SEPARATE OPINION OF JUDGE EL-ERIAN

I concur in the Opinion of the Court. I am in agreement with the analysis of the facts of the case, the statement of the applicable principles of law and the precise and clear replies furnished by the Opinion. I am moved to write a separate opinion, first to elaborate on a few preliminary questions, and second to relate some of the points raised in the Opinion to the general law of international organizations.

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I wish first to address myself to a question of a preliminary character relating to the constitutional grounds and substantive reasons on the basis of which I opted for giving positive replies to the present request. The two questions posed in the request are legal questions. One concerns a problem of treaty interpretation. The other seeks to enunciate the legal responsibilities of the parties to the treaty envisaged in the first question in case of an affirmative answer to that question.

In the written and oral statements and documents submitted to the Court, a number of issues concerning the interpretation of certain provisions of the Constitution of the World Health Organization and other legal texts were raised. These questions involved : (1) the interpretation of the 1951 host agreement between Egypt and the World Health Organization and the conditions applicable to its revision and denunciation ; (2) the power of an international organization to establish a regional office and the conditions for the exercise of such a power ; (3) the rules governing the integration with the WHO of pre-existing inter-governmental regional health organizations ; and (4) the legal principles regulating the selection and transfer of the site of a regional office. All these are legal questions, "arising within the scope of the activities" and "within the competence of the Organization", on which the WHO has been "authorized" to "request advisory opinions of the Court" (Art. 96, para. 2, of the Charter of the United Nations ; Art. 65, para. 1, of the Statute of the Court ; Art. 76 of the Constitution of the WHO ; Art. X, para. 2, of the 1947 Agreement between the United Nations and the WHO).

In the debates in the World Health Assembly on the draft resolution which served as a basis for the present request, some of the statements of those who opposed the draft resolution appeared to imply that the question of the transfer of the Alexandria Regional Office was a political question. This was by no means the first occasion on which similar exceptions had been taken in connection with requests for advisory opin-

ions of the Court, whether in the course of debates before the international organization requesting the opinion, or in the written or oral arguments submitted to the Court. In one of its opinions this Court stated :

> "It has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task, namely, the interpretation of a treaty provision." (*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 151.)

A distinction should, therefore, be made between the political character of the problem which gives rise to a request for advisory opinion and the legal character of the question which constitutes the subject-matter of the requested opinion. The criterion is the intrinsic nature of the questions rather than the various extrinsic factors.

But even if the question put to the Court is a legal question, the Court may decline to answer it. Basing itself on what it termed the "permissive character" of Article 65 of its Statute, from which its power to give an advisory opinion is derived, the Court stated in one of its Opinions that it had "the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the request" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, I.C.J. Reports 1950*, p. 72). In another Opinion the Court said that only "compelling reasons" should lead it to refuse to give a requested advisory opinion (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, I.C.J. Reports 1956*, p. 86). I see no reasons, compelling or not, for the Court to depart in the present request from its consistent practice of acceding to requests for advisory opinions. There are valid reasons, and indeed a need for giving authoritative legal guidance to the WHO. When the opinion of the Director of the Legal Division of the WHO was sought by the World Health Assembly on the interpretation of Section 37 of the 1951 Agreement between the WHO and Egypt, he contented himself with pointing out the issues involved and the alternative possible interpretations. He refrained from giving a definitive interpretation. Nor was the Working Group of the Executive Board of the WHO able to agree on a definitive interpretation of Section 37 of the 1951 Agreement. In its resolution WHA 33.16 of 20 May 1980 the World Health Assembly noted that "the Working Group of the Executive Board has been unable to make a judgment or a recommendation on the applicability of Section 37 of this Agreement" (the Agreement of 1951). In paragraph 4.3 of its report, the Working Group stated that it was "not in a position to decide whether or not Section 37 of the Agreement with Egypt is applicable", and that "the International Court of Justice could possibly be requested to

provide an advisory opinion under Article 76 of the WHO Constitution" (WHA33/19/Ann. 1, EB65/19 Rev.1, 16 January 1980).

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Another question of judicial policy which weighs with me to the extent that it needs to be specially brought out is briefly stated below. In the debates in the World Health Assembly on the draft resolution proposing the request for the present opinion, some of those who opposed the proposal alleged that it was a political manoeuvre designed to postpone the decision concerning the transfer of the Regional Office. I wish to note first that the jurisprudence of the Court has established that it "is not concerned with the motives which may have inspired [the] request" (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61 ; see also *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, pp. 6 f. ; and *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 155).

But I also wish to point out that when concern is expressed in the debates in an international organization regarding the legal implications of a certain decision, such concern is a legitimate one which should be satisfied and not be dismissed as dilatory tactics. It is imperative for international organizations to base their actions on valid and solid legal grounds and take their decisions in full awareness of their legal implications and guided by an authoritative interpretation of their constitutions. The overriding objective should be the observance of the principles of the organization and the fulfilment of it purposes. The common interest of the member States of the organization can be adequately assured not through the excessive influence of political considerations which are of a transient character but on the basis of respect for legal safeguards and constraints. The United Nations is required by its Charter to carry out its most political function, which is the maintenance of international peace and security, and the settlement of international disputes, under Article 1, paragraph 1: "in conformity with the principles of justice and international law".

From the outset, the General Assembly of the United Nations recognized the importance of the role of the advisory jurisdiction of the Court in the interpretation of the constituent instruments of the specialized agencies. At its second session in 1947, the General Assembly adopted a resolution on the "need for greater use by the United Nations and its organs of the International Court of Justice". In its resolution 171 (II), the General Assembly noted that "it is of paramount importance that the interpretation of the Charter of the United Nations and *the constitutions of*

the specialized agencies should be based on recognized principles of international law" (emphasis added). It recommended that

> "Organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized in accordance with Article 96, paragraph 2, of the Charter, should refer them to the International Court of Justice for an advisory opinion."

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In considering the full meaning and implications of the questions on which the Court was asked to give advice, the Opinion rightly states that, although the questions in the request are formulated in terms only of Section 37 of the 1951 Agreement, the true legal question under consideration in the World Health Assembly and therefore the legal question submitted to the Court by the request is : What are the legal principles and rules applicable to the question under what conditions and in accordance with what modalities a transfer of the Regional Office from Egypt may be effected ? I fully agree with the Opinion's assertion that if the Court is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction it must ascertain what are the legal questions really at issue in questions formulated in a request.

I wish to make two comments on the power of the Court to interpret a question submitted to it for an advisory opinion.

The first comment relates to the jurisprudence of both the Permanent Court of International Justice and this Court. This jurisprudence establishes that, this being inherent in the quality of the Court as a judicial organ, it has the power to interpret any request for advisory opinion. This power has been exercised by the Court both to determine the object for which the question was put, and in interpretation of the question itself. Instances in the jurisprudence of both the Permanent Court of International Justice and the present Court are to be found in the following cases : *Nationality Decrees Issued in Tunis and Morocco ; Status of Eastern Carelia ; Competence of the ILO to Regulate Incidentally the Personal Work of the Employer ; Jurisdiction of the European Commission of the Danube ; Jurisdiction of the Courts of Danzig ; Free City of Danzig and the ILO ; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory ; Conditions of Admission of a State to Membership in the United Nations ; Interpretation of Peace Treaties with Bulgaria, Hungary*

and Romania; Effect of Awards of Compensation Made by the United Nations Administrative Tribunal; Voting Procedure on Questions Relating to Reports and Petitions concerning the Territory of South West Africa; Admissibility of Hearings of Petitioners by the Committee on South West Africa; Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization; Certain Expenses of the United Nations.

In his book on *The Extent of the Advisory Jurisdiction of the International Court of Justice* (Leyden, 1971) Kenneth James Keith presents a detailed analysis of cases where the Court found it necessary to "redraft" the question posed it in order to ascertain its real object and true meaning.

I wish also to point out that the principle of effective interpretation is also inherent in the purpose and raison d'être of the advisory jurisdiction of the Court. In one of its resolutions requesting an advisory opinion of the Court, the General Assembly of the United Nations used the words "Recognizing its need for authoritative legal guidance" (G.A. res. 1731 (XVI)). If the Court is to provide such guidance, it cannot content itself with giving a formalistic or simplistic reply based on a narrow construction of the question as drafted. It is incumbent upon it to establish what is at issue and what is involved when an international organization is contemplating a certain course of action and seeking clarification of legal issues and the provision of guidelines based on legal principles and rules.

In evaluating the purposes served by the advisory jurisdiction of the Permanent Court of International Justice, Manley Hudson singled out in particular its contribution to the work of the Council of the League of Nations, the International Labour Organisation and other international bodies which were able, through the Council of the League, to request advisory opinions. In his work on the old Court, Hudson states :

> "In several instances, advisory opinions greatly facilitated the work of the Council of the League of Nations . . . [T]he Court's opinion may clarify difficult questions as to the Council's competence, or it may dispose of legal questions which condition progress in the settlement of political issues . . .
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> Advisory opinions also facilitated the efficient functioning of international institutions other than the Council. International bodies do not operate automatically, and many legal questions may arise to impede their action. In numerous instances authoritative answers to such questions were obtained from the Court through the mediation of the Council." (Manley O. Hudson, *The Permanent Court of International Justice 1920-1942, A Treatise*, 1943, p. 523.)

The contribution of the new Court to the work of the United Nations system cannot be over-emphasized. Owing to the new organic relationship

of the Court with the United Nations (the Statute being an integral part of the Charter and the Court being one of the principal organs of the United Nations) the Court regards itself, rightly, as being under the duty of participating, within its competence, in the activities of the Organization. The same applies to the other international organizations related to the United Nations, i.e., the specialized agencies which may directly request advisory opinions of the Court.

The importance of authoritative legal guidance to the work of international organizations is reflected in the relatively substantial number of advisory opinions relating to the competence of international organizations. Out of the 15 requests for advisory opinions submitted to this Court, no less than ten related to the interpretation of legal issues concerning the competence of the United Nations and certain specialized agencies.

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I turn now to the question of the power of the WHO to select and transfer the seat of one of its regional offices and the conditions for the exercise of such a power. The Opinion has rightly pointed out that this power is not absolute and that international organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties. I wish to make a few reflections with a view to putting this problem in the context of the general law of international organizations.

Constituent instruments of international organizations contain provisions which establish their principal organs and empower those principal organs to establish subsidiary organs as they deem necessary for the performance of certain tasks. Characteristically, a subsidiary organ has been established to carry out a specific task assigned to it by one of the principal organs and has gone out of existence when the task has been completed. Thus there are what may be called "short-lived" subsidiary organs engaged in preparatory work, appointed to investigate particular situations, or asked to study and report on some aspect of the organization's activities. Conversely, there are what have been referred to by some writers as "operating agencies", functioning on a "continuing" basis. They are to be found in particular in the sphere of economic, social and technical activities of international organizations, for example, the regional Economic Commissions of the United Nations, Development Programme Regional Offices, regional Information Centres and regional seats or offices of the specialized agencies. Operational regional offices are usually located in the territory of a State other than the State in whose territory the seat of the organization itself is located. This renders necessary, in addition to the decisions and acts adopted within the internal law of the organization, an agreement with the State which is chosen to host the operational

regional office. Thus while the power of an organization to establish a regional office is derived from its constituent instrument and lies within its discretion, the process of such an act involves the host State in whose territory the regional office performs its activities and enjoys the legal status necessary for such performance and enforced within the sphere of action of the host State. The establishment of the regional office, is, therefore, not a matter so absolutely and exclusively within the discretion and power of the organization. The provision of a constitution of an international organization empowering the organization to establish a regional office cannot be interpreted in the abstract or in a vacuum. It must be taken in conjunction with the other components of the process of the establishment of the regional office and not separately from the actual development of that process.

The composite character of the process illustrates the compound nature of the legal act of establishing a regional office of an international organization. A decision is first taken in principle for the establishment of a regional office. An invitation is extended by one of the States of the region to host the office. The organization then decides to accept the invitation tentatively and empowers its Director-General to enter into negotiations with the State extending the invitation, with a view to determining the legal status of the office, its privileges and immunities, the facilities to be accorded by the host State and other working conditions. On the side of the host State some preliminary steps are taken through the enactment of national legislation which is subsequently completed and consecrated vis-à-vis the organization by the host agreement. The establishment of a regional office therefore comprises certain acts which belong to the internal law of the organization ; their sources are the constituent instruments and decisions of the organization. But it also comprises certain acts which fall within the territorial field of operation of the regional office, which is the territory of the host State. The sources of these acts are the host agreement and the related contractual engagements and arrangements. In other words, two sets of law are involved here : the internal law of the organization, and the law governing its external relations with States.

It follows that a regional office established by such a composite legal act and elaborate process cannot be de-established without due regard to the nature and character of such an act and process. The requirement of consultations, negotiations and a notice period as a guarantee for the stability of elaborately worked out and longstanding arrangements for institutionalized co-operation among States and safeguards against their abrupt discontinuance cannot be considered as something which would fetter the power of an organization to establish a regional office.

One must distinguish between the power of an organization to establish a regional office, which certainly is granted to it and is within its discretion, and the exercise of such power, which may be submitted to certain safeguards and conditions. The same applies to the host State. Its consent is

necessary for the hosting of a regional office in its territory which is a manifestation of its territorial sovereignty. But once this consent is given in an internationally binding engagement, it becomes subject to whatever safeguards have been provided for and in particular the notice period attaching to any demand on its part for the transfer of the office from its territory. Another illustration is to be found in the case of withdrawal by a State from an international organization, which is an attribute of sovereignty, but for which a notice period is usually required.

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In supporting or opposing the application of Section 37 of the 1951 Agreement in the case of the transfer of the WHO Regional Office from Egypt, the written and oral statements submitted to the Court appear to draw legal differences and conclusions from the question whether the Agreement is a "headquarters or host agreement" or an "agreement on privileges and immunities".

Before stating how I view the 1951 Agreement in the light of its genesis and nature, its legislative history and terms, I wish to make the following observation :

In grouping all the agreements relating to the seats of international organizations, whether the principal seats of the organizations or the seats for their regional offices, as well as the arrangements for the places where meetings of their organs or conferences convened under their auspices are held in the territory of a State other than the State in whose territory the seat of the organization is located, three categories may be identified. There are first the "headquarters agreements" which are concluded between the United Nations and specialized agencies on the one hand, and States in whose territory they maintain headquarters on the other hand. There are secondly the General Conventions on the Privileges and Immunities of the United Nations and the Specialized Agencies, which were concluded in 1946 and 1947 respectively.

The purpose of these two categories and their object is the definition of the legal status, privileges and immunities of the organization, its officials, representatives attending the meetings of its organs and conferences and other persons engaged in its activities. They contain provisions which recognize the legal capacity of the organization and accord it and its property and assets immunity from every form of legal process. The premises of the organization are inviolable. Representatives of member States are accorded privileges and immunities generally enjoyed by diplomatic envoys. Certain privileges and immunities are also accorded for officials of the organization and for "experts on mission" for the organization. Therefore there is no basic difference in their legal nature. There are differences of orientation and emphasis which derive from the difference regarding the parties to the agreement and its sphere of operations. A headquarters agreement is concluded between the organization and the

host State. It defines the status of the seat of the organization and covers the activities of the organization which takes place within the territory of the host State. On the other hand, the Conventions on Privileges and Immunities are addressed to all member States and are designed to apply to the organizations' activities in their respective territories.

The third category consists of what may broadly be referred to as "special agreements". The *Repertory of the Practice of the Organs of the United Nations*, Vol. V (1955), contains in its section on Articles 104 and 105 of the Charter a synoptic survey of these special agreements. It includes agreements complementary or supplementary to the General Convention, agreements applying the provisions of the General Convention in cases where Members have not yet acceded to the Convention, and agreements specifying the nature of privileges and immunities to be enjoyed by certain United Nations bodies in host countries (see also *Suppl. No. 1*, Vol. II (1958), *Suppl. No. 2*, Vol. III (1963) and *Suppl. No. 3*, Vol. IV (1973)).

Jenks gives a detailed enumeration of these special agreements, classifying them in the following categories :

(a) Host agreements (examples : agreements concluded by the World Health Organization for its regional offices with Egypt, France and Peru, and by the International Labour Organisation for its field offices with Mexico, Peru, Turkey and Nigeria).

(b) Agreements relating to special political tasks (examples : agreements concerning the United Nations Emergency Forces).

(c) Technical assistance and supply agreements.

(d) Agreements concerning particular meetings (example : the Agreement of 17 August 1951 between the United Nations and France relating to the holding in Paris of the Sixth Session of the General Assembly). (C. Wilfred Jenks, *International Immunities*, 1961, pp. 7-11.)

The texts of all the above-mentioned agreements are grouped in the United Nations Legislative Series under the title of *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (ST.LEG/SER.B10 and 11). Moreover, whenever an agreement is a "host agreement" or an "agreement on privileges and immunities", its principal objective in either case is the regulation of the legal status of the organization (or an organ or conference thereof) and its privileges, immunities and facilities within the territory of the host State. This notion is reflected in the definition of host agreements given by P. Cahier :

> "*[Translation]* agreements concluded between an international organization and a State with the object of establishing the status of that

> organization within the State in whose territory it has its seat and defining the privileges and immunities which will be granted to it and its officials" (*Etude des accords de siège conclus entre les organisations internationales et les Etats où elles résident*, Milan, 1959, p. 1, and *Le droit diplomatique contemporain*, Geneva/Paris, 1962, p. 45).

Cahier, like Jenks also, includes among host agreements the 1951 Agreement between Egypt and the WHO (*Etude des accords de siège..., op. cit.*, p. 432).

Having made these observations on "headquarters agreements" and "agreements on privileges and immunities" in general, I wish now to turn to the 1951 Agreement between the WHO and Egypt. A careful examination of the circumstances of its conclusion, the purposes sought to be achieved by such an instrument and an analysis of its provisions clearly reveal that the Agreement is a "host agreement". It was intended to regulate the legal status and activities of the Regional Office in Alexandria. The Preamble of the Agreement states :

> "Desiring to conclude an agreement for the purpose of determining the privileges, immunities and facilities to be granted by the Government of Egypt to the World Health Organization, to the representatives of its Members and to its experts and officials *in particular with regard to its arrangements in the Eastern Mediterranean Region*, and of regulating other related matters." (Emphasis added.)

A number of the provisions of the Agreement contain references to "the Regional Committee of the Eastern Mediterranean Region", "the Regional Office in Alexandria", "the Regional Director in Egypt and his Deputy" and "the necessary police supervision for the protection of the seat of the Organization and the maintenance of order in the immediate vicinity thereof". These references indicate that one of the basic purposes of the Agreement is to regulate the activities of the Regional Office in Alexandria and that it serves as the instrument governing its legal régime.

The fact that the Office started its operations before the conclusion of the 1951 Agreement does not change the legal situation. In practice some *de facto* arrangements of an interim character precede the formal establishment of such offices before their consolidation in and consecration by the agreement governing their legal status. The headquarters agreement of the United Nations itself was preceded by such provisional arrangements. On 14 February 1946 the General Assembly, meeting in London, accepted the invitation of the United States Congress of 10 December 1945 to establish it headquarters in the territory of the United States. The United Nations established itself there from that time on, although the headquarters agreement was not concluded until 26 June 1947. The *de facto* character of the arrangements which were made prior to the conclusion of the

1951 WHO/Egypt Agreement was confirmed by a representative of the WHO in a statement, made to the Fourth World Health Assembly in the course of its consideration of the proposed agreement, in which he

> "stressed the fact that the Egyptian Government had so far shown a large measure of understanding and had in fact accorded the Organization most of the facilities necessary for the proper functioning of the regional office at Alexandria. However, although the Organization thus enjoyed the most courteous treatment, it would be highly desirable for such a treatment to be accorded *de jure* and not *de facto*" (WHO, *Official Records,* No. 35, p. 315).

Of no legal bearing on the 1951 Agreement either is the transfer of functions from the Alexandria Sanitary Bureau to the Regional Office of the WHO for the Eastern Mediterranean, whether it was effected by a unilateral statement by the Egyptian Government or by the statement and its acceptance which were described by the Director of the Legal Division of the WHO in his replies to the questions put to him by the Court as "*[Translation]* separate but concordant unilateral statements by those parties" (sitting of 23 Oct. 1980). The transfer of functions from the Alexandria Sanitary Bureau and the establishment of the Regional Office in Alexandria are two distinct operations which have different objects and subject-matters and thus require two separate legal acts.

Furthermore, it is difficult to accept the view that the establishment of the Regional Office in Alexandria was made by a "unilateral act of the Organization" or by "an agreement in simplified form" resulting from the acceptance by Egypt of the decision of the Organization. It involved a composite legal act and could not be effected by a unilateral decision of the organization, inasmuch as its field of operation was the territory of a State, whose consent was necessary. In the long process which the establishment of a regional office requires, the host State extends an invitation to the organization to establish one of its subsidiary organs in its territory. Then the organization decides likewise, a decision in which the host State when it is a member of the organization concurs, and its individual will is a part of the general will which produces the decision. Subsequently a number of preliminary steps are taken and negotiations are held to put them in a definitive form and embody the legal régime which governs the accumulative institution in a formal instrument. An agreement by which a State hosts a regional office which enjoys inviolability and immunity from all forms of legal process requires, according to the constitutional requirements of the host State, a number of legislative acts which cannot and are not based on "agreement in simplified form". Nor can the organization give its definitive consent to the setting-up of one of its subsidiary organs before final agreement on the specific modalities of such a legal régime and its consecration in an instrument binding on and enforceable vis-à-vis the host State. And once such an instrument enters into legal force, it integrates the previous acts, arrangements and understandings and becomes

the law governing the operation of the institution, any changes in its rules and its eventual termination.

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The last point which I wish to comment upon concerns the conditions for the transfer of the Regional Office.

Section 37 of the 1951 Agreement confers upon both parties the right to denounce the Agreement following failure to agree on certain provisions requested by either of them. It provides for guarantees to guard against abrupt denunciation or disruptive termination of the Agreement. It requires consultations between the parties concerning the modifications to be made in its provisions. It also requires two years' notice for denunciation of the Agreement in case the negotiations for revision do not result in an understanding within one year. The requirements and guarantees contained in Section 37 manifest the intention of the parties to ensure the security and stability of a regional office, set up for an indefinite period, through the establishment of which in the territory of the host State the latter was enabled to continue its regional role in the health field. Such a role is of long standing and dates back as far as 1831.

It has been argued in some of the statements submitted to the Court that Section 37 is not a denunciation but a revision clause. It would, it is contended, apply exclusively to cases of denunciation subsequent to failure to reach agreement on certain demands for revision, and not to the transfer of the seat of the Regional Office. I have not found the arguments in support of such a restrictive interpretation of Section 37 to be warranted or well conceived. Both the legislative history and the general law of international organizations lead me to opt for the effective interpretation of Section 37.

Section 37 of the 1951 Agreement is modelled on a formulation originally employed in the headquarters agreement of 1946 between Switzerland and the International Labour Organisation and subsequently reproduced in the headquarters agreement of 1948 between Switzerland and the World Health Organization. The materials submitted to the Court by the Legal Adviser of the International Labour Organisation on the negotiations which led to the conclusion of the 1946 Agreement indicate that the parties intended that denunciation of the Agreement should be required in order to remove the seat.

The transfer of the seat of the Regional Office at Alexandria would connote revision of the 1951 host agreement inasmuch as it would deprive it of its subject-matter at a stroke. To argue that the safeguards provided for in Section 37 do not apply to the transfer of the seat would imply conceding to one party to the Agreement the power to circumvent these

guarantees by resorting to a technicality which would allow it to frustrate the very object of the instrument without complying with the procedure prescribed for denunciation consequent upon a request for revision of one or more provisions of the Agreement.

Interpreting Section 37 as requiring the notice period provided by it in the case of the transfer of the Office is also in conformity with the general law of international organizations. A study of the headquarters agreements of international organizations indicates that the requirement of a notice period is a common feature. Their provisions on the matter could be considered as evidence of a customary rule. Concern with the security and stability of arrangements for institutionalized inter-State co-operation is also reflected in the established rule contained in the constituent instruments of international organizations, requiring a notice period for withdrawal from membership.

In considering the question of the application of Section 37 of the 1951 Agreement to a transfer of the Regional Office, the Opinion has adopted a broad approach which views it within "the general legal framework in which the true legal issues before the Court have to be resolved". It has pointed out that whatever view may be held on this question, the fact remains that certain legal principles and rules are applicable in the case of such a transfer. They relate to consultations prior to the decision to transfer, negotiations concerning the conditions and modalities of transfer, and a reasonable transitional period between the notification of the decision and its eventual coming into effect.

I note with concurrence that one of the final conclusions of the Opinion (para. 43) states that : "This special legal régime [regulating the Regional Office] of mutual rights and obligations has been in force between Egypt and WHO for over thirty years", that "the result is that there now exists in Alexandria a substantial WHO institution employing a large staff and discharging health functions important both to the Organization and to Egypt itself" and that "any transfer of the WHO Regional Office from the territory of Egypt necessarily raises practical problems of some importance".

I agree with the Opinion's statement that :

> "These problems are, of course, the concern of the Organization and of Egypt rather than of the Court. But they also concern the Court to the extent that they may have a bearing on the legal conditions under which a transfer of the Regional Office from Egypt may be effected."

It is evident that all this has to be borne in mind and taken into due account in the consultations and negotiations between the WHO and Egypt regarding the determination of what the Opinion refers to as a "reasonable

period of time . . . required to effect an orderly transfer of the operation of the Office" and "with a minimum of prejudice to the work of the Organization and the interests of" the host State.

The Opinion rightly points out that what periods of time may be involved in the observance of duties to consult and negotiate and what period of notice of termination should be given, are matters which necessarily vary according to the requirements of the particular case. The conclusion to be drawn from this general statement when applied to the present case is obvious inasmuch as the latter concerns an arrangement of inter-State institutionalized co-operation which is well-established and of long standing, and has been functioning in an effective manner for the common interest. It is imperative to protect the legal régime created by such arrangements from being suddenly and precipitately terminated.

Another point which invites comment on my part relates to what the Opinion of the Court refers to as "some indications as to the possible periods involved" in the event of the transfer of the seat of the Regional Office from the territory of the host State. In reviewing a number of host agreements concluded by States with various international organizations, and containing varying provisions regarding the revision, termination or denunciation of the agreement which were brought to the Court's attention, the Opinion rightly makes a distinction between two main groups. The first group provides the necessary régime for the seat of headquarters or regional offices "of a more or less permanent character". The second group provides a régime for other offices "set up *ad hoc* and not envisaged as of a permanent character". The Opinion rightly includes the host agreements for regional offices concluded by the WHO in the first category. The Court has stated that some indications as to the possible periods involved can be seen in provisions of host agreements, including Section 37 of the Agreement of 25 March 1951, as well as in Article 56 of the Vienna Convention on the Law of Treaties and in the corresponding article of the International Law Commission's draft article on treaties between States and international organizations or between international organizations. I wish to observe that this statement is so general in its scope as to cover the different categories of host agreement. It should be noted, however, that the reference in this context to Article 56 of the Vienna Convention on the Law of Treaties, and to the corresponding article of the International Law Commission's draft articles on treaties between States and international organizations or between international organizations, applies to cases in which no provision for denunciation is included and hence the residual rule enunciated in these two articles is required. In the present case concerning the WHO Regional Office in Egypt, there is no need for any residual rule. The 1951 Agreement provides a contractual rule which the parties have adopted. It expresses their intention as to what notice period should apply to the termination of the activities of the Regional Office. Therefore the indications which apply to the present case and have particular relevance are to be found in Section 37 of the 1951 Agreement, supplemented by whatever may be necessary to provide a reasonable period for an orderly

termination of the activities of the Regional Office in Alexandria, which was set up as an operational organism concerned with health : the most imperative of all the technical fields of inter-State co-operation. This organism, as I mentioned before, was set up as an indefinite arrangement, is well-established and of long standing, and has discharged its functions satisfactorily in the common interest of the member States of the region concerned.

(Signed) Abdullah EL-ERIAN.