Governing Board, acting by special majority, decides within a further 48 hours to maintain the emergency measures or to deactivate them only in part.

4. In making its finding under this Article, the Secretariat shall consult with the international advisory board, mentioned in Article 19, paragraph 7, to obtain its views regarding the situation and the appropriateness of the measures to be taken.

5. Any Participating Country may request the Secretariat to make a finding under this Article.

Article 24

When emergency measures are in force, and the Secretariat has not made a finding under Article 23, the Governing Board, acting by special majority, may at any time decide to deactivate the measures either wholly or in part.

Chapter V

INFORMATION SYSTEM ON THE INTERNATIONAL OIL MARKET

Article 25

1. The Participating Countries shall establish an Information System consisting of two sections:

- a General Section on the situation in the international oil market and activities of oil companies,

- a Special Section designed to ensure the efficient operation of the measures described in Chapters I to IV.

2. The System shall be operated on a permanent basis, both under normal conditions and during emergencies, and in a manner which ensures the confidentiality of the information made available.

3. The Secretariat shall be responsible for the operation of the Information System and shall make the information compiled available to the Participating Countries.

Article 26

The term "oil companies" means international companies, national companies, non-integrated companies and other entities which play a significant role in the international oil industry.

GENERAL SECTION

Article 27

1. Under the General Section of the Information System, the Participating Countries shall, on a regular basis, make available to the Secretariat information on the precise data identified in accordance with Article 29 on the following subjects relating to oil companies operating within their respective jurisdictions:

(*a*) Corporate structure;

(*b*) Financial structure, including balance sheets, profit and loss accounts, and taxes paid;

(*c*) Capital investments realized;

(*d*) Terms of arrangements for access to major sources of crude oil;

(*e*) Current rates of production and anticipated changes therein;

(*f*) Allocations of available crude supplies to affiliates and other customers (criteria and realizations);

(*g*) Stocks;

(*h*) Cost of crude oil and oil products;

(*i*) Prices, including transfer prices to affiliates;

(*j*) Other subjects, as decided by the Governing Board, acting by unanimity.

2. Each Participating Country shall take appropriate measures to ensure that all oil companies operating within its jurisdiction make such information available to it as is necessary to fulfil its obligations under paragraph 1, taking into account such relevant information as is already available to the public or to Governments.

3. Each Participating Country shall provide information on a non-proprietary basis and on a company and/or country basis as appropriate, and in such a manner and degree as will not prejudice competition or conflict with the legal requirements of any Participating Country relating to competition.

4. No Participating Country shall be entitled to obtain, through the General Section, any information on the activities of a company operating within its jurisdiction which could not be obtained by it from that company by application of its laws or through its institutions and customs if that company were operating solely within its jurisdiction.

Article 28

Information provided on a "non-proprietary basis" means information which does not constitute or relate to patents, trademarks, scientific or manufacturing processes or developments, individual sales, tax returns, customer lists or geological and geophysical information, including maps.

Article 29

1. Within 60 days of the first day of the provisional application of this Agreement, and as appropriate thereafter, the Standing Group on the Oil Market shall submit a report to the Management Committee identifying the precise data within the list of subjects in Article 27, paragraph 1, which are required for the efficient operation of the General Section, and specifying the procedures for obtaining such data on a regular basis.

2. The Management Committee shall review the report and make proposals to the Governing Board which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall take the decisions necessary for the establishment and efficient operation of the General Section.

Article 30

In preparing its reports under Article 29, the Standing Group on the Oil Market shall

– consult with oil companies to ensure that the System is compatible with industry operations;

– identify specific problems and issues which are of concern to Participating Countries;

– identify specific data which are useful and necessary to resolve such problems and issues;

– work out precise standards for the harmonization of the required information in order to ensure comparability of the data;

– work out procedures to ensure the confidentiality of the information.

Article 31

1. The Standing Group on the Oil Market shall on a continuing basis review the operation of the General Section.

2. In the event of changes in the conditions of the international oil market, the Standing Group on the Oil market shall report to the Management Committee. The Committee shall make proposals on appropriate changes to the Governing Board which, acting by majority, shall decide on such proposals.

SPECIAL SECTION

Article 32

1. Under the Special Section of the Information System, the Participating Countries shall make available to the Secretariat all information which is necessary to ensure the efficient operation of emergency measures.

2. Each Participating Country shall take appropriate measures to ensure that all oil companies operating within its jurisdiction make such information available to it as is necessary to enable it to fulfil its obligations under paragraph 1 and under Article 33.

3. The Secretariat shall, on the basis of this information and other information available, continuously survey the supply of oil to and the consumption of oil within the group and each Participating Country.

Article 33

Under the Special Section, the Participating Countries shall, on a regular basis, make available to the Secretariat information on the precise data identified in accordance with Article 34 on the following subjects:

(*a*) Oil consumption and supply;

(*b*) Demand restraint measures;

(*c*) Levels of emergency reserves;

(*d*) Availability and utilization of transportation facilities;

(*e*) Current and projected levels of international supply and demand;

(*f*) Other subjects, as decided by the Governing Board, acting by unanimity.

Article 34

1. Within 30 days of the first day of the provisional application of this Agreement, the Standing Group on Emergency Questions shall submit a report to the management Committee identifying the precise data within the list of subjects in Article 33 which are required under the Special Section to ensure the efficient operation of emergency measures and specifying the procedures for obtaining such data on a regular basis, including accelerated procedures in times of emergency.

2. The Management Committee shall review the report and make proposals to the Governing Board which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall take the decisions necessary for the establishment and efficient operation of the Special Section.

Article 35

In preparing its report under Article 34, the Standing Group on Emergency Questions shall

– consult with oil companies to ensure that the System is compatible with industry operations;

– work out precise standards for the harmonization of the required information in order to ensure comparability of the data;

– work out procedures to ensure the confidentiality of the information.

Article 36

The Standing Group on Emergency Questions shall on a continuing basis review the operation of the Special Section and shall, as appropriate, report to the Management Committee. The Committee shall make proposals on appropriate changes to the Governing Board, which, acting by majority, shall decide on such proposals.

Chapter VI

FRAMEWORK FOR CONSULTATION WITH OIL COMPANIES

Article 37

1. The Participating Countries shall establish within the Agency a permanent framework for consultation within which one or more Participating Countries may, in an appropriate manner, consult with and request information from individual oil companies on all important aspects of the oil industry, and within which the Participating Countries may share among themselves on a co-operative basis the results of such consultations.

2. The framework for consultation shall be established under the auspices of the Standing Group on the Oil Market.

3. Within 60 days of the first day of the provisional application of this Agreement, and as appropriate thereafter, the Standing Group on the Oil Market, after consultation with oil companies, shall submit a report to the Management Committee on the procedures for such consultations. The Management Committee shall review the report and make proposals to the Governing Board, which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall decide on such procedures.

Article 38

1. The Standing Group on the Oil Market shall present a report to the Management Committee on consultations held with any oil company within 30 days thereof.

2. The Management Committee shall consider the report and may make proposals on appropriate co-operative action to the Governing Board, which shall decide on such proposals.

Article 39

1. The Standing Group on the Oil Market shall, on a continuing basis, evaluate the results of the consultations with and the information collected from oil companies.

2. On the basis of these evaluations, the Standing Group may examine and assess the international oil situation and the position of the oil industry and shall report to the Management Committee.

3. The Management Committee shall review such reports and make proposals on appropriate co-operative action to the Governing Board, which shall decide on such proposals.

Article 40

The Standing Group on the Oil market shall submit annually a general report to the Management Committee on the functioning of the framework for consultation with oil companies.

Chapter VII

LONG TERM CO-OPERATION ON ENERGY

Article 41

1. The Participating Countries are determined to reduce over the longer term their dependence on imported oil for meeting their total energy requirements.

2. To this end, the Participating Countries will undertake national programs and promote the adoption of co-operative programs, including, as appropriate, the sharing of means and efforts, while concerting national policies, in the areas set out in Article 42.

Article 42

1. The Standing Group on Long Term Co-operation shall examine and report to the Management Committee on co-operative action. The following areas shall in particular be considered:

(*a*) Conservation of energy, including co-operate programs on

- exchange of national experiences and information on energy conservation;

- ways and means for reducing the growth of energy consumption through conservation.

(*b*) Development of alternative sources of energy such as domestic oil, coal, natural gas, nuclear energy and hydro-electric power, including co-operative programs on

- exchange of information on such matters as resources, supply and demand, price and taxation;

- ways and means for reducing the growth of consumption of imported oil through the development of alternative sources of energy;

– concrete projects, including jointly financed projects;

– criteria, quality objectives and standards for environmental protection.

(*c*) Energy research and development, including as a matter of priority co-operative programs on

– coal technology;

– solar energy;

– radioactive waste management;

– controlled thermonuclear fusion;

– production of hydrogen from water;

– nuclear safety;

– waste heat utilization;

– conservation of energy;

– municipal and industrial waste utilization for energy conservation;

– overall energy system analysis and general studies.

(*d*) Uranium enrichment, including co-operative programs

– to monitor developments in natural and enriched uranium supply;

– to facilitate development of natural uranium resources and enrichment services;

– to encourage such consultations as may be required to deal with international issues that may arise in relation to the expansion of enriched uranium supply;

– to arrange for the requisite collection, analysis and dissemination of data related to the planning of enrichment services.

2. In examining the areas of co-operative action, the Standing Group shall take due account of ongoing activities elsewhere.

3. Programs developed under paragraph 1 may be jointly financed. Such joint financing may take place in accordance with Article 64, paragraph 2.

Article 43

1. The Management Committee shall review the reports of the Standing Group and make appropriate proposals to the Governing Board, which shall decide on these proposals not later than 1st July, 1975.

2. The Governing Board shall take into account possibilities for co-operation within a broader framework.

Chapter VIII

RELATIONS WITH PRODUCER COUNTRIES AND WITH OTHER CONSUMER COUNTRIES

Article 44

The Participating Countries will endeavour to promote co-operative relations with oil producing countries and with other oil consuming countries, including developing countries. They will keep under review developments in the energy field with a view to identifying opportunities for and promoting a purposeful dialogue, as well as other forms of co-operation, with producer countries and with other consumer countries.

Article 45

To achieve the objectives set out in Article 44, the Participating Countries will give full consideration to the needs and interests of other oil consuming countries, particularly those of the developing countries.

Article 46

The Participating Countries will, in the context of the Program, exchange views on their relations with oil producing countries. To this end, the Participating Countries should inform each other of co-operative action on their part with producer countries which is relevant to the objectives of the Program.

Article 47

The Participating Countries will, in the context of the Program

– seek, in the light of their continuous review of developments in the international energy situation and its effect on the world economy, opportunities and means of encouraging stable international trade in oil and of promoting secure oil supplies on reasonable and equitable terms for each Participating Country;

– consider, in the light of work going on in other international organisations, other possible fields of co-operation including the prospects for co-operation in accelerated industrialisation and socio-economic development in the principal producing areas and the implications of this for international trade and investment;

– keep under review the prospects for co-operation with oil producing countries on energy questions of mutual interest, such as conservation of energy, the development of alternative sources, and research and development.

Article 48

1. The Standing Group on Relations with Producer and other Consumer Countries will examine and report to the Management Committee on the matters described in this Chapter.

2. The Management Committee may make proposals on appropriate co-operative action regarding these matters to the Governing Board, which shall decide on such proposals.

Chapter IX

INSTITUTIONAL AND GENERAL PROVISIONS

Article 49

1. The Agency shall have the following organs:

- a Governing Board
- a Management Committee
- Standing Groups on
  - Emergency Questions
  - The Oil Market
  - Long Term Co-operation
  - Relations with Producer and Other Consumer Countries.

2. The Governing Board or the Management Committee may, acting by majority, establish any other organ necessary for the implementation of the Program.

3. The Agency shall have a Secretariat to assist the organs mentioned in paragraphs 1 and 2.

GOVERNING BOARD

Article 50

1. The Governing Board shall be composed of one or more ministers or their delegates from each Participating Country.

2. The Governing Board, acting by majority, shall adopt its own rules of procedure. Unless otherwise decided in the rules of procedure, these rules shall also apply to the Management Committee and the Standing Groups.

3. The Governing Board, acting by majority, shall elect its Chairman and Vice-Chairmen.

Article 51

1. The Governing Board shall adopt decisions and make recommendations which are necessary for the proper functioning of the Program.

2. The Governing Board shall review periodically and take appropriate action concerning developments in the international energy situation, including problems relating to the oil supplies of any Participating Country or Countries, and the economic and monetary implications of these developments. In its activities concerning the economic and monetary implications of developments in the international energy situation, the Governing Board shall take into account the competence and activities of international institutions responsible for overall economic and monetary questions.

3. The Governing Board, acting by majority, may delegate any of its functions to any other organ of the Agency.

Article 52

1. Subject to Article 61, paragraph 2, and Article 65, decisions adopted pursuant to this Agreement by the Governing Board or by any other organ by delegation from the Board shall be binding on the Participating Countries.

2. Recommendations shall not be binding.

MANAGEMENT COMMITTEE

Article 53

1. The Management Committee shall be composed of one or more senior representatives of the Government of each Participating Country.

2. The Management Committee shall carry out the functions assigned to it in this Agreement and any other function delegated to it by the Governing Board.

3. The Management Committee may examine and make proposals to the Governing Board, as appropriate, on any matter within the scope of this Agreement.

4. The Management Committee shall be convened upon the request of any Participating Country.

5. The Management Committee, acting by majority, shall elect its Chairman and Vice-Chairmen.

STANDING GROUPS

Article 54

1. Each Standing Group shall be composed of one or more representatives of the Government of each Participating Country.

2. The Management Committee, acting by majority, shall elect the Chairmen and Vice-Chairmen of the Standing Groups.

Article 55

1. The Standing Group on Emergency Questions shall carry out the functions assigned to it in Chapters I to V and the Annex and any other function delegated to it by the Governing Board.

2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapters I to IV and the Annex.

3. The Standing Group may consult with oil companies on any matter within its competence.

Article 56

1. The Standing Group on the Oil Market shall carry out the functions assigned to it in Chapters V and VI and any other function delegated to it by the Governing Board.

2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapters V and VI.

3. The Standing Group may consult with oil companies on any matter within its competence.

Article 57

1. The Standing Group on Long Term Co-operation shall carry out the functions assigned to it in Chapter VII and any other function delegated to it by the Governing Board.

2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapter VII.

Article 58

1. The Standing Group on Relations with Producer and other Consumer Countries shall carry out the functions assigned to it in Chapter VIII and any other function delegated to it by the Governing Board.

2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapter VIII.

3. The Standing Group may consult with oil companies on any matter within its competence.

SECRETARIAT

Article 59

1. The Secretariat shall be composed of an Executive Director and such staff as is necessary.

2. The Executive Director shall be appointed by the Governing Board.

3. In the performance of their duties under this Agreement the Executive Director and the staff shall be responsible to and report to the organs of the Agency.

4. The Governing Board, acting by majority, shall take all decisions necessary for the establishment and the functioning of the Secretariat.

Article 60

The Secretariat shall carry out the functions assigned to it in this Agreement and any other function assigned to it by the Governing Board.

VOTING

Article 61

1. The Governing Board shall adopt decisions and recommendations for which no express voting provision is made in this Agreement, as follows:

(*a*) by majority:

- decisions on the management of the Program, including decisions applying provisions of this Agreement which already impose specific obligations on Participating Countries
- decisions on procedural questions
- recommendations

(*b*) by unanimity:

- all other decisions, including in particular decisions which impose on Participating Countries new obligations not already specified in this Agreement.

2. Decisions mentioned in paragraph 1 (*b*) may provide:

(*a*) that they shall not be binding on one or more Participating Countries;

(*b*) that they shall be binding only under certain conditions.

Article 62

1. Unanimity shall require all of the votes of the Participating Countries present and voting. Countries abstaining shall be considered as not voting.

2. When majority or special majority is required, the Participating Countries shall have the following voting weights:

	General voting weights	**Oil Consumption voting weights**	**Combined voting weights**
Australia	3	1	4
Austria	3	1	4
Belgium	3	1	4
Canada	3	5	8
Denmark	3	1	4
Finland	3	1	4
France	3	6	9
Germany	3	8	11
Greece	3	0	3
Ireland	3	0	3
Italy	3	5	8
Japan	3	14	17
Luxembourg	3	0	3
The Netherlands	3	1	4
New Zealand	3	0	3
Portugal	3	0	3
Spain	3	2	5
Sweden	3	2	5
Switzerland	3	1	4
Turkey	3	1	4
United Kingdom	3	6	9
United States	3	44	47
Totals	66	100	166

3. Majority shall require 60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast.

4. Special majority shall require:

(*a*) 60 per cent of the total combined voting weights and 50 general voting weights for:

- the decision under Article 2, paragraph 2, relating to the increase in the emergency reserve commitment;
- decisions under Article 19, paragraph 3, not to activate the emergency measures referred to in Articles 13 and 14;
- decisions under Article 20, paragraph 3, on the measures required for meeting the necessities of the situation;
- decisions under Article 23, paragraph 3, to maintain the emergency measures referred to in Articles 13 and 14;
- decisions under Article 24 to deactivate the emergency measures referred to in Articles 13 and 14.

(*b*) 57 general voting weights for:

- decisions under Article 19, paragraph 3, not to activate the emergency measures referred to in Article 17;
- decisions under Article 23, paragraph 3, to maintain the emergency measures referred to in Article 17;
- decisions under Article 24 to deactivate the emergency measures referred to in Article 17.

5. The Governing Board, acting by unanimity, shall decide on the necessary increase, decrease, and redistribution of the voting weights referred to in paragraph 2, as well as on amendment of the voting requirements set out in paragraphs 3 and 4 in the event that

- a Country accedes to this Agreement in accordance with Article 71, or
- a Country withdraws from this Agreement in accordance with Article 68, paragraph 2, or Article 69, paragraph 2.

6. The Governing Board shall review annually the number and distribution of voting weights specified in paragraph 2, and, on the basis of such review, acting by unanimity, shall decide whether such voting weights should be increased or decreased, or redistributed, or both, because a change in any Participating Country's share in total oil consumption has occurred or for any other reason.

7. Any change in paragraph 2, 3 or 4 shall be based on the concepts underlying those paragraphs and paragraph 6.

RELATIONS WITH OTHER ENTITIES

Article 63

In order to achieve the objectives of the Program, the Agency may establish appropriate relations with non-participating countries, international organisations, whether governmental or non-governmental, other entities and individuals.

FINANCIAL ARRANGEMENTS

Article 64

1. The expenses of the Secretariat and all other common expenses shall be shared among all Participating Countries according to a scale of contributions elaborated according to the principles and rules set out in the Annex to the "OECD Resolution of the Council on Determination of the Scale of Contributions by Member Countries to the Budget of the Organisation" of 10th December, 1963. After the first year of application of this Agreement, the Governing Board shall review this scale of contributions and, acting by unanimity, shall decide upon any appropriate changes in accordance with Article 73.

2. Special expenses incurred in connection with special activities carried out pursuant to Article 65 shall be shared by the Participating Countries taking part in such special activities in such proportions as shall be determined by unanimous agreement between them.

3. The Executive Director shall, in accordance with the financial regulations adopted by the Governing Board and not later than 1st October of each year, submit to the Governing Board a draft budget including personnel requirements. The Governing Board, acting by majority, shall adopt the budget.

4. The Governing Board, acting by majority, shall take all other necessary decisions regarding the financial administration of the Agency.

5. The financial year shall begin on 1st January and end on 31st December of each year. At the end of each financial year, revenues and expenditures shall be submitted to audit.

SPECIAL ACTIVITIES

Article 65

1. Any two or more Participating Countries may decide to carry out within the scope of this Agreement special activities, other than activities which are required to be carried out by all Participating Countries under Chapters I to V. Participating Countries which do not wish to take part in such special activities shall abstain from taking part in such decisions and shall not be bound by them. Participating Countries carrying out such activities shall keep the Governing Board informed thereof.

2. For the implementation of such special activities, the Participating Countries concerned may agree upon voting procedures other than those provided for in Articles 61 and 62.

IMPLEMENTATION OF THE AGREEMENT

Article 66

Each Participating Country shall take the necessary measures, including any necessary legislative measures, to implement this Agreement and decisions taken by the Governing Board.

Chapter X

FINAL PROVISIONS

Article 67

1. Each Signatory State shall, not later than 1st May, 1975, notify the Government of Belgium that, having complied with its constitutional procedures, it consents to be bound by this Agreement.

2. On the tenth day following the day on which at least six States holding at least 60 per cent of the combined voting weights mentioned in Article 62 have deposited a notification of consent to be bound or an instrument of accession, this Agreement shall enter into force for such States.

3. For each Signatory State which deposits its notification thereafter, this Agreement shall enter into force on the tenth day following the day of deposit.

4. The Governing Board, acting by majority, may upon request from any Signatory State decide to extend, with respect to that State, the time limit for notification beyond 1st May, 1975.

Article 68

1. Notwithstanding the provisions of Article 67, this Agreement shall be applied provisionally by all Signatory States, to the extent possible not inconsistent with their legislation, as from 18th November, 1974 following the first meeting of the Governing Board.

2. Provisional application of the Agreement shall continue until:

- the Agreement enters into force for the State concerned in accordance with Article 67, or
- 60 days after the Government of Belgium receives notification that the State concerned will not consent to be bound by the Agreement, or
- the time limit for notification of consent by the State concerned referred to in Article 67 expires.

Article 69

1. This Agreement shall remain in force for a period of ten years from the date of its entry into force and shall continue in force thereafter unless and until the Governing Board, acting by majority, decides on its termination.

2. Any Participating Country may terminate the application of this Agreement for its part upon twelve months' written notice to the Government of Belgium to that effect, given not less than three years after the first day of the provisional application of this Agreement.

Article 70

1. Any State may, at the time of signature, notification of consent to be bound in accordance with Article 67, accession or at any later date, declare by notification addressed to the Government of Belgium that this Agreement shall apply to all or any of the territories for whose international relations it is responsible, or to any territories within its frontiers for whose oil supplies it is legally responsible.

2. Any declaration made pursuant to paragraph 1 may, in respect of any territory mentioned in such declaration, be withdrawn in accordance with the provisions of Article 69, paragraph 2.

Article 71

1. This Agreement shall be open for accession by any Member of the Organisation for Economic Co-operation and Development which is able and willing to meet the requirements of the Program. The Governing Board, acting by majority, shall decide on any request for accession.

2. This Agreement shall enter into force for any State whose request for accession has been granted on the tenth day following the deposit of its instrument of accession with the Government of Belgium, or on the date of entry into force of the Agreement pursuant to Article 67, paragraph 2, whichever is the later.

3. Accession may take place on a provisional basis under the conditions set out in Article 68, subject to such time limits as the Governing

Board, acting by majority, may fix for an acceding State to deposit its notification of consent to be bound.

Article 72

1. This Agreement shall be open for accession by the European Communities.

2. This Agreement shall not in any way impede the further implementation of the treaties establishing the European Communities.

Article 73

This Agreement may at any time be amended by the Governing Board, acting by unanimity. Such amendment shall come into force in a manner determined by the Governing Board, acting by unanimity and making provision for Participating Countries to comply with their respective constitutional procedures.

Article 74

This Agreement shall be subject to a general review after 1st May, 1980.

Article 75

The Government of Belgium shall notify all Participating Countries of the deposit of each notification of consent to be bound in accordance with Article 67, and of each instrument of accession, of the entry into force of this Agreement or any amendment thereto, of any denunciation thereof, and of any other declaration or notification received.

Article 76

The original of this Agreement, of which the English, French and German texts are equally authentic, shall be deposited with the Government of Belgium, and a certified copy thereof shall be furnished to each other Participating country by the Government of Belgium.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Paris, this eighteenth day of November, Nineteen Hundred and Seventy Four.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT à Paris, le dix-huit novembre mil neuf cent soixante-quatorze.

ZU URKUND DESSEN haben die hierzu von ihren Regierungen gehörig befugten Unterzeichneten dieses Übereinkommen unterschrieben.

GESCHEHEN ZU Paris, am 18. November 1974.

For the REPUBLIC OF AUSTRIA: Pour la RÉPUBLIQUE D'AUTRICHE: Für die REPUBLIK ÖSTERREICH:	Dr. GEORG SEYFFERTITZ
For the KINGDOM OF BELGIUM: Pour le ROYAUME DE BELGIQUE: Für das KÖNIGREICH BELGIEN:	E. DAVIGNON
For CANADA: Pour le CANADA: Für KANADA:	P. M. TOWE
For the KINGDOM OF DENMARK: Pour le ROYAUME DE DANEMARK: Für das KÖNIGREICH DÄNEMARK:	JENS CHRISTENSEN
For the FEDERAL REPUBLIC OF GERMANY: Pour la RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE: Für die BUNDESREPUBLIK DEUTSCHLAND:	E. EMMEL ROHWEDDER

For IRELAND:
Pour l'IRLANDE: EAMONN GALLAGHER
Für IRLAND:

For the ITALIAN REPUBLIC:
Pour la RÉPUBLIQUE ITALIENNE: CESIDIO GUAZZARONI
Für die ITALIENISCHE REPUBLIK:

For JAPAN:
Pour le JAPON: BUNROKU YOSHINO
Für JAPAN:

For the GRAND DUCHY OF LUXEMBOURG:
Pour le GRAND DUCHÉ DE LUXEMBOURG: REICHLING
Für das GROSSHERZOGTUM LUXEMBURG:

For the KINGDOM OF THE NETHERLANDS:
Pour le ROYAUME DES PAYS-BAS: F. ITALIANER
Für das KÖNIGREICH DER NIEDERLANDE: K. WESTERHOFF

For SPAIN:
Pour l'ESPAGNE: Marquis de NERVA
Für SPANIEN:

For the KINGDOM OF SWEDEN:
Pour le ROYAUME DE SUÈDE: HANS V. EWERLÖF
Für das KÖNIGREICH SCHWEDEN:

For the SWISS CONFEDERATION:
Pour la CONFÉDÉRATION SUISSE: P. LANGUETIN
Für die SCHWEIZERISCHE EIDGENOSSENSCHAFT:

For the REPUBLIC OF TURKEY:
Pour la RÉPUBLIQUE DE TURQUIE: MEMDUH AYTÜR
Für die REPUBLIK TÜRKEI:

For the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Pour le ROYAUME-UNI DE GRANDE-BRETAGNE ET L'IRLANDE DU NORD: LEONARD WILLIAMS

Für das VEREINIGTE KÖNIGREICH VON GROSSBRITANNIEN UND NORDIRLAND:

For the UNITED STATES OF AMERICA:

Pour les ETATS-UNIS D'AMÉRIQUE: THOMAS O. ENDERS

Für die VEREINIGTEN STAATEN VON AMERIKA:

ANNEX

EMERGENCY RESERVES

Article 1

1. Total oil stocks are measured according to the OECD and EEC definitions, revised as follows:

A. Stocks included:

crude oil, major products and unfinished oil held

- in refinery tanks
- in bulk terminals
- in pipeline tankage
- in barges
- in intercoastal tankers
- in oil tankers in port
- in inland ship bunkers
- in storage tank bottoms
- in working stocks
- by large consumers as required by law or otherwise controlled by Governments.

B. Stocks excluded:

(*a*) crude oil not yet produced

(*b*) crude oil, major products and unfinished oils held

– in pipelines

– in rail tank cars

– in truck tank cars

– in seagoing ships' bunkers

– in service stations and retail stores

– by other consumers

– in tankers at sea

– as military stocks.

2. That portion of oil stocks which can be credited toward each Participating country's emergency reserve commitment is its total oil stocks under the above definition minus those stocks which can be technically determined as being absolutely unavailable in even the most severe emergency. The Standing Group on Emergency Questions shall examine this concept and report on criteria for the measurement of absolutely unavailable stocks.

3. Until a decision has been taken on this matter, each Participating Country shall subtract 10 per cent from its total stocks in measuring its emergency reserves.

4. The Standing Group on Emergency Questions shall examine and report to the Management Committee on:

(*a*) the modalities of including naphtha for uses other than motor and aviation gasoline in the consumption against which stocks are measured,

(*b*) the possibility of creating common rules for the treatment of marine bunders in a emergency, and of including marine bunders in the consumption against which stocks are measured,

(*c*) the possibility of creating common rules concerning demand restraint for aviation bunkers,

(*d*) the possibility of crediting towards emergency reserve commitments some portion of oil at sea at the time of activa-tiron of emergency measures,

(*e*) the possibility of increasing supplies available in an emergency through savings in the distribution system.

Article 2

1. Fuel switching capacity is defined as normal oil consumption that may be replaced by other fuels in an emergency, provided that this capacity is subject to government control in an emergency, can be brought into operation within one month, and that secure supplies of the alternative fuel are available for use.

2. The supply of alternative fuel shall be expressed in terms of oil equivalent.

3. Stocks of an alternative fuel reserved for fuel switching purposes may be credited towards emergency reserve commitments insofar as they can be used during the period of self-sufficiency.

4. Stand-by production of an alternative fuel reserved for fuel switching purposes will be credited towards emergency reserve commitments on the same basis as stand-by oil production, subject to the provisions of Article 4 of this Annex.

5. The Standing Group on Emergency Questions shall examine and report to the Management Committee on

(*a*) the appropriateness of the time limit of one month mentioned in paragraph 1,

(*b*) the basis of accounting for the fuel switching capacity based on stocks of an alternative fuel, subject to the provisions of paragraph 3.

Article 3

A Participating Country may credit towards its emergency reserve commitment oil stocks in another country provided that the Government of that other country has an agreement with the government of the Participating Country that it shall impose no impediment to the transfer of those stocks in an emergency to the Participating Country.

Article 4

1. Stand-by oil production is defined as a Participating Country's potential oil production in excess of normal oil production within its jurisdiction

– which is subject to governement control, and

– which can be brought into use during an emergency within the period of self-sufficiency.

2. The Standing Group on Emergency Questions shall examine and report to the Management Committee on

(*a*) the concept of and methods of measurement of stand-by oil production as referred to in paragraph 1,

(*b*) the appropriateness of "the period of self-sufficiency" as a time limit,

(*c*) the question of whether a given quantity of stand-by oil production is of greater value for purposes of emergency self-sufficiency than the same quantity of oil stocks, the amount of a possible credit for stand-by production, and the method of its calculation.

Article 5

Stand-by oil production available to a Participating Country within the jurisdiction of another country may be credited towards its emergency reserve commitment on the same basis as stand-by oil production within it own jurisdiction, subject to the provisions of Article 4 of this Annex provided that the Government of that other country has an agreement with

the Government of the Participating Country that it shall impose no impediment to the supply of oil from that stand-by capacity to the Participating Country in an emergency.

Article 6

The Standing Group on Emergency Questions shall examine and report to the Management Committee on the possibility of crediting towards a Participating Country's emergency reserve commitment mentioned in Article 2, paragraph 2, of the Agreement, long term investments which have the effect of reducing the Participating Countries' dependence on imported oil.

Article 7

1. The Standing Group on Emergency Questions shall examine and report to the Management Committee regarding the reference period set out in Article 2, paragraph 1, of the Agreement, in particular taking into account such factors as growth, seasonal variations in consumption and cyclical changes.

2. A decision by the Governing Board to change the definition of the reference period mentioned in paragraph 1 shall be taken by unanimity.

Article 8

The Standing Group on Emergency Questions shall examine and report to the Management Committee on all elements of Chapters I to IV of the Agreement to eliminate possible mathematical and statistical anomalies.

Article 9

The reports from the Standing Group on Emergency Questions on the matters mentioned in this Annex shall be submitted to the Management Committee by 1st April, 1975. The Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, not later than 1st July, 1975, shall decide on these proposals except as provided for in Article 7, paragraph 2, of this Annex.

OECD Council Decision on the Establishment of the Agency

(Adopted on 15 November 1974)

The Council,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960 (hereinafter called the "Convention") and, in particular, Articles 5(a), 6, 9, 12, 13 and 20 of the Convention;

Having regard to the Financial Regulations of the Organisation and, in particular, to Articles 5, 10, 14(b) and 16(b) thereof;

Having regard to the Regulations, Rules and Instructions for Council Experts and Consultants of the Organisation;

Noting that the Governments of certain Member countries have declared their intention to enter into a separate Agreement on an International Energy Program which is attached to document C(74)204 of 6th November, 1974, and Corrigendum 1 thereto, which is circulated for reference and is hereinafter referred to as the "Agreement";

Having regard to the Recommendation of the Council of 29th June, 1971 on Oil Stockpiling [C(71)113(Final)];

Having regard to the Decision of the Council of 14th November, 1972 on Emergency Plans and Measures and Apportionment of Oil Supplies in an Emergency in the OECD European Area [C(72)201(Final)];

Having regard to the Recommendation of the Council of 10th January, 1974 on the Supply of Bunker Fuels for Shipping and Fishing [C(73)257(Final)];

Having regard to the Recommendation of the Council of 10th January, 1974 on the Supply of Fuel for Civil Aircraft [C(73)258 (Final)];

Having regard to the Note by the Secretary-General of 6th November, 1974 concerning the International Energy Program [C(74)203 and Corrigendum 1];

DECIDES:

Article 1

An International Energy Agency (hereinafter called the "Agency") is hereby established as an autonomous body within the framework of the Organisation.

Article 2

Participating Countries of the Agency are:

(a) Austria, Belgium, Canada, Denmark, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States;

(b) other Member countries of the Organisation which accede to this Decision and to the Agreement in accordance with its terms.

Article 3

This Decision will be open for accession by the European Communities upon their accession to the Agreement in accordance with its terms.

Article 4

A Governing Board composed of all the Participating Countries of the Agency shall be the body from which all acts of the Agency derive, and shall have the power to make recommendations and to take decisions which shall, except as otherwise provided, be binding upon Participating Countries, and to delegate its powers to other organs of the Agency. The Governing Board shall adopt its own rules of procedure and voting rules.

Article 5

The Governing Board shall establish such organs and procedures as may be required for the proper functioning of the Agency.

Article 6

(a) The Governing Board shall decide upon and carry out an International Energy Program for co-operation in the field of energy, the aims of which are:

(i) development of a common level of emergency self-sufficiency in oil supplies;

(ii) establishment of common demand restraint measures in an emergency;

(iii) establishment and implementation of measures for the allocation of available oil in time of emergency;

(iv) development of a system of information on the international oil market and a framework for consultation with international oil companies;

(v) development and implementation of a long-term co-operation programme to reduce dependence on imported oil, including: conservation of energy, development of alternative sources of energy, energy research and development, and supply of natural and enriched uranium;

(vi) promotion of co-operative relations with oil producing countries and with other oil consuming countries, particularly those of the developing world.

The Governing Board may adopt other measures of co-operation in the energy field which it may deem necessary and otherwise amend the Program by unanimity, taking into account the constitutional procedures of the Participating Countries.

(b) Upon the proposal of the Governing Board of the Agency the Council may confer additional responsibilities upon the Agency.

Article 7

(a) The organs of the Agency shall be assisted by an Executive Director and such staff as is necessary who shall form part of the Secretariat of the Organisation and who shall, in performing their duties under the International Energy Program, be responsible to and report to the organs of the Agency.

(b) The Executive Director shall be appointed by the Governing Board on the proposal or with concurrence of the Secretary-General.

(c) Consultants to the Agency may be appointed for a period exceeding that provided in Regulation 2(b) of the Regulations and Rules for Council Experts and Consultants of the Organisation.

Article 8

The Governing Board shall report annually to the Council on the activities of the Agency. The Governing Board shall submit, upon the request of the Council or upon its own initiative, other communications to the Council.

Article 9

The Agency shall co-operate with other competent bodies of the Organisation in areas of common interest. These bodies and the Agency shall consult with one another regarding their respective activities.

Article 10

(a) The budget of the Agency shall form part of the Budget of the Organisation and expenditure of the Agency shall be charged against the appropriations authorised for it under Part II of the Budget which shall include appropriate Budget estimates and provisions for all expenditure necessary for the operation of the Agency. Each Participating Country's share in financing such expenditure shall be fixed by the Governing Board. Special expenses incurred by the Agency in connection with activities referred to in Article 11 shall be shared by the Participating Countries in such proportions as shall be determined by unanimous agreement of those countries. The Governing Board shall designate an organ of the Agency to advise the Governing Board as required on the financial administration of the Agency and to give its opinion on the annual and other budget proposals submitted to the Governing Board.

(b) The Governing Board shall submit the annual and other budget proposals of the Agency to the Council for adoption by agreement of those Participating Countries of the Agency which voted in the Governing Board to submit the proposals to the Council.

(c) Notwithstanding the provisions of Article 14(b) of the Financial Regulations, the Governing Board may accept voluntary contributions and grants as well as payments for services rendered by the Agency.

(d) Notwithstanding the provisions of Article 16(b) of the Financial Regulations of the Organisation, appropriations in respect of the special activities referred to in Article 11 of this Decision, for which no commitment has been entered into before the end of the Financial Year for which they were appropriated, shall be automatically carried forward to the budget for the ensuing year.

Article 11

Any two or more Participating Countries may decide to carry out within the scope of the Program special activities, other than activities which are required to be carried out by all Participating Countries under the Agreement. Participating Countries who do not wish to take part in such activities shall abstain from taking part in such decisions and shall not be bound by them. Participating Countries carrying out such activities shall keep the Governing Board informed thereof.

Article 12

In order to achieve the objectives of the Program, the Agency may establish appropriate relationships with countries which are not Participating Countries, international organisations, whether Governmental or non-Governmental, other entities and individuals.

Article 13

(a) A Participating Country for which the Agreement shall have ceased to be in force or to apply provisionally shall be deemed to have withdrawn from the Agency.

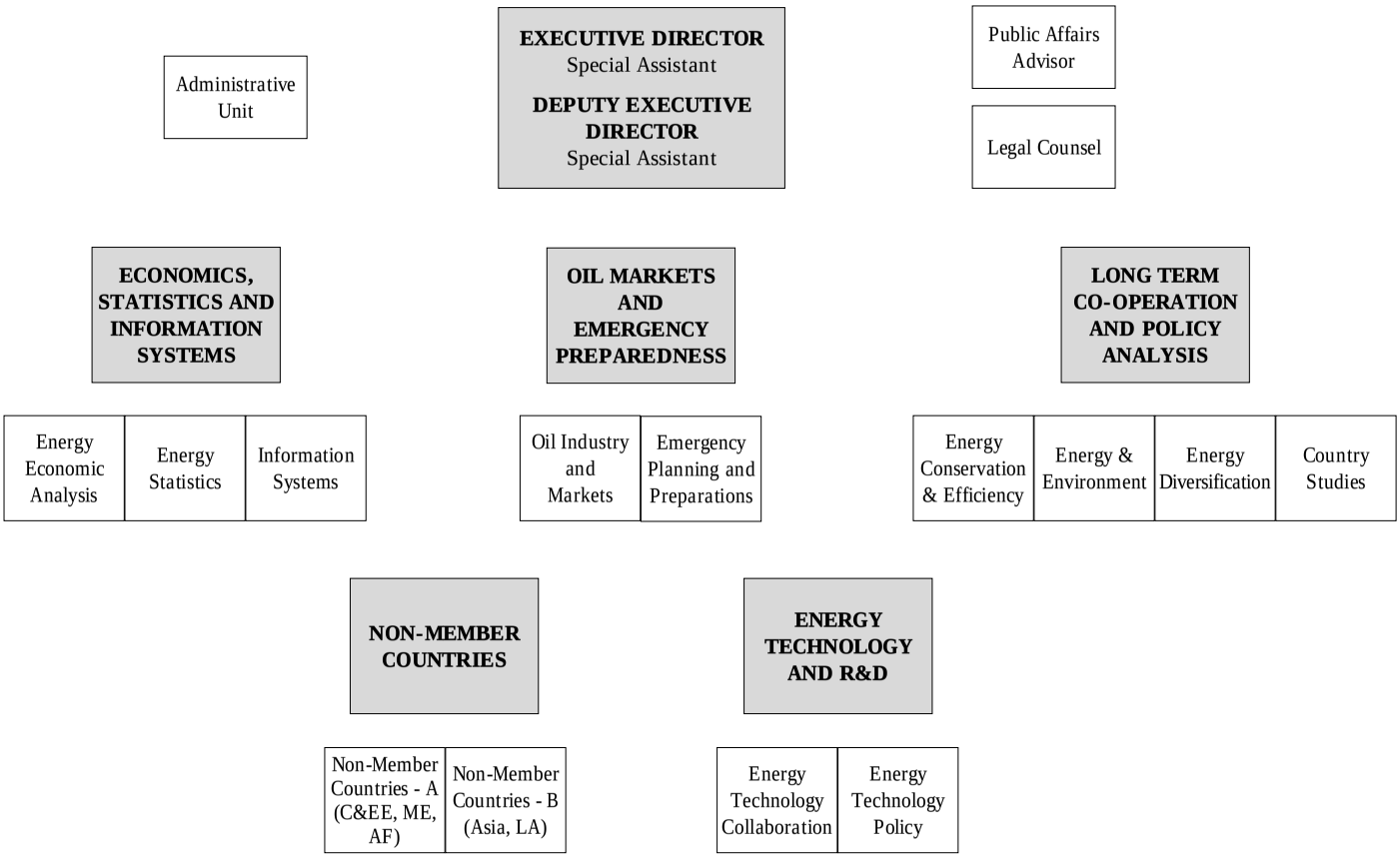
(b) Notwithstanding the provisions of paragraph (a), a Country whose Government shall have signed the Agreement may, upon written notice to the Governing Board and to the Government of Belgium to the effect that the adoption of the Program by the Governing Board is binding

on it pursuant to this Decision, remain a Participating Country of the Agency after the Agreement shall have ceased to apply for it, unless the Governing Board decides otherwise. Such a Country shall have the same obligations and the same rights as a Participating Country of the Agency for which the Agreement shall have entered definitively into force.

Article 14

The present Decision shall enter into force on 15th November, 1974.

Organization of the IEA Secretariat 1 January 1994



Highlights of Principal IEA Events 1974 - 1993

The following Highlights are adapted from the IEA Governing Board's Annual Reports to the OECD Council for the years 1974-1993 and from other IEA publications and documents. They have been compiled to give a rapid overview from an historical perspective and to help guide the reader to the underlying materials. Of course all items do not have the same status; many of them are no longer applicable. More information can be found in the Annual Reports which are contained in the documents cited in the footnotes. Many of the energy policies and actions appearing in the Highlights will be considered further in Volume II of the *History*.

1974[1]

The IEA is formally established as 16 countries sign the Agreement on an International Energy Program on 18 November in Paris.

The Governing Board holds its first two meetings, adopts the Decision on the Program which incorporates the I.E.P. Agreement into IEA internal legislation, establishes the organization and operating policies of the Agency and develops the Agency's work programme for the first year.

The Governing Board appoints Dr. Ulf Lantzke as the IEA's first Executive Director.

IEA activities concentrate on the establishment of the Agency and on initial measures to implement the Agreement.

1975[2]

The first IEA Ministerial Governing Board meeting reviews the world energy situation, sets guidelines for the Agency's future work, and outlines the basis for long-term co-operation on general energy policies and energy R D & D.

1 IEA/GB(75)90(2nd Rev.)

2 IEA/GB(75)90(2nd Rev.)

The Agency establishes itself in the OECD's New Building in Paris.

Mr. J. Wallace Hopkins is appointed Deputy Executive Director of the Agency.

New Zealand joins the IEA. Norway agrees to participate under the terms of a special agreement. The I.E.P. Agreement is ratified by ten Members.

IEA countries commit themselves to reduce their total expected oil imports in 1975 by two million barrels a day through conservation, increased oil production, and fuel-switching.

The Industry Advisory Board (IAB), composed of senior executives from fifteen private and state oil companies, is established to advise the Agency on the oil Emergency Sharing System and to assist in testing and operating the System.

IEA countries agree to increase by the beginning of 1976 their emergency oil stock holding commitment from 60 to 70 days of net oil imports. The Agency develops the oil emergency information system.

Five R D & D Agreements are signed in the field of coal technology — the first energy R D & D collaborative projects to be carried out under IEA auspices.

The Governing Board adopts the IEA strategy for energy R D & D.

The Agency's general oil information system is established, together with the permanent framework for consultations with oil companies on general and specific aspects of the oil market.

1976[3]

The Agreement on an International Energy Program, the treaty which established the Agency in 1974, officially enters into force on 19 January, after ratification by eleven Members.

The Governing Board approves the IEA's Long-Term Co-operation Programme to encourage Members to reduce their dependence on imported oil through greater use of alternative energy sources and structural changes in their energy economies. The Board also establishes medium and long-range goals for reducing IEA oil imports.

The IEA completes its first comprehensive review of energy conservation programmes in Member countries.

Greece joins the IEA.

The IEA conducts its first test of the emergency oil-sharing system (AST-1).

3 IEA/GB(77)3(1st Revision)

IEA countries agree to increase by the beginning of 1980 their emergency oil stock holdings to 90 days of net oil imports.

The IEA participates as a permanent observer in the Energy Commission of the Conference on International Economic Co-operation held in Paris.

1977[4]

The second IEA Ministerial meeting adopts the Decision on Group Objectives and Principles for Energy Policy, setting a goal for limiting oil imports in IEA countries in 1985, establishing twelve Principles for Energy Policy and ordering systematic annual reviews of the energy policies and programmes of Member countries.

The IEA publishes the first *World Energy Outlook*, which forecasts energy trends to 1990.

The IEA continues to play an active role in assisting the co-ordination of the views of IEA Members in the Energy Commission of the Conference on International Economic Co-operation. The Governing Board adopts its Preliminary Guidelines for Collaboration on Energy R & D between IEA Countries and Developing Countries.

1978[5]

The IEA publishes its first annual review of energy policies and programmes, covering events in 1977.

The IEA holds its second test of the emergency allocation system (AST-2), involving national emergency supply organisations (NESOs) for the first time. Over 200 national and international oil companies participate.

The IEA sponsors a workshop in Paris on energy data relating to developing countries. The Agency publishes *Basic Energy Statistics and Energy Balances of Developing Countries*, 1967-1977.

The IEA publication *Steam Coal Prospects to 2000* calls for wider substitution of coal for oil to sustain economic growth in IEA and developing countries.

The total number of energy R & D projects under way rises to thirty-five.

The Secretariat hosts a Workshop on Energy Data of Developing Countries which is attended by experts from fifteen developing countries.

4 IEA/GB(78)1

5 IEA/GB(79)2

1979[6]

In March, the Governing Board meets in response to oil supply problems arising out of the loss of Iranian oil in the market. IEA Member countries agree to take prompt action to reduce their demand for oil by two million barrels per day (five percent of consumption).

The IEA's emergency data system is used to monitor the world oil supply situation following the revolution in Iran.

IEA Ministers meet twice during the year. In May, Ministers assess the oil market situation and note that the world energy supply situation would be tight for the foreseeable future. They confirm the Board's action to reduce oil demand by five per cent and emphasize the need for continuing efforts to reduce oil imports. Ministers also adopt principles for increased production, trade and use of coal. The Ministerial statement recognizes that expansion of coal use must proceed under acceptable environmental conditions.

In December, IEA Ministers agree on measures to promote more stable oil market conditions, including national oil import ceilings for 1980 and goals for 1985, increased monitoring of energy policies and developments, and procedures for consultation on oil stocks.

Australia joins the IEA.

The IEA completes a study of opportunities for co-operation between industrial and developing countries on new and renewable sources of energy.

The Governing Board adopts Principles for IEA Action on Coal as part of the Agency's effort to reduce dependence on imported oil through the development of alternative energy sources.

The Coal Industry Advisory Board (CIAB) is created to make available to the Agency advice and expertise from senior executives of companies engaged in various aspects of coal production, transport and use.

IEA countries are engaged in forty-eight collaborative projects in energy R & D.

1980[7]

IEA Ministers again meet twice during the year. In May Ministers express renewed concern about economic effects of high oil prices. They agree to tighten oil import targets for 1985, to continue efforts to reduce oil imports beyond that date, and to strengthen measures for dealing with short-term oil market disruptions.

6 IEA/GB(80)13

7 IEA/GB(81)25

In October, IEA Countries react quickly to prevent pressures on the oil market through oil supply losses caused by the Iran-Iraq war. Measures include oil stock drawdowns, consultations between IEA governments and oil companies, and reinforced conservation and fuel-switching.

In December IEA Ministers strengthen the measures taken in October to maintain the balance between oil supply and demand. The Ministers adopt lines of action for energy conservation and fuel-switching. They also receive the first report of the CIAB Coal Action Programme, with recommendations for actions to double coal use by 1990 and to triple it by 2000.

Portugal completes procedures to join the Agency, bringing the total IEA membership to twenty-one countries.

The IEA conducts the third Allocations Systems Test of the Agency's Emergency Sharing System (AST-3), with expanded scope including increased industry participation, as fourteen additional co-operating oil companies joined in for the first time.

The Governing Board establishes the IEA Dispute Settlement Centre, which provides a system of binding arbitration for disputes between oil companies on actions taken in co-operation with the Agency in an oil supply emergency.

The IEA's study *Group Strategy for Energy Research, Demonstration and Development* concludes that accelerating development and commercialization of new energy technologies could reduce IEA oil imports by nearly six million barrels per day by the year 2000.

1981[8]

IEA Ministers note the improved world oil market situation, but stress that the oil market balance remains fragile. They agree on the need for more progress in achieving structural change in IEA energy economies.

The IEA sponsors a symposium on energy and the economy in Paris and a conference on commercializing new conservation technologies in Berlin.

The IEA takes part in the United Nations Conference on New and Renewable Sources of Energy in Nairobi, Kenya.

Acting on the report of an *Ad Hoc* Group, the Governing Board, in December, adopts the Decision on Preparation for Future Supply Disruptions, with flexible arrangements for responding to oil supply disruptions which do not reach the seven per cent level required to trigger the emergency

8 IEA/GB(82)7

allocation system. The new arrangements provide for continuous monitoring of supply, improved information, prompt convening of the Board to consider responses, and a range of possible actions.

1982[9]

IEA Ministers agree to continue efforts to improve overall energy efficiency and to bring about a more balanced energy mix which minimizes oil use.

The Agency and the CIAB publish *The Use of Coal in Industry*, which shows a large potential for growth of coal use in industrial sectors of IEA countries. Following a CIAB recommendation, the Agency developed a Coal Information System.

The IEA and the CIAB hold a conference in Paris on "The Use of Coal in Industry" for senior executives from coal-using industries. The IEA publishes its first bi-annual review on coal prospects and policies of IEA countries.

The IEA concludes in its publication *Natural Gas: Prospects to 2000* that significant world-wide natural gas resources could support expanded use of gas, but that this would require IEA countries to increase imports and could create energy security problems.

The IEA and the Nuclear Energy Agency jointly publish *Nuclear Energy Prospects to 2000*. The report calls for measures to speed up the construction and licensing of nuclear power stations.

The second *World Energy Outlook*, which projects energy and oil demand to 2000, is published by the Agency.

1983[10]

IEA Ministers, recognizing the continued likelihood of heavy reliance on imported energy and especially oil, assess energy requirements and security of the next two decades. They agree to avoid undue dependence on any one source of gas imports and to obtain future supplies from secure sources, with emphasis on gas produced in IEA countries.

Coal Use and the Environment, a CIAB study, concludes that existing technology permits the use of coal to be expanded in an environmentally acceptable manner. The study suggests actions government and industry can take to increase coal use.

The IEA sponsors a workshop on methods of formulating energy policy. Participants from government, industry, and the academic community

9 IEA/GB(83)4

10 IEA/GB(84)10

examine such issues as criteria for energy investment and the role of energy prices in policy making.

The IEA begins the commercial publication of the IEA monthly *Oil Market Report*.

The fourth Test of the Emergency Allocation System (AST-4) provides valuable operational training to all participants in the System, including officers of Member governments and oil companies as well as members of the Secretariat.

The total IEA portfolio of energy R & D collaborative projects continues to grow, now approaching fifty projects.

1984[11]

The IEA's second coal review calls for greater reliance on coal by Member countries. Costs of coal production and transport can probably be kept down, the report says, and if so, coal can remain cost-competitive.

In July Mrs. Helga Steeg of the Federal Republic of Germany takes over as the IEA Executive Director upon the retirement of Dr. Ulf Lantzke, the IEA's first Executive Director.

The IEA Governing Board adopts its Decision on Stocks and Supply Disruptions, with procedures to enable governments to decide promptly on early co-ordinated use of oil stocks and other measures in the event of a significant oil supply disruption if this is judged necessary to prevent economic damage.

The annual review of IEA R D & D programmes shows Member governments are spending almost seven billion dollars annually on publicly-funded energy R D & D programmes. The report says this demonstrates a continuing strong commitment to energy research, despite budgetary constraints and a well supplied world oil market.

1985[12]

IEA Ministers state that it would be "imprudent and even dangerous" for IEA countries to ignore forecasts of tightening energy markets in the 1990s, and advocate continuing efforts to reduce dependence on imported oil. Noting significant overcapacity in oil refineries, including new refineries outside IEA countries, Ministers agree to a common approach whereby imported refined oil products can go to markets of different IEA countries on the basis of supply and demand as determined by market forces without distortions.

11 IEA/GB(85)16

12 IEA/GB(86)1

An IEA study reports distinct improvement in fuel efficiency of passenger cars in Member countries over a ten-year period, but expresses concern that further progress might be hampered by the then current and easier oil market situation, declining consumer interest in fuel efficiency, and rising incomes. The study warns of a shift in consumer demand toward larger and less fuel-efficient cars.

The IEA publishes a study on the outlook for electricity. The study says governments and electric utilities in the industrialized countries should do more to overcome obstacles preventing electricity from making its full contribution to economic development and energy security.

The IEA's annual review of energy policies and programmes says Member countries' oil production has probably reached its peak and is projected to decline. The review foresees a massive expansion of coal and nuclear energy production, and considerable growth of hydropower for the rest of the century.

The fifth Allocation Systems Test (AST-5) was conducted with new data quality features to make the test a more realistic simulation of emergency conditions.

With the completion of a number of energy R & D projects and the commencement of others, the project portfolio covers about fifty different activities in end-use technology, fossil fuel technology, renewable energy development and controlled nuclear fusion.

1986[13]

The United States, Japan, and the European Community, in an agreement negotiated under the auspices of the Agency, establish an IEA collaborative project on research into advanced nuclear fusion energy. The agreement provides for exchanges of information derived from their experimental large Tokamak facilities, designed to develop nuclear fusion as a potential source of commercial electricity generation.

The 1985 IEA country review sees the merger of the reviews of energy policies and programmes of energy R D & D policies into a single integrated country review process.

The likely effects of changes in the energy and price outlook on the development of alternative fuels and the implications of the Chernobyl accident for the provision of future electricity generation capacity are also examined in the Agency.

13 IEA/GB(87)4

In the oil emergency sector, a critical review is made of Members' legislative provisions for implementing stockdraw in an I.E.P. emergency oil sharing trigger situation as well as in a lesser supply disruption.

1987[14]

IEA Ministers underscore the IEA's central objective of the security of energy supply to ensure economic well-being. They give impetus to the Agency's work in technology developments, the inter-relationships between energy and the environment, and better understanding of the energy economies of developing countries and other non-Member countries.

The IEA publishes a study entitled *Energy Conservation in IEA Countries*, on the improvement of energy efficiency and the measures available to governments to promote efficiency.

Eleven IEA countries join in a new R & D project on co-ordinated exchanges of energy technology information through a national computer-based system (at Oak Ridge, Tennessee).

An Energy Data Workshop is held in Tokyo in conjunction with the Asian Development Bank, several Member governments and representatives from twelve developing countries.

1988[15]

Energy security and environment considerations are integrated into most IEA activities.

The IEA publishes *Energy Efficiency Update*, designed to facilitate exchange among Member countries of information on innovative efficiency programmes.

The IEA "Operations Manual - Consultations on Co-ordinated Emergency Response Measures (CERM)" is adopted, and a test of CERM is conducted for the first time to test procedures under the IEA's 1984 Decision on Stocks and Supply Disruptions.

The Agency again tests the Emergency Sharing System (AST-6) to assess the readiness of the System and the application of improved procedures.

The Centre for Analysis and Dissemination of Demonstrated Energy Technologies (CADDET) is launched in March to facilitate the sharing of technologies ready for introduction into the market.

14 IEA/GB(88)10

15 IEA/GB(89)10

1989[16]

IEA Ministers note gains in energy security, efficiency, conservation, emergency preparedness, R & D collaboration and other sectors; they view with concern growing world-wide oil consumption and environmental effects of energy consumption. Ministers reconfirm their commitment to ensuring energy security and policy objectives while also achieving a healthy environment.

Mr. John P. Ferriter is appointed Deputy Executive Director of the Agency.

The IEA publishes *Energy and the Environment - Policy Overview*, a study of the long-term impacts on energy security of proposed environmental measures, and the policy choices to achieve energy and environmental objectives.

The IEA participates in the work of the Intergovernmental Panel on Climate Change (IPCC) and other energy and the environment activities.

The Agency intensifies its work on energy and environment questions in Eastern Europe, and begins preparations for a seminar on the Polish energy sector, sponsored by Denmark, Poland and the IEA.

1990[17]

With the Iraqi invasion of Kuwait in August, the IEA moves into a phase of urgent operational work which continues through 1990 and into 1991. The IEA emergency oil data system is activated. IEA countries devise emergency response programmes to deal with various possible scenarios, update them monthly and take actions to ensure Members' preparations to respond adequately to an oil supply disruption, mainly by demand restraint and stockdraw.

The IEA devotes major attention to analysis of the energy situation in Eastern Europe and the Soviet Union. The Secretariat participates actively in the G-24 process to co-ordinate assistance to the energy sectors of Eastern Europe.

The Agency joins in preparation of the study of *The Economy of the USSR*, with the IMF, IBID, OECD and EBRD, acting upon the request by the Houston G-7 Summit in July.

Five new IEA energy R & D collaborative project Implementing Agreements are signed, and the corresponding projects are launched.

16 IEA/GB(90)4

17 IEA/GB(91)16

1991[18]

All IEA countries, joined by France, Finland and Iceland, agree to a Co-ordinated Energy Emergency Contingency Plan in the Gulf Crisis, a 2.5 million barrels-a-day contingency plan for a mix of stockdraw, demand restraint, fuel switching and increased indigenous production to reduce demand for oil, reassure the market and avoid disruption of supplies. The Governing Board adopts the Plan on 11 January and the Executive Director activates it on 17 January shortly after the war begins. The Board terminates the Plan in March after the war ends.

IEA Ministers meet in June to evaluate the IEA countries' actions during the Gulf Crisis, and express continuing commitment to energy security. They also reaffirm the importance of environmental protection and economic growth, the need to address the global warming issue and the importance of sound relations between industrial and oil producing countries.

The IEA participates actively with Member countries, Eastern Europe and the NIS in the negotiation of the European Energy Charter on energy investment and trade and dispute settlement arrangements for that sector. The Charter is adopted in December as negotiations continue for the purpose of preparing an international agreement on this subject.

The Agency produces its report *Climate Change Policy Initiatives: Update* for use in the climate change framework negotiations.

The IEA completes its study *Assessment of Energy Technology Priority Areas: Energy Technology Strategy.*

The IEA continues strong interest in Eastern and Central Europe. The Agency publishes the *Survey of the Polish Energy Sector and the Surveys of the Energy Policies of Hungary and the Czech and Slovak Federal Republic.*

The IEA monthly *Oil Market Report* is expanded with specific information on the former Centrally Planned Economies (CPE) region.

The Agency expands its contacts with the Dynamic Asian Economies, with Latin America and the Latin American Energy Organization (OLADE) and other regions where energy use influences the global economy and the environment.

1992[19]

The IEA welcomes Finland and France as new Members, bringing IEA membership up to 23 countries (all OECD countries except Iceland).

18 IEA/GB(92)2

19 IEA/GB(93)8

The IEA hosts a high-level technical conference of energy experts on issues of common interest to energy importing and exporting countries with the objectives of enhancing communication and mutual understanding between energy importers and exporters, and increasing market transparency and efficiency.

The Agency continues active participation in the negotiation of the European Energy Charter Agreement.

The IEA integrates and enhances its work in the energy and the environment field, forming a new Division of the Secretariat for that purpose.

On behalf of the G-7, the IEA Secretariat and the World Bank carry out a study of alternative ways of meeting electricity demand in Central and Eastern Europe and in the Newly Independent States (NIS) in the event of closure for safety reasons of some nuclear powers stations in that part of the world.

The Executive Director addresses the United Nations Conference on Environment and Development where IEA offers energy information and policy assistance.

The IEA publishes *The Role of IEA Governments in Energy*, a survey of government involvement in all segments of the energy sectors of IEA countries.

The Emergency Sharing System, is again tested (AST-7), the seventh test in this series, including for the first time Finland, France and the whole of Germany.

The Agency continues its work on Central and Eastern Europe and the NIS in carrying out energy surveys, publishing reports and organizing seminars and conferences.

The Agency conducts an in-depth energy review of Korea, the first IEA review of a non-Member country in the Asia-Pacific region.

The IEA encourages non-Member and international organization participation in energy R & D Implementing Agreements, creating a new relationship of "Associate Contracting Party" for that purpose. Non-Member "Associate" participation in certain IEA energy R & D Implementing Agreements is extended to Israel and Malaysia.

Thirty-five separate energy R & D Implementing Agreements are in force, five more are prepared and proposed for signature.

The IEA publishes *Collaboration in Energy Technology: 1987-1990* which reviews the effectiveness of the Agency's programme in this sector over the four year period.

1993[20]

IEA Ministers assess the current energy situation and trends against the backdrop of the Agency's *World Energy Outlook to 2010*. They adopt IEA

20 IEA/GB(94)8

Shared Goals on essential framework conditions for energy policy and co-operation, and commend them to non-Members of the Agency as well. Ministers agree that concerted policy actions should be taken in respect of emergency response mechanisms, diversity of energy sources, energy efficiency, minimization of adverse environmental impacts and expanding relations with particular non-IEA Member countries.

The IEA, jointly with the OECD, organizes a conference on the Economics of Climate Change.

The IEA launches a newsletter, the *Energy Environment Update*.

The Governing Board agrees to conduct in March 1994 in Switzerland an informal Ministerial "brainstorming" meeting on energy and the environment, the first IEA "brainstorming" meeting at Ministerial Level.

The Agency publishes the *World Energy Outlook* which examines the current energy situation and alternatives of the global energy system to the year 2010.

The IEA organizes a Workshop on Stockdraw and Emergency Response management to be held in Japan in February 1994.

The Agency continues to participate directly and actively in the Brussels negotiations on the proposed European Energy Charter Agreement.

The IEA hosts a second major conference of technical experts from energy exporting and importing countries, with over forty countries participating. The conference concentrates on projections of oil demand, on exploration and production cost developments, including environmental costs, and on investment needs.

In a series of in-depth country reports on the energy situation in Central and Eastern Europe, the IEA completes a report on Romania.

The Government of Korea expresses its intention to seek IEA membership in parallel with OECD membership. An IEA/Korea Conference on Demand-Side Management is convened in Seoul in November.

The IEA expands its relations with countries in Latin America and Asia.

Non-Member "Associate" participation in certain IEA energy R & D Implementing Agreements is extended to Korea, the Russian Federation, Israel and Poland.

The IEA adds to its Implementing Agreements portfolio several new projects, for work on an international natural gas research and technology information centre, on photovoltaic power systems, on electric demand-side management and on a Greenhouse Gas Technology Information Exchange (GREENTIE). New projects on electric vehicle technologies and nuclear fusion power reactors are also agreed.

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