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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish a *Juridical Yearbook* which would include certain documentary materials of a legal character concerning the United Nations and related inter-governmental organizations.

Accordingly, chapters I and II of the present volume—the fifth of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related inter-governmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1967. Decisions given during 1967 by international and national tribunals relating to the legal status of the various organizations will be found in chapters VII and VIII.

Decisions, recommendations and reports of a legal character which, in the view of the organization concerned, merited reproduction in whole or in part are contained in chapter III. Other documents under this category are simply enumerated in bibliographical form in chapter IX.

Chapter IV is devoted to treaties concerning international law concluded under the auspices of the organizations concerned during the year in question, whether or not they entered into force in that year. This criterion has been used in order to reduce in some measure the difficulty created by the sometimes considerable time-lag between the conclusion of treaties and their publication in the United Nations *Treaty Series* following upon entry into force.

The index in chapter IX is designed to provide, together with the texts reproduced in chapter III, as complete a picture as possible of the legal documentation of the United Nations and related inter-governmental organizations. A part of the index has been set aside for each of the organizations, which were requested to present their own documentation in the manner they thought best suited to the material.

Finally, the bibliography in chapter X lists works and articles of a legal character published in 1967 regardless of the period to which they refer. Some works and articles which were not included in the bibliographies of the *Juridical Yearbook* for previous years have also been listed.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and juridical decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

ABBREVIATIONS

BANK, IBRD	International Bank for Reconstruction and Development
BIRPI	United International Bureaux for the Protection of Intellectual Property
ECLA	Economic Commission for Latin America
FAO	Food and Agriculture Organization of the United Nations
FUND	International Monetary Fund
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
IDA	International Development Association
IFC	International Finance Corporation
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
ITU	International Telecommunication Union
ONUC	United Nations in the Congo
UNCTAD	United Nations Conference for Trade and Development
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNRRA	United Nations Relief and Rehabilitation Administration
UNTEA	United Nations Temporary Executive Authority
UPU	Universal Postal Union
WHO	World Health Organization
WMO	World Meteorological Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATION

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

1. Australia

REGULATIONS UNDER THE INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) ACT 1963-1966

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations [1] under the *International Organizations (Privileges and Immunities) Act* 1963-1966. [2]

Dated this sixteenth day of June, 1967.

CASEY
Governor-General

By His Excellency's Command,

Paul HASLUCK
Minister of State for External Affairs

INTERNATIONAL COURT OF JUSTICE (PRIVILEGES AND IMMUNITIES) REGULATIONS

1. These Regulations may be cited as the International Court of Justice (Privileges and Immunities) Regulations.

2. In these Regulations, unless the contrary intention appears—

"the Act" means the *International Organizations (Privileges and Immunities) Act* 1963-1966;

"the Court" means the International Court of Justice established by the Charter of the United Nations;

"the Registrar" means the Registrar of the Court.

3. (1.) A member of the Court has—

(*a*) when engaged on the business of the Court;

(*b*) when on a journey in connexion with the exercise of his functions as a member of the Court; or

(*c*) if he is not an Australian citizen, when residing in Australia for the purpose of holding himself permanently at the disposal of the Court,

the privileges and immunities specified in Part I of the Second Schedule to the Act.

---

[1] Notified in the *Commonwealth Gazette* on 29 June 1967.

[2] *Juridical Yearbook, 1963* p. 3.

(2.) A person who has ceased to be a member of the Court—

(*a*) has the immunities specified in Part II of the Second Schedule to the Act; and

(*b*) is exempted from taxation in respect of any salary, allowances or compensation received from the Court.

4. A person who holds the office of Registrar, or is performing the duties of that office, has, while on the business of the Court or while on a journey in connexion with the exercise of the functions of that office, the privileges and immunities specified in Part I of the Second Schedule to the Act.

(2.) A person who has ceased to hold, or perform the duties of, the office of Registrar has the immunities specified in Part II of the Second Schedule to the Act.

5. (1.) A person who holds an office in the Court, other than the office of Registrar, has, while on the business of the Court or while on a journey in connexion with the performance of the functions of his office—

(*a*) the privileges and immunities specified in paragraphs 1 to 5 (inclusive) of Part I of the Fourth Schedule to the Act; and

(*b*) the following privileges, namely, the like repatriation facilities (including repatriation facilities for a spouse and any dependent relatives) in time of international crisis as are accorded to an official of comparable rank forming part of a diplomatic mission.

(2.) The salary and emoluments received from the Court by a person to whom the last preceding sub-regulation applies, being a resident of Australia within the meaning of the *Income Tax Assessment Act* 1936-1967, are not, to the extent to which they are for services rendered in Australia, exempt from taxation unless the person is not an Australian citizen and came to Australia solely for the purpose of performing duties of the office in the Court held by him.

(3.) The salary and emoluments received from the Court by a person to whom sub-regulation (1.) of this regulation applies, being a resident of the Territory of Papua and New Guinea within the meaning of the *Income Tax Ordinance* 1959-1966 of that Territory, are not, to the extent to which they are for services rendered in that Territory, exempt from taxation unless the person is not an Australian citizen or an Australian protected person and unless the person came to that Territory solely for the purpose of performing duties of the office in the Court held by him.

(4.) In the last preceding sub-regulation, "Australian protected person" means a person declared by the regulations under the *Nationality and Citizenship Act* 1948-1967 to be, for the purposes of that Act, under the protection of the Australian Government.

(5.) Subject to the next succeeding sub-regulation, a person who holds an office in the Court, other than the office of Registrar, has the privileges and immunities specified in paragraph 7 of Part I of the Fourth Schedule to the Act.

(6.) The last preceding sub-regulation does not apply to or in relation to a person who is an Australian citizen.

(7.) A person who has ceased to hold an office in the Court, other than the office of Registrar, has the immunities specified in Part II of the Fourth Schedule to the Act.

6. (1.) A person, not being an Australian citizen or a person acting on behalf of the Government of Australia, has—

(*a*) while appearing before the Court as agent, counsel or advocate; or

(*b*) while proceeding on a journey in connexion with such an appearance,

the privileges and immunities specified in paragraphs 1 to 6 (inclusive) of Part I of the Third Schedule to the Act.

(2.) A person, not being an Australian citizen or a person acting on behalf of the Government of Australia, who has concluded his appearance before the Court as agent, counsel or advocate has the immunities specified in Part II of the Third Schedule to the Act.

(3.) For the purposes of this regulation, the Third Schedule to the Act has effect in relation to a person as if the words "in his capacity as agent, counsel or advocate before the Court" were substituted for the words "in his capacity as such a representative" in paragraph 2 of Part I and in Part II of that Schedule.

7. (1.) A person has—

(*a*) while acting as an assessor of the Court;

(*b*) while appearing as a witness or an expert before the Court; or

(*c*) while performing a mission by order of the Court,

and while on a journey in connexion with such a duty, the privileges and immunities specified in paragraphs 1 to 5 (inclusive) of Part I of the Fifth Schedule to the Act.

(2.) A person referred to in the last preceding sub-regulation who has ceased to perform the duties referred to in that sub-regulation has the immunities specified in Part II of the Fifth Schedule to the Act.

(3.) For the purposes of this regulation, the Fifth Schedule to the Act has effect in relation to a person—

(*a*) as if the words "while acting as an assessor of the Court, while appearing as a witness or an expert before the Court or while performing a mission by order of the Court" were substituted for the words "in serving on the committee, participating in the work or performing the mission" in paragraph 2 of Part I and in Part II of that Schedule; and

(*b*) as if the word "Court" were substituted for the word "organization" in paragraph 4 of Part I of that Schedule.

8. (1.) In this regulation, "the appropriate authority" means—

(*a*) in relation to the Registrar—the Court;

(*b*) in relation to an official of the Court other than the Registrar—the Registrar acting with the approval of the President of the Court;

(*c*) in relation to an agent, counsel or advocate—the government of the country on behalf of which he is, or was, appearing before the Court; and

(*d*) in relation to any other person, not being a member of the Court, referred to in these Regulations—the Court, or, if the Court is not then sitting, the President of the Court.

(2.) The appropriate authority in relation to a particular person may waive any privileges or immunities to which that person is entitled by virtue of the Act or these Regulations.

9. Nothing in these Regulations affects the application of any law of the Commonwealth or a Territory of the Commonwealth, including the Territory of Nauru, relating to quarantine, or prohibiting or restricting the importation into, or the exportation from, Australia or that Territory, as the case may be, of any animals, plants or goods, but this regulation does not prejudice the immunity from suit or from civil or criminal process conferred by these Regulations.

2. Barbados

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT

An Act [3] to confer immunities, powers and privileges on diplomatic and consular representatives and representatives of international organisations and certain other persons: and for purposes ancillary to or connected with matters aforesaid

(30th November, 1966)

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Assembly of Barbados, and by the authority of the same, as follows—

Part I

Preliminary

1. This Act may be cited as the Diplomatic Immunities and Privileges Act, 1967.

2. (1) For the purposes of this Act, the expression—

. . .

"head of mission" means an Ambassador, High Commissioner or other person, by whatever title called, accredited by a sovereign Power and recognised as a head of mission in Barbados by the Government of Barbados;

"member of the family" in relation to any person to whom this Act applies, means—

(*a*) the spouse or any dependent child of that person; and

(*b*) any person deemed by the Minister to be a member of the family in question;

"Minister" means the Minister for the time being responsible for External Affairs;

"personal immunities" means immunity from suit or legal process (except in respect of things done or omitted to be done in the course of the performance of official duties) and inviolability of residence, and any exemption in respect of taxes, duties, rates or fees;

"Vienna Convention" means the international convention on diplomatic relations set forth in the First Schedule.

(2) It is hereby declared that for the purposes of this Act the expression "sovereign Power" includes any member of the Commonwealth which is sovereign.

Part II

Diplomatic Immunities and Privileges

3. Subject to the provisions of this Act, a head of mission shall be entitled to such immunities and privileges, and inviolability of residence, official premises, and official archives as are by customary international law and usage accorded to a duly accredited representative of a sovereign Power or as may be necessary to comply with the terms of—

(*a*) the Vienna Convention; or

(*b*) any other international agreement,

[3] No. 42 of 1967. Assented to on 12 August 1967.

in the event that the country of the head of mission and Barbados are parties to such Convention or agreement.

4. (1) Subject to the provisions of this Act, a member of mission shall be entitled to such immunities and privileges as are by customary international law and usage accorded to the member of mission of a duly accredited representative of a sovereign Power or as may be necessary to comply with the terms of—

(*a*) the Vienna Convention; or

(*b*) any other international agreement,

in the event that the country of the head of mission and Barbados are parties to such Convention or agreement.

(2) For the purposes of subsection (1) the expression "member of mission" in relation to any head of mission includes—

(*a*) a member of the official or domestic staff of the head of mission;

(*b*) a member of the family of the head of mission;

(*c*) a member of the family or of the domestic staff of a member of the official staff of the head of mission.

. . .

Part III

International Organisations and Persons connected therewith

6. (1) This section shall apply to any organisation declared by the Minister by order to be an organisation the members of which are sovereign Powers or the government of governments thereof.

(2) Subject to subsection (3), the Minister may from time to time by order—

(*a*) provide that any organisation to which this section applies (hereinafter referred to as "the organisation") shall, to such extent as may be specified in the order, have the immunities and privileges set out in Part I of the Second Schedule and shall also have the legal capacities of a body corporate;

(*b*) confer upon—

(i) any persons who are representatives (whether of governments or not) on any organ of the organisation or are members of any committee of the organisation or of any organ thereof;

(ii) such officers or classes of officers of the organisation as are specified in the order, being the holders of such high offices in the organisation as are so specified;

(iii) such persons employed on missions on behalf of the organisation as are specified in the order.

to such extent as are specified in the order, the immunities and privileges specified in Part II of the Second Schedule;

(*c*) confer upon such other classes of officers and servants of the organisation as specified in the order, to such extent as are so specified in Part III of the Second Schedule;

(*d*) confer upon such other persons as are specified in the order, being persons under contract with the organisation, to such extent as are so specified, the immunities and privileges specified in Part V of the Second Schedule,

and Part IV of the Second Schedule shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in sub-paragraph (i) of paragraph (*b*) of this subsection and to the families of officers of the organisation any immunities and privileges conferred upon the representatives, members, or officers under that paragraph, except in so far as the operation of the said Part IV is excluded by the order conferring the immunities and privileges.

(3) Any order made by the Minister pursuant to subsection (2)—

(*a*) may, notwithstanding any thing contained in sub-section (2), confer on the organisation or on such persons or classes of persons as are referred to in that subsection such immunities and privileges as are required to give effect to any international agreement in that behalf to which Barbados is a party;

(*b*) shall be so framed as to secure that there are not conferred on the organisation or on any such person or class of persons as aforesaid any immunities and privileges greater in extent than those which, at the time of the making of the order, are required to be conferred on the organisation or on such person or class of persons as aforesaid in order to give effect to any such international agreement in that behalf.

(4) Nothing in this section shall authorise the making of any order to confer immunity or privilege upon any person as a representative of the Government of Barbados or a member of the staff of such representative.

7. The Minister may from time to time, by order confer on the judges and registrars of the International Court of Justice established by the Charter of the United Nations, and of any other international judicial institution approved by the Minister, and on suitors to that Court or to any such institutions and their agents, counsel, and advocates, such immunities, privileges, and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations or, in the case of any such institution as aforesaid, as the Minister may deem necessary for the proper discharge its functions.

8. (1) Where—

(*a*) a conference is held in Barbados and is attended by representatives of the governments of one or more sovereign Powers or of any of the territories for whose international relations any of those governments is responsible; and

(*b*) it appears to the Minister that doubts may arise as to the extent to which the representatives of those governments (other than the Government of Barbados) and members of their official staffs are entitled to immunities and privileges,

the Minister may, by notice in the *Gazette* direct that every representative of any such government (other than the Government of Barbados) shall for the purposes of any enactment or rule of law or custom relating to diplomatic immunities and privileges, be treated as if he were a head of mission, and that such of the members of his official staff as the Minister may from time to time direct shall be treated for the purpose aforesaid as if they were members of the official staff of a head of mission.

(2) For the purpose of subsection (1) the Minister may compile a list of the representatives of the Governments aforesaid (other than the Government of Barbados) and members of their official staffs as he thinks proper, and shall cause such list and any amendment of that list or amended list to be published in the *Gazette* and such publication shall include a statement of the date from which the list or amendment, as the case may be, takes or took effect.

Part IV

General

9. (1) The Minister responsible for Finance may by order published in the *Gazette*, or by directions in writing—

(*a*) make such provisions as he thinks fit in order to facilitate any exemption from taxes, duties, rates or fees to which any person is entitled consequent on the diplomatic immunities and privileges to which this Act relates and may in the order or directions declare the extent of such exemption in respect of any person or class of persons and as to whether or not any particular tax, duty, rate or fee is included therein or excluded therefrom; and where any such declaration is made it shall, subject to the provisions of the Second Schedule (in the case of any person to whom an order made under subsecton (1) or subsection (2) of section 6 refers), be conclusive;

. . .

(2) No order published or directions given by the Minister responsible for Finance pursuant to subsection (1) shall be construed as exempting any person from compliance with the formalities in respect of importation of goods which are prescribed in any law relating to customs.

(3) Any exemption from taxes, duties, rates or fees to which this section relates shall be subject to compliance with such conditions for protecting the Revenue as may be prescribed by the officer or the authority responsible under the law for collecting the taxes, duties, rates or fees in question.

10. (1) The Minister shall compile a list of the persons appearing to him to be entitled to immunities and privileges in accordance with the principles of customary international law and usage or by or under the provisions of this Act, except—

(*a*) children under the age of eighteen years of a person so entitled;

(*b*) any person whose name appears on a list published under the provisions of subsection (2) of section 8;

and he shall from time to time amend the list, and shall cause the list and any amendment of the list or any amended list to be published in the *Gazette*.

(2) If in any proceedings any question arises whether or not any person or any organisation is entitled to immunities or privileges in accordance with the principles of customary international law and usage or by or under the provisions of this Act, or by reason of being included in a list compiled under the provisions of subsection (2) of section 8, a certificate issued by or under the authority of the Minister stating any fact relevant to that question shall be conclusive evidence of the fact.

11. Any immunities or privileges conferred on any person by or under the provisions of this Act or any regulations made thereunder may be waived in accordance with the principles of customary international law and usage or in compliance with the terms of any Convention or agreement in that behalf to which Barbados is a party.

12. (1) If any goods to which this section applies are sold or disposed of within three years of importation or of being taken out of bond or of purchase to a person who is not entitled to customs, or, as the case may be, excise franchise privileges, the person who sells or disposes of such goods may be called upon to pay duty thereon at the rate required according to the law relating to the payment of customs or excise duty.

(2) This section applies to goods which have been imported or taken out of bond without payment of customs duty, or which have been purchased without payment of excise duty by a person in pursuance of any diplomatic immunity or privilege, or other immunity or privilege conferred or granted by or under this Act.

13. (1) Nothing in this Act shall be construed as precluding the Minister from withdrawing—

. . .

(ii) any immunities or privileges referred to in Part III or in the Second Schedule from any representatives or nationals of any sovereign Power on the grounds that such Power is failing to accord corresponding immunities of privileges in respect of Barbados,

or from declining to accord any such immunity or privilege as may be conferred by order or direction under the provision of this Act on any such grounds as aforesaid.

. . .

14. No person being exclusively a citizen of Barbados shall in Barbados be entitled to any personal immunities and the member of such person's family shall not, as such, be entitled to any personal immunities unless his name is included in a list compiled under the provisions of section 10 and published in the *Gazette* and still in force.

15. No person shall be entitled to any immunities or privileges in accordance with customary international law or usage or by or under any of the provisions of this Act, on account of his being a domestic servant of a head of mission or any other person, unless his name is included in a list compiled under the provisions of section 10 and published in the *Gazette* and still in force.

Part V

Miscellaneous Provisions, Repeal and Saving

. . .

17. The Minister may from time to time make regulations for carrying into effect the purposes of this Act, and regulations so made shall be subject to negative resolution.

18. This Act shall not affect any legal proceedings begun before the enactment thereof.

19. (1) The Acts specified in Part I of the Third Schedule are hereby repealed.

. . .

20. Every order made and list compiled under the provisions of the Diplomatic Privileges Act, 1947 or the Diplomatic Privileges (Vienna Convention) Act, 1965 which are still in force immediately before the commencement of this Act shall be deemed to have been made or compiled under the corresponding provisions of this Act and shall continue in force accordingly until amended, varied, revoked or replaced under this Act.

21. This Act shall be deemed to have come into operation on 30th November, 1966.

First Schedule

(sections 2, 3 and 4)

VIENNA CONVENTION ON DIPLOMATIC RELATIONS

[Not reproduced][4]

Second Schedule

(section 6)

Part I

Immunities and Privileges of the Organisation

1. Immunity from suit and legal process.

2. The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of the head of mission.

3. The like exemption or relief from taxes, duties, rates and fees, other than duties on the importation of goods, as is accorded to a sovereign Power.

4. Exemption from duties on the importation of goods directly imported by the organisation for its official use in Barbados or for exportation, or on the importation of any publications of the organisation directly imported by it, such exemption to be subject to compliance with such conditions as the Comptroller of Customs may prescribe for the protection of the Revenue.

5. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organisation for its official use and in the case of any publications of the organisation directly imported or exported by it.

6. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the Press or for broadcasting (including communications addressed to or despatched from places outside Barbados), of any reduced rates applicable for the corresponding service in the case of Press telegrams.

Part II

Immunities and Privileges of High Officers, Representatives, Members of Committees and Persons on Missions

1. The like immunity from suit and legal process as is accorded to a head of mission.

2. The like inviolability of residence as is accorded to such a head of mission.

3. The like exemption or relief from taxes, duties, rates and fees as is accorded to such a head of mission.

Part III

Immunities and Privileges of Other Officers and Servants

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

2. Exemption from income tax in respect of emoluments received as an officer or servant of the organisation.

Part IV

Immunities and Privileges of Official Staff and of High Officer's Family

1. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as a representative on any organ of the organisation or a member of any committee of the organisation or of an organ hereof his official staff accompanying him as such a representative or member shall also be entitled to those immunities and privileges to the same extent as the retinue of a head of mission is entitled to the immunities and privileges accorded to the head of mission.

[4] See United Nations, *Treaty Series*, vol. 500, p. 95.

2. Where any person is entitled to any such immunities and privileges as are mentioned in Part II of this Schedule as an officer of the organisation, that person's wife or husband and children under the age of twenty-one shall also be entitled to those immunities and privileges to the same extent as the wife or husband and children of a head of mission are entitled to the immunities and privileges accorded to the head of mission.

Part V

Immunities and Privileges of Persons under Contract

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

2. Exemption from income tax in respect of emoluments received from the organisation.

Third Schedule

(section 19)

Part I

(Acts repealed)

The Diplomatic Privileges Act, 1947.

The Diplomatic Privileges (Vienna Convention) Act, 1965.

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3. Colombia

(*a*) Resolution No. 162 of 1966 on the privileges and immunities of international officials and experts in Colombia [5]

The Secretary-General of the Ministry of Foreign Affairs, in charge of the office

In virtue of the powers conferred on him by law and

Considering:

(1) That article 4 of Legislative Decree 3135 of 20 December 1956 empowers the Ministry of Foreign Affairs to regulate the system of immunities and privileges on the basis of reciprocity;

(2) That it has been deemed necessary to clarify the provisions of the said Decree, especially with regard to practical application of the system of reciprocity; and

(3) That by Resolution No. 0899 of 30 December 1964 the Ministry of Foreign Affairs established regulations for the system applicable to foreign diplomatic staff and consular officials, and that the regulations dealing with international officials and experts in Colombia must therefore be supplemented;

Decides as follows:

Article 1

For the purposes of this Resolution, the following classification is established for officials assigned to Colombia in the employ of international technical or technical assistance organizations with offices in Colombia:

[5] Translation by the Secretariat of the United Nations.

(*a*) The titular Director and Deputy Director of the regional office of an organization;

(*b*) Representatives of international organizations and bodies accredited in the country;

(*c*) Officials of lower rank than the above;

(*d*) Experts in the service of technical assistance organizations or bodies;

(*e*) Experts of the United Nations and other international organizations; and

(*f*) Experts who come to the country under international agreements and are not paid by the Government of Colombia.

Organizations

Article 2

International technical or technical assistance organizations shall enjoy in Colombia the following privileges and immunities:

(1) Immunity from legal process in respect of their property and assets;

(2) Inviolability of premises and offices, archives and official documentation;

(3) Facilities in respect of exchange and the transfer of official funds; in exercising this privilege the specialized agencies shall furnish any explanations requested by the Government, to the extent compatible with their particular functions;

(4) Exemption from direct taxes;

(5) Exemption from customs duties and from all restrictions in respect of any kind of equipment imported for official use, with the exception of motor vehicles and goods dealt with separately; and

(6) The authority to use telegraphic codes for their official communications.

Senior and Subordinate Personnel

Article 3

The officials listed in article 1, (*a*) and (*b*), and so recognized by the Ministry of Foreign Affairs, shall enjoy the privileges and immunities granted to diplomatic staff, except as regards the importation of motor vehicles and goods regulated by article 8 *et seq.* and article 19.

Article 4

No Colombian national, whatever his status or rank, shall have the right to enjoy on Colombian territory the privileges and immunities granted by the provisions in force to international officials.

Article 5

The international technical personnel listed in article 1 (*c*) and (*d*) shall enjoy the following privileges and immunities, subject to prior recognition by the Ministry of Foreign Affairs;

(1) Immunity from legal process in respect of acts performed by them in their official capacity, including words spoken or written;

(2) Exemption from taxation in respect of the salaries and emoluments paid to them by the organization to which they belong;

(3) Exemption, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration formalities;

(4) The same privileges in respect of exchange facilities as are accorded to officials of diplomatic missions;

(5) Exemption from customs duties for their baggage; this exemption shall also apply to effects arriving at a Colombian port as "unaccompanied baggage" within three months after the arrival of the official in Colombia, the date to be verified from his passport if the mission or organization did not report his arrival in the country at the time;

(6) Household effects shall enjoy customs exemption when the official arrives in Colombia for the first time to take up his post, provided his contract is for a period of not less than one year.

Article 6

United Nations experts (article 1 (*e*)) shall enjoy during the period of their duties and the time required for travel in connexion with their functions the privileges and immunities listed in the preceding article, subject to the conditions specified therein.

Article 7

Experts coming to Colombia under special international agreements (article 1 (*f*)) and not paid by the Government of Colombia, shall enjoy the privileges listed under article 5 (2), (3), (4), (5) and (6).

Vehicles

Article 8

International technical or technical assistance organizations may import free of customs duties such service vehicles as, under the existing agreements with and in the judgement of the Ministry of Foreign Affairs are necessary for the normal functioning of their assistance programmes. Such vehicles shall be registered in the name of the organization concerned, and may not be sold without payment of customs duties until four (4) years have elapsed from the date of issue of the relevant licence plates.

Article 9

The Ministry of Foreign Affairs may, for duly attested special reasons, in exceptional cases authorize the transfer of such vehicles before the end of the period specified in the preceding article, but in such cases the appropriate customs duties shall be paid, except in the event of donation to a Colombian official body.

Article 10

On importation of any vehicle intended for an international or technical assistance organization or its personnel, the appropriate customs duties shall be entered on the manifest referring to the vehicle as if it was imported on behalf of a private individual. The figure shall be used as basis for the payment of customs duties if the vehicle should be sold or transferred, the scale specified for the purpose in article 12 being applied.

Article 11

The heads and permanent representatives of the international technical assistance organizations categories (*a*) and (*b*) may import free of customs duties, for their personal

use, a single motor car every two (2) years reckoned from the date of issue of plates for the vehicle registered in their name with the Ministry of Foreign Affairs.

Should the official complete his mission in Colombia before two years have elapsed and the vehicle has been in use for a minimum of twelve (12) months, it may be sold subject to payment of the appropriate duties in accordance with the provisions of the following article. If twelve (12) months have not elapsed, the vehicle must be re-exported.

Article 12

The duties referred to in the preceding article shall be assessed and payable as follows: the total value of the customs duties appearing on the import manifest (the only control document) shall be reduced by one-twelfth for each completed month between the end of the twelve-month period referred to above and the day on which transfer was authorized.

Article 13

When by virtue of the authorization granted in article 8 an international organization has imported vehicles in its name to be allocated for the private use of its staff members, none of the latter may request authorization to import another vehicle.

Article 14

The international technical personnel listed in article 1 (*c*) and (*d*) may during the four months following their arrival in Colombia import one motor car for their personal use, free of customs duties, on condition that their contract is for a minimum term of two (2) years. The weight of such vehicle may not exceed 1,650 kg and its f.o.b. value may not exceed $US2,800.

(1) If the official's contract is for a term of less than two years, authority may be granted, upon receipt of a written request, for the temporary importation into Colombia of a vehicle for the same purpose, meeting the above requirements, but the vehicle may not remain permanently in the country.

(2) An official who has imported a vehicle in the statutory manner and leaves Colombia for whatever reason before the two (2) years specified in his contract have expired may not request that the vehicle remain in that country; it must be re-exported.

Article 15

The import of a second vehicle shall not be authorized in cases where an official is transferred within Colombia, whether in the employ of the same or a similar organization, or where, having been absent from Colombia, he returns before a year has elapsed.

Article 16

International technical personnel as referred to in article 14 may sell a motor car imported in the statutory manner after the period of two (2) years of use has elapsed, subject to prior payment of the total customs duties waived on entry, as shown on the corresponding import manifest, but this shall not give entitlement to import another vehicle.

Article 17

A vehicle may be transferred without payment of customs duties to persons enjoying the privilege of importing a vehicle duty-free, but this shall be regarded as a regular import on the part of the purchaser, who shall therefore be required to comply with the conditions laid down for such imports in accordance with the provisions of this Resolution.

Licence plates

Article 18

The preparation of plates for vehicles imported under the present regulations shall be authorized by the Ministry of Foreign Affairs in accordance with a standard model supplied by the Division of Protocol, at the cost of the party concerned. These plates shall be exempt from tax and shall be issued on presentation of the original of a policy issued by an insurance company domiciled in Colombia and covering the vehicle against damage or injuries to third parties up to a sum of not less than 50,000 pesos, for a period of one year, renewable.

Merchandise

Article 19

The senior personnel listed in article 1 (*a*) and (*b*) of this Resolution may import into Colombia free of customs and other duties, in quantities which the Ministry of Foreign Affairs judges to be sufficient for their requirements, articles or goods for official use or for their exclusive private use or consumption.

Article 20

The obligations contracted by the Republic under agreements on matters identical with or similar to those dealt with in this Resolution shall not be affected by these provisions, and shall therefore remain in force for the term specified in each such agreement. Should they be extended or another be enacted, the relevant provisions shall be applied.

The foregoing shall be communicated and published.

DONE at Bogotá on 23 April 1966.

Luis Humberto SALAMANCA

Eduardo RESTREPO DEL CORRAL
Acting Secretary

(*b*) DECREE NO. 232 OF 1967 REGULATING THE IMPORT OF VEHICLES INTENDED FOR THE OFFICIAL OR PERSONAL USE OF MEMBERS OF DIPLOMAT AND CONSULAR MISSIONS OR OF REPRESENTATIVES OF INTERNATIONAL AND TECHNICAL ASSISTANCE ORGANIZATIONS DULY ACCREDITED IN COLOMBIA [6]

. . .

Article 4

The Ministry of Foreign Affairs may authorize the sale of motor cars . . . subject to the following regulations:

(*a*) If the vehicle has been in use for less than six months, the Ministry of Foreign Affairs shall authorize its sale after payment in full of the duties waived at the time of importation, as shown on the customs manifest, which shall be the sole control document;

(*b*) If the vehicle has been in use for more than six months, it may be sold after payment of duties reduced as follows: the total duties appearing on the customs manifest shall be reduced by one forty-eighth part for each month which has elapsed from the date of registration of the vehicle with the Division of Protocol of the Ministry of Foreign Affairs.

[6] Translation by the Secretariat of the United Nations.

Should the customs tariff in force at the moment of arrival in Colombia of vehicles imported duty free be modified to a more favourable rate, the latter rate shall apply for the payment of duties under the terms of the present Decree at the time when sale is authorized.

. . .

Article 10

Experts and other technical officials of international organizations accredited in the country, as also specialist personnel coming to Colombia under technical assistance agreements signed by the Colombian Government, may import a vehicle into the country on a single occasion free of customs duties for their personal use.

The Ministry of Foreign Affairs may authorize the sale of such vehicles before the expiry of the general term of four years in the event of termination of a mission subject to prior payment of the statutory duties and in the manner laid down in article 4 of this Decree.

Article 11

International technical or technical assistance organizations may import free of customs duties such service vehicles as under the existing Agreements and in the judgement of the Ministry of Foreign Affairs are necessary for the normal functioning of their assistance programmes. Such vehicles shall be registered in the name of the organization concerned and may not be sold without payment of customs duties until four years have elapsed from the date of issue of relevant licence plates.

Article 12

The Ministry of Foreign Affairs may, for duly attested special reasons, in exceptional cases authorize the transfer of such vehicles to third parties before the end of the period specified in the preceding article, but in such cases the appropriate customs duties shall be paid, except in the event of donation to Colombian official or semi-official bodies.

Article 13

The importation of a second vehicle shall not be authorized in cases where an official is transferred within Colombia, whether in the employ of the same Government or organization or another organization, or where, having been absent from Colombia, he returns before a year has elapsed.

Article 14

A vehicle may be transferred without payment of customs duties to persons enjoying the privilege of importing a vehicle duty free, but this shall be regarded as a regular import on the part of the purchaser, who shall therefore be required to comply with the conditions laid down for such imports in accordance with the provisions of this Decree.

Article 15

Vehicles imported free of customs duty may at no time be transferred without prior permission of the Ministry of Foreign Affairs, and the national transport authorities shall not authorize transfer without such permission in writing.

Article 16

Exemption from customs duty for motor vehicles shall be granted on condition that the import was made under a special licence issued by the Ministry of Foreign Affairs and

that shipping documents are forthcoming from the country of origin in the name of a person entitled to the privilege.

1. The Ministry of Foreign Affairs shall in each case authorize the appropriate Colombian Consul to validate free of charge the shipping documents covering the import.

. . .

Article 17

Exemption from customs duties in respect of future imports shall not be applicable to the purchase of vehicles already regularly imported into the country.

. . .

Article 21

No Colombian national, whatever his status or rank, shall have the right to enjoy on Colombian territory the privileges granted by the provisions of the present Decree to foreign officials.

The provisions of this article shall not apply to officials of Colombian nationality employed by international organizations and coming to Colombia expressly to serve such organizations.

. . .

Article 24

The Ministry of Foreign Affairs shall be the sole body competent to interpret and apply the regulations established by the present Decree.

Article 25

From the date of entry into force of this Decree the Division of Protocol of the Ministry of Foreign Affairs shall not grant requests for the transfer of vehicles except in accordance with the provisions contained herein.

Article 26

This Decree shall enter into force on the date of issue.

The foregoing shall be communicated and published.

DONE at Bogotá on 11 February 1967

Carlos LLERAS RESTREPO

4. Ecuador

(*a*) SUPREME DECREE NO. 1422 OF 31 DECEMBER 1963 REGULARIZING THE SYSTEM OF PRIVILEGES FOR MEMBERS OF THE DIPLOMAT AND CONSULAR CORPS AND MILITARY AND TECHNICAL ASSISTANCE MISSIONS [7]

THE GOVERNING MILITARY JUNTA

Considering:

That it is necessary to bring up to date the regulations established in Executive Decree No. 2034, of 30 November 1959; and

By virtue of the powers vested in it.

[7] Translation by the Secretariat of the United Nations.

Decrees:

Article 1. On the basis of the strictest international reciprocity, members of the diplomatic corps accredited to the Government of Ecuador, foreign career consular officers and members of military and technical assistance missions shall enjoy exemption from consular fees, customs duties and all other fees or duties which now exist or may be established in the future on specified goods imported exclusively for their personal use, in conformity with the following categories and quotas:

First category: Heads of diplomatic missions with the rank of ambassador, minister plenipotentiary or chargé d'affaires *en titre*, up to an f.o.b. value of five thousand dollars for the first year and four thousand dollars for subsequent years.

Second category: Minister-counsellors and counsellors, generals and colonels who are members of foreign military missions and are serving in the country under contracts concluded with the Government of Ecuador, and career consuls general, up to an f.o.b. value of three thousand three hundred dollars for the first year and two thousand six hundred dollars for subsequent years.

Third category: Service attachés, first secretaries, lieutenant-colonels and majors who are members of foreign military missions, senior career consuls and directors in charge of technical assistance missions working in the country under existing or future contracts or agreements concluded by the Government of Ecuador with foreign Governments or international organizations, up to an f.o.b. value of two thousand five hundred dollars for the first year and two thousand dollars for subsequent years.

Fourth category: Second and third secretaries and career consuls and vice-consuls, up to an f.o.b. value of two thousand three hundred dollars for the first year and one thousand eight hundred dollars for subsequent years.

Fifth category: Chiefs of department or section, chiefs of division or administrative chiefs of technical assistance bodies, up to an f.o.b. value of one thousand nine hundred dollars for the first year and one thousand four hundred dollars for subsequent years.

Sixth category: Captains and lieutenants who are members of foreign military missions, up to an f.o.b. value of one thousand six hundred dollars for the first year and one thousand two hundred dollars for subsequent years.

Seventh category: Civil, commercial, cultural and press attachés and adjutants to service attachés, second lieutenants and ensigns who are members of foreign military missions, technical consultants, technical assistance experts, advisers and technicians, up to an f.o.b. value of one thousand three hundred dollars for the first year and one thousand dollars for subsequent years.

Eighth category: Troops serving in foreign military missions and secretaries of technical assistance missions, up to an f.o.b. value of eight hundred dollars for the first year and five hundred dollars for subsequent years.

Article 2. Members of the diplomatic corps performing the functions of head of mission as chargés d'affaires *ad interim*, either because the main headquarters of the representation is not situated in the country or because of the prolonged absence of the titular head of the mission for a period of not less than sixty days, shall be entitled to the exemptions from duties and taxes corresponding to the category immediately above their own. This treatment shall be applied in proportion to the period during which the person concerned performs his temporary functions.

Article 3. Members of special missions, such as the Peace Corps and similar bodies, shall be entitled only to import their personal baggage and household effects free of duty on arrival in the country.

In order to obtain exemptions for technical and scientific working materials and equipment and for cultural publicity material, such special missions shall submit the relevant applications every year to the Ministry of Finance, which shall grant exemption from import duties and taxes, subject to a favourable report by the Economic Planning and Co-ordination Board.

This treatment may be claimed only on the basis of existing contracts legally concluded with the Government.

Article 4. For diplomatic staff, career consular staff and mission staff already residing in the country, the annual exemption quotas established in this Decree shall apply from 1 January 1964. For staff arriving in the country after that date, they shall apply from the date of presentation of credentials in the case of heads of mission, and from the date of notification of their arrival in the country to the Ministry of Foreign Affairs, in the case of other officials.

Article 5. Duty-free import quotas may not be accumulated from one year to another, transferred, assigned, or used for any goods other than those imported for the personal use of the beneficiary.

Article 6. Applications for the exemptions from import duties referred to in the present Decree shall be submitted by heads of mission to the Ministry of Foreign Affairs which, after examining them and ensuring that they comply with the relevant quota, shall request the Ministry of Finance to issue the appropriate exemption agreement, the text of which shall specify in sucres the value of the duties from which exemption is granted.

The Ministry of Finance shall transmit a copy of the exemption agreement to the Ministry of Foreign Affairs.

Article 7. Heads of diplomatic missions with the rank of ambassador may import, subject strictly to the principle of international reciprocity, up to two motor cars every two years, entirely tax-free; other diplomatic officials, foreign career consuls, technical assistance specialists, experts and advisers, and officers of foreign military missions may import one motor car for their personal use every two years, likewise entirely tax-free. The importation of these motor cars shall not be set against personal quotas.

Subject to the principle of reciprocity, motor cars and other vehicles for the official use of diplomatic missions may also be imported entirely tax-free, in quantities reasonably proportionate to the size of the mission's staff and its service needs.

Article 8. Vehicles imported duty-free by diplomatic, consular or technical assistance missions or by the staff of such missions may not be sold, assigned or transferred, free of charge or against payment, without prior authorization from the Ministry of Foreign Affairs, which may not be granted before two years have elapsed, except when the official is permanently transferred, when there are reciprocal international agreements, or for reasons of *force majeure*, such as accidents which render the vehicle unusable, death of the official, withdrawal of the mission, etc. In such cases, always in conformity with the principle of diplomatic reciprocity, a progressive reduction shall be granted, the total duties and taxes in force on the date of sale being divided into twenty-four parts and a reduction of one part being allowed for each month during which the vehicle has been in the country. Fractions of a month shall count as a whole month for this purpose.

If a motor car or any other durable consumer goods imported duty-free is sold, transferred or assigned before two years have elapsed since its importation, without a special justifying reason, all the duties in force at the date of sale shall be payable.

The sale of a motor car or any other durable consumer goods imported duty-free shall require prior authorization by the Ministry of Finance, which shall grant it automatically at the request of the Ministry of Foreign Affairs. When the sale involves the payment of duties, the Ministry of Foreign Affairs shall first calculate the value of the duties to be paid by the owner and shall make out a payment order for the Customs Administration, which upon payment being made shall issue a voucher showing that the person concerned has paid the duties. The interested party shall then submit the voucher to the Directorate of Protocol, which shall forthwith transmit the appropriate sales permit to the Ministry of Finance. In addition, when a motor car is sold the licence plates shall be returned before the sale is effected.

Vehicles belonging to diplomatic, consular, military and technical assistance missions or to members of their respective staffs may be transferred free of tax to other missions or officials entitled to import motor cars in conformity with the provisions of articles 6 and 7. In such cases the two-year period which must elapse before the vehicles may be freely transferred to third parties shall be calculated from the date of the original exemption agreement.

Article 9. The Ecuadorian traffic authorities may not register or issue licence plates for vehicles transferred by diplomatic or consular corps or by technical assistance or military missions or by their members unless the Ministry of Finance has issued a certificate stating that any taxes due have been paid or that the sale may take place freely because two or more years have elapsed since the vehicle was brought into the country.

Article 10. Foreign diplomatic or consular missions and bodies which have concluded contracts with the Government shall enjoy exemption from duties on imports of office furniture, fixtures and accessories, emblems, flags and other articles for the exclusive use of the mission as such, as well as on materials for the construction of mission premises.

Article 11. Foreign administrative non-diplomatic staff shall enjoy exemption from customs duties for the importation, on one occasion only, of their personal belongings and articles intended for their initial installation. They may also import, on one occasion only, a motor car with an f.o.b. value of up to two thousand two hundred dollars, the sale of which shall be subject to the regulations set out in articles 8 and 9 of the present Decree.

Article 12. Embassies and military or technical assistance missions may establish commissaries by combining all the personal quotas of their staff members, in which case the individual quotas shall be eliminated.

Article 13. In accordance with general rules, international practice, and international agreements, the Ecuadorian customs and postal authorities shall deliver immediately, without examining their contents, sealed envelopes, packages and correspondence duly sealed, such as in general constitute the diplomatic bag, bearing the seal of the Ministry of Foreign Affairs of another country and sent through the diplomatic channel.

Article 14. The personal baggage of foreign diplomats and consuls accredited to the Government of Ecuador and that of heads of technical assistance missions who hold diplomatic passports shall be admitted without inspection by the Ecuadorian customs authorities.

The same treatment shall be accorded to members of the families of the aforementioned officials who hold diplomatic passports.

Article 15. The Ecuadorian customs and postal authorities shall grant preferential treatment and priority to the handling of diplomatic imports which have fulfilled all the

necessary conditions and have been authorized by the Ministry of Foreign Affairs and the Ministry of Finance, which shall maintain the registers needed for the supervision of the quotas and the establishment of their balances.

The Ecuadorian customs and postal authorities shall inform the Ministry of Foreign Affairs and the Ministry of Finance by telegram of the particulars relating to diplomatic duty-free imports and shall subsequently confirm the details by memorandum.

Article 16. Applications for exemption in respect of all imports effected by members of diplomatic missions or career consuls even when the latter are stationed outside the capital of the Republic, shall be submitted to the Ministry of Foreign Affairs through the appropriate diplomatic mission, which shall make the request by means of a note signed by the head of the mission.

Article 17. The application of the principle of international reciprocity is the responsibility of the Ministry of Foreign Affairs, which can thus ensure that the diplomatic representatives of the various countries are subject to the same limitations and treatment as Ecuadorian diplomats in the countries in question. In no case, however, may it grant treatment more favourable than that set out in the present Decree.

Article 18. Career members of the Ecuadorian Foreign Service returning to the country upon termination of their assignments may bring in free of duty their personal baggage, furniture and household effects, and a used motor car. All such belongings must be shipped from a port in the country in which they carried out their duties.

Proof that the motor car so imported is used shall be shown by production of the purchase invoice and the registration certificate, and by inspection of the vehicle itself by the customs authorities on its arrival.

The same exemption from duty shall be granted to Ecuadorian technicians, officials and experts engaged as such by international bodies or foreign Governments when they return to the country on the termination of their contracts after having worked abroad for at least one year.

This concession shall not extend to Ecuadorian fellowship-holders, students studying abroad, officials travelling abroad on duty, delegates to international conferences or congresses or honorary attachés or consuls, even when they hold diplomatic passports.

The authorization of the Ministry of Finance, which shall be granted automatically at the request of the Ministry of Foreign Affairs, shall be required for the transfer to a third party of motor cars imported free of duty in conformity with the provisions of this article.

Article 19. The Ministry of Foreign Affairs shall issue a reasonable number of coupons for the purchase of duty-free fuel, according to the class of vehicle and in conformity with the provisions of Executive Decrees No. 2042 of 2 December 1929 and No. 112 of 25 June 1963.

Article 20. Borderline cases which occur in connexion with the execution of the present Decree shall be settled by the Ministry of Foreign Affairs.

Article 21. All decrees, regulations or provisions which conflict with the provisions of this Decree are repealed.

This Decree shall be executed by the Minister for Foreign Affairs and the Minister of Finance.

DONE at Quito, in the National Palace, on 31 December 1963.

Ramón CASTRO JIJON
Rear-Admiral, President

Luis CABRERA SEVILLA
Major-General

Marcos GÁNDARA ENRIQUEZ
Major-General

Guillermo FREILE POSSO
Colonel, Air Force General Staff

Neftali PONCE MIRANDA
Minister for Foreign Affairs

Jack BERMEO
Minister of Finance

(*b*) SUPREME DECREE NO. 504 OF 3 MARCH 1966 AMENDING DECREE NO. 1422 OF 31 DECEMBER 1963 [8]

THE GOVERNING MILITARY JUNTA,

Considering:

The need for adequate regulations governing imports and sales of motor cars by members of the diplomatic and consular corps, international organizations and their agencies and officials in the Ecuadorian Foreign Service;

By virtue of the powers vested in it,

Decrees:

Article 1. Article 8, first and second paragraphs, of Supreme Decree No. 1422 of 31 December 1963, published in *Registro Oficial* No. 149 of 9 January 1964, shall be replaced by the following text:

"Vehicles or other durable consumer goods imported free of duty, which are sold, assigned or transferred, free of charge or against payment, before two years have elapsed since they were brought into the country, shall be liable to payment of all the duties chargeable at the date of the sale.

"If two years have elapsed since such vehicles were brought into the country, a scaled reduction shall be granted, equivalent to one twenty-fourth of the total duties and taxes payable at the date of the sale for each month during which the vehicle has been in the country. Fractions of a month shall be counted as a full month.

"The foregoing provisions shall be subject to the principle of reciprocity, the international agreements in force, and cases of *force majeure* such as accidents rendering the vehicle unusable, death of the official or suspension of diplomatic relations requiring the withdrawal of the diplomatic mission."

Article 2. The words "of two years" shall be deleted from the last paragraph of article 8 of Supreme Decree No. 1422 of 31 December 1963.

In article 9 of the same Decree, the words "two years" shall be replaced by the words "four years".

[8] Translation by the Secretariat of the United Nations.

Article 3. Article 18, third paragraph, of Supreme Decree No. 1422 of 31 December 1963 shall be deleted.

Article 4. The last paragraph of article 18 of Supreme Decree No. 1422 of 31 December 1963 shall be replaced by the following:

> "The transfer to third persons of motor cars imported duty-free in accordance with this article shall require the authorization of the Ministry of Finance, which shall be granted automatically, at the request of the Ministry of Foreign Affairs, after two years have elapsed since the date of arrival of the vehicles in the country."

Article 5. It is strictly forbidden for foreign officials enjoying diplomatic privileges of exemption from customs duties to import merchandise in transit.

Article 6. This Decree shall enter into force on the date of its publication in the *Registro Oficial* and its provisions shall apply to vehicles arriving from that date onwards.

Article 7. The Minister for Foreign Affairs and the Minister of Finance shall be responsible for the execution of this Decree.

DONE at Quito, in the Government Palace, on 3 March 1966.

Ramón CASTRO JIJON
Rear-Admiral

Luis CABRERA SEVILLA
Major-General

Marcos GÁNDARA ENRIQUEZ
Major-General

Luis VALENCIA RODRIGUEZ
Minister for Foreign Affairs

Jaime SALVADOR C.
Minister of Finance

(*c*) SUPREME DECREE NO. 1228 OF 10 OCTOBER 1966 BRINGING TOGETHER THE PROVISIONS RELATING TO DIPLOMATIC EXEMPTIONS AND PRIVILEGES[9]

CLEMENTE YEROVI INDABURU,

ACTING PRESIDENT OF THE REPUBLIC,

Considering:

That there is an urgent need to assemble in a single text the provisions relating to diplomatic exemptions and privileges,

That it is becoming vital, during the economic crisis facing the country, to regulate the systems of exceptions, which have already been introduced in other friendly nations,

That, in accordance with Ecuadorian law and international practice, the Ministry of Foreign Affairs and the Ministry of Finance are responsible for all matters concerning such diplomatic immunities and the privileges and exemptions to be granted to members of the diplomatic corps, foreign consular agents, members of military missions and agents of international and technical assistance organizations accredited to the national Government, and

[9] Translation by the Secretariat of the United Nations.

By virtue of the powers vested in him,

Decrees:

Article 1. In accordance with the international conventions on privileges and diplomatic immunities applicable to Ecuador and on the basis of the strictest international reciprocity, weighted in quantitative terms, members of the diplomatic corps accredited to the Government of Ecuador, career foreign consular agents and members of military missions, missions of international organizations and technical assistance missions shall enjoy exemption from duties and taxes applicable now or in the future on approved imports effected officially for the missions and for their exclusive personal use, in accordance with the following categories and quotas:

First category: Heads of diplomatic missions with the rank of ambassador or minister plenipotentiary, up to an f.o.b. value of five thousand dollars for the first year and two thousand five hundred dollars for subsequent years.

Second category: Chargés d'affaires *en titre*, up to an f.o.b. value of four thousand dollars for the first year and two thousand dollars for each subsequent year.

Third category: Minister counsellors, service attachés with the rank of general and generals who are members of foreign military missions and are serving in the country under contracts concluded with the national Government, up to an f.o.b. value of three thousand three hundred dollars for the first year and one thousand six hundred and fifty dollars for subsequent years.

Fourth category: Counsellors, career consuls general, service attachés of other countries with the rank of colonel and colonels serving in the country under contracts concluded with the national Government, up to an f.o.b. value of two thousand six hundred dollars for the first year and one thousand three hundred dollars for subsequent years.

Fifth category: First secretaries, service attachés with the rank of lieutenant-colonel or major, lieutenant-colonels and majors who are members of foreign military missions, senior career consuls and directors in charge of technical assistance missions working in the country under contracts or conventions which have been or may be concluded by the national Government with foreign Governments or with international organizations, up to an f.o.b. value of two thousand three hundred dollars for the first year and one thousand one hundred and fifty dollars for subsequent years.

Sixth category: Second secretaries and career consuls, up to an f.o.b. value of two thousand dollars for the first year and one thousand dollars for subsequent years.

Seventh category: Third secretaries, career vice-consuls, administrative or division chiefs of international or technical assistance organizations, up to an f.o.b. value of one thousand four hundred dollars for the first year and seven hundred dollars for subsequent years.

Eighth category: Non-service commercial and cultural attachés, captains who are members of foreign military missions, department or section chiefs and technical consultants, experts and advisers of international and technical assistance organizations, up to an f.o.b. value of one thousand two hundred dollars for the first year and six hundred dollars for subsequent years.

Ninth category: Press attachés, lieutenants, second lieutenants and ensigns who are members of foreign military missions, up to an f.o.b. value of one thousand dollars for the first year and five hundred dollars for subsequent years.

Technical consultants, experts, advisers and technicians may enjoy such exemption if they belong to international technical assistance organizations, provided an agreement has been signed between a foreign Government or international organization and the

Ecuadorian Government and the right to exemption is expressly established in the said agreement through the participation of the Ministry of Foreign Affairs and the Ministry of Finance.

All other foreign technicians or advisers shall enjoy only the advantages of temporary importation of their effects, which shall be taken out of the country upon termination of their mission and, if sold, shall be liable to the relevant taxes.

Managerial and technical staff with contracts for less than six months shall not be entitled to any exemption. If they have contracts for periods of more than six months but less than one year, they may, as the one and only benefit, be granted exemption for the part of their imports proportionate to their quota, with the exception of vehicles and household furniture.

Foreign technicians who are in the country under an agreement concluded between the organization to which they belong and the Government of Ecuador and are paid by the latter shall not enjoy diplomatic exemption and shall be allowed to import into the country only their baggage and one motor car, within the appropriate category.

Article 2. Administrative personnel, assistants or any other officials and troops belonging to foreign military missions not specifically mentioned in the foregoing categories shall not, even when they belong to diplomatic, consular, military or technical assistance missions or missions of international organizations, be entitled to any special quota or exemption, except for their personal baggage and household effects imported as unaccompanied baggage.

Article 3. Members of the diplomatic corps performing the functions of head of mission, in the capacity of chargés d'affaires *ad interim*, because the principal seat of the representation is not in Ecuador, shall be entitled to the exemption corresponding to the category immediately above their own, in proportion to the period during which they perform their interim functions in the country, provided this period exceeds sixty days.

Article 4. Members of special missions such as the Peace Corps and other similar missions shall, on their arrival in the country, be entitled to import free of duty only their personal baggage and household effects, it being understood that the baggage must come from their last place of residence and within a period of not more than ninety days.

In order to obtain exemption for working materials and equipment of a technical or scientific nature and for social or cultural publicity material, such special missions shall submit in advance to the Ministry of Finance a schedule of their activities and a list of their immediate import needs, covering a period of not less than six months. No exemption shall be granted unless this requirement has been fulfilled.

This treatment may be claimed solely on the basis of the existence of agreements or contracts which have been legally concluded with the Ecuadorian Government, with the compulsory participation of the Ministry of Foreign Affairs and the Ministry of Finance as well as of the Ministry directly concerned with such agreements and provided that the latter expressly stipulate the granting of exemption.

Any contracts or agreements in force not fulfilling the requirement concerning specific authorization by the Ministry of Foreign Affairs and the Ministry of Finance shall be reviewed, brought up to date and renegotiated, in so far as they relate to the granting of diplomatic exemptions, so that the exemptions may be valid.

Article 5. The annual exemption quotas shall apply to diplomatic personnel, career consular agents and personnel of special technical assistance missions, military missions and missions of international organizations already in the country or arriving in the future,

as from the date of presentation of credentials in the case of heads of mission and as from the date on which the Ministry of Foreign Affairs was officially notified of their arrival in the country in the case of other officials.

Article 6. Import quotas are personal and non-transferable. They shall not be accumulated from year to year and exemption shall not be granted in advance for the following year. These quotas shall not be transferred or used for any imports other than those strictly necessary for the personal use of the beneficiary.

Article 7. Where the amount, quality or frequency of the imports, taken individually or as a whole, can be regarded as excessive or beyond what is normally required for personal needs and also exceed the qualitative and quantitative limits fixed for this purpose by mutual agreement between the Ministry of Foreign Affairs and the Ministry of Finance, the imports shall be disallowed by the Ministry of Foreign Affairs, even if the quota has not been filled.

Article 8. All applications for exemption from import duties referred to in this Decree shall be submitted by the head of mission concerned to the Ministry of Foreign Affairs which, after approving them and ascertaining that they are within the relevant quota and within reasonable limits, shall request the necessary clearance and exemption from the Ministry of Finance.

Article 9. Ecuadorian customs and postal authorities shall in no case hand over goods subject to these provisions and entitled to exemption without the prior authorization of the Ministry of Foreign Affairs and the Ministry of Finance. In urgent cases, for instance, when the goods are considered to be perishable or consist of vaccines or medicines and they have been duly approved by the Ministry of Finance, the Ministry may authorize the handing over of the goods. In such cases, in order to validate the exemption, the applicant shall submit the relevant request to the Ministry of Foreign Affairs not later than ten days after the withdrawal of the goods. No mission may request another regular clearance so long as an earlier request has not been validated.

Article 10. Heads of diplomatic missions belonging to the first category may, subject strictly to the principle of international reciprocity, import entirely free of tax not more than two motor cars every two years, without limit as to their value.

Other officials may import motor cars up to the following maximum values:

Officials in categories 2 and 3, up to an f.o.b. value of $US3,000.
Officials in categories 4 and 5, up to an f.o.b. value of $US2,500.
Officials in categories 6 and 7, up to an f.o.b. value of $US2,000.
Officials in categories 8 and 9, up to an f.o.b. value of $US1,500.

Should an official wish to import a motor car whose ex-factory price is higher than that allowed for his category, he shall, at the time of arrival of the motor car in the country, pay the duties corresponding to the excess price, calculated as though the vehicle were new. In such cases, the fact that the vehicle is a used one and the price quoted for it abroad shall not be taken into consideration.

Officials in the above-mentioned categories may import one motor car duty-free every two years, up to the maximum values listed above.

Article 11. Similarly, subject to the principle of reciprocity, weighted in quantitative terms, each mission may import every three years one vehicle for official use and additional vehicles at the rate of one for every ten career officials and one for every twenty officials in the category of technicians or experts.

In order to obtain this exemption, the diplomatic mission or international organization shall submit with its application the official certificate issued by the competent authority of its Government or of the organization, stating that the vehicle belongs to the State or international organization in question.

Similarly, in order to arrange for the free importation of any merchandise intended for official use, the diplomatic mission or representation of an international organization shall submit with its application the official certificate issued by the Ministry of Foreign Affairs or the competent authority of the international organization.

Article 12. Should it see fit to do so, the Ministry of Foreign Affairs may, in agreement with the Ministry of Finance, cancel or curtail this treatment in application of the principle of reciprocity, weighted in quantitative terms.

Article 13. The sale, assignment, transfer, hire or exchange of the vehicle, free of charge or against payment, or its regular use by someone other than the official or person to whom the exemption was granted, without payment of the duties and without due authorization from the Ministry of Foreign Affairs and the Ministry of Finance, shall constitute tax evasion and be subject to the procedure and penalties established for this offence by the Organic Customs Law.

Proceedings shall be instituted, after notification of the Ministry of Foreign Affairs, on the basis of a duly substantiated report prepared by the competent officials attesting the fact that one of the above-mentioned offences has been committed.

Article 14. The period of two or three years, as the case may be, for the ownership or transfer of duty-free imports shall be reckoned from the date of arrival of the merchandise in the Ecuadorian customs until the conclusion of the official's mission.

Duties shall be payable not later than thirty days after the conclusion of the official's mission.

Article 15. Sale of their vehicles by departing diplomats, international civil servants or members of military and other similar missions, without authorization and without settlement of any duties payable, shall be sufficient grounds for seizure of the vehicle and institution of appropriate legal action.

Article 16. The sale, assignment or transfer, free of charge or against payment, of vehicles or other durable consumer goods and furniture imported duty-free by diplomatic and consular officials, technical assistance officials and members of military missions and international organizations shall require the prior authorization of the Ministry of Foreign Affairs and the Ministry of Finance, which shall not be granted until two years have elapsed, even subject to payment of duties, except when the official is transferred permanently and concludes his mission in the country or in cases of *force majeure* such as the death of the official, withdrawal of the mission, or accident causing the destruction of the vehicles where it is established that the beneficiary of the exemption is in no way at fault.

Article 17. In such cases, when vehicles, movable goods or other durable consumer goods are sold, assigned or transferred, free of charge or against payment, before two years have elapsed, the Ministry of Finance shall, at the request of the Ministry of Foreign Affairs, grant a scaled reduction, the total duties and taxes originally waived being divided into twenty-four parts and one part remitted for every month or fraction of a month during which the vehicle or other goods were in the country. Fractions of a month shall in all cases be counted as a full month. The taxes to be reduced shall comprise those payable from the arrival of the merchandise until the end of the official's mission. The application shall be accompanied by the manufacturer's invoice, without which it will not be considered.

When the sale does not involve duties because more than two years have elapsed, the authorization of the Ministry of Foreign Affairs and the Ministry of Finance shall nevertheless be required.

Vehicles and other durable consumer goods for official use imported duty-free shall not be sold before three years have elapsed in the case of vehicles, unless they are rendered completely unusable as a result of an accident or the mission is withdrawn, and five years in the case of other goods.

For the purpose of determining the duties payable, vehicles rendered unusable by accidents shall be appraised by valuers appointed by the Ministry of Finance and the value thus determined shall be the basis for tax purposes.

Vehicles belonging to members of diplomatic, consular, military and technical assistance missions may be transferred without payment of any duties to other officials entitled to import motor cars in conformity with the provisions of this Decree, the two-year period after which duties are no longer payable being reckoned from the date when the transfer was authorized by the Ministry of Finance, at the request of the Ministry of Foreign Affairs. No vehicle may be transferred more than twice without payment of the relevant taxes.

When granting the sales authorization, the Ministry of Foreign Affairs shall at the same time have the diplomatic licence plates removed from the vehicle.

Vehicles, movable goods and other durable consumer goods imported free of duty which are sold, assigned or transferred, free of charge or against payment, less than two years after being brought into the country and without the prior authorization of the Ministry of Foreign Affairs and the Ministry of Finance shall be liable to all the duties payable at the date of the transaction.

When the transaction involves the payment of duties, it shall be the responsibility of the Ministry of Foreign Affairs to determine what duties are to be paid and to notify the Ministry of Finance accordingly, so that it can submit the necessary assessment. The assessment shall be transmitted to the Ministry of Foreign Affairs which, in turn, shall inform the person concerned.

Article 18. The Ecuadorian traffic authorities may not register or issue licences for vehicles transferred by diplomatic or consular personnel or personnel of technical assistance or military missions unless a certificate issued by the Ministry of Finance is produced, proving that any taxes due have been paid, or that the legal formalities have been fulfilled, if the period during which taxes are payable has expired.

Article 19. In accordance with the provisions of the Organic Customs Law, diplomatic, consular, military and technical assistance missions may import free of duty and for official use solely and exclusively official emblems, flags, coats of arms, office equipment, printed matter, furniture and equipment for the construction and maintenance of their premises, subject to the provisions in the last paragraph of article 11.

Article 20. Embassies and military and technical assistance missions having a staff of at least ten persons may establish commissaries by combining all the personal quotas of their staff members, in which case the individual exemptions shall no longer exist. In no case shall commissaries and personal quotas exist concurrently.

Article 21. In accordance with current international usage, Ecuadorian customs and postal authorities shall immediately deliver, without opening them or inspecting their contents, envelopes, packages and correspondence duly sealed constituting the diplomatic bag, bearing the seal of the Ministry of Foreign Affairs of another country and sent through the diplomatic channel.

Without prejudice to the right of inspection recognized by international conventions, the personal baggage of diplomats, foreign consular officials and heads of technical assistance missions may be delivered without being inspected by the Ecuadorian customs authorities. Similar treatment may be accorded to the personal baggage of members of the households of the above-mentioned officials, provided they hold diplomatic passports.

Unaccompanied baggage belonging to the above-mentioned officials may be cleared without inspection provided it originates in their last place of residence, that it arrives not more than ninety days after the date of the officials' arrival in the country, and that it conforms to the technical and legal definition of baggage. After the expiry of this time-limit, the baggage shall be regarded as an import and shall be dutiable.

Article 22. Imports subject to quotas shall be cleared by the Ecuadorian customs authorities after checking, control and appraisal. The declaration and schedule shall be detailed and comply strictly with the legal and statutory procedures applicable to commercial imports. Generic descriptions such as "food-stuffs", "liquor", "provisions", etc. shall not be acceptable and the amount and value of each article shall be specified in all cases.

Article 23. The Ecuadorian customs and postal authorities shall give precedence, priority and every facility for the clearance of diplomatic imports which have fulfilled the legal requirements applicable to all imports and those established in this Decree.

Article 24. A consular invoice, which shall be duly countersigned and issued gratis, shall be required for importation into the country of duty-free goods with a value of over $US40.

Article 25. The Ecuadorian customs authorities shall keep a check or running account of duty-free imports and of the amount of duties waived and shall each month submit an itemized list to the Ministry of Foreign Affairs and the Ministry of Finance, in addition to partial summaries as already prepared.

Exemptions from duty shall not be granted for imports of foods similar to those produced in Ecuador, save in exceptional cases previously approved by the Ministry of Foreign Affairs and the Ministry of Finance.

Article 26. The Ecuadorian customs authorities shall each week inform the Ministry of Foreign Affairs and the Ministry of Finance—by memorandum in the case of the authorities in the capital, and by telegram followed by a memorandum in the case of the authorities in other cities—of the nature, amount and value of the goods exempted, indicating the consignees and the amount of duties waived.

If any duty-free goods are handed over without the prior and express authorization of the Ministry of Foreign Affairs and the Ministry of Finance, all the duties shall be levied and the officials who authorized the delivery shall be dismissed.

Article 27. Any current treatment laid down in international agreements or arrangements of any kind which is more favourable than that provided for in this Decree shall be denounced by the Ministry of Foreign Affairs within sixty days following the date of entry into force of this Decree, and in future no treatment more favourable than that provided for in this Decree shall be granted under any circumstances.

Article 28. The application of the principle of international reciprocity shall be the responsibility of the Ministry of Foreign Affairs, which may stipulate in respect of diplomatic representatives the same limitations and treatment as are applied to Ecuadorian diplomats in the countries concerned but in no case may more favourable treatment be granted than that provided for in this Decree.

Article 29. Career members of the Ecuadorian Foreign Service returning home upon termination of their assignments may bring into the country free of duty their personal baggage, furniture and household effects, and not more than one used motor car, subject to the same limitations on value as are laid down for foreign diplomatic officials in article 10 of this Decree; all such belongings must be shipped from a port of the country in which they carried out their duties. Proof that the motor car is used shall be shown by production of the registration papers or customs documents covering its importation into the country from which the diplomat comes. Exemption for such furniture and motor cars shall not be granted more than once a year.

Article 30. In exceptional cases, when an official proves satisfactorily and by production of the necessary documentary evidence that he purchased his motor car before the date on which he was notified of the termination of his assignment abroad and that, for reasons beyond his control, the vehicle had not yet been shipped to him at his place of assignment, it may be shipped direct to Ecuador from a country other than the one in which the official is serving, subject to the prior authorization of the Ministry of Foreign Affairs and the Ministry of Finance.

In order to claim this right, the official must have notified the head of the Ecuadorian diplomatic mission in the country concerned, in writing, of the purchase of the motor car, supplying certified copies of the documentary proof of purchase as soon as it is made. Heads of diplomatic missions shall transmit these data immediately to the Ministry of Foreign Affairs.

Heads of mission in this situation shall submit the necessary proof direct to the Ministry of Foreign Affairs. A copy of the correspondence and documentation shall be sent to the Ministry of Finance for information.

Failure to comply with these formalities shall be sufficient grounds for cancelling the entitlement to exemption.

Article 31. Subject to the maximum values specified in article 10 of this Decree, Ecuadorian officials returning home permanently after serving abroad for more than one year without interruption, under contracts with foreign Governments or with international technical assistance organizations, as experts or advisers, may on one occasion only bring into the country their personal baggage and household effects, and not more than one motor car, all of them used. This shall not apply to administrative personnel assigned under a system of rotation or required to change duty station periodically.

Applications requesting recognition of the right to this exemption shall be submitted in advance to the Ministry of Foreign Affairs accompanied by the necessary documentation proving that the applicant is an expert under contract. After approving the application, the Ministry of Foreign Affairs shall request the Ministry of Finance to authorize shipment of the vehicle and other personal effects.

This exemption shall not be granted to Ecuadorian fellowship-holders, students abroad, officials and officers in the armed forces on active duty, delegates to international conferences or congresses and honorary consular agents or officials, even when they hold diplomatic passports.

Article 32. The transfer of ownership, assignment or transfer, free of charge or against payment, of motor cars imported duty-free by Ecuadorian career diplomats or national officials entitled to this treatment shall require the authorization of the Ministry of Finance, which shall be granted at the request of the Ministry of Foreign Affairs, subject to the following conditions:

(*a*) When the imported vehicle is a used motor car, it may be sold without payment of any duties after a period of six months has elapsed since the date of its arrival in Ecuador;

(*b*) When the vehicle in question is a new motor car and the provisions of article 30 of this Decree have been complied with, it may not be sold during the first six months reckoned from the date of its arrival in Ecuador, but it may be transferred on payment of 10 per cent of the duties, from the seventh month up to the end of the first year, after which it shall not be subject to any duties.

Article 33. In the event of the arrival in Ecuador of vessels, aircraft or vehicles belonging to foreign military missions or intended for their temporary or special use and carrying articles or goods of any kind, the mission concerned shall notify the Ministry of Foreign Affairs and the Ministry of Finance in good time so that the vessel or aircraft may be received by the appropriate authorities, in particular the customs authorities, even when it arrives at a military base.

Articles carried by such vessels, vehicles or aircraft, with the exception of war matériel or military equipment, shall be handed over to the Ecuadorian customs authorities and placed in customs warehouses, where they shall remain until clearance has been given and, in the case of personal consumer goods, the relevant quotas have been applied.

When the articles in question are war matériel or military equipment, which by their nature require special precautions, the Ministry of Finance may assign special officials to conduct these formalities.

The authorities of the Ecuadorian Army, Air Force, Navy, Civil Aviation network and Merchant Marine shall insist on compliance with these provisions and co-operate fully with the customs authorities.

Article 34. In order for exemption from duties to be granted in accordance with the established standards and procedures, the import documents must show the diplomatic or technical mission concerned as the signatory and the official concerned as the consignee.

The consular and commercial invoices required for the customs declaration shall state clearly the value, net and gross weight, number of units (figures and measurements), number of litres, bottles, etc.

The purchase of vehicles, merchandise, etc. locally for subsequent replacement, or any other form of advance dealing, even for identical goods, loan or offsetting arrangement, shall be strictly prohibited.

Duty-free merchandise found in any commercial establishment, market or agency and used for payment or compensation shall be considered as illegal imports and seized forthwith.

The Ministry of Finance shall exercise the strictest supervision to ensure compliance with the provisions of this Decree.

Article 35. Borderline cases which arise in the application of these provisions shall be settled by mutual agreement between the Ministry of Foreign Affairs and the Ministry of Finance, with the participation, when necessary, of the Ministry of Defence.

Article 36. The said Ministries shall likewise establish, by mutual agreement, the most suitable administrative procedures and methods, forms and documents for the granting of exemptions.

Article 37. The provisions of the present Decree shall apply to all merchandise shipped to Ecuador from the date of its entry into force.

Modifications, reductions or changes of quota category shall apply automatically from the date of entry into force of this Decree.

Vehicles imported into Ecuador after 15 March—the date of entry into force of Supreme Decree No. 504 of 3 March, amending Supreme Decree No. 1422 of 31 December 1963—for which exemptions have not been granted or are pending shall be subject to the provisions of this Decree.

When a vehicle has already been purchased for importation and the order for it has been accepted and processed by the manufacturers or retailers, if the officials concerned submit documentary evidence to this effect to the Ministry of Foreign Affairs and the Ministry of Finance, exemption from duties may be granted provided the option is exercised not later than thirty days after the entry into force of this Decree.

Express authorization from the Ministry of Finance, granted at the request of the Ministry of Foreign Affairs, shall be required for the shipment of such vehicles, without any exception whatever. Without this transitory authorization, Ecuadorian consular officials shall not countersign shipment papers for vehicles coming outside the scope of this Decree.

Article 38. Supreme Decree No. 1422 (*Registro Oficial* No. 149 of 9 January 1964), Supreme Decree No. 1874 (*Registro Oficial* No. 325 of 3 September 1964), Supreme Decree No. 504 (*Registro Oficial* No. 711 of 15 March 1966) and any special or general provisions which conflict with this Decree shall be repealed.

Article 39. Since the granting and control of diplomatic exemptions and privileges is the exclusive function of the Ministry of Foreign Affairs and the Ministry of Finance, no agreement shall be applicable to such exemptions and privileges unless these Ministries have participated or participate in their negotiation. Agreements concluded before this date shall be denounced within a period of sixty days, after notification of the Parties by the Ministry of Foreign Affairs, and shall be renegotiated before they are valid. It shall be understood that the denunciation of such agreements covers and relates exclusively to all matters connected with the granting of diplomatic exemptions and privileges.

Article 40. The Minister for Foreign Affairs and the Minister of Finance shall be responsible for the execution of this Decree, which shall enter into force on the date of its publication.

DONE at Quito, in the National Palace, on 10 October 1966.

Clemente YEROVI INDABURU
Acting President of the Republic

José RUMAZO GONZÁLEZ
Acting Minister for Foreign Affairs

Renato PÉREZ DROUET
Minister of Finance

(*d*) EXECUTIVE DECREE NO. 114 OF 10 FEBRUARY 1967 AMENDING DECREE NO. 1228 OF 10 OCTOBER 1966 ON PRIVILEGES AND EXEMPTIONS IN RESPECT OF THE VARIOUS CATEGORIES [10]

OTTO AROSEMENA GOMEZ,

ACTING CONSTITUTIONAL PRESIDENT OF THE REPUBLIC,

Considering:

That certain diplomatic privileges and exemptions should be modified in order to make them more flexible and in keeping with the requirements of international organizations for the better fulfilment of their objectives in connexion with the country's economic and social development programmes, the provisions of paragraphs 4, 5 and 6 (*b*) of article 15 of the Organic Customs Law now in force being adjusted accordingly,

Decrees:

That the following articles of Decree No. 1228 of 10 October 1966 shall be amended as follows:

Article 1. The clauses of article 1 relating to the categories contained in the above-mentioned Decree shall be deleted and replaced by the following:

First category: Heads of diplomatic missions with the rank of ambassador or minister plenipotentiary, up to an f.o.b. value of five thousand dollars for the first year and three thousand dollars for subsequent years.

Second category: Chargés d'affaires *en titre*, up to an f.o.b. value of four thousand three hundred dollars for the first year and two thousand three hundred dollars for each subsequent year.

Third category: Minister-counsellors, service attachés with the rank of general officer, heads of technical assistance missions and generals who are members of foreign military missions and are serving in the country by virtue of agreements or contracts concluded or to be concluded between the National Government and foreign Governments or international organizations, up to an f.o.b. value of three thousand nine hundred and fifty dollars for the first year and two thousand dollars for subsequent years.

Fourth category: Counsellors, career consuls general and heads of division of international technical assistance missions, up to an f.o.b. value of three thousand five hundred and fifty dollars for the first year and one thousand eight hundred dollars for subsequent years.

Fifth category: First secretaries, service attachés with the rank of lieutenant-colonel or major, senior career consuls, lieutenant-colonels and majors who are members of foreign military missions, up to an f.o.b. value of three thousand one hundred dollars for the first year and one thousand six hundred dollars for subsequent years.

Sixth category: Second secretaries, career consuls, administrative and section chiefs of international technical assistance organizations, up to an f.o.b. value of two thousand six hundred dollars for the first year and one thousand three hundred and fifty dollars for subsequent years.

Seventh category: Third secretaries, career vice-consuls, captains acting as adjutants to service attachés or members of foreign military missions, non-service commercial, cultural, press and other diplomatic attachés, and consultants, experts and technical advisers of international technical assistance organizations, up to f.o.b. value of two thousand two hundred

[10] Translation by the Secretariat of the United Nations.

and fifty dollars for the first year and one thousand two hundred and fifty dollars for subsequent years.

Eighth category: Lieutenants, second lieutenants and ensigns acting as adjutants to service attachés or members of foreign military missions, up to an f.o.b. value of one thousand four hundred and fifty dollars for the first year and eight hundred dollars for subsequent years.

Ninth category: Troops serving in foreign military missions and civilian technicians employed in the Latin American System of Military Communications, up to an f.o.b. value of eight hundred dollars for the first year and six hundred dollars for subsequent years.

The provisions of this Decree shall not apply to technicians, experts, advisers, etc., whatever their rank, who are privately contracted by public or private bodies, or to residents of the country, whatever type of contract they hold and to whatever national or international organization they belong.

Article 2. Article 2 shall be deleted and replaced by the following:

Article 2. Subject to the principle of the strictest reciprocity, foreign non-diplomatic administrative personnel shall enjoy exemption from customs duties for the importation, on one occasion only and within one hundred and twenty days of their arrival in the country, of their personal baggage and household effects intended for their initial installation. Similarly, they may, on one occasion only and within the same period of time and provided they have not previously resided in the country, import one used motor car whose original ex-factory value was not more than two thousand two hundred dollars, the sale of such vehicle to be subject to the regulations laid down in articles 13, 14, 15, 16 and 17.

Article 3. Article 4 shall read as follows:

Article 4. Members of special missions, such as Peace Corps and other similar volunteers, shall have the right on their arrival in the country to import free of duty only their personal baggage and household effects intended for their initial installation, it being understood that the effects must come from their last place of residence and within a period of not more than 120 days.

Except for the exemptions already granted in the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November 1950, technical assistance missions intending to import vehicles, material and equipment shall submit to the Ministry of Finance in advance a schedule of their activities and immediate requirements in respect of future imports over a period of not less than six months. No exemption from customs duties shall be granted unless this condition is fulfilled.

Paragraphs 3 and 4 shall retain their present wording.

Article 4. The maximum values established in article 10 for importation of motor cars shall be deleted and replaced by the following:

For persons in categories 2 and 3, up to an ex-factory value of $4,200.

For persons in categories 4 and 5, up to an ex-factory value of $3,700.

For persons in categories 6 and 7, up to an ex-factory value of $3,200.

For persons in category 8, up to an ex-factory value of $2,700.

For persons in category 9, up to an ex-factory value of $2,200.

The last paragraph of article 10 shall be deleted.

Article 5. The first paragraph of article 11 shall be replaced by the following:

Similarly, subject to the principle of reciprocity, each mission may import, once very three years, one vehicle for its official use and additional vehicles in reasonable proportion to the number of personnel and service requirements. The Ministry of Foreign Affairs and the Ministry of Justice may limit the number of such imports if, in their opinion, they are excessive.

Article 6. In article 16 the phrase "or other durable consumer goods and furniture" shall be deleted.

Article 7. Article 21 shall read as follows:

In accordance with normal international usage, the Ecuadorian customs and postal authorities shall deliver immediately, without opening them or inspecting their contents, envelopes, packages and correspondence duly sealed constituting the diplomatic bag, bearing the seal of the Ministry of Foreign Affairs of another country and sent through the diplomatic channel.

Without prejudice to the right of inspection recognized under international agreements, the personal baggage of diplomats, foreign consular officials, heads of technical assistance missions and their families may be delivered without being examined.

Similar treatment may be granted to the administrative staff and experts of technical assistance missions.

The furniture and household effects intended for the initial installation of personnel to whom this Decree applies shall, except where specifically indicated, be free of duty, provided they are sent from the last country of residence and are imported within a period of not more than 120 days, which may be extended, where the delay is justified, by the Ministry of Finance at the request of the Ministry of Foreign Affairs.

Article 8. Sub-paragraphs (*a*) and (*b*) of article 32 shall be deleted and replaced by the following:

(*a*) When the imported vehicle is a used motor car, it may be sold free of all duties and without any restrictions.

(*b*) When the vehicle in question is a new motor car and all the provisions of article 30 have been fulfilled, it may be sold within a period of six months of its arrival in the country on payment of 10 per cent of the corresponding duties. From the seventh month onwards, it shall be free of all duties.

Article 9. Article 39 shall be deleted and replaced by the following:

Article 39. The granting and control of diplomatic privileges and exemptions being the exclusive prerogative of the Ministry of Foreign Affairs and the Ministry of Finance, these Ministries shall in all cases participate in the negotiation of any agreement or arrangement under which such privileges and exemptions are granted.

Agreements or arrangements signed before this date which do not fulfil the requirements laid down in the preceding paragraph or which grant more favourable treatment, shall be subject to renegotiation with a view to unifying and amending the concessions granted under the provisions of the present Decree.

Article 10. The Ministry of Foreign Affairs and the Ministry of Finance shall be responsible for the execution of this Decree.

DONE at Quito, in the National Palace, on 10 February 1967.

Otto AROSEMENA GOMEZ
Acting Constitutional President of the Republic
Jorge CARRERA ANDRADE
Minister for Foreign Affairs
Federico INTRIAGO ARRATO
Minister of Finance

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5. Ireland

DIPLOMATIC RELATIONS AND IMMUNITIES ACT, 1967

An Act [11] to enable effect to be given so far as Ireland is concerned to certain international conventions respecting diplomatic and consular relations, immunities and privileges and certain international conventions and agreements respecting the immunities and privileges of the United Nations and certain other international organizations, for those purposes to make provision as respects such relations, immunities and privileges and to provide for other matters connected with the matters aforesaid.

[*15 April 1967*]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Part I

Preliminary and General

1. This Act may be cited as the Diplomatic Relations and Immunities Act, 1967.

2. In this Act "the Minister" means the Minister for External Affairs.

. . .

Part III

General Convention on the Privileges and Immunities of the United Nations

7. In this Part—

"the Convention" means the General Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on the 13th day of February, 1946, as set out in the *Third Schedule* to this Act;

"the Court" means the International Court of Justice;

"the Organization" means the United Nations Organization.

8. The Organization shall have the legal capacity of a body corporate.

9. The Organization and its property and a person in relation to whom the Convention applies and the property of such a person shall have and enjoy inviolability, exemptions, facilities, immunities, privileges and rights in such manner, to such extent and subject to

[11] No. 8 of 1967.

such limitations (including the waiver thereof) as are provided for in each case by the Convention.

10. Judges of the Court, the Registrar of the Court and a person acting as such Registrar shall, when engaged on the business of the Court and during any journeys connected with the exercise of their functions, have and enjoy the same inviolability, exemptions, facilities, immunities, privileges and rights as are accorded to a head of a diplomatic mission under the Convention set out in the *First Schedule* to this Act.

11. Judges of the Court shall enjoy exemption from income tax (including sur-tax) in respect of emoluments received by them as such judges.

12. Persons, not being Irish citizens, engaged in appearing before the Court as representatives of a government or as advocates shall, when so engaged and during any journeys in connection with the matters on which they are so engaged, have and enjoy immunities and privileges corresponding to those conferred by Sections 11 to 13 of Article IV of the Convention.

13. Persons engaged in appearing as witnesses before the Court or in performing duties assigned to them by the Court and assessors of the Court engaged on the business of the Court shall, while so engaged, and during any journeys in connection with the matters on which they are so engaged, have and enjoy the same immunities and privileges as are conferred by Section 22 of Article VI of the Convention.

14. Officials of the Court shall, when engaged on the business of the Court and during any journeys connected with such business, have and enjoy such facilities and immunities as may be necessary for the independent exercise of their functions.

15. (1) The inviolability and the exemptions, facilities, immunities, privileges and rights conferred by this Act on a judge of the Court, the Registrar of the Court and the person acting as such Registrar and the immunities and privileges conferred by this Act on a person engaged in appearing as a witness before the Court or in performing duties assigned to him by the Court and on an assessor of the Court may be waived by the Court.

(2) The immunities and privileges conferred by this Act on persons engaged in appearing before the Court as representatives of a government or as advocates may be waived by the Government that they represent before the Court.

(3) The facilities and immunities conferred by this Act on officials of the Court (other than the Registrar of the Court) may be waived by the Registrar of the Court.

Part IV

Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations

16. In this Part—

"the Convention" means the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations adopted by the General Assembly of the United Nations on the 21st day of November, 1947, and the Annexes thereto, as set out in the *Fourth Schedule* to this Act and any annex thereto standing specified in an order under section 17 of this Act;

"organisation to which this Part applies" means—

(*a*) (*i*) the World Health Organization;

(*ii*) the International Civil Aviation Organization;

(*iii*) the International Labour Organisation;

(*iv*) the Food and Agriculture Organization of the United Nations;

(*v*) the United Nations Educational, Scientific and Cultural Organization;
(*vi*) the International Bank for Reconstruction and Development;
(*vii*) the International Monetary Fund;
(*viii*) the Universal Postal Union;
(*ix*) the International Telecommunication Union;
(*x*) the World Meteorological Organization;
(*xi*) the Inter-Governmental Maritime Consultative Organization;
(*xii*) the International Finance Corporation;
(*xiii*) the International Development Association; and

(*b*) an organisation standing designated for the time being by order under section 17 of this Act.

17. The Government may from time to time by order designate an international organization to be an organization to which this Part applies if the organization is in relationship with the United Nations Organization in accordance with Articles 57 and 63 of the Charter of the United Nations Organization and shall provide in the order that the annex to the Convention that relates to the organization and is specified in the order shall have effect in relation thereto, subject, if the organization has approved of the annex subject to amendments, to those amendments.

20. An organization to which this Part applies and its property and a person in relation to whom the Convention applies and the property of such a person shall have and enjoy inviolability, exemptions, facilities, immunities, privileges and rights in such manner, to such extent and subject to such limitations (including the waiver thereof) as are provided for in each case by the Convention in accordance with Sections 33, 36 and 38 thereof.

. . .

Part VIII

General

39. In this Part "organisation to which this Part applies" means an international organisation, community or body standing designated for the time being by order under section 40 of this Act.

40. (1) The Government may by order designate an international organisation, community or body of which the State or the Government is or intends to become a member to be an organisation to which this Part of this Act applies and may, by the order, make provision for the purposes of section 42 of this Act, as respects inviolability, exemptions, facilities, immunities, privileges and rights in relation to the organisation.

(2) The Government may by order revoke or amend an order under this section including an order under this subsection.

41. An organization to which this Part applies shall have the legal capacity of a body corporate.

42. An organization to which this Part applies, its institutions or organs, its property and a person who is a member of any of its institutions or organs, an official of the organization or a delegate to, or a representative of a state or government that is a member of, the organization or is performing duties assigned to him by the organization and any person, being a spouse of such person or a member of his family dependent on him, shall have and enjoy inviolability and exemptions, facilities, immunities, privileges and rights in such manner, to such extent and subject to such limitations (including the waiver thereof) as may be provided for in each case in the order under section 40 of this Act in relation to the organization.

43. (1) The Government may, as respects an international judicial body or a semi-judicial body established under an agreement to which the State or the Government is or intends to become a party or an arbitration or conciliation board established by or on behalf of or for the purposes of an international organisation to which this Part applies, by order make provision as respects inviolability and exemptions, facilities, immunities, privileges and rights in relation to judges and registrars of the body, persons engaged in appearing as advocates or witnesses before the body or board or in performing duties assigned to them by the body or board and persons who are parties to a suit before the body or board or apply to the body or board in relation to the commencement of a suit or other proceedings before the body or board and their advisers.

(2) The Government may, by order, revoke or amend an order under this section, including an order under this subsection.

(3) A person, body or board referred to in subsection (1) of this section shall have and enjoy inviolability and exemptions, facilities, immunities, privileges and rights in such manner, to such extent and subject to such limitations (including the waiver thereof) as may be provided for in each case in the relevant order under this section.

44. The Minister may, in relation to a conference which—

(*a*) is being or will be held in the State, and

(*b*) is being or will be attended by representatives of the Government or the State and of another government or other governments or another state or other states,

cause notice of the holding of the conference and the dates thereof to be published in *Iris Oifigiúil*.

45. A person attending on behalf of a government or state a conference in the State in respect of which a notice has been published pursuant to section 44 of this Act shall, during the conference and on the day immediately preceding and the day immediately succeeding the conference, have and enjoy inviolability and exemptions, facilities, immunities, privileges and rights in such manner, to such extent and subject to such limitations (including the waiver thereof) as a member of a diplomatic mission under the convention set out in the *First Schedule* to this Act.

46. (1) A person who wilfully hinders, restricts or prevents the enjoyment or exercise of inviolability or an exemption, facility, immunity, privilege or right conferred by this Act shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both the fine and the imprisonment.

(2) Proceedings for the prosecution of an offence under this section shall not be instituted without the certificate of the Minister that the institution of the proceedings is in his opinion expedient.

47. In proceedings in any court a certificate purporting to be under the seal of the Minister and stating any fact relevant to determine whether a judicial or semi-judicial body, an arbitration or conciliation board, an organisation, community, body, diplomatic mission, consular post or person is entitled to inviolability or to an exemption, facility, immunity, privilege or right under a provision of this Act or of an order made under this Act shall be *prima facie* evidence of the fact.

. . .

49. Officials of an international organization, community or body referred to in this Act or an organization to which this Part applies serving in the State or persons performing

duties in the State assigned to them by any such organization, community or body shall not be appointed from among persons who are Irish citizens except with the consent of the Government, and the consent may be withdrawn at any time.

First Schedule

VIENNA CONVENTION ON DIPLOMATIC RELATIONS

[Not reproduced][12]

Third Schedule

GENERAL CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

[Not reproduced][13]

Fourth Schedule

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES OF THE UNITED NATIONS

[Not reproduced][14]

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6. Malaysia

FOREIGN REPRESENTATIVES (PRIVILEGES AND IMMUNITIES) ACT, 1967

An Act[15] to enable certain privileges and immunities to be conferred, on the basis of reciprocity of treatment on representatives of foreign countries, being representatives who are other than those accredited as diplomatic and consular representatives

[*3rd August, 1967*]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Foreign Representatives (Privileges and Immunities) Act, 1967, and shall apply throughout Malaysia.

2. (1) Where the Yang di-Pertuan Agong is satisfied that a representative of the Federation who is accredited to or stationed in a foreign country is accorded any of the privileges and immunities specified in the Vienna Conventions on Consular and Diplomatic Relations, he may, on the basis of reciprocity of treatment, by order, direct that such representative of the foreign country as may be specified in the order, being a representative who is accredited to or stationed in the Federation be accorded with any of the said privileges and immunities.

(2) The order made under this section shall have effect notwithstanding the provisions of any written law to the contrary.

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[12] See United Nations, *Treaty Series*, vol. 500, p. 95.

[13] *Ibid.*, vol. 1, p. 15 and vol. 90, p. 327.

[14] *Ibid.*, vol. 33, p. 261.

[15] No. 34 of 1967. Assented to on 20 July 1967.

3. Nothing in this Act shall be so construed as to preclude the Yang di-Pertuan Agong from declining to accord privileges or immunities to, or from withdrawing the same from, the representatives of any foreign country on the ground that such country is failing to accord corresponding privileges and immunities to the representatives of the Federation.

4. For the purpose of this Act, "representative" means a representative other than a diplomatic and consular representative.

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7. Malta

APPLICATION OF PART III OF THE DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT ORDER, 1966 [16]

Date of commencement: 25th October, 1966.

IN EXERCISE of the powers conferred by section 5 of the Diplomatic Immunities and Privileges Act, 1966, [17] the Honourable Minister of Commonwealth and Foreign Affairs has made the following order:

1. This order may be cited as the Application of Part III of the Diplomatic Immunities and Privileges Act Order, 1966.

2. The organizations set out in the Schedule to this order (hereinafter referred to as "the organizations") are organizations of which Malta or the Government thereof and one or more other states or the government or governments thereof are members.

3. The organizations shall enjoy the immunities and privileges set out in Part I of the Second Schedule to the Diplomatic Immunities and Privileges Act, 1966 and shall have the legal capacities of a juridical person.

Schedule

The United Nations Organization
The International Labour Organisation
The Inter-Governmental Committee for European Migration
The Food and Agriculture Organization of the United Nations
The United Nations Educational, Scientific and Cultural Organization
The World Health Organization
The International Civil Aviation Organization
The International Telecommunication Union
The Universal Postal Union
The Council of Europe
The Inter-Governmental Maritime Consultative Organization
The General Agreement on Tariffs and Trade
The Commonwealth Secretariat.

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[16] Legal notice 67 of 1966. Came into force on 25 October 1966.

[17] See *Juridical Yearbook, 1966*, p. 6.

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8. New Zealand

THE DIPLOMATIC PRIVILEGES (FAO) ORDER 1959 [18], AMENDMENT NO. 2

Bernard FERGUSSON, Governor-General

By his Deputy

Richard WILD

ORDER IN COUNCIL

At the Government House at Wellington this 10th day of May 1967

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Diplomatic Immunities and Privileges Act 1957, [19] His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and in respect of clause 3 of this order at the request and with the consent of the Government of the Cook Islands given in accordance with the Constitution of the Cook Islands, hereby makes the following order.

ORDER

1. This order may be cited as the Diplomatic Privileges (FAO) Order 1959, Amendment No. 2, and shall be read together with and deemed part of the Diplomatic Privileges (FAO) Order 1959 * (hereinafter referred to as the principal order).

2. Clause 12 of the principal order is hereby amended by inserting, after the words "Deputy Director-General", the words "and any Assistant Director-General".

3. This order shall be in force in the Cook Islands.

T. J. SHERRARD
Clerk of the Executive Council

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* S.R. 1959/52—Amendment No. 1: S.R. 1961/14

[18] United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations*, vol. II (ST/LEG/SER.B/11), p. 37.

[19] *Ibid.*, vol. I (ST/LEG/SER.B/10), p. 55.

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Treaty provisions concerning the legal status of the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following States acceded to the Convention on the Privileges and Immunities of the United Nations in 1966:[2]

State	*Date of receipt of instrument of accession*
Ireland	10 May 1967

This brought up to 95 the number of States parties to this Agreement.

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2. AGREEMENTS RELATING TO MEETINGS AND INSTALLATIONS

(*a*) Agreement between the United Nations and Austria regarding the Headquarters of the United Nations Industrial Development Organization (with exchange of notes and *aide-mémoire*).[3] Signed at New York on 13 April 1967

(i) Agreement between the United Nations and Austria regarding the Headquarters of the United Nations Industrial Development Organization

THE UNITED NATIONS AND THE REPUBLIC OF AUSTRIA:

Considering that the United Nations General Assembly, by resolutions 2089 (XX) and 2152 (XXI) of 20 December 1965 and 17 November 1966, has established the United Nations Industrial Development Organization as a subsidiary organ of the General Assembly of the United Nations and, in response to an offer by the Republic of Austria, has, by resolution 2212 (XXI) of 17 December 1966, decided to establish the headquarters of that organization at Vienna;

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[1] United Nations, *Treaty Series*, vol. 1, p. 15 and vol. 90, p. 327.

[2] The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations as from the date of its deposit.

[3] Came into force on 7 July 1967.

Considering that the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the Republic of Austria is a party, is *ipso facto* applicable to the United Nations Industrial Development Organization;

Considering that it is desirable to conclude an agreement, complementary to the Convention on the Privileges and Immunities of the United Nations, to regulate questions not envisaged in that Convention arising as a result of the establishment of the headquarters of the United Nations Industrial Development Organization at Vienna;

Have agreed as follows:

Article I

Definitions

Section 1

In this Agreement,

(*a*) The expression "the UNIDO" means the United Nations Industrial Development Organization;

(*b*) The expression "the Government" means the Federal Government of the Republic of Austria;

(*c*) The expression "Executive Director" means the Executive Director of the UNIDO or any officer designated to act on his behalf;

(*d*) The expression "appropriate Austrian authorities" means such federal, state, municipal or other authorities in the Republic of Austria as may be appropriate in the context and in accordance with the laws and customs applicable in the Republic of Austria;

(*e*) The expression "laws of the Republic of Austria" includes:

(i) the federal constitution and state constitutions; and

(ii) legislative acts, regulations and orders issued by or under authority of the Government or appropriate Austrian authorities;

(*f*) The expression "headquarters seat" means:

(i) the headquarters area with the building or buildings upon it, as may from time to time be defined in the supplemental agreements referred to in section 3; and

(ii) any other land or building which may from time to time be included, temporarily or permanently, therein in accordance with this Agreement or by supplemental agreement with the Government;

(*g*) The expression "Member State" means a State which is a Member of the United Nations or a member of one of the specialized agencies, or a member of the International Atomic Energy Agency;

(*h*) The expression "officials of the UNIDO" means the Executive Director and all members of the staff of the UNIDO except those who are locally recruited and assigned to hourly rates;

(*i*) The expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946.

Article II

The Headquarters Seat

Section 2

(*a*) The permanent headquarters of the UNIDO shall be in the headquarters seat, and shall not be removed therefrom unless the United Nations should so decide. Any

transfer of the headquarters temporarily to another place shall not constitute a removal of the permanent headquarters unless there is an express decision by the United Nations to that effect.

(*b*) Any building in or outside of Vienna which may be used with the concurrence of the Government for meetings convened by the UNIDO shall be temporarily included in the headquarters seat.

(*c*) The appropriate Austrian authorities shall take whatever action may be necessary to ensure that the UNIDO shall not be dispossessed of all or any part of the headquarters seat without the express consent of the United Nations.

Section 3

The Government grants to the UNIDO, and the UNIDO accepts from the Government, the permanent use and occupation of a headquarters seat as may from time to time be defined in supplemental agreements to be concluded between the UNIDO and the Government.

Section 4

(*a*) The United Nations shall for official purposes have the authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board.

(*b*) The Government shall, upon request, grant to the UNIDO for official purposes appropriate radio and other telecommunications facilities in conformity with technical arrangements to be made with the International Telecommunication Union.

Section 5

The UNIDO may establish and operate research, documentation and other technical facilities of any type. These facilities shall be subject to appropriate safeguards which, in the case of facilities which might create hazards to health or safety or interfere with property, shall be agreed with the appropriate Austrian authorities.

Section 6

The facilities provided for in sections 4 and 5 may, to the extent necessary for efficient operation, be established and operated outside the headquarters area. The appropriate Austrian authorities shall, at the request of the UNIDO, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the UNIDO of appropriate premises for such purposes, and for the inclusion of such premises in the headquarters seat.

Article III

Extraterritoriality of the Headquarters Seat

Section 7

(*a*) The Government recognizes the extraterritoriality of the headquarters seat, which shall be under the control and authority of the UNIDO as provided in this Agreement.

(*b*) Except as otherwise provided in this Agreement or in the General Convention, and subject to any regulation enacted under section 8, the laws of the Republic of Austria shall apply within the headquarters seat.

(*c*) Except as otherwise provided in this Agreement or in the General Convention, the courts or other appropriate organs of the Republic of Austria shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat.

Section 8

(*a*) The UNIDO shall have the power to make regulations, operative within the headquarters seat, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No law of the Republic of Austria which is inconsistent with a regulation of the UNIDO authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters seat. Any dispute between the UNIDO and the Republic of Austria as to whether a regulation of the UNIDO is authorized by this section or as to whether a law of the Republic of Austria is inconsistent with any regulation of the UNIDO authorized by this section, shall be promptly settled by the procedure set out in section 35. Pending such settlement, the regulation of the UNIDO shall apply and the law of the Republic of Austria shall be inapplicable in the headquarters seat to the extent that the UNIDO claims it to be inconsistent with the regulation of the UNIDO.

(*b*) The UNIDO shall from time to time inform the Government, as may be appropriate, of regulations made by it in accordance with subsection (*a*).

(*c*) This section shall not prevent the reasonable application of fire protection or sanitary regulations of the appropriate Austrian authorities.

Section 9

(*a*) The headquarters seat shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, shall enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Executive Director. The service of legal process, including the seizure of private property, shall not take place within the headquarters seat except with the express consent of, and under conditions approved by, the Executive Director.

(*b*) Without prejudice to the provisions of the General Convention or article X of this Agreement, the UNIDO shall prevent the headquarters seat from being used as a refuge by persons who are avoiding arrest under any law of the Republic of Austria, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

Article IV

Protection of the Headquarters Seat

Section 10

(*a*) The appropriate Austrian authorities shall exercise due diligence to ensure that the tranquillity of the headquarters seat is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbances in the immediate vicinity of the headquarters seat, and shall provide on the boundaries of the headquarters seat such police protection as may be required for these purposes.

(*b*) If so requested by the Executive Director, the appropriate Austrian authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters seat.

Section 11

The appropriate Austrian authorities shall take all reasonable steps to ensure that the amenities of the headquarters seat are not prejudiced and that the purposes for which the headquarters seat is required are not obstructed by any use made of the land or buildings in the vicinity of the headquarters seat. The UNIDO shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters seat are not prejudiced by any use made of the land or buildings in the headquarters seat.

Article V

Public services in the Headquarters Seat

Section 12

(*a*) The appropriate Austrian authorities shall exercise, to the extent requested by the Executive Director, their respective powers to ensure that the headquarters seat shall be supplied with the necessary public services, including without limitation by reason of this enumeration, electricity, water, sewerage, gas, post, telephone, telegraph, local tansportation, drainage, collection of refuse, fire protection and snow removal from public streets, and that such public services shall be supplied on equitable terms.

(*b*) In case of any interruption or threatened interruption of any such services, the appropriate Austrian authorities shall consider the needs of the UNIDO as being of equal importance with those of essential agencies of the Government, and shall take steps accordingly to ensure that the work of the UNIDO is not prejudiced.

(*c*) The Executive Director shall, upon request, make suitable arrangements to enable duly authorized representatives of the appropriate public services bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters seat under conditions which shall not unreasonably disturb the carrying out of the functions of the UNIDO.

(*d*) Where gas, electricity, water or heat is supplied by appropriate Austrian authorities, or where the prices thereof are under their control, the UNIDO shall be supplied at tariffs which shall not exceed the lowest comparable rates accorded to Austrian governmental administrations.

Article VI

Communications, publications and transportation

Section 13

(*a*) All official communications directed to the UNIDO, or to any of its officials at the headquarters seat, and all outward official communications of the UNIDO, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings.

(*b*) The UNIDO shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Section 14

(*a*) The Government recognizes the right of the UNIDO freely to publish and broadcast within the Republic of Austria in the fulfilment of its purpose.

(*b*) It is, however, understood that the UNIDO shall respect any laws of the Republic of Austria, or any international conventions to which the Republic of Austria is a party, relating to copyrights.

Section 15

The UNIDO shall be entitled for its official purposes to use the railroad facilities of the Government at tariffs which shall not exceed the lowest comparable passenger fares and freight rates accorded to Austrian governmental administrations.

Article VII

Freedom from taxation

Section 16

(*a*) The UNIDO, its assets, income and other property shall be exempt from all forms of taxation, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by the UNIDO.

(*b*) In so far as the Government, for important administrative considerations, may be unable to grant to the UNIDO exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the UNIDO, including rentals, the Government shall reimburse the UNIDO for such taxes by the payment, from time to time, of lump sums to be agreed upon by the UNIDO and the Government. It is, however, understood that the UNIDO will not claim reimbursement with respect to minor purchases. With respect to such taxes, the UNIDO shall at all times enjoy at least the same exemptions and facilities as are granted to Austrian governmental administrations or to chiefs of diplomatic missions accredited to the Republic of Austria, whichever are the more favourable. It is further understood that the UNIDO will not claim exemption from taxes which are in fact no more than charges for public utility services.

(*c*) All transactions to which the UNIDO is a party, and all documents recording such transactions, shall be exempt from all taxes, recording fees, and documentary taxes.

(*d*) Articles imported or exported by the UNIDO for official purposes shall be exempt from customs duties and other levies, and from prohibitions and restrictions on imports and exports.

(*e*) The UNIDO shall be exempt from customs duties and other levies, prohibitions and restrictions on the importation of service automobiles, and spare parts thereof, required for its official purposes.

(*f*) The Government shall, if requested, grant allotments of gasoline or other fuels and lubricating oils for each such automobile operated by the UNIDO in such quantities as are required for its work and at such special rates as may be established for diplomatic missions in the Republic of Austria.

(*g*) Articles imported in accordance with subsections (*d*) and (*e*) or obtained from the Government in accordance with subsection (*f*) of this section, shall not be sold by the UNIDO in the Republic of Austria within two years of their importation or acquisition, unless otherwise agreed upon by the Government.

Article VIII

Financial facilities

Section 17

(*a*) Without being subject to any financial controls, regulations or moratoria of any kind, the UNIDO may freely:

(i) Purchase any currencies through authorized channels and hold and dispose of them;

(ii) Operate accounts in any currency;

(iii) Purchase through authorized channels, hold and dispose of funds, securities and gold;

(iv) Transfer its funds, securities, gold and currencies to or from the Republic of Austria, to or from any other country, or within the Republic of Austria; and

(v) Raise funds through the exercise of its borrowing power or in any other manner which it deems desirable, except that with respect to the raising of funds within the Republic of Austria, the UNIDO shall obtain the concurrence of the Government.

(*b*) The Government shall assist the UNIDO to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

(*c*) The UNIDO shall, in exercising its rights under this section, pay due regard to any representations made by the Government in so far as effect can be given to such representations without prejudicing the interests of the UNIDO.

Article IX

Social security and pension fund

Section 18

The United Nations Joint Staff Pension Fund shall enjoy legal capacity in the Republic of Austria and shall enjoy the same exemptions, privileges and immunities as the UNIDO itself.

Section 19

The UNIDO shall be exempt from all compulsory contributions to, and officials of the UNIDO shall not be required by the Government to participate in, any social security scheme of the Republic of Austria.

Section 20

The Government shall make such provision as may be necessary to enable any official of the UNIDO who is not afforded social security coverage by the UNIDO to participate, if the UNIDO so requests, in any social security scheme of the Republic of Austria. The UNIDO shall in so far as possible, arrange, under conditions to be agreed upon, for the participation in the Austrian social security system of those locally recruited members of its staff who do not participate in the United Nations Joint Staff Pension Fund or to whom UNIDO does not grant social security protection at least equivalent to that offered under Austrian law.

Article X

Transit and residence

Section 21

(*a*) The Government shall take all necessary measures to facilitate the entry into and sojourn in Austrian territory and shall place no impediment in the way of the departure from Austrian territory of the persons listed below; it shall ensure that no impediment is placed in the way of their transit to or from the headquarters seat and shall afford them any necessary protection in transit:

(i) Members of permanent missions and other representatives of Member States, their families and other members of their households, as well as clerical and other auxiliary personnel and the spouses and dependent children of such personnel;

(ii) Officials of the UNIDO, their families and other members of their households;

(iii) Officials of the United Nations or of one of the specialized agencies or of the International Atomic Energy Agency, attached to the UNIDO, and those who have official business with the UNIDO, and their spouses and dependent children;

(iv) Representatives of other organizations, with which the UNIDO has established official relations, who have official business with the UNIDO;

(v) Persons, other than officials of the UNIDO, performing missions authorized by the UNIDO or serving on committees or other subsidiary organs of the UNIDO, and their spouses;

(vi) Representatives of the press, radio, film, television or other information media, who have been accredited to the UNIDO in its discretion after consultation with the Government;

(vii) Representatives of other organizations or other persons invited by the UNIDO to the headquarters seat on official business. The Executive Director shall communicate the names of such persons to the Government before their intended entry.

(*b*) This section shall not apply in the case of general interruptions of transportation, which shall be dealt with as provided in section 12 (*b*) and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

(*c*) Visas, where required for persons referred to in this section, shall be granted without charge and as promptly as possible.

(*d*) No activity performed by any person referred to in subsection (*a*) in his official capacity with respect to the UNIDO shall constitute a reason for preventing his entry into or his departure from the territory of the Republic of Austria or for requiring him to leave such territory.

(*e*) No person referred to in subsection (*a*) shall be required by the Government to leave the Republic of Austria save in the event of an abuse of the right of residence, in which case the following procedure shall apply:

(i) No proceeding shall be instituted to require any such person to leave the Republic of Austria except with the prior approval of the Federal Minister for Foreign Affairs of the Republic of Austria;

(ii) In the case of a representative of a Member State, such approval shall be given only after consultation with the Government of the Member State concerned;

(iii) In the case of any other person mentioned in subsection (*a*), such approval shall be given only after consultation with the Executive Director, and if expulsion proceedings are taken against any such person, the Executive Director shall have the right to appear or to be represented in such proceedings on behalf of the person against whom such proceedings are instituted; and

(iv) Persons who are entitled to diplomatic privileges and immunities under section 28 shall not be required to leave the Republic of Austria otherwise than in accordance with the customary procedure applicable to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.

(*f*) This section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this section come within the classes described in subsection (*a*), or the reasonable application of quarantine and health regulations.

Section 22

The Executive Director and the appropriate Austrian authorities shall, at the request of either of them, consult as to methods of facilitating entrance into the Republic of Austria,

and as to the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters seat and who do not enjoy the privileges provided by section 21.

Article XI

Representatives to the UNIDO

Section 23

Representatives of Member States to meetings of or convened by the UNIDO, and those who have official business with the UNIDO, shall, while exercising their functions and during their journey to and from Austria, enjoy the privileges and immunities provided in article IV of the General Convention.

Section 24

Members of permanent missions to the UNIDO shall be entitled to the same privileges and immunities as the Government accords to members, having comparable rank, of diplomatic missions accredited to the Republic of Austria.

Section 25

Permanent missions to the UNIDO of States Members of the Industrial Development Board and those of Member States shall enjoy the same privileges and immunities as are accorded to diplomatic missions in the Republic of Austria.

Section 26

The UNIDO shall communicate to the Government a list of persons within the scope of this article and shall revise such list from time to time as may be necessary.

Article XII

Officials of the UNIDO

Section 27

Officials of the UNIDO shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:

(*a*) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them in their official capacity; such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the UNIDO;

(*b*) Immunity from seizure of their personal and official baggage;

(*c*) Immunity from inspection of official baggage, and if the official comes within the scope of section 28, immunity from inspection of personal baggage;

(*d*) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the UNIDO for services past or present or in connexion with their service with the UNIDO;

(*e*) Exemption from any form of taxation on income derived by them from sources outside the Republic of Austria;

(*f*) Exemption, with respect to themselves, their spouses, their dependent relatives and other members of their households from immigration restrictions and alien registration;

(*g*) Exemption from national service obligations, provided that, with respect to Austrian nationals, such exemption shall be confined to officials whose names have,

by reason of their duties, been placed upon a list compiled by the Executive Director and approved by the Government; provided further that should officials, other than those listed, who are Austrian nationals, be called up for national service, the Government shall, upon request of the Executive Director, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of the essential work of the UNIDO;

(*h*) Freedom to acquire or maintain within the Republic of Austria or elsewhere foreign securities, foreign currency accounts, and other movable, and, under the same conditions applicable to Austrian nationals, immovable property; and at the termination of their UNIDO employment, the right to take out of the Republic of Austria through authorized channels without prohibition, or restriction, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria.

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria; and

(*j*) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same;

(ii) One automobile every four years; and

(iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale; the UNIDO may establish a commissary for the sale of such articles to its officials and members of delegations. A supplemental agreement shall be concluded between the UNIDO and the Government to regulate the exercise of these rights.

Section 28

In addition to the privileges and immunities specified in section 27:

(*a*) The Executive Director shall be accorded the privileges and immunities, exemptions and facilities accorded to Ambassadors who are heads of missions;

(*b*) A senior official of the UNIDO, when acting on behalf of the Executive Director during his absence from duty, shall be accorded the same privileges and immunities, exemptions and facilities as are accorded to the Executive Director; and

(*c*) Other officials having the professional grade of P-5 and above, and such additional categories of officials as may be designated, in agreement with the Government, by the Executive Director in consultation with the Secretary-General of the United Nations on the ground of the responsibilities of their positions in the UNIDO, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.

Section 29

(*a*) The UNIDO shall communicate to the Government a list of officials of the UNIDO and shall revise such list from time to time as may be necessary.

(*b*) The Government shall furnish persons within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Austrian authorities.

Section 30

The provisions of this article shall apply to other officials of the United Nations who are attached to the UNIDO or to other United Nations offices set up with the consent of the Government in the Republic of Austria. They shall also apply to officials of the specialized agencies and the International Atomic Energy Agency attached to the UNIDO on a continuing basis.

Article XIII

Experts on mission for UNIDO

Section 31

Experts (other than officials of the UNIDO coming within the scope of article XII) performing missions authorized by, serving on committees or other subsidiary organs of, or consulting at its request in any way with, the UNIDO shall enjoy, within and with respect to the Republic of Austria, the following privileges and immunities so far as may be necessary for the effective exercise of their functions:

(*a*) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage;

(*b*) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them, in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for, the UNIDO, or may no longer be present at the headquarters seat or attending meetings convened by the UNIDO;

(*c*) Inviolability of all papers, documents and other official material;

(*d*) The right, for the purpose of all communications with the UNIDO, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;

(*e*) Exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations;

(*f*) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria;

(*g*) The same privileges with respect to currency and exchange restrictions as are accorded to respresentatives of foreign Governments on temporary official missions; and

(*h*) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.

Section 32

Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in section 31 may be present in the Republic of Austria for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation on their salaries and emoluments received from the UNIDO during such periods of duty and shall be exempt from all tourist taxes.

Section 33

(*a*) The UNIDO shall communicate to the Government a list of persons within the scope of this article and shall revise such list from time to time as may be necessary.

(*b*) The Government shall furnish persons within the scope of this article with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Austrian authorities.

Article XIV

Settlement of disputes

Section 34

The UNIDO shall make provision for appropriate methods of settlement of:

(*a*) Disputes arising out of contracts and disputes of a private law character to which the UNIDO is a party; and

(*b*) Disputes involving an official of the UNIDO who, by reason of his official position, enjoys immunity, if such immunity has not been waived.

Section 35

(*a*) Any dispute between the UNIDO and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the headquarters seat or the relationship between the UNIDO and the Government, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Executive Director, one to be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria, and the third, who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the UNIDO or the Government.

(*b*) The Secretary-General of the United Nations or the Government may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Article XV

General provisions

Section 36

The Republic of Austria shall not incur by reason of the location of the headquarters seat of the UNIDO within its territory any international responsibility for acts or omissions of the UNIDO or of its officials acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Republic of Austria would incur as a Member of the United Nations.

Section 37

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Republic of Austria. They also have a duty not to interfere in the internal affairs of this State.

Section 38

(*a*) The Executive Director shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur, and for this purpose shall establish such rules and regulations as may be deemed necessary and expedient, for officials of the UNIDO and for such other persons as may be appropriate.

(*b*) Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Executive Director shall, upon request, consult with the appropriate Austrian authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Executive Director and to the Government, the matter shall be determined in accordance with the procedure set out in section 35.

Section 39

This Agreement shall apply irrespective of whether the Government maintains or does not maintain diplomatic relations with the State concerned and irrespective of whether the State concerned grants a similar privilege or immunity to diplomatic envoys or nationals of the Republic of Austria.

Section 40

Whenever this Agreement imposes obligations on the appropriate Austrian authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

Section 41

The provisions of this Agreement shall be complementary to the provisions of the General Convention. In so far as any provision of this Agreement and any provision of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

Section 42

This Agreement shall be construed in the light of its primary purpose of enabling the UNIDO at its headquarters in the Republic of Austria fully and efficiently to discharge its responsibilities and fulfil its purposes.

Section 43

Consultations with respect to modification of this Agreement shall be entered into at the request of the United Nations or the Government. Any such modification shall be by mutual consent.

Section 44

The UNIDO and the Government may enter into such supplemental agreements as may be necessary.

Section 45

This Agreement shall apply, *mutatis mutandis*, to other offices of the United Nations set up with the consent of the Government in the Republic of Austria.

Section 46

This Agreement shall cease to be in force:

(i) By mutual consent of the United Nations and the Government; or

(ii) If the permanent headquarters of the UNIDO is removed from the territory of the Republic of Austria, except for such provisions as may be applicable in connexion with the orderly termination of the operations of the UNIDO at its permanent headquarters in the Republic of Austria and the disposal of its property therein.

Section 47

This Agreement shall enter into force upon an exchange of notes between the Secretary-General of the United Nations and the duly authorized representative of the Federal President of the Republic of Austria.

DONE at New York, in duplicate, in the English and German languages, both being equally authentic, on this thirteenth day of April 1967.

For the United Nations
On behalf of the Secretary-General
C. A. STAVROPOULOS
Under-Secretary
Legal Counsel

For the Republic of Austria
Carl H. BOBLETER
Under-Secretary of State
for Foreign Affairs

(ii) Exchange of notes

I

Note from the Under-Secretary of State for Foreign Affairs of Austria

New York, 13 April 1967

Sir,

With reference to the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of the United Nations Industrial Development Organization, to which I have this day affixed my signature, I have the honour to propose that:

(1) In accordance with the Financial Regulations of the United Nations, the articles mentioned in paragraph (*g*) of section 16 of this Agreement may be disposed of without charge only for the benefit of international organizations or charitable institutions.

(2) Having regard to article 38 (1) of the Vienna Convention on Diplomatic Relations [4] and to the practice of Austria, the Republic of Austria will accord members of permanent missions referred to in section 24 of the Agreement, who are Austrian nationals or stateless persons resident in Austria, only the immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their capacity as members of permanent missions.

(3) Officials of the UNIDO or other United Nations organs or experts on missions for the United Nations who are Austrian nationals and stateless persons resident in Austria shall enjoy only those privileges and immunities provided in the General Convention, it being understood, nevertheless, that such privileges and immunities include exemption from taxation on pensions paid to them by the Pension Fund of the United Nations.

In addition, officials of the UNIDO who are Austrian nationals or stateless persons resident in Austria shall have access to the Commissary to be established in accordance with paragraph (*j*) (iii) of section 27 of the Agreement, the exercise of this right being regulated by the supplemental agreement as envisaged in the above-mentioned provision of the Agreement.

[4] United Nations, *Treaty Series*, vol. 500, p. 95.

(4) In accordance with the practice of the Republic of Austria which is in conformity with article 42 of the Vienna Convention on Diplomatic Relations to which Austria is a party, diplomatic agents accredited to the Republic of Austria may not practise for personal profit any professional or commercial activity. It is understood that the same restriction shall apply to all persons to whom the Agreement accords the same privileges and immunities as are accorded to members, having comparable rank, of diplomatic missions in the Republic of Austria.

(5) Persons to whom the Agreement applies, who are not Austrian nationals or stateless persons resident in Austria, shall not benefit from Austrian regulations on allowances for children.

(6) Without prejudice to the provisions of sections 18 (*e*) and 22 (*e*) of the General Convention and section 27 (*h*) of the Agreement, officials and experts of the UNIDO shall be allowed, over and above the facilities granted by the Agreement, to make transfers to other countries up to a maximum amount of one thousand US dollars (US $1,000.00) per year, to the debit of accounts in Austrian Schilling held in their names at Austrian credit institutions. If officials or experts of the UNIDO wish to make Austrian currency transfers exceeding the amount mentioned above, such transfers shall be authorized by the Austrian authorities up to the amount of all salary previously received in Austrian currency by the person concerned from the UNIDO, provided that the UNIDO agrees that the amount to be transferred shall be deducted from transferable Austrian currency balances of the UNIDO.

If the United Nations agrees to this proposal, I have the honour to propose that this note and your note of confirmation shall constitute an Agreement between the Republic of Austria and the United Nations, entering into force on the same day as the Headquarters Agreement.

Accept, Sir, the renewed assurances of my highest consideration.

Carl H. BOBLETER
Under-Secretary of State for Foreign Affairs

His Excellency
U THANT
United Nations
New York, N. Y.

II

Note from the Legal Counsel of the United Nations

New York, 13 April 1967

Sir,

I am directed by the Secretary-General to refer to your note of 13 April 1967, which reads as follows:

[*See note I*]

I have the honour to confirm that the United Nations agrees with the above proposal and that your note and this reply will constitute an Agreement between the United Nations and the Republic of Austria, entering into force on the same day as the Headquarters Agreement.

Accept, Sir, the assurances of my highest consideration.

C. A. STAVROPOULOS
Under-Secretary
Legal Counsel

His Excellency
Dr. Carl BOBLETER
Under-Secretary of State for Foreign Affairs
New York, N. Y.

(iii) *Aide-mémoire*

Desiring that the "Advance Party" may enjoy the privileges and immunities provided in the Headquarters Agreement even before the entering into force of this agreement the following measures are envisaged by the Austrian authorities:

(1) A Certificate will be issued to the members of the "Advance Party"; this Certificate may be presented to all Austrian authorities and reads as follows:

"The Federal Ministry for Foreign Affairs certifies that the United Nations Industrial Development Organization (UNIDO), a subsidiary organ of the General Assembly of the United Nations transfers its headquarters from New York to Vienna. In view of the establishment of the UNIDO's headquarters in Vienna, a Headquarters Agreement was concluded between the Republic of Austria and the United Nations; this agreement was approved by the Council of Ministers and was signed on 13 April 1967. The Headquarters Agreement as a treaty involving changes in ordinary laws has to be submitted to parliament for approval and to be ratified by the Federal President. This agreement is not yet entered into force, but has already been submitted to parliament for approval. The Headquarters Agreement entitles the UNIDO and its officials *inter alia* to the following rights going in part beyond the scope of the Convention on Privileges and Immunities of the United Nations (Federal Law Gazette N. 126/1957):

"(*a*) Officials of the UNIDO, their families and other members of their households shall enter freely into Austrian territory; visas where required shall be granted without charge and as promptly as possible.

"(*b*) Officials of the UNIDO enjoy immunity from seizure of their personal and official baggage and immunity from inspection of official baggage.

"(*c*) Officials of the UNIDO are free to acquire and maintain within the Republic of Austria foreign securities, foreign currency accounts and other movable and under the same conditions as applicable to Austrian nationals immovable property.

"(*d*) The UNIDO shall be entitled for its official purpose to use Austrian railroad facilities at tariffs which shall not exceed the lowest comparable passenger fares and freight rates accorded to Austrian governmental administrations.

"(*e*) The headquarters seat shall be supplied with the necessary public services on equitable terms.

"(*f*) The UNIDO shall be granted for official purposes appropriate radio and other telecommunication facilities.

"(*g*) The UNIDO, its assets, income and other property shall be exempt from all forms of taxation; all transactions to which the UNIDO is a party and all documents recording such transactions shall be exempt from all taxes, recording fees and documentary taxes.

"(*h*) The UNIDO may freely purchase any currencies, funds, securities and gold through authorized channels; it shall get assistance from the Austrian Government to obtain the most favourable conditions as regards exchange—rates, banking—commissions in exchange transactions and the like.

"The Federal Ministry for Foreign Affairs asks to aid the UNIDO and its officials in establishing the headquarters in Vienna and to have due regard to the provisions of the already signed Headquarters Agreement."

(2) Officials of the UNIDO entering into Austrian territory and bearing the aforementioned certificate will enjoy already before the entering into force of the Headquarters Agreement all privileges concerning customs duties provided in this agreement.

(*b*) Agreement between the United Nations and Venezuela concerning the arrangements for the twelfth session of the United Nations Economic Commission for Latin America to be held in Caracas. [5] Signed at Santiago on 18 November 1966

. . .

Article X

Compensation

The Government shall pay compensation for any damage to the Conference area, or furniture or equipment therein. The Government further recognizes that the United Nations shall not be held liable for the payment of damages for injuries to persons attending the Conference or for claims for damages, on any grounds whatsoever, arising out of the employment by the Government of Conference staff.

. . .

Article XII

Privileges and immunities

In application of the Act on the Immunities and Prerogatives of Foreign Officials of 13 August 1945, [6] the Government shall by Special Resolution extend to delegates or representatives, officials or experts and observers of Member States or of the specialized agencies of the United Nations attending the twelfth session of the Economic Commission for Latin America (ECLA) the benefit, during their stay in the territory of the Republic of Venezuela, of all the immunities and prerogatives granted to diplomatic officials under the terms of that Act.

Article XIII

Status of the Conference area

The Conference area shall be under the authority of the United Nations, which shall be entitled, by agreement with the Venezuelan authorities, to authorize or prohibit the entry of any person or article to the Conference area.

. . .

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[5] Came into force on the date of signature.

[6] *United Nations Legislative Series, Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities* (ST/LEG/SER.B/7), pp. 402-403.

Article XV

Freedom of access

1. The Government shall permit the following persons, irrespective of their nationality, to enter, remain in and leave Venezuela while performing their functions in connexion with the Conference:

(*a*) Representatives of States Members of the United Nations and their immediate families;

(*b*) United Nations officials and experts and their immediate families;

(*c*) Officials of the specialized agencies and their immediate families;

(*d*) Representatives of non-governmental organizations having consultative status with the Economic and Social Council of the United Nations;

(*e*) Representatives of press, radio, cinema and other information media accredited by the United Nations;

(*f*) Any other persons formally invited by the United Nations to attend the Conference.

2. Any visas required for the entry to and exit from Venezuela of the persons listed in the foregoing paragraph shall be granted as speedily as possible and free of charge.

Article XVI

Diplomatic pouches

The Government shall grant the United Nations diplomatic pouch privileges, between United Nations Headquarters in New York and the Conference area in Caracas, and between ECLA Headquarters at Santiago and the Conference area. This privilege shall apply from one month before the opening of the Conference to one week after the closing of the Conference.

Article XVII

Customs

Without prejudice to the general conditions laid down in this Agreement, all property of the United Nations and the personal effects of the persons enumerated in article XV, sub-paragraph 1 (*a*), (*b*) and (*c*), may be imported and exported to and from Venezuela free of duty and other charges, but shall not be sold within Venezuela except in accordance with the regulations made by the Venezuelan customs authorities.

(*c*) Agreement between the United Nations and Nigeria regarding the arrangements for the eighth session of the Economic Commission for Africa.[7] Signed at Lagos on 7 February 1967

I. *Premises, equipment, utilities and stationery supplies*

. . .

(5) The Government agrees to indemnify and hold harmless the United Nations and its personnel from any and all actions, causes of actions, claims or other demands arising out of any damage to the premises in this conference area or of injuries to persons using such premises or of damages to furniture or equipment provided by the Government except

[7] Came into force on the date of signature.

where it is agreed by the parties that the damage to property or injuries to persons was occasioned by the gross negligence or wilful misconduct of any personnel of the United Nations.

. . .

III. *Transportation*

. . . The Government agrees to indemnify and hold harmless the United Nations and its personnel from any and all actions, causes of actions, claims or other demands arising out of any damage to person or property caused or suffered in using transportation referred to in this article, except where it is agreed by the parties that the damage to property or injuries to persons was occasioned by the gross negligence or wilful misconduct of any personnel of the United Nations.

. . .

V. *Local personnel*

. . .

(4) The Government agrees to indemnify and hold harmless the United Nations and its personnel from any and all actions, causes of actions, claims or other demands arising out of the employment for the United Nations of the personnel referred to in this article.

. . .

VII. *Privileges and immunities*

(1) The Convention on the Privileges and Immunities of the United Nations shall be fully applicable with respect to the Session. Accordingly, officials of the United Nations performing functions in connexion with the Session shall enjoy the privileges and immunities provided in articles V and VII of the said Convention.

(2) Officials of the specialized agencies performing functions in connexion with the Session shall enjoy the privileges and immunities provided under the Convention on the Privileges and Immunities of the Specialized Agencies.

(3) Without prejudice to the provisions of the preceding paragraphs, all participants and all persons performing functions in connexion with the Session shall enjoy such privileges and immunities, facilities and courtesies, as are necessary for the independent exercise of their functions in connexion with the Session.

(4) Representatives of members and associate members of the United Nations Economic Commission for Africa and representatives or observers from other States Members of the United Nations shall enjoy the privileges and immunities provided in article IV of the Convention on the Privileges and Immunities of the United Nations. Observers of members of the specialized agencies shall enjoy the privileges and immunities provided for representatives in article V of the Convention on the Privileges and Immunities of the specialized agencies.

(5) All participants and all persons performing functions in connexion with the Session who are not nationals of Nigeria shall have the right of entry into and exit from the country. They shall be granted facilities for speedy travel. Visas, where required, shall be granted promptly and free of charge.

(6) The area designated under article I shall be deemed to constitute United Nations premises, and access to the conference area and to office space therein shall be under the control and authority of the United Nations.

(*d*) Agreement between the United Nations and Ghana regarding the arrangements for the first meeting of ministers of the Economic Community of West Africa. [8] Signed at Accra on 8 April 1967

I. *Premises, equipment, utilities and stationery supplies*

. . .

(5) [Similar to article I (5) in (*c*) above]

. . .

III. *Transportation*

. . . The Government agrees to indemnify and hold harmless the United Nations and its personnel from any and all actions, causes of actions, claims or other demands arising out of any damage to person or property caused or suffered in using transportation referred to in this article.

. . .

V. *Local personnel*

. . .

(4) [Similar to article V (4) in (*c*) above]

. . .

VII. *Privileges and immunities*

[Similar to article VII in (*c*) above, with the omission of the second sentence of paragraph (4)].

. . .

(*e*) Agreement between the United Nations and Greece regarding arrangements for the International Symposium on Industrial Development, to be held in Athens from 29 November to 20 December 1967. [9] Signed at Athens on 14 April 1967

VIII. *Local personnel*

. . .

(*b*) The Government agrees to indemnify and save harmless the United Nations from any and all actions, causes of actions, claims or other demands arising out of the employment for the United Nations of the personnel referred to in this section.

. . .

X. *Privileges and immunities*

(*a*) The Convention on the Privileges and Immunities of the United Nations, to which Greece is a party, shall be applicable with respect to the Symposium. In particular, the Government will accord representatives attending the Symposium and all officials of the United Nations connected with the Symposium the privileges and immunities set forth in articles IV and V of the said Convention.

(*b*) Representatives of States non-members of the United Nations attending the Symposium shall enjoy the same privileges and immunities as are accorded to representatives of States Members of the Organization.

(*c*) Representatives of the specialized agencies and of inter-governmental organizations and international non-governmental organizations invited to the Symposium shall enjoy

[8] Came into force on the date of signature.

[9] Came into force on the date of signature.

the same privileges and immunities as are accorded to officials of comparable rank of the United Nations.

(*d*) The area referred to under sections I, II, III and V above shall be deemed to constitute United Nations premises, access to which shall be under the authority and control of the United Nations.

(*e*) The Greek Government and authorities shall impose no impediment to transit to and from the Symposium of the following categories of persons attending the Symposium: representatives of Governments and their immediate families; representatives of specialized agencies and inter-governmental organizations and their immediate families; officials of the United Nations and their immediate families; observers of non-governmental organizations having consultative status with the Economic and Social Council of the United Nations; representatives of the Press or of radio, television, film or other information agencies accredited by the United Nations at its discretion after consultation with the Government; and other persons officially invited to the Symposium by the United Nations. Any visa required for such persons shall be granted promptly and without charge.

(*f*) The Government shall allow the importation, duty free, of all equipment and shall waive import duties and taxes with respect to supplies necessary for the Symposium. It shall issue without delay to the United Nations any necessary import and export permits.

(*g*) The Government shall issue to the United Nations an import permit for the limited supplies needed by the United Nations for official requirements and entertainment schedule of the Symposium.

. . .

XIV. *Miscellaneous*

(*a*) Any damage to the premises in the meeting area or injury to persons using such premises or damage to furniture or equipment provided by the Government shall be made good at the expense of the Government, without prejudice to the Government's right of recourse as long as such right is not contrary to the present Agreement.

. . .

(*f*) Agreement between the United Nations and Senegal concerning the arrangements for the first meeting of West African Community Ministers.[10] Signed at Addis-Ababa and Dakar on 8 November 1967

. . .

V. *Local personnel*

. . .

(4) The Government agrees to indemnify the United Nations and hold it harmless in any and all actions, causes of actions or demands arising out of the employment for the United Nations of the personnel referred to in this article.

. . .

VII. *Privileges and immunities*

[Similar to article VII in (*c*) above, with the omission of the second sentence of paragraph (4)]

[10] Came into force on the date of signature.

(*g*) Agreement between the United Nations and Finland relating to a United Nations seminar on the civic and political education of women, to be held at Helsinki from 1 to 14 August 1967.[11] Signed at Helsinki on 7 December 1966 and at New York on 16 January 1967

. . .

Article V

Facilities, privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the seminar. Accordingly, officials of the United Nations performing functions in connexion with the seminar shall enjoy the privileges and immunities provided under articles V and VII of the said Convention.

2. Officials of the specialized agencies attending the seminar in pursuance of paragraph 1 (*c*) of article II of this Agreement shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and all persons performing functions in connexion with the seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the seminar.

4. All participants and all persons performing functions in connexion with the seminar, who are not nationals of Finland, shall have the right of entry into and exit from Finland. They shall be granted facilities for speedy travel. Visas, entry and exit permits, where required, shall be granted free of charge.

. . .

(*h*) Agreement between the United Nations and Poland relating to a United Nations seminar on the realization of economic and social rights contained in the Universal Declaration of Human Rights, to be held at Warsaw from 15 to 28 August 1967.[12] Signed at New York on 15 and 20 February 1967 ·

Article V

[Similar to article V in (*g*) above]

(*i*) Exchange of notes constituting an agreement between the United Nations and Romania regarding the privileges and immunities to be applied in respect of the joint meetings of the Committee for Programme and Coordination of the United Nations Economic and Social Council and the Administrative Committee on Coordination, to be held at Bucharest from 5 to 7 July 1967.[13] New York, 8 March and 8 April 1967

1. The Convention on the Privileges and Immunities of the United Nations, to which the Romanian People's Republic is a party, shall be applicable to the Joint Meetings. Officials of the specialized agencies participating in the Joint Meetings shall enjoy the same

[11] Came into force on 16 January 1967.

[12] Came into force on 20 February 1967.

[13] Came into force on 8 April 1967.

privileges and immunities as are accorded to officials of comparable rank of the United Nations.

2. All participants and other persons performing functions in connexion with the Joint Meetings shall have the right of entry into and exit from Romania. They shall be granted the necessary travel facilities. Visas, where required, shall be granted free of charge.

(*j*) Agreement between the United Nations and Zambia relating to the arrangements for the international seminar on *apartheid*, racial discrimination and colonialism in Southern Africa.[14] Signed at New York on 6 July 1967

. . .

VIII. *Privileges and immunities*

(*a*) The Convention on the Privileges and Immunities of the United Nations shall be applicable with respect to the Seminar. In particular, the Government will accord representatives of States attending the Seminar and all officials of the United Nations connected with the Seminar the privileges and immunities provided in the said Convention.

(*b*) Representatives of the specialized agencies and those of other inter-governmental organizations attending the Seminar shall be accorded the privileges and immunities provided in the Convention on the Privileges and Immunities of the Specialized Agencies.

(*c*) All participants and all persons performing functions in connexion with the Seminar shall be accorded such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Seminar.

(*d*) The area referred to under article II above shall be deemed to constitute United Nations premises, access to which shall be under the authority and control of the United Nations.

(*e*) All participants and all persons performing functions in connexion with the Seminar, who are not nationals of Zambia, shall have the right of entry into and exit from Zambia. They shall be granted facilities for speedy travel. Visas, where required, shall be granted free of charge.

(*f*) The Government shall allow the importation, duty free, of all equipment and shall waive import duties and taxes with respect to supplies necessary for the Seminar. It shall issue without delay to the United Nations any necessary import and export permits.

. . .

X. *General provisions*

(*a*) The Government agrees to indemnify and save harmless the United Nations from any and all actions, causes of actions, claims or other demands arising out of the employment for the United Nations of the personnel referred to in article IV of this Agreement.

Any damage to the premises in the meeting area or injury to persons using such premises or damage to furniture or equipment provided by the Government shall be made good at the expense of the Government, except where it is agreed by the parties that such damage or injury is caused by the gross negligence or wilful misconduct of United Nations personnel. This shall be without prejudice to the Government's right of recourse against third parties as long as such right is not contrary to the present Agreement.

. . .

[14] Came into force on the date of signature.

(*k*) Agreement between the United Nations and India regarding the arrangements for the Second United Nations Conference on Trade and Development.[15] Signed at New Delhi on 4 November 1967

I. *Premises, equipment, utilisation and stationery supplies*

. . .

(5) Any claim, action or proceeding for damages or loss to the land or premises within the Conference area or in respect of or arising from anything on such area or in respect of any injury to the person suffered within such area shall be the sole responsibility of the Government. The Government agrees to indemnify and hold harmless the United Nations and its personnel from any and all actions, causes of action, claims or other demands arising out of any damage to the premises in the Conference area or of injuries to persons using such premises or of damages to furniture or equipment provided by the Government, except when it is agreed by the parties hereto that such damage and injury is caused by the gross negligence or wilful misconduct of United Nations personnel.

. . .

II. *Transportation*

. . . Any claim, action or proceeding for damages or loss to property or in respect of injury to the person arising out of the use of such transportation for the purposes of the Conference shall be the sole responsibility of the Government. The Government agrees to indemnify and hold harmless the United Nations and its personnel from any and all actions, causes of action, claims or other demands arising out of such claims except when it is agreed by the parties hereto that such damage and injury is caused by the gross negligence or wilful misconduct of United Nations personnel.

. . .

IV. *Local personnel for the Conference*

. . .

(2) The Government agrees to indemnify and save harmless the United Nations from any and all actions, causes of action, claims or other demands arising out of the employment for the United Nations of the personnel referred to in this Section.

. . .

VII. *Privileges and immunities*

(1) The Convention on the Privileges and Immunities of the United Nations, to which India is a party, shall be applicable with respect to the Conference. In particular, the Government will accord to all representatives attending the Conference and to all officials of the United Nations connected with the Conference the privileges and immunities set forth in articles IV and V of the said Convention.

(2) Representatives of States non-members of the United Nations, but members of UNCTAD, shall enjoy the same privileges and immunities as are accorded to representatives of States Members of the Organization.

(3) Representatives of the specialized agencies and other inter-governmental organizations invited to the Conference shall enjoy the privileges and immunities provided in the Convention on the Privileges and Immunities of the Specialized Agencies.

(4) Local personnel provided by the Government under article IV (1) of this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them within the Conference premises in their official capacity in connexion with the Conference.

[15] Came into force on the date of signature.

(5) The buildings and areas referred to in section I shall be deemed to constitute United Nations premises and access thereto shall be subject to the authority and control of the United Nations.

(6) The Government shall ensure that no impediment is imposed on transit to and from the Conference of the following categories of persons attending the Conference: representatives of Governments and their immediate families; representatives of specialized agencies and inter-governmental organizations and their immediate families; officials and experts of the United Nations and their immediate families; observers of non-governmental organizations having consultative status with UNCTAD and with the Economic and Social Council of the United Nations; representatives of the Press or of radio, television, film or other information agencies accredited by the United Nations upon consultation with the Government; and other persons officially invited to the Conference by the United Nations. Any visa required for such persons shall be granted promptly and without charge.

(7) The Government shall allow the importation, duty free, of all equipment and shall waive import duties and taxes in respect of supplies necessary for the Conference. It shall issue without delay to the United Nations any necessary import and export permits.

(8) The Goverument shall issue to the United Nations an import permit for the supplies needed by the United Nations for official requirements and entertainment schedule of the Conference.

(*l*) Agreement between the United Nations Children's Fund and Chile regulating conditions for the operation, in Chile, of the United Nations Children's Fund Regional Office for the Americas. [16] Signed at Santiago on 30 November 1965

WHEREAS the Government of Chile has invited the United Nations Children's Fund to establish its Regional Office for the Americas in Santiago, Chile,

WHEREAS the United Nations Children's Fund has agreed to accept the invitation made by the Government of Chile,

NOW, THEREFORE, the Government of Chile and the United Nations Children's Fund have entered into this Agreement in a spirit of friendly co-operation.

Article I

Definitions

In this Agreement:

(*a*) The expression "The Government" means the Government of the Republic of Chile;

(*b*) The expression "UNICEF" means the United Nations Children's Fund;

(*c*) The expression "competent Chilean authorities" means national or other authorities of the Republic of Chile, in accordance with Chilean law;

(*d*) The expression "Executive Director" means the Executive Director of the United Nations Children's Fund;

(*e*) The expression "UNICEF officials" means the permanent members of the UNICEF international staff employed by UNICEF at the Regional Office for the Americas;

[16] Came into force on 5 June 1967.

(*f*) The expression "UNICEF Regional Headquarters" means the premises occupied by the Regional Office for the Americas;

(*g*) The expression "property" as used in this Agreement means all property, including funds and assets, belonging to UNICEF or held or administered by UNICEF in furtherance of its constitutional functions, and, in general, all income of UNICEF.

Article II

Co-operation on the part of UNICEF and continuation of Agreements in force

UNICEF shall continue to co-operate in child health and welfare programmes operated by the Government in accordance with the provisions of the Agreement signed between the Government and UNICEF on 3 March 1950. In so far as they have not been modified by this Agreement, the provisions of the above-mentioned Agreement and those of the Additional Protocol to it, signed on 11 June 1956, shall remain in force.

Article III

Immunity from legal process

1. The Government recognizes the immunity from legal process of UNICEF Regional Headquarters, which shall be under the authority and administration of UNICEF, as provided in this Agreement.

2. The UNICEF Regional Headquarters shall be inviolable.

3. Without prejudice to the provisions of article VII, UNICEF undertakes not to permit its Headquarters to be used as a refuge by persons who are avoiding arrest under any law of the Republic of Chile or who are required by the Government, or who are endeavouring to avoid service of legal process or a judicial proceeding.

Article IV

Communications

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government or organization, including foreign diplomatic missions in Chile.

2. UNICEF shall be entitled, for its official purpose, to use the State Railways under the same conditions as may be granted to resident diplomatic missions.

3. No censorship shall be applied to the official correspondence or other communications of UNICEF. Such immunity shall extend to printed matter, photographs, slides, films and sound recordings, this list being subject to amplification by mutual agreement. UNICEF shall have the right to use codes and to dispatch and receive correspondence either by courier or in sealed pouches. Nothing in this section may be construed to preclude the adoption of appropriate security measures to be determined by agreement between the Government and UNICEF.

Article V

UNICEF property and taxation

1. UNICEF and its property, wherever situated and by whomsoever held, shall enjoy immunity from legal process, except in so far as in any particular case UNICEF shall have expressly waived such immunity. It is, however, understood that no waiver of immunity shall extend to any enforcement measure.

2. The property and assets of UNICEF, wherever situated and by whomsoever held, shall be immune from search, seizure, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of UNICEF, and in general all documents belonging to or held by it, shall be inviolable.

4. The assets, income and other property of UNICEF shall be exempt:

(*a*) From any form of direct taxation; it is understood, however, that UNICEF will not claim exemption from taxes which are in fact no more than charges for public utility services;

(*b*) From customs duties and import prohibitions and restrictions on articles imported by UNICEF for its official use; it is understood, however, that articles imported under such exemption will not be sold within the country, except under conditions to be agreed upon between the Government and UNICEF;

(*c*) From customs duties and prohibitions and restrictions in respect of the import and export of its publications.

Article VI

Financial and exchange facilities

1. UNICEF shall not be subject to any financial controls, regulations or moratoria, and may freely:

(*a*) Acquire negotiable currencies from authorized commercial agencies, hold them and use them; operate foreign currency accounts, and acquire through authorized institutions, hold and use funds, securities and gold;

(*b*) Transfer funds, securities, foreign currencies and gold to or from the Republic of Chile, to or from any other country, or within the Republic of Chile itself.

2. In exercising its rights under this section, UNICEF shall pay due regard to any representations made by the Government and shall give effect to such representations so far as this is possible without detriment to the interests of UNICEF.

Article VII

UNICEF officials

1. Within the territory of the Republic of Chile, UNICEF officials shall enjoy the following privileges and immunities:

(*a*) Immunity from personal arrest or detention;

(*b*) Immunity from seizure of their personal and official baggage;

(*c*) Immunity from legal process of any kind in respect of words spoken or written and of all acts performed by them in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of UNICEF;

(*d*) Exemption from any form of direct taxation on salaries, remuneration and allowances paid by UNICEF;

(*e*) Exemption for officials who are not of Chilean nationality from any form of direct taxation on income derived from sources outside the Republic of Chile;

(*f*) Exemption for themselves, their spouses and relatives dependent on them, from registration as aliens and from immigration restrictions;

(*g*) Freedom for officials who are not of Chilean nationality to maintain, within the Republic of Chile or elsewhere, foreign securities, foreign currency accounts, and

movable or immovable property; and, on termination of their employment by UNICEF, the right to take their funds out of the Republic of Chile, without any restrictions or limitations, in the currencies and in the amounts brought by them into the Republic of Chile through authorized channels;

(*h*) The same repatriation facilities and the same rights to protection by the Chilean authorities for themselves, their families and dependents as are accorded to members of diplomatic missions in times of international tension.

(*i*) UNICEF officials shall have the right to import, free of customs duties and other import levies, prohibitions and restrictions, their furniture and effects, including one motor car, on first taking up their post in the Republic of Chile. The general regulations for the resident diplomatic corps shall apply to the transfer of each motor car.

2. All officials of UNICEF shall be provided with a special identity card certifying that they are UNICEF officials enjoying the privileges and immunities set forth in this Agreement.

3. In so far as the provisions of the Constitution permit, the Government shall accord to the Regional Director and other permanent senior international officials of UNICEF, recognized as such by the Ministry of Foreign Affairs, the diplomatic privileges and immunities granted to the Executive Secretary and permanent senior international staff of the Economic Commission for Latin America and Directors of other Regional Offices of the United Nations established in Chile. For this purpose, the said permanent senior international officials of UNICEF shall be assigned by the Ministry of Foreign Affairs to the appropriate diplomatic categories and shall enjoy the customs exemptions specified in section 1901 of the Customs Tariff.

4. The privileges and immunities accorded under this Agreement are granted in the interests of UNICEF and not for the personal benefit of the individuals concerned. The Executive Director shall waive the immunity of any official in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of UNICEF.

5. UNICEF and its officials shall co-operate at all times with the Chilean authorities to facilitate the proper administration of justice, ensure the observance of police regulations and prevent the occurrence of any abuse in the exercise of the privileges and immunities conferred by this Agreement.

Article VIII

General provisions

1. The Executive Director shall take every precaution to prevent any abuse in the exercise of the privileges and immunities conferred by this Agreement and for this purpose shall establish such regulations as he may deem necessary and expedient for officials of UNICEF.

2. Should the Government consider that an abuse has occurred in the exercise of the privileges and immunities conferred by this Agreement, the Executive Director shall, at the request of the Government, consult with the appropriate Chilean authorities to determine whether such an abuse has occurred. If such consultations fail to achieve results satisfactory to the Executive Director and the Government, the matter shall be settled in accordance with the procedure laid down in article VIII, section 30, of the Convention on the Privileges and Immunities of the United Nations.

Article IX

1. This Agreement shall enter into force the day on which UNICEF receives from the Government written notification to the effect that the Agreement has obtained legislative approval in accordance with the provisions of the Chilean Constitution. Without prejudice to the foregoing, all parts of the Agreement which may be put into effect by virtue of the legal powers of the President of the Republic of Chile shall be applicable from the date on which the Agreement is signed.

2. Consultations with respect to the modification of this Agreement may be entered into at the request of the Government or of UNICEF. Any such modification shall be by mutual consent.

3. This Agreement shall be interpreted in the light of its primary purpose, which is to enable UNICEF to discharge its responsibilities fully and efficiently and to attain its objective in Latin America.

4. Wherever this Agreement imposes obligations on the appropriate Chilean authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

5. This Agreement shall cease to be in force six months after either of the Contracting Parties shall have given notice in writing to the other of its decision to terminate the Agreement, except as regards those provisions in this Agreement and the Agreement referred to in article II which may apply to the normal cessation of the activities of UNICEF in Chile and the disposal of its property in Chile.

IN WITNESS WHEREOF

The undersigned, duly appointed representatives of the Government and UNICEF, respectively, have on behalf of the Parties signed this Agreement, in duplicate, in the Spanish language, both texts being equally authentic, at Santiago on 30 November 1965.

For the Government of Chile

Gabriel VALDES
Minister for Foreign Affairs

For the United Nations Children's Fund

Henri R. LABOUISSE
Executive Director

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF

Article VI

Claims against UNICEF

[See *Juridical Yearbook*, 1965, pp. 31 and 32]

Article VII

Privileges and immunities

[See *Juridical Yearbook*, 1965, p. 32]

(*a*) Agreements between UNICEF and the Governments of Zambia and Australia concerning the activities of UNICEF.[17] Signed respectively at Lusaka on 24 January 1967 and at Kampala on 2 February 1967, and at New York on 21 December 1967

These agreements contain articles similar to articles VI and VII of the revised model agreement.

(*b*) Agreement between UNICEF and Brazil concerning the activities of UNICEF in Brazil.[18] Signed at New York on 28 March 1966

. . .

Article VI

Claims against UNICEF

The Government shall be responsible for dealing with any claims which may be brought by third parties against UNICEF or its experts, agents or employees and shall hold harmless UNICEF and its experts, agents and employees in case of any claims or liabilities resulting from the execution of Plans of Operations made pursuant to this Agreement, except where it is agreed by the Government and UNICEF that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents or employees. This article shall not apply with respect to any claim against UNICEF for injuries incurred by a staff member of UNICEF.

Article VII

Privileges and immunities

[Similar to article VII of the revised model agreement]

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4. AGREEMENTS RELATING TO TECHNICAL ASSISTANCE: MODEL REVISED STANDARD AGREEMENT CONCERNING TECHNICAL ASSISTANCE

Article I

Furnishing of Technical Assistance

. . .

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organizations and their experts, agents and employees and shall hold harmless such Organizations and their experts, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government, the Administrator of the United Nations Development Programme, and the Organizations concerned that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents or employees.

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[17] Came into force respectively on 2 February 1967 and 21 December 1967.

[18] Came into force on 23 October 1967.

Article V

Facilities, privileges and immunities

[See *Juridical Yearbook*, 1963, p. 27]

(*a*) Agreement between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Government of the Netherlands concerning technical assistance to Surinam and the Netherlands Antilles.[19] Signed at New York on 19 April 1967.

This agreement contains articles similar to articles I (6) and V of the model revised standard agreement.

(*b*) Revised standard agreement between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, UPU and IMCO, and the Government of Botswana.[20] Signed at Gaberones on 12 October 1967

This agreement contains articles similar to articles I (6) and V of the model revised standard agreement.

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5. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME (SPECIAL FUND): MODEL REVISED AGREEMENT CONCERNING ASSISTANCE FROM THE UNITED NATIONS DEVELOPMENT PROGRAMME (SPECIAL FUND)

Article VIII

Facilities, privileges and immunities

[See *Juridical Yearbook*, 1963, p. 31]

Article X

General provisions

. . .

4. . . . [See *Juridical Yearbook*, 1963, p. 32]

(*a*) Agreement between the United Nations Development Programme (Special Fund) and the Government of Australia concerning assistance from the Special Fund sector of the United Nations Development Programme for the Territory of Papua and the Trust Territory of New Guinea.[21] Signed at New York on 6 February 1967

This agreement contains articles similar in substance to articles VIII and X (4) of the model revised agreement and is accompanied by the following exchange of letters:

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[19] Applied provisionally from the date of signature.

[20] Came into force on the date of signature.

[21] Came into force on 6 February 1967.

I

Letter from the Permanent Representative of Australia to the United Nations

6 February 1967

Sir,

I have the honour to refer to the Agreement signed today between the Government of Australia and the United Nations Development Programme for the provision of assistance from the Special Fund sector of the United Nations Development Programme for the Territory of Papua and the Trust Territory of New Guinea. In this connection, I should like to convey to you the following observations of the Government of Australia concerning this Agreement:

. . .

(*c*) It will not be possible for the Government to give full effect to article IV, section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies, which requires each State party to the Convention to grant specialized agencies, in its territory, treatment not less favourable than that accorded by the Government of that State to any other Government in the matter of priorities, rates and taxes on telecommunications.

(*d*) With regard to subparagraphs (*e*) and (*f*) of paragraph 4 of article VIII of the Agreement, the Government understands that these subparagraphs will not oblige it to permit the importation into the Territories of articles whose importation is prohibited or restricted by laws and regulations which concern public security, health or morality or which are designed to prevent the introduction into Australia and its territories of plant or animal diseases. With regard to paragraph 2 of article VIII, the Government understands that each Specialized Agency acting as an Executing Agency will, before importing into the Territories any goods the importation of which is ordinarily prohibited or restricted by the laws in force in the Territories, consult with the Government and give sympathetic consideration to representations made by the Government. These understandings do not affect such obligations as have been assumed by the Government of Australia with respect to the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies.

. . .

If the foregoing observations are acceptable to the United Nations Development Programme, I have the honour to suggest that the present letter, together with your reply in that sense, shall be regarded as placing on record the positions of the Government of Australia and of the United Nations Development Programme on this matter.

Accept, Sir, the assurance of my highest consideration.

Patrick SHAW
Permanent Representative of Australia

Mr. Paul G. HOFFMAN
Administrator
United Nations Development Programme

II

6 February 1967

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I]

The United Nations Development Programme takes note of the observations expressed by your Government as set out in the letter quoted above, and agrees that your letter, together with this reply, shall be regarded as placing on record the positions of the Government of Australia and of the United Nations Development Programme on this matter.

Accept, Sir, the assurance of my highest consideration.

Paul G. HOFFMAN
Administrator

His Excellency Mr. Patrick SHAW
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Australia
to the United Nations

(*b*) Agreements between the United Nations Development Programme (Special Fund) and the Governments of Hungary, Botswana and Czechoslovakia concerning assistance from the United Nations Development Programme (Special Fund).[22] Signed respectively at Geneva on 28 April 1967, at Gaberones on 12 October 1967 and at Geneva on 13 July 1967

These agreements contain articles similar to articles VIII and X (4) of the model revised agreement.

(*c*) Exchange of letters constituting an agreement between the United Nations Development Programme (Special Fund), the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Government of Indonesia by which the Agreement between the United Nations Special Fund and the Government of Indonesia concerning assistance from the Special Fund, signed at Djakarta on 7 October 1960 and the Revised Basic Agreement for the provision of technical assistance between the Organizations members of the United Nations Technical Assistance Board and the Government of Indonesia, signed at Djakarta on 29 October 1954, are deemed revived and applicable to activities of the United Nations Development Programme in Indonesia subject, as regards the second of these agreements, to certain amendments thereto.[23] New York, 1 November 1966, and Djakarta, 17 November 1966 and 25 January 1967

By this exchange of letters, the ITU, WMO, IAEA, UPU and IMCO have been added to the list of Organizations parties to the Revised Basic Agreement for the provision of technical assistance and article I (6) of the said Agreement has been brought into line with article I (6) of the model revised agreement.

6. AGREEMENTS RELATING TO OPERATIONAL ASSISTANCE: STANDARD AGREEMENT ON OPERATIONAL ASSISTANCE[24]

Article II

Functions of the Officers

. . .

3. [See *Juridical Yearbook*, 1965, p. 37]

[22] Came into force on the respective dates of signature.

[23] Came into force on 17 November 1966.

[24] United Nations Development Programme, *Field Manual*, Edition II (1 May 1966), section IX C, p. 36/Rev.1.

Article IV

Obligations of the Government

. . .

5. [See *Juridical Yearbook*, 1965, pp. 37 and 38]

6. [See *Juridical Yearbook*, 1965, p. 38]

. . .

(*a*) Agreement on operational assistance between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Government of Uganda.[25] Signed at Kampala on 27 February 1967

This agreement contains articles similar to articles II (3) and IV (5) and (6) of the standard agreement.

(*b*) Standard agreements on operational assistance between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and the Governments of Costa Rica, Ceylon, Honduras, Botswana and Ivory Coast.[26] Signed respectively at San José on 13 April 1967, at Colombo on 10 June 1967, and Tegucigalpa on 21 June 1967, at Gaberones on 12 October 1967 and at Abidjan on 27 October 1967

These agreements contain articles similar to articles II (3) and IV (5) and (6) of the standard agreement.

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7. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN THE UNITED NATIONS AND ITALY RELATING TO THE SETTLEMENT OF CLAIMS FILED AGAINST THE UNITED NATIONS IN THE CONGO BY ITALIAN NATIONALS.[27] NEW YORK, 18 JANUARY 1967

I

Letter from the Secretary-General

18 January 1967

Dear Mr. Ambassador,

A number of Italian nationals have lodged with the United Nations claims for damage to persons and property arising from the operations of the United Nations Force in the Congo, particularly those which took place in Katanga. The claims in question have been examined by United Nations officials assigned to assemble all the information necessary for establishing the faces submitted by the claimants or their beneficiaries and any other available information.

The United Nations has agreed that the claims of Italian nationals who may have suffered damage as a result of harmful acts committed by ONUC personnel, not arising from military necessity, should be dealt with in an equitable matter.

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[25] Came into force on the date of signature.

[26] Came into force on the respective dates of signature.

[27] Came into force on 18 January 1967.

It has stated that it would not evade responsibility where it was established that United Nations agents had in fact caused injustifiable damage to innocent parties.

It is pointed out that, under these principles, the Organization does not assume liability for damage to persons or property, which resulted solely from military operations or which was caused by third parties; cases based on such claims are therefore excluded from the proposed compensation.

Consultations have taken place with the Italian Government. The examination of the claims having now been completed, the United Nations shall, without prejudice to its privileges and immunities, pay to the Italian Government the amount of one hundred fifty thousand (150.000) United States dollars plus two million five hundred thousand (2,500,000) francs of the Democratic Republic of the Congo in lump-sum and final settlement of all claims arising from the causes mentioned in the first paragraph of this letter.

The distribution to be made of the amount referred to in the preceding paragraph shall be the responsibility of the Italian Government. The United Nations shall supply to the Italian Government all information at its disposal which might be useful in carrying out the distribution of the amount in question, including the list of individual cases in respect of which the United Nations has considered that it must bear financial responsibility, and any other information relevant to the determination of such responsibility.

Acceptance of the above-mentioned payment shall constitute lump-sum and final settlement between Italy and the United Nations of all the claims referred to in this letter. It is understood that this settlement does not affect any claims arising from contractual relationships between the claimants and the Organization or those which are at present still handled by United Nations administrative departments, such as ordinary requisitions.

Accept, dear Mr. Ambassador, the assurances of my highest consideration.

U THANT
Secretary-General

His Excellency Mr. Piero VINCI
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Italy
to the United Nations

II

Letter from the Permanent Representative of Italy to the United Nations

18 January 1967

Dear Mr. Secretary-General,

I have the honour to acknowledge receipt of your letter of 18 January 1967 concerning the settlement of claims lodged with the United Nations by Italian nationals or their beneficiaries who suffered damage arising from the operations carried out by the United Nations Force in the Congo, particularly those which took place in Katanga.

I have the honour to inform you that the Italian Government accepts the lump-sum and final settlement which you have proposed.

Your letter of 18 January 1967 and my reply constitute an agreement between Italy and the United Nations which comes into effect on this day.

Accept, Sir, the assurances of my highest consideration.

Piero VINCI
Ambassador

His Excellency U THANT
Secretary-General
of the United Nations

B. Treaty provisions concerning the Legal Status of inter-governmental organizations related to the United Nations

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[28] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1966, the following States acceded to the Convention, or if already parties undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:[29]

State		*Date of receipt of instrument of accession or notification*	*Specialized agencies*
Hungary[30]	Accession	2 August 1967	WHO, ILO, UNESCO, UPU, ITU, WMO
Ireland	Accession	10 May 1967	WHO, ICAO, ILO, FAO, UNESCO, BANK, FUND, UPU, ITU, WMO, IMCO, IFC, IDA
New Zealand	Notification	23 May 1967	FAO-Second revised text of annex II

As of 31 December 1967, sixty-three States were parties to the Convention.

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2. INTERNATIONAL LABOUR ORGANISATION

(*a*) Agreement between the Government of Senegal and the International Labour Organisation concerning the establishment of an office of the Organisation at Dakar.[31] Signed on 9 February 1967

. . .

Article 2

The Government shall grant to the Office of the International Labour Organisation and to the staff of the Organisation appointed to the said Office the privileges and immunities provided for in the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947.

Article 3

The Government of Senegal shall facilitate the entry into and the stay in Senegal of persons invited to go to the Office of the International Labour Organisation for official purposes, and their departure from the country.

. . .

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[28] United Nations, *Treaty Series*, vol. 33, p. 261.

[29] The Convention is in force with regard to each State which deposited an instrument of accession and in respect of specialized agencies indicated therein or in a subsequent notification as from the date of deposit of such instrument or receipt of such notification.

[30] With the following reservation:

"The Hungarian People's Republic accepts sections 24 and 32 of the Convention with the reservation that disputes regarding the interpretation and application of the Convention shall be referred to the International Court of Justice only with the consent of all parties involved in the given dispute.

The Hungarian People's Republic makes a reservation also with regard to the provision in section 32 making the advisory opinion of the Court decisive in certain cases."

[31] Came into force on the date of signature.

Article 5

The Government of Senegal shall grant the Office of the International Labour Organisation and its staff treatment which shall not be less favourable than that granted in general to other inter-governmental or international organizations having a representative at Dakar.

(*b*) Agreement between the Government of the People's Democratic Republic of Algeria and the International Labour Organisation concerning the establishment of an office of the Organisation in Algiers.[32] Signed in Algiers on 6 April 1967

This agreement contains articles similar to articles 2 and 3 of the agreement in (*a*) above.

(*c*) Agreement between the Government of Cameroon and the International Labour Organisation concerning the establishment of an office of the Organisation in Yaoundé.[33] Signed in Yaoundé on 7 May 1967

This agreement contains articles similar to articles 2, 3 and 5 of the agreement in (*a*) above.

(*d*) Agreement between the Government of the Republic of Zambia and the International Labour Organisation concerning the establishment of an office of the Organisation in Lusaka.[34] Signed at Lusaka on 20 December 1967

This agreement contains articles similar to articles 2, 3 and 5 of the agreement in (*a*) above.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Exchange of letters between the Government of the French Republic and UNESCO concerning new methods of application of article 16 of the Agreement between the Government of the French Republic and the United Nations Educational, Scientific and Cultural Organization regarding the Headquarters of UNESCO and the Privileges and Immunities of the Organization on French Territory of 2 July 1954.[35, 36] Paris, 7 and 24 July 1967

I

Paris, 7 July 1967

Mr. Director-General,

I have the honour to refer to the conversations held at the initiative of the French Government between its representatives and those of UNESCO with a view to establishing new methods of application of article 16 of the Agreement between the Government of the

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[32] Came into force on the date of signature.

[33] Came into force on the date of signature.

[34] Came into force on the date of signature.

[35] United Nations, *Treaty Series*, vol. 357, p. 3.

[36] Came into force on 24 July 1967.

French Republic and the United Nations Educational, Scientific and Cultural Organization regarding the Headquarters of UNESCO and the Privileges and Immunities of the Organization on French Territory signed at Paris on 2 July 1954. In the light of the views exchanged at that time, I am proposing the adoption of the following provisions:

1. In application of article 16 of the aforesaid Agreement dated 2 July 1954, the Organization shall be reimbursed for all indirect taxes in respect of activities undertaken officially and which form part of the cost of goods sold and services rendered to it and activities involving movable or immovable property, including building activities.

2. For that purpose, the Organization shall make a request each month to the Ministry of Foreign Affairs (Department of Protocol) for reimbursement of taxes, enclosing the invoices of the suppliers to whom the amounts disbursed the previous month relate and a statement of those invoices.

3. At the request of the Organization, the Ministry for Economic and Financial Affairs shall grant an advance to cover those taxes. The advance shall be subject to equalization each month.

I would be grateful if you would let me know whether the provisions proposed above meet with your approval. If so, this letter and your reply will constitute an agreement which will enter into force on the date of your reply. However, these provisions will also apply to purchases of goods and services or other activities undertaken by the Organization officially prior to that date for which the suppliers have issued invoices with "tax included".

Accept, Mr. Director-General, the assurance of my highest consideration.

Hervé ALPHAND
For the Minister of Foreign Affairs
and by delegation
Ambassador of France, General Secretary

Mr. René MAHEU
Director-General of the United Nations
Educational, Scientific
and Cultural Organization
Paris

II

DG/6/31/2285 24 July 1967

Excellency,

I have the honour to acknowledge receipt of the letter sent to me on your behalf by Ambassador Alphand, General Secretary of the Ministry of Foreign Affairs of the French Republic on 7 July 1967, which reads as follows:

[See letter I]

On behalf of the Organization, I accept the proposals contained in your letter. Consequently, your letter and this reply shall be considered as constituting the new methods of application of article 16 of the Headquarters Agreement dated 2 July 1954.

Accept, Excellency, the assurance of my highest consideration.

René MAHEU
Director-General

His Excellency, the Minister of Foreign Affairs
Ministry of Foreign Affairs
Quai d'Orsay
Paris VII

4. WORLD HEALTH ORGANIZATION

(*a*) Basic agreements between the World Health Organization and the Governments of Malta, Barbados, Cyprus and Lesotho for the provision of technical advisory assistance.[37] Signed respectively at Copenhagen on 18 February 1966 and at Valletta on 10 May 1967, at Barbados on 6 July 1967 and at Washington on 18 July 1967, at Alexandria on 3 August 1967 and at Nicosia on 7 October 1967, and at Brazzaville on 7 November 1967 and at Maseru on 11 December 1967

Article I

Furnishing of technical advisory assistance

. . .

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the Organization that such claims or liabilities arise from the gross negligence or wilful misconduct of such advisers, agents or employees.

. . .

Article V

Facilities, privileges and immunities

1. The Government, in so far as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. This Convention shall also apply to any WHO representative appointed to Malta [to Barbados] [to Cyprus] [to Lesotho] who shall be afforded the treatment provided for under section 21 of the said Convention.

(*b*) Basic agreement between the World Health Organization and the Government of New Zealand for the provision of technical advisory assistance to certain territories for whose international relations New Zealand is responsible.[38] Signed at Manila on 24 April 1967 and at Wellington on 29 August 1967

This agreement contains articles similar to articles I (6) and V cited under (*a*) above, with the omission of the second sentence in article V (2).

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[37] Came into force respectively on 10 May 1967, 18 July 1967, 7 October 1967 and 11 December 1967.

[38] Came into force on 29 August 1967.

5. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement on the Privileges and Immunities of IAEA.[39] Approved by the Board of Governors of the Agency on 1 July 1959

(a) *Deposit of instruments of acceptance*

The following States accepted the Agreement on the Privileges and Immunities of the IAEA in 1967:[40]

State	*Date of deposit of the instrument of acceptance*
Hungary[41]	14 July 1967
Jamaica	5 September 1967
Tunisia	28 December 1967

This brought up to 28 the number of States parties to this Agreement.

(b) *Incorporation of the Agreement by reference in other agreements*

(i) Section 5 of the Agreement between the International Atomic Energy Agency and the Government of the United Arab Republic for assistance by the Agency to the Government in establishing a project for training and medical applications (INFCIRC/96); entered into force on 1 March 1967.

(ii) Article VI, section 8 of the Agreement between the International Atomic Energy Agency and the Government of Iran for assistance by the Agency to Iran in establishing a research reactor project (INFCIRC/97,II); entered into force on 10 May 1967.

(iii) Part V, section 25 of the Agreement between the International Atomic Energy Agency, the Government of the Republic of South Africa and the Government of the United States of America for the application of safeguards (INFCIRC/98); entered into force on 26 July 1967.

(iv) Article VI, section 8 of the Agreement between the International Atomic Energy Agency and the Government of Spain for assistance by the Agency to Spain in establishing a zero energy fast reactor project (INFCIRC/99,II); entered into force on 23 June 1967.

(v) Article IV, section 9 of the Project Agreement between the International Atomic Energy Agency and the Government of the United Mexican States regarding arrangements for the transfer of radiodiagnostic equipment (INFCIRC/101); entered into force on 18 August 1967.

(vi) Paragraph 6 of the Annex to the Agreement between the International Atomic Energy Agency and the Government of the United Mexican States for assistance by the Agency to Mexico in establishing a sub-critical assembly project (INFCIRC/102,II); entered into force on 23 August 1967.

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[39] United Nations, *Treaty Series*, vol. 374, p. 147.

[40] The Agreement comes into force as between the Agency and the accepting States on the date of deposit of instruments of acceptance.

[41] With the following reservation:

"The Hungarian People's Republic accepts sections 26 and 34 of the Agreement with the reservation that disputes regarding the interpretation and application of the Agreement shall be referred to the International Court of Justice only with the consent of all parties involved in the given dispute.

The Hungarian People's Republic makes a reservation also with regard to the provision in section 34 making the advisory opinion of the Court decisive in certain cases."

(vii) Article IV, section 8 of the Project Agreement between the International Atomic Energy Agency and the Government of Israel regarding arrangements for the transfer of irradiation equipment; entered into force on 31 August 1967.

(viii) Article IV, section 9 of the Project Agreement between the International Atomic Energy Agency and the Government of Iraq regarding arrangements for the transfer of radiotherapy equipment (INFCIRC/104); entered into force on 21 September 1967.

(ix) Article IV, section 9 of the Project Agreement between the International Atomic Energy Agency and the Government of the Union of Burma regarding arrangements for the transfer of radiotherapy equipment (INFCIRC/105); entered into force on 11 October 1967.

(x) Article VI, section 8 of the Agreement between the International Atomic Energy Agency and the Government of the Republic of Viet-Nam in connection with a reactor (INFCIRC/106,II); entered into force on 16 October 1967.

(xi) Article III, section 21 of the Agreement between the International Atomic Energy Agency, the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland for the application of Agency safeguards in respect of the bilateral agreement between those Governments for co-operation in the peaceful uses of atomic energy (INFCIRC/107); entered into force on 26 September 1967.

(xii) Article III, section 17 of the Agreement between the International Atomic Energy Agency, the Government of Iran and the Government of the United States of America for the application of safeguards (INFCIRC/108); entered into force on 4 December 1967.

(xiii) Part V, section 23 of the Agreement between the International Atomic Energy Agency, the Government of the United States of America and the Government of the Republic of Indonesia for the application of safeguards (INFCIRC/109); entered into force on 6 December 1967.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

Chapter III

SELECTED DECISIONS, RECOMMENDATIONS AND REPORTS OF A LEGAL CHARACTER BY THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Decisions, recommendations and reports of a legal character by the United Nations

1. EXTRACT FROM A REPORT OF THE SECRETARY-GENERAL ON THE WITHDRAWAL OF THE UNITED NATIONS EMERGENCY FORCE[1]

[Original text: English]
[26 June 1967]

INTRODUCTION

1. This report on the withdrawal of the United Nations Emergency Force (UNEF) is submitted because, as indicated in my statement on 20 June 1967 to the fifth emergency special session of the General Assembly [1527th plenary meeting], important questions have been raised concerning the actions taken on the withdrawal of UNEF. These questions merit careful consideration and comment. It is in the interest of the United Nations, I believe, that this report should be full and frank, in view of the questions involved and the numerous statements that have been made, both public and private, which continue to be very damaging to the United Nations and to its peace-keeping role in particular. Despite the explanations already given in the several reports on the subject which have been submitted to the General Assembly and to the Security Council, misunderstandings and what, I fear, are misrepresentations, persist, in official as well as unofficial circles, publicly and behind the scenes.

2. A report of this kind is not the place to try to explain why there has been so much and such persistent and grossly mistaken judgement about the withdrawal of UNEF. It suffices to say here that the shattering crisis in the Near East inevitably caused intense shock in many capitals and countries of the world, together with deep frustration over the inability to cope with it. It is, of course, not unusual in such situations to seek easy explanations and excuses. When, however, this tactic involves imputing responsibility for the unleashing of major hostilities, it is, and must be, a cause for sober concern. The objective of this report is to establish an authentic, factual record of actions and their causes.

3. The emphasis here, therefore, will be upon facts. The report is intended to be neither a polemic nor an apologia. Its sole purpose is to present a factually accurate picture of what happened and why. It will serve well the interests of the United Nations, as well as of historical integrity, if this presentation of facts can help to dissipate some of the distortions of the record which, in some places, apparently have emanated from panic, emotion and political bias.

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[1] Document A/6730/Add. 3, reproduced from *Official Records of the General Assembly, Fifth Emergency Special Session, Annexes*, agenda item 5.

4. Not only events but dates, and even the time of day, have an important bearing on this exposition. The significant events and actions and their dates and times are therefore set forth below.

16 May 1967

5. *2000 hours GMT (2200 hours, Gaza local time).* A message from General Fawzy, Chief of Staff of the United Arab Republic Armed Forces, was received by the Commander of UNEF, Major-General Rikhye, requesting withdrawal of "all UN troops which install observation posts along our borders" (A/6730, para. 6, sub-para. 3 (*a*)). Brigadier Mokhtar, who handed General Fawzy's letter to the Commander of UNEF, told General Rikhye at the time that he must order the immediate withdrawal of United Nations troops from El Sabha and Sharm el Sheikh on the night of 16 May since United Arab Republic armed forces must gain control of these two places that very night. The UNEF Commander correctly replied that he did not have authority to withdraw his troops from these positions on such an order and could do so only on instructions from the Secretary-General; therefore, he must continue with UNEF operations in Sinai as hitherto. Brigadier Mokhtar told the Commander of UNEF that this might lead to conflict on that night (16 May) between United Arab Republic and UNEF troops, and insisted that the Commander issue orders to UNEF troops to remain confined to their camps at El Sabha and Sharm el Sheikh. General Rikhye replied that he could not comply with this request. He did, of course, inform the contingent commanders concerned of these developments. He also informed United Nations Headquarters that he proposed to continue with UNEF activities as established until he received fresh instructions from the Secretary-General.

6. *2130 hours GMT (1730 hours, New York time).* The Secretary-General received at this time the UNEF Commander's cable informing him of the above-mentioned message from General Fawzy. The UNEF Commander was immediately instructed to await further instructions from the Secretary-General and, pending this later word from him, to "be firm in maintaining UNEF position while being as understanding and as diplomatic as possible in your relations with local United Arab Republic officials".

7. *2245 hours GMT (1845 hours, New York time).* The Permanent Representative of the United Arab Republic visited the Secretary-General at this time at the latter's urgent request. The Secretary-General requested the Permanent Representative to communicate with his Government with the utmost urgency and to transmit to it his views (A/6730, para. 6, sub-para. 3 (*c*)). In particular, the Secretary-General requested the Permanent Representative to obtain his Government's clarification of the situation, pointing out that any request for the withdrawal of UNEF must come directly to the Secretary-General from the Government of the United Arab Republic.

8. *2344 hours GMT.* The UNEF Commander further reported at this time that considerable military activity had been observed in the El Arish area since the afternoon of 16 May 1967.

17 May 1967

9. *0800 hours GMT (0400 hours New York time).* The Commander of UNEF reported then that on the morning of 17 May, thirty soldiers of the Army of the United Arab Republic had occupied El Sabha in Sinai and that United Arab Republic troops were deployed in the immediate vicinity of the UNEF observation post there. Three armoured

cars of the United Arab Republic were located near the Yugoslav UNEF camp at El Sabha and detachments of fifteen soldiers each had taken up positions north and south of the Yugoslav contingent's camp at El Amr. All UNEF observation posts along the armistice demarcation line and the international frontier were manned as usual, but in some places United Arab Republic troops were also at the Line.

10. *1030 hours GMT (0630 hours, New York time).* The Commander of UNEF reported then that troops of the United Arab Republic had occupied the UNEF observation post at El Sabha and that the Yugoslav UNEF camps at El Qusaima and El Sabha were now behind the positions of the army of the United Arab Republic. The Commander of UNEF informed the Chief of the United Arab Republic Liaison Staff of these developments, expressing his serious concern at them. The Chief of the United Arab Republic Liaison Staff agreed to request the immediate evacuation of the observation post at El Sabha by United Arab Republic troops and shortly thereafter reported that orders to this effect had been given by the United Arab Republic military authorities. He requested, however, that to avoid any future misunderstandings, the Yugoslav observation post at El Sabha should be withdrawn immediately to El Qusaima camp. The Commander replied that any such withdrawal would require the authorization of the Secretary-General.

11. *1200 hours GMT (0800 hours, New York time).* The Chief of the United Arab Republic Liaison Staff at this time conveyed to the Commander of UNEF a request from General Mohamed Fawzy, Chief of Staff of the Armed Forces of the United Arab Republic, for the withdrawal of the Yugoslav detachments of UNEF in the Sinai within twenty-four hours. He added that the UNEF Commander might take "forty-eight hours or so" to withdraw the UNEF detachment from Sharm el Sheikh. The Commander of UNEF replied that any such move required instructions from the Secretary-General.

12. *1330 hours GMT.* The Commander of UNEF then reported that a sizable detachment of troops of the United Arab Republic was moving into the UNEF area at El Kuntilla.

13. *2000 hours GMT (1600 hours, New York time).* The Secretary-General at this date held an informal meeting in his office with the representatives of countries providing contingents to UNEF to inform them of the situation as then known. There was an exchange of views. The Secretary-General gave his opinion on how he should and how he intended to proceed, observing that if a formal request for the withdrawal of UNEF were to be made by the Government of the United Arab Republic, the Secretary-General, in his view, would have to comply with it, since the Force was on United Arab Republic territory only with the consent of the Government and could not remain there without it. Two representatives expressed serious doubts about the consequences of agreeing to a peremptory request for the withdrawal of UNEF and raised the questions of consideration of such a request by the General Assembly and an appeal to the United Arab Republic not to request the withdrawal of UNEF. Two other representatives stated the view that the United Arab Republic was entitled to request the removal of UNEF at any moment and that that request would have to be respected regardless of what the General Assembly might have to say in the matter, since the agreement for UNEF's presence had been concluded between the then Secretary-General and the Government of Egypt. A clarification of the situation from the United Arab Republic should therefore be awaited.

14. *2150 hours GMT (1750 hours, New York time).* The Secretary-General at this time saw the Permanent Representative of the United Arab Republic and handed to him an aide-mémoire, the text of which is contained in paragraph 6 of document A/6730. The Secretary-General also gave to the Permanent Representative of the United Arab Republic an aide-mémoire calling to the attention of his Government the "good faith" accord, the text of which is contained in paragraph 7 of document A/6730.

15. *1321 hours GMT (0921 hours, New York time).* The Commander of UNEF reported at this time that his Liaison Officer in Cairo had been informed by an ambassador of one of the countries providing contingents to UNEF that the Foreign Minister of the United Arab Republic had summoned the representatives of nations with troops in UNEF to the Ministry for Foreign Affairs and informed them that UNEF had terminated its tasks in the United Arab Republic and in the Gaza Strip and must depart from the above territory forthwith. This information was confirmed by representatives of some of these countries at the United Nations.

16. Early on 18 May the UNEF sentries proceeding to man the normal observation post at El Sabha in Sinai were prevented from entering the post and from remaining in the area by United Arab Republic soldiers. The sentries were then forced to withdraw. They did not resist by use of force since they had no mandate to do so.

17. *1100 hours GMT.* United Arab Republic soldiers at this time forced Yugoslav UNEF sentries out of their observation post on the international frontier in front of El Kuntilla Camp. One hour later, United Arab Republic officers arrived at the water point and asked UNEF soldiers to withdraw the guard.

18. *1220 hours GMT.* At this hour, United Arab Republic soldiers entered the UNEF observation post on the international frontier in front of El Amr Camp and forced the Yugoslav soldiers to withdraw. Later, two United Arab Republic officers visited El Amr Camp and asked the UNEF platoon to withdraw within fifteen minutes.

19. *1210 hours GMT.* United Arab Republic officers then visited the Yugoslav camp at Sharm el Sheikh and informed the Commanding Officer that they had come to take over the camp and the UNEF observation post at Ras Nasrani, demanding a reply within fifteen minutes. The contingent commander replied that he had no instructions to hand over the positions.

20. *1430 hours GMT.* The UNEF Yugoslav detachment at El Qusaima camp reported that two artillery shells, apparently ranging rounds from the United Arab Republic artillery, had burst between the UNEF Yugoslav camps at El Qusaima and El Sabha.

21. *1030 hours New York time.* The Secretary-General met at this time with the Permanent Representative of Israel who gave his Government's views on the situation, emphasizing that the UNEF withdrawal should not be achieved by a unilateral United Arab Republic request alone and asserting Israel's right to a voice in the matter. The question of stationing UNEF on the Israel side of the Line was raised by the Secretary-General and this was declared by the Permanent Representative of Israel to be entirely unacceptable to his Government.

22. *1600 hours GMT (12 noon New York time).* At this hour the Secretary-General received through the Permanent Representative of the United Arab Republic the following message from Mr. Mahmoud Riad, Minister of Foreign Affairs of the United Arab Republic:

> "The Government of the United Arab Republic has the honour to inform Your Excellency that it has decided to terminate the presence of the United Nations Emergency Force from the territory of the United Arab Republic and Gaza Strip.
>
> "Therefore, I request that the necessary steps be taken for the withdrawal of the Force as soon as possible.
>
> "I avail myself of this opportunity to express to Your Excellency my gratitude and warm regards."

At the same meeting the Permanent Representative of the United Arab Republic informed the Secretary-General of the strong feeling of resentment in Cairo at what was there considered to be attempts to exert pressure and to make UNEF an "occupation force". The Secretary-General expressed deep misgivings about the likely disastrous consequences of the withdrawal of UNEF and indicated his intention to appeal urgently to President Nasser to reconsider the decision. Later in the day, the representative of the United Arab Republic informed the Secretary-General that the Foreign Minister had asked the Permanent Representative by telephone from Cairo to convey to the Secretary-General his urgent advice that the Secretary-General should not make an appeal to President Nasser to reconsider the request for withdrawal of UNEF and that, if he did so, such a request would be sternly rebuffed. The Secretary-General raised the question of a possible visit by him to Cairo and was shortly thereafter informed that such a visit as soon as possible would be welcomed by the Government of the United Arab Republic.

23. *1700 hours New York time.* The Secretary-General met with the UNEF Advisory Committee, set up under the terms of paragraphs 6, 8 and 9 of resolution 1001 (ES-I) of 7 November 1956, and the representatives of three countries not members of the Advisory Committee but providing contingents to UNEF, to inform them of developments and particularly the United Arab Republic's request for UNEF's withdrawal, and to consult them for their views on the situation. At this meeting, one of the views expressed was that the United Arab Republic's demand for the immediate withdrawal of UNEF from United Arab Republic territory was not acceptable and that the ultimate responsibility for the decision to withdraw rested with the United Nations acting through the Security Council or the General Assembly. The holders of this view therefore urged further discussion with the Government of the United Arab Republic as well as with other Governments involved. Another position was that the Secretary-General had no choice but to comply with the request of the Government of the United Arab Republic, one representative stating that the moment the request for the withdrawal of UNEF was known his Government would comply with it and withdraw its contingent. A similar position had been taken in Cairo by another Government providing a contingent. No proposal was made that the Advisory Committee should exercise the right vested in it by General Assembly resolution 1001 (ES-I) to request the convening of the General Assembly to take up the situation arising from the United Arab Republic communication. At the conclusion of the meeting, it was understood that the Secretary-General had no alternative other than to comply with the United Arab Republic's demand, although some representatives felt the Secretary-General should previously clarify with that Government the meaning in its request that withdrawal should take place "as soon as possible". The Secretary-General informed the Advisory Committee that he intended to reply promptly to the United Arab Republic, and to report to the General Assembly and to the Security Council on the action he had taken. It was for the Member States to decide whether the competent organs should or could take up the matter and to pursue it accordingly.

24. After the meeting of the Advisory Committee, at approximately 1900 hours, New York time, on 18 May, the Secretary-General replied to the message from the Minister for Foreign Affairs of the United Arab Republic through that Government's Permanent Representative as follows:

> "I have the honour to acknowledge your letter to me of 18 May conveying the message from the Minister for Foreign Affairs of the United Arab Republic concerning the United Nations Emergency Force. Please be so kind as to transmit to the Foreign Minister the following message in reply:
>
> " 'Your message informing me that your Government no longer consents to the presence of the United Nations Emergency Force on the territory of the United Arab

Republic, that is to say in Sinai, and in the Gaza Strip, and requesting that the necessary steps be taken for its withdrawal as soon as possible, was delivered to me by the Permanent Representative of the United Arab Republic at noon on 18 May.

" 'As I have indicated to your Permanent Representative on 16 May, the United Nations Emergency Force entered Egyptian territory with the consent of your Government and in fact can remain there only so long as that consent continues. In view of the message now received from you, therefore, your Government's request will be complied with and I am proceeding to issue instructions for the necessary arrangements to be put in train without delay for the orderly withdrawal of the Force, its vehicles and equipment and for the disposal of all properties pertaining to it. I am, of course, also bringing this development and my actions and intentions to the attention of the UNEF Advisory Committee and to all Governments providing contingents for the Force. A full report covering this development will be submitted promptly by me to the General Assembly, and I consider it necessary to report also to the Security Council about some aspects of the current situation in the area.

" 'Irrespective of the reasons for the action you have taken, in all frankness, may I advise you that I have serious misgivings about it for, as I have said each year in my annual reports to the General Assembly on UNEF, I believe that this Force has been an important factor in maintaining relative quiet in the area of its deployment during the past ten years and that its withdrawal may have grave implications for peace.

" 'U THANT' "

It is to be noted that the decision notified to the Government of the United Arab Republic in this letter was in compliance with the request to withdraw the Force. It did not, however, signify the actual withdrawal of the Force which, in fact, was to remain in the area for several more weeks.

25. Formal instructions relating to the withdrawal of UNEF were sent to the UNEF Commander by the Secretary-General on the night of 18 May (see annex).

26. Also on the evening of 18 May the Secretary-General submitted his special report to the General Assembly (A/6730).

27. On 19 May the Secretary-General issued his report to the Security Council on recent developments in the Near East (S/7896).

19 May 1967

28. *1130 hours New York time.* The Secretary-General again received the Permanent Representative of Israel who gave him a statement from his Government concerning the withdrawal of UNEF, strongly urging the Secretary-General to avoid condoning any changes in the *status quo* pending the fullest and broadest international consultation.

29. On the afternoon of 22 May, the Secretary-General departed from New York, arriving in Cairo on the afternoon of 23 May. He left Cairo on the afternoon of 25 May, arriving back in New York on 26 May. While *en route* to Cairo during a stop in Paris, the Secretary-General learned that on this day President Nasser had announced his intention to reinstitute the blockade against Israel in the Strait of Tiran.

17 June 1967

30. The withdrawal of UNEF was completed. Details of the actual withdrawal and evacuation of UNEF are given in document A/6730/Add.2.

MAIN POINTS AT ISSUE

31. Comment is called for on some of the main points at issue even prior to the consideration of the background and basis for the stationing of UNEF on United Arab Republic territory.

The causes of the present crisis

32. It has been said rather often in one way or another that the withdrawal of UNEF is a primary cause of the present crisis in the Near East. This is, of course, a superficial and over-simplified approach. As the Secretary-General pointed out in his report of 26 May 1967 to the Security Council, this view "ignores the fact that the underlying basis for this and other crisis situations in the Near East is the continuing Arab-Israel conflict which has been present all along, and of which the crisis situation created by the unexpected request for the withdrawal of the Emergency Force is the latest expression" (S/7906, para. 2).[2] The Secretary-General's report to the Security Council of 19 May 1967 (S/7896) described the various elements of the increasingly dangerous situation in the Near East prior to the decision of the Government of the United Arab Republic to terminate its consent for the presence of UNEF on its territory.

33. The United Nations Emergency Force served for more than ten years as a highly valuable instrument in helping to maintain quiet along the line between Israel and the United Arab Republic. Its withdrawal revealed in all its depth and danger the undiminishing conflict between Israel and her Arab neighbours. The withdrawal also made immediately acute the problem of access for Israel to the Gulf of Aqaba through the Strait of Tiran—a problem which had been dormant for over ten years only because of the presence of UNEF. But the presence of UNEF did not touch the basic problem of the Arab-Israel conflict—it merely isolated, immobilized and covered up certain aspects of that conflict. At any time in the last ten years either of the parties could have reactivated the conflict and if they had been determined to do so UNEF's effectiveness would automatically have disappeared. When, in the context of the whole relationship of Israel with her Arab neighbours, the direct confrontation between Israel and the United Arab Republic was revived after a decade by the decision of the United Arab Republic to move its forces up to the Line, UNEF at once lost all usefulness. In fact, its effectiveness as a buffer and as a presence had already vanished, as can be seen from the chronology given above, even before the request for its withdrawal had been received by the Secretary-General from the Government of the United Arab Republic. In recognizing the extreme seriousness of the situation thus created, its true cause, the continuing Arab-Israel conflict, must also be recognized. It is entirely unrealistic to maintain that that conflict could have been solved, or its consequences prevented, if a greater effort had been made to maintain UNEF's presence in the area against the will of the Government of the United Arab Republic.

The decision on UNEF's withdrawal

34. The decision to withdraw UNEF has been frequently characterized in various quarters as "hasty", "precipitous", and the like, even, indeed, to the extent of suggesting that it took President Nasser by surprise. The question of the withdrawal of UNEF is by no means a new one. In fact, it was the negotiations on this very question with the Government of Egypt which, after the establishment of UNEF by the General Assembly, delayed its arrival while it waited in a staging area at Capodichino airbase, Naples, Italy, for several days in November 1956. The Government of Egypt, understandably, did not

[2] See *Official Records of the Security Council, Twenty-second Year, Supplement for April, May and June 1967.*

wish to give permission for the arrival on its soil of an international force, unless it was assured that its sovereignty would be respected and a request for withdrawal of the Force would be honoured. Over the years, in discussions with representatives of the United Arab Republic, the subject of the continued presence of UNEF has occasionally come up, and it was invariably taken for granted by United Arab Republic representatives that if their Government officially requested the withdrawal of UNEF the request would be honoured by the Secretary-General. There is no record to indicate that this assumption was ever questioned. Thus, although the request for the withdrawal of UNEF came as a surprise, there was nothing new about the question of principle nor about the procedure to be followed by the Secretary-General. It follows that the decision taken by him on 18 May 1967 to comply with the request for the withdrawal of the Force was seen by him as the only reasonable and sound action that could be taken. The actual withdrawal itself, it should be recalled, was to be carried out in an orderly, dignified, deliberate and not precipitate manner over a period of several weeks. The first troops in fact left the area only on 29 May.

The possibility of delay

35. Opinions have also been frequently expressed that the decision to withdraw UNEF should have been delayed pending consultations of various kinds, or that efforts should have been made to resist the United Arab Republic's request for UNEF's withdrawal, or to bring pressure to bear on the Government of the United Arab Republic to reconsider its decision in this matter. In fact, as the chronology given above makes clear, the effectiveness of UNEF, in the light of the movement of United Arab Republic troops up to the Line and into Sharm el Sheikh, had already vanished before the request for withdrawal was received. Furthermore, the Government of the United Arab Republic had made it entirely clear to the Secretary-General that an appeal for reconsideration of the withdrawal decision would encounter a firm rebuff and would be considered as an attempt to impose UNEF as an "army of occupation". Such a reaction, combined with the fact that UNEF positions on the Line had already been effectively taken over by United Arab Republic troops in pursuit of their full right to move up to the Line in their own territory, and a deep anxiety for the security of UNEF personnel should an effort be made to keep UNEF in position after its withdrawal had been requested, were powerful arguments in favour of complying with the United Arab Republic request, even supposing there had not been other overriding reasons for accepting it.

36. It has been said that the decision to withdraw UNEF precipitated other consequences such as the reinstitution of the blockade against Israel in the Strait of Tiran. As can be seen from the chronology, the UNEF positions at Sharm el Sheikh on the Strait of Tiran (manned by thirty-two men in all) were in fact rendered ineffective by United Arab Republic troops before the request for withdrawal was received. It is also pertinent to note that in response to a query from the Secretary-General as to why the United Arab Republic had announced its reinstitution of the blockade in the Strait of Tiran while the Secretary-General was actually *en route* to Cairo on 22 May, President Nasser explained that his Government's decision to resume the blockade had been taken some time before U Thant's departure and it was considered preferable to make the announcement before rather than after the Secretary-General's visit to Cairo.

The question of consultations

37. It has been said also that there was not adequate consultation with the organs of the United Nations concerned or with the Members before the decision was taken to withdraw the Force. The Secretary-General was, and is, firmly of the opinion that the

decision for withdrawal of the Force, on the request of the host Government, rested with the Secretary-General after consultation with the Advisory Committee on UNEF, which is the organ established by the General Assembly for consultation regarding such matters. This was made clear by Secretary-General Hammarskjöld, who took the following position on 25 February 1957 in reply to a question about the withdrawal of the Force from Sharm el Sheikh:

> "An indicated procedure would be for the Secretary-General to inform the Advisory Committee on the United Nations Emergency Force, which would determine whether the matter should be brought to the attention of the Assembly." [3]

The Secretary-General consulted the Advisory Committee before replying to the letter of 18 May 1967 from the United Arab Republic requesting withdrawal. This consultation took place within a few hours after receipt of the United Arab Republic request, and the Advisory Committee was thus quickly informed of the decision which the Secretary-General had in mind to convey in his reply to the Foreign Minister of the United Arab Republic. As indicated in the report to the Security Council of 26 May 1967:

> "The Committee did not move, as it was its right to do under the terms of paragraph 9 of General Assembly resolution 1001 (ES-I), of 7 November 1956, to request the convening of the General Assembly on the situation which had arisen." (S/7906, para. 4).

38. Before consulting the Advisory Committee on UNEF, the Secretary-General had also consulted the Permanent Representatives of the seven countries providing the contingents of UNEF and informed them of his intentions. This, in fact, was more than was formally required of the Secretary-General in the way of consultation.

39. Obviously, many Governments were concerned about the presence and functioning of UNEF and about the general situation in the area, but it would have been physically impossible to consult all of the interested representatives within any reasonable time. This was an emergency situation requiring urgent action. Moreover, it was perfectly clear that such consultations were sure to produce sharply divided counsel, even if they were limited to the permanent members of the Security Council. Such sharply divided advice would have complicated and exacerbated the situation, and, far from relieving the Secretary-General of the responsibility for the decision to be taken, would have made the decision much more difficult to take.

40. It has been said that the final decision on the withdrawal of UNEF should have been taken only after consideration by the General Assembly. This position is not only incorrect but also unrealistic. In resolution 1000 (ES-I), the General Assembly established a United Nations Command for an emergency international force. On the basis of that resolution the Force was quickly recruited and its forward elements flown to the staging area at Naples. Thus, though established, it had to await the permission of the Government of Egypt to enter Egyptian territory. That permission was subsequently given by the Government of Egypt as a result of direct discussions between Secretary-General Hammarskjöld and President Nasser of Egypt. There is no official United Nations document on the basis of which any case could be made that there was any limitation on the authority of the Government of Egypt to rescind that consent at its pleasure, or which would indicate that the United Arab Republic had in any way surrendered its right to ask for and obtain at any time the removal of UNEF from its territory. This point is elaborated later in this report (see paras. 71-80 below).

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[3] *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 66, document A/3563, annex I, B, 2.

41. As a practical matter, there would be little point in any case in taking such an issue to the General Assembly unless there would be reasonable certainty that that body could be expected expeditiously to reach a substantive decision. In the prevailing circumstances, the question could have been validly raised as to what decision other than the withdrawal of UNEF could have been reached by the Assembly once United Arab Republic consent for the continued presence of UNEF was withdrawn.

42. As regards the practical possibility of the Assembly considering the request for UNEF's withdrawal, it is relevant to observe that the next regular session of the General Assembly was some four months off at the time the withdrawal request was made. The special session of the General Assembly which was meeting at the time could have considered the question, according to rule 19 of the Assembly's rules of procedure, only if two thirds or eighty-two members voted for the inclusion of the item in the agenda. It is questionable, to say the least, whether the necessary support could have been mustered for such a controversial item. There could have been no emergency special session since the issue was not then before the Security Council, and therefore the condition of lack of unanimity did not exist.

43. As far as consultation with or action by the Security Council was concerned, the Secretary-General reported to the Council on the situation leading up to and created by the withdrawal of UNEF on 19 May 1967 (S/7896). In that report he characterized the situation in the Near East as "extremely menacing". The Council met for the first time after this report on 24 May 1967, but took no action.

44. As had already been stated, the Advisory Committee did not make any move to bring the matter before the General Assembly, and no representative of any Member Government requested a meeting of either the Security Council or the General Assembly immediately following the Secretary-General's two reports (A/6730 and S/7896). In this situation, the Secretary-General himself did not believe that any useful purpose would be served by his seeking a meeting of either organ, nor did he consider that there was any basis for him to do so at that time. Furthermore, the information available to the Secretary-General did not lead him to believe that either the General Assembly or the Security Council would have decided that UNEF should remain on United Arab Republic territory, by force if necessary, despite the request of the Government of the United Arab Republic that it should leave.

Practical factors influencing the decision

45. Since it is still contended in some quarters that the UNEF operation should somehow have continued after the consent of the Government of the United Arab Republic to its presence was withdrawn, it is necessary to consider the factors, quite apart from constitutional and legal considerations, which would have made such a course of action entirely impracticable.

46. The consent and active co-operation of the host country is essential to the effective operation and, indeed, to the very existence, of any United Nations peace-keeping operation of the nature of UNEF. The fact is that UNEF had been deployed on Egyptian and Egyptian-controlled territory for over ten and a half years with the consent and co-operation of the Government of the United Arab Republic. Although it was envisaged in pursuance of General Assembly resolution 1125 (XI) of 2 February 1957 that the Force would be stationed on both sides of the Line, Israel exercised its sovereign right to refuse the stationing of UNEF on its side, and the Force throughout its existence was stationed on the United Arab Republic side of the Line only.

47. In these circumstances, the true basis for UNEF's effectiveness as a buffer and deterrent to infiltration was, throughout its existence, a voluntary undertaking by local United Arab Republic authorities with UNEF, that United Arab Republic troops would respect a defined buffer zone along the entire length of the Line in which only UNEF would operate and from which United Arab Republic troops would be excluded. This undertaking was honoured for more than a decade, and this Egyptian co-operation extended also to Sharm el Sheikh, Ras Nasrani and the Strait of Tiran. This undertaking was honoured although UNEF had no authority to challenge the right of United Arab Republic troops to be present anywhere on their own territory.

48. It may be pointed out in passing that over the years UNEF dealt with numerous infiltrators coming from the Israel as well as from the United Arab Republic side of the Line. It would hardly be logical to take the position that because UNEF has successfully maintained quiet along the Line for more than ten years, owing in large measure to the co-operation of the United Arab Republic authorities, that Government should then be told that it could not unilaterally seek the removal of the Force and thus in effect be penalized for the long co-operation with the international community it had extended in the interest of peace.

49. There are other practical factors relating to the above-mentioned arrangement which are highly relevant to the withdrawal of UNEF. First, once the United Arab Republic troops moved up to the Line to place themselves in direct confrontation with the military forces of Israel, UNEF had, in fact, no further useful function. Secondly, if the Force was no longer welcome, it could not as a practical matter remain in the United Arab Republic, since the friction which would almost inevitably have arisen with that Government, its armed forces and with the local population would have made the situation of the Force both humilitating and untenable. It would even have been impossible to supply it. UNEF clearly had no mandate to try to stop United Arab Republic troops from moving freely about on their own territory. This was a peace-keeping force, not an enforcement action. Its effectiveness was based entirely on voluntary co-operation.

50. Quite apart from its position in the United Arab Republic, the request of that Government for UNEF's withdrawal automatically set off a disintegration of the Force, since two of the Governments providing contingents quickly let the Secretary-General know that their contingents would be withdrawn, and there can be little doubt that other such notifications would not have been slow in coming if friction had been generated through an unwillingness to comply with the request for withdrawal.

51. For all the foregoing reasons, the operation, and even the continued existence of UNEF on United Arab Republic territory, after the withdrawal of United Arab Republic consent, would have been impossible, and any attempt to maintain the Force there would without question have had disastrous consequences.

Legal and constitutional considerations and the question of consent for the stationing of UNEF on United Arab Republic territory

52. Legal and constitutional considerations were, of course, of great importance in determining the Secretary-General's actions in relation to the request of the Government of the United Arab Republic for the withdrawal of UNEF. Here again, a chronology of the relevant actions in 1956 and 1957 may be helpful.

53. *4 November 1956.* The General Assembly, at its first emergency special session, in resolution 998 (ES-I), requested "the Secretary-General to submit to it within forty-eight hours a plan for the setting up, with the consent of the nations concerned, of an emergency international United Nations Force to secure and supervise the cessation of hostilities . . .".

54. *5 November 1956.* The General Assembly, in its resolution 1000 (ES-I), established a United Nations Command for an emergency international Force, and, *inter alia*, invited the Secretary-General "to take such administrative measures as may be necessary for the prompt execution of the actions envisaged in the present resolution".

55. *7 November 1956.* The General Assembly, by its resolution 1001 (ES-I), *inter alia*, approved the guiding principles for the organization and functioning of the emergency international United Nations Force and authorized the Secretary-General "to take all other necessary administrative and executive action".

56. *10 November 1956.* Arrival of advance elements of UNEF at staging area in Naples.

57. *8-12 November 1956.* Negotiations between Secretary-General Hammarskjöld and the Government of Egypt on entry of UNEF into Egypt.

58. *12 November 1956.* Agreement on UNEF entry into Egypt announced and then postponed, pending clarification, until 14 November.

59. *15 November 1956.* Arrival of advance elements of UNEF in Abu Suweir, Egypt.

60. *16-18 November 1956.* Negotiations between Secretary-General Hammarskjöld and President Nasser in Cairo on the presence and functioning of UNEF in Egypt and co-operation with Egyptian authorities, and conclusion of an "aide-mémoire on the basis for the presence and functioning of the United Nations Emergency Force in Egypt" (the so-called "good faith accord"). [4]

61. *24 January 1957.* The Secretary-General, in a report to the General Assembly, [5] suggested that the Force should have units stationed on both sides of the armistice demarcation line and that certain measures should be taken in relation to Sharm el Sheikh. On *2 February 1957*, the General Assembly, by its resolution 1125 (XI), noted with appreciation the Secretary-General's report and considered that

> "after full withdrawal of Israel from the Sharm el Sheikh and Gaza areas, the scrupulous maintenance of the Armistice Agreement requires the placing of the United Nations Emergency Force on the Egyptian-Israel armistice demarcation line and the implementation of other measures as proposed in the Secretary-General's report, with due regard to the considerations set out therein with a view to assist in achieving situations conducive to the maintenance of peaceful conditions in the area".

62. *7 March 1957.* Arrival of UNEF in Gaza.

63. *8 March 1957.* Arrival of UNEF elements at Sharm el Sheikh.

64. In general terms the consent of the host country to the presence and operation of the United Nations peace-keeping machinery is a basic prerequisite of all United Nations peace-keeping operations. The question has been raised whether the United Arab Republic had the right to request unilaterally the withdrawal "as soon as possible" of UNEF from its territory or whether there were limitations on its rights in this respect. An examination of the records of the first emergency special session and the eleventh session of the General Assembly is relevant to this question.

65. It is clear that the General Assembly and the Secretary-General from the very beginning recognized, and in fact emphasized, the need for Egyptian consent in order that UNEF be stationed or operate on Egyptian territory. Thus, the initial resolution 998

[4] *Ibid.*, document A/3375, annex.

[5] *Ibid.*, document A/3512.

(ES-I) of 4 November 1956 requested the Secretary-General to submit a plan for the setting up of an emergency force, "with the consent of the nations concerned". The "nations concerned" obviously included Egypt (now the United Arab Republic), the three countries (France, Israel and the United Kingdom) whose armies were on Egyptian soil and the States contributing contingents to the Force.

66. The Secretary-General, in his report to the General Assembly of 6 November 1956, stated, *inter alia*:

> "Functioning, as it would, on the basis of a decision reached under the terms of resolution 337 (V), 'Uniting for peace', the Force, if established, would be limited in its operations to the extent that consent of the parties concerned is required under generally recognized international law. While the General Assembly is enabled to *establish* the Force with the consent of those parties which contribute units to the Force, it could not request the Force to be *stationed* or *operate* on the territory of a given country without the consent of the Government of that country." [6]

67. He noted that the foregoing did not exclude the possibility that the Security Council could use such a Force within the wider margins provided under Chapter VII of the United Nations Charter. He pointed out, however, that it would not be necessary to elaborate this point further, since no use of the Force under Chapter VII, with the rights in relation to Member States that this would entail, had been envisaged.

68. The General Assembly, in its resolution 1001 (ES-I) of 7 November 1956, expressed its approval of the guiding principles for the organization and functioning of the emergency international United Nations Force as expounded in paragraphs 6 to 9 of the Secretary-General's report. This included the principle of consent embodied in paragraph 9.

69. The need for Egypt's consent was also stated as a condition or "understanding" by some of the States offering to contribute contingents to the Force.

70. It was thus a basic legal principle arising from the nature of the Force, and clearly understood by all concerned, that the consent of Egypt was a prerequisite to the stationing of UNEF on Egyptian territory, and it was a practical necessity as well in acquiring contingents for the Force.

The "good faith" aide-mémoire of 20 November 1956

71. There remains to be examined whether any commitments were made by Egypt which would limit its pre-existing right to withdraw its consent at any time that it chose to do so. The only basis for asserting such limitation could be the so-called "good faith" aide-mémoire which was set out as an annex to a report of the Secretary-General submitted to the General Assembly on 20 November 1956. [7]

72. The Secretary-General himself did not offer any interpretation of the "good faith" aide-mémoire to the General Assembly or make any statement questioning the remarks made by the Foreign Minister of Egypt in the General Assembly the following week (see para. 74 below). It would appear, however, that in an exchange of cables he had sought to obtain the express acknowledgement from Egypt that its consent to the presence of the Force would not be withdrawn before the Force had completed its task. Egypt did not accept this interpretation but held to the view that if its consent was no longer maintained the Force should be withdrawn. Subsequent discussions between Mr. Hammarskjöld and President Nasser resulted in the "good faith" aide-mémoire.

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[6] *Ibid., First Emergency Special Session, Annexes*, agenda item 5, document A/3302, para. 9.

[7] *Ibid., Eleventh Session, Annexes*, agenda item 66, document A/3375, annex.

73. An interpretative account of these negotiations made by Mr. Hammarskjöld in a personal and private paper entitled "aide-mémoire", dated 5 August 1957, some eight and a half months after the discussions, has recently been made public by a private person who has a copy. It is understood that Mr. Hammarskjöld often prepared private notes concerning significant events under the heading "aide-mémoire". This memorandum is not in any official record of the United Nations nor is it in any of the official files. The General Assembly, the Advisory Committee on UNEF and the Government of Egypt were not informed of its contents or existence. It is not an official paper and has no standing beyond being a purely private memorandum of unknown purpose or value, in which Secretary-General Hammarskjöld seems to record his own impressions and interpretations of his discussions with President Nasser. This paper, therefore, cannot affect in any way the basis for the presence of UNEF on the soil of the United Arab Republic as set out in the official documents, much less supersede those documents.

Position of Egypt

74. It seems clear that Egypt did not understand the "good faith" aide-mémoire to involve any limitation on its right to withdraw its consent to the continued stationing and operation of UNEF on its territory. The Foreign Minister of Egypt, speaking in the General Assembly on 27 November 1956, one week after the publication of the "good faith" aide-mémoire and three days following its approval by the General Assembly, said:

> "We still believe that the General Assembly resolution of 7 November 1956 still stands, together with its endorsement of the principle that the General Assembly could not request the United Nations Emergency Force to be stationed or to operate on the territory of a given country without the consent of the Government of the country. This is the proper basis on which we believe, together with the overwhelming majority of this Assembly, that the United Nations Emergency Force could be stationed or could operate in Egypt. It is the only basis on which Egypt has given its consent in this respect." [8]

He then added:

> ". . . as must be abundantly clear, this Force has gone to Egypt to help Egypt, with Egypt's consent; and no one here or elsewhere can reasonably or fairly say that a fire brigade, after putting out a fire, would be entitled or expected to claim the right of deciding not to leave the house". [9]

Analysis of the "task" of the Force

75. In the "good faith" aide-mémoire the Government of Egypt declared that, "when exercising its sovereign rights on any matter concerning the presence and functioning of UNEF, it will be guided, in good faith, by its acceptance of General Assembly resolution 1000 (ES-I) of 5 November 1956".

76. The United Nations in turn declared "that the activities of UNEF will be guided, in good faith, by the task established for the Force in the aforementioned resolutions [1000 (ES-I) and 997 (ES-I)]; in particular, the United Nations, understanding this to correspond to the wishes of the Government of Egypt, reaffirms its willingness to maintain UNEF until its task is completed".

77. It must be noted that, while Egypt undertook to be guided in good faith by its acceptance of General Assembly resolution 1000 (ES-I), the United Nations also undertook

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[8] *Ibid., Plenary Meetings*, 597th meeting, para. 48.

[9] *Ibid.*, para. 50.

to be guided in good faith by the task established for the Force in resolutions 1000 (ES-I) and 997 (ES-I). Resolution 1000 (ES-I), to which the declaration of Egypt referred, established a United Nations Command for the Force "to secure and supervise the cessation of hostilities in accordance with all the terms" of resolution 997 (ES-I). It must be recalled that at this time Israel forces had penetrated deeply into Egyptian territory and that forces of France and the United Kingdom were conducting military operations on Egyptian territory. Resolution 997 (ES-I) urged as a matter of priority that all parties agree to an immediate cease-fire, and halt the movement of military forces and arms into the area. It also urged the parties to the Armistice Agreements promptly to withdraw all forces behind the armistice lines, to desist from raids across the armistice lines, and to observe scupulously the provisions of the Armistice Agreements. It further urged that, upon the cease-fire being effective, steps be taken to reopen the Suez Canal and restore secure freedom of navigation.

78. While the terms of resolution 997 (ES-I) cover a considerable area, the emphasis in resolution 1000 (ES-I) is on securing and supervising the cessation of hostilities. Moreover, on 6 November 1956 the Secretary-General, in his second and final report on the plan for an emergency international United Nations Force, noted that "the Assembly intends that the Force should be of a temporary nature, the length of its assignment being determined by the needs arising out of the present conflict". [10] Noting further the terms of resolution 997 (ES-I) he added that "the functions of the United Nations Force would be, when a cease-fire is being established, to enter Egyptian territory with the consent of the Egyptian Government, in order to help maintain quiet during and after the withdrawal of non-Egyptian troops, and to secure compliance with the other terms established in the resolution of 2 November 1956".

79. In a cable delivered to Foreign Minister Fawzi on 9 or 10 November 1956, in reply to a request for clarification as to how long it was contemplated that the Force should stay in the demarcation line area, the Secretary-General stated: "A definite reply is at present impossible but the emergency character of the Force links it to the immediate crisis envisaged in resolution 2 November [997 (ES-I)] and its liquidation." This point was confirmed in a further exchange of cables between the Secretary-General and Mr. Fawzi on 14 November 1956.

80. The Foreign Minister of Egypt, Mr. Fawzi, gave his understanding of the task of the Force in a statement to the General Assembly on 27 November 1956:

> "Our clear understanding—and I am sure it is the clear understanding of the Assembly—is that this Force is in Egypt only in relation to the present attack against Egypt by the United Kingdom, France and Israel, and for the purposes directly connected with the incursion of the invading forces into Egyptian territory. The United Nations Emergency Force is in Egypt, not as an occupation force, not as a replacement for the invaders, not to clear the Canal of obstructions, not to resolve any question or settle any problem, be it in relation to the Suez Canal, to Palestine or to any other matter; it is not there to infringe upon Egyptian sovereignty in any fashion or to any extent, but, on the contrary, to give expression to the determination of the United Nations to put an end to the aggression committed against Egypt and to the presence of the invading forces in Egyptian territory." [11]

81. In letters dated 3 November 1956 addressed to the Secretary-General, the representatives of both France and the United Kingdom had proposed very broad functions for

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[10] *Ibid., First Emergency Special Session, Annexes*, agenda item 5, document A/3302, para. 8.

[11] *Ibid., Eleventh Session, Plenary Meetings*, 597th meeting, para. 49.

UNEF, stating on behalf of their Governments that military action could be stopped if the following conditions were met:

"(*a*) Both the Egyptian and Israel Governments agree to accept a United Nations Force to keep the peace.

"(*b*) The United Nations decides to constitute and maintain such a Force until an Arab-Israel peace settlement is reached and until satisfactory arrangements have been agreed in regard to the Suez Canal, both agreements to be guaranteed by the United Nations.

"(*c*) In the meantime, until the United Nations Force is constituted, both combatants agree to accept forthwith limited detachments of Anglo-French troops to be stationed between the combatants." [12]

These broad functions for the Force were not acceptable to the General Assembly, however, as was pointed out in telegrams dated 4 November 1956 from Secretary-General Dag Hammarskjöld to the Minister for Foreign Affairs of France and the Secretary of State for Foreign Affairs of the United Kingdom. [13]

82. Finally, it is obvious that the task referred to in the "good faith" aide-mémoire could only be the task of the Force as it had been defined in November 1956 when the understanding was concluded. The "good faith" undertaking by the United Nations would preclude it from claiming that the Egyptian agreement was relevant or applicable to functions which the Force was given at a much later date. The stationing of the Force on the armistice demarcation line and at Sharm el Sheikh was only determined in pursuance of General Assembly resolution 1125 (XI) of 2 February 1957. The Secretary-General, in his reports relating to this decision, made it clear that the further consent of Egypt was essential with respect to these new functions. [14] Consequently, the understanding recorded in the "good faith" aide-mémoire of 20 November 1956 could not have been, itself, a commitment with respect to functions only determined in February and March 1957. It is only these later tasks that the Force had been performing during the last ten years—tasks of serving as a buffer and deterring infiltrators which went considerably beyond those of securing and supervising the cessation of hostilities provided in the General Assembly resolutions and referred to in the "good faith" aide-mémoire.

The stationing of UNEF on the armistice demarcation line and at Sharm el Sheikh

83. There remains to examine whether Egypt made further commitments with respect to the stationing of the Force on the armistice demarcation line and at Sharm el Sheikh. Israel, of course, sought to obtain such commitments, particularly with respect to the area around Sharm el Sheikh.

84. For example, in an aide-mémoire of 4 February 1957, [15] the Government of Israel sought clarification as to whether units of the United Nations Emergency Force would be stationed along the western shore of the Gulf of Aqaba in order to act as a restraint against hostile acts, and would remain so deployed until another effective means was agreed upon between the parties concerned for ensuring permanent freedom of navigation and the

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[12] *Ibid.*, *First Emergency Special Session*, *Annexes*, agenda item 5, documents A/3268 and A/3269.

[13] *Ibid.*, document A/3287, annexes 2 and 4.

[14] *Ibid.*, *Eleventh Session*, *Annexes*, agenda item 66, documents A/3512, para. 20, and A/3527, para. 5.

[15] *Ibid.*, document A/3527, annex I.

absence of belligerent acts in the Strait of Tiran and the Gulf of Aqaba. The Secretary-General pointed out that such "clarification" would require "Egyptian consent". He stated:

> "The second of the points in the Israel aide-mémoire requests a 'clarification' which, in view of the position of the General Assembly, could go beyond what was stated in the last report only after negotiation with Egypt. This follows from the statements in the debate in the General Assembly, and the report on which it was based, which make it clear that the stationing of the Force at Sharm el Sheikh, under such terms as those mentioned in the question posed by Israel, would require Egyptian consent." [16]

85. It is clear from the record that Egypt did not give its consent to Israel's proposition. The Secretary-General's report of 8 March 1957 recorded "arrangements for the complete and unconditional withdrawal of Israel in accordance with the decision of the General Assembly." [17] There is no agreement on the part of Egypt to forgo its rights with respect to the granting or withdrawing of its consent to the continued stationing of the Force on its territory. On the contrary, at the 667th plenary meeting of the General Assembly on 4 March 1957, the Foreign Minister of Egypt stated:

> "At our previous meeting I stated that the Assembly was unanimous in expecting full and honest implementation of its resolutions calling for immediate and unconditional withdrawal by Israel. I continue to submit to the Assembly that this position —which is the only position the Assembly can possibly take—remains intact and entire. Nothing said by anyone here or elsewhere could shake this fact or detract from its reality and its validity, nor could it affect the fullness and the lawfulness of Egypt's rights and those of the Arab people of the Gaza Strip." [18]

86. The Foreign Minister of Israel, in her statement at the 666th meeting of the General Assembly, on 1 March 1957, asserted that an assurance had been given that any proposal for the withdrawal of UNEF from the Gulf of Aqaba area would come first to the Advisory Committee on UNEF (see paragraphs 95-98 below).

Question of the stationing of UNEF on both sides of the armistice demarcation line

87. Another point having significance with respect to the undertakings of Egypt is the question of the stationing of UNEF on both sides of the armistice demarcation line. The Secretary-General, in his report of 24 January 1957 to the General Assembly, [19] suggested that the Force should have units stationed also on the Israel side of the armistice demarcation line. In particular, he suggested that units of the Force should at least be stationed in the El Auja demilitarized zone [20] which had been occupied by the armed forces of Israel. He indicated that if El Auja were demilitarized in accordance with the Armistice Agreement and units of UNEF were stationed there, a condition of reciprocity would be the Egyptian assurance that Egyptian forces would not take up positions in the area in contraven-

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[16] *Ibid.*, document A/3527, para. 5.

[17] *Ibid.*, document A/3568, para. 2.

[18] *Ibid.*, *Eleventh Session*, *Plenary Meetings*, 667th meeting, para. 240.

[19] *Ibid.*, *Annexes*, agenda item 66, document A/3512.

[20] Article VIII of the Egyptian-Israel General Armistice Agreement provides, *inter alia*, that an area comprising the village of El Auja and vicinity, as defined in the article, shall be demilitarized and that both Egyptian and Israel armed forces shall be totally excluded therefrom. The article further provides that on the Egyptian side of the frontier, facing the El Auja area no Egyptian defensive positions shall be closer to El Auja than El Qusaima and Abu Aweigila.

tion of the Armistice Agreement.[21] However, Israel forces were never withdrawn from El Auja and UNEF was not accepted at any point on the Israel side of the Line.

88. Following the Secretary-General's report, the General Assembly on 2 February 1957 adopted resolution 1125 (XI), in which it noted the report with appreciation and considered:

> ". . . that, after full withdrawal of Israel from the Sharm el Sheikh and Gaza areas, the scrupulous maintenance of the Armistice Agreement requires the placing of the United Nations Emergency Force on the Egyptian-Israel armistice demarcation line and the implementation of other measures as proposed in the Secretary-General's report, with due regard to the considerations set out therein with a view to assist in achieving situations conducive to the maintenance of peaceful conditions in the area;".

89. On 11 February 1957, the Secretary-General stated in a report to the General Assembly that, in the light of the implication of Israel's question concerning the stationing of UNEF at Sharm el Sheikh (see para. 84 above), he "considered it important . . . to learn whether Israel itself, in principle, consents to a stationing of UNEF units on its territory in implementation of the functions established for the Force in the basic decisions and noted in resolution 1125 (XI) where it was indicated that the Force should be placed 'on the Egyptian-Israel armistice demarcation line' ".[22] No affirmative response was ever received from Israel. In fact, already on 7 November 1956 the Prime Minister of Israel, Mr. Ben-Gurion, in a speech to the Knesset, stated, *inter alia*, "On no account will Israel agree to the stationing of a foreign force, no matter how called, in her territory or in any of the territories occupied by her." In a note to correspondents of 12 April 1957 a "United Nations spokesman" stated:

> "Final arrangements for the United Nations Emergency Force will have to wait for the response of the Government of Israel to the request by the General Assembly that the Force be deployed also on the Israel side of the armistice demarcation line."

90. In a report dated 9 October 1957 to the twelfth session of the General Assembly, the Secretary-General stated:

> "Resolution 1125 (XI) calls for placing the Force 'on the Egyptian-Israel armistice demarcation line', but no stationing of UNEF on the Israel side has occurred to date through lack of consent by Israel."[23]

91. In the light of Israel's persistent refusal to consent to the stationing and operation of UNEF on its side of the Line in spite of General Assembly resolution 1125 (XI) of 2 February 1957 and the efforts of the Secretary-General, it is even less possible to consider that Egypt's "good faith" declaration made in November 1956 could constitute a limitation of its rights with respect to the continued stationing and operation of UNEF on Egyptian territory in accordance with the resolution of 2 February 1957.

92. The representative of Israel stated in the General Assembly, on 23 November 1956:

> "If we were to accept one of the proposals made here—namely, that the Force should separate Egyptian and Israel troops for as long as Egypt thought it convenient and should then be withdrawn on Egypt's unilateral request—we would reach a reduction to absurdity. Egypt would then be in a position to build up, behind the screen of this Force, its full military preparations and, when it felt that those military preparations had reached their desired climax, to dismiss the United Nations Emergency

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[21] *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 66, document A/3512, paras. 15-22.

[22] *Ibid.*, document A/3527, para. 5.

[23] *Ibid., Twelfth Session, Annexes*, agenda item 65, document A/3694, para. 15.

Force and to stand again in close contact and proximity with the territory of Israel. This reduction to absurdity proves how impossible it is to accept in any matter affecting the composition or the functions of the Force the policies of the Egyptian Government as the sole or even the decisive criterion." [24]

93. The answer to this problem which is to be found in resolution 1125 (XI) is not in the form of a binding commitment by Egypt which the record shows was never given, but in the proposal that the Force should be stationed on both sides of the armistice demarcation line. Israel, in the exercise of its sovereign right, did not give its consent to the stationing of UNEF on its territory and Egypt did not forgo its sovereign right to withdraw its consent at any time.

Role of the UNEF Advisory Committee

94. General Assembly resolution 1001 (ES-I) of 7 November 1956, by which the Assembly approved the guiding principles for the organization and functioning of UNEF, established an Advisory Committee on UNEF under the chairmanship of the Secretary-General. The Assembly decided that the Advisory Committee, in the performance of its duties, should be empowered to request, through the usual procedures, the convening of the General Assembly and to report to the Assembly whenever matters arose which, in its opinion, were of such urgency and importance as to require consideration by the General Assembly itself.

95. The memorandum of important points in the discussion between the representative of Israel and the Secretary-General on 25 February 1957 recorded the following question raised by the representative of Israel:

"In connexion with the duration of UNEF's deployment in the Sharm El Sheikh area, would the Secretary-General give notice to the General Assembly of the United Nations before UNEF would be withdrawn from the area, with or without Egyptian insistence, or before the Secretary-General would agree to its withdrawal?" [25]

96. The response of the Secretary-General was recorded as follows:

"On the question of notification to the General Assembly, the Secretary-General wanted to state his view at a later meeting. An indicated procedure would be for the Secretary-General to inform the Advisory Committee on the United Nations Emergency Force, which would determine whether the matter should be brought to the attention of the Assembly." [26]

97. On 1 March 1957 the Foreign Minister of Israel stated at the 666th plenary meeting of the General Assembly:

"My Government has noted the assurance embodied in the Secretary-General's note of 26 February 1957 [A/3563, annex], that any proposal for the withdrawal of the United Nations Emergency Force from the Gulf of Aqaba area would first come to the Advisory Committee on the United Nations Emergency Force, which represents the General Assembly in the implementation of its resolution 997 (ES-I) of 2 November 1956. This procedure will give the General Assembly an opportunity to ensure that no precipitate changes are made which would have the effect of increasing the possibility of belligerent acts." [27]

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[24] *Ibid., Eleventh Session, Plenary Meetings*, 592nd meeting, para. 131.

[25] *Ibid., Annexes*, agenda item 66, document A/3563, annex I, A, 2.

[26] *Ibid.*, annex I, B, 2.

[27] *Ibid., Plenary Meetings*, 666th meeting, para. 8.

98. In fact, the 25 February 1957 memorandum does not go as far as the interpretation given by the Foreign Minister of Israel. In any event, however, it gives no indication of any commitment by Egypt, and so far as the Secretary General is concerned it only indicates that a procedure would be for the Secretary-General to inform the Advisory Committee which would determine whether the matter should be brought to the attention of the General Assembly. This was also the procedure provided in General Assembly resolution 1001 (ES-I). It was, furthermore, the procedure followed by the Secretary-General on the withdrawal of UNEF.

Observations

99. A partial explanation of the misunderstanding about the withdrawal of UNEF is an evident failure to appreciate the essentially fragile nature of the basis for UNEF's operation throughout its existence. UNEF in functioning depended completely on the voluntary co-operation of the host Government. Its basis of existence was the willingness of Governments to provide contingents to serve under an international command and at a minimum of cost to the United Nations. It was a symbolic force, small in size, with only 3,400 men, of whom 1,800 were available to police a line of 295 miles at the time of its withdrawal. It was equipped with light weapons only. It had no mandate of any kind to open fire except in the last resort in self-defence. It had no formal mandate to exercise any authority in the area in which its was stationed. In recent years it experienced an increasingly uncertain basis of financial support, which in turn gave rise to strong annual pressures for reduction in its strength. Its remarkable success for more than a decade, despite these practical weaknesses, may have led to wrong conclusions about its nature, but it has also pointed the way to a unique means of contributing significantly to international peace-keeping.

Annex

Cable containing instructions for the withdrawal of UNEF sent by the Secretary-General to the Commander of UNEF on 18 May 1967 at 2230 hours, New York time

The following instructions are to be put in effect by you as of date and time of their receipt and shall remain operative until and unless new instructions are sent by me.

1. UNEF is being withdrawn because the consent of the Government of the United Arab Republic for its continued deployment on United Arab Republic territory and United Arab Republic-controlled territory has been rescinded.

2. Date of the commencement of the withdrawal of UNEF will be 19 May when the Secretary-General's response to the request for withdrawal will be reveiced in Cairo by the Government of the United Arab Republic, when also the General Assembly will be informed of the action taken and the action will become public knowledge.

3. The withdrawal of UNEF is to be orderly and must be carried out with dignity befitting a Force which has contributed greatly to the maintenance of quiet and peace in the area of its deployment and has earned widespread admiration.

4. The Force does not cease to exist or to lose its status or any of its entitlements, privileges and immunities until all of its elements have departed from the area of its operation.

5. It will be a practical fact that must be reckoned with by the Commander that as of the date of the announcement of its withdrawal the Force will no longer be able to carry out its established functions as a buffer and as a deterrent to infiltration. Its duties, therefore, after 19 May and until all elements have been withdrawn, will be entirely nominal and concerned primarily with devising arrangements and implementation of arrangements for withdrawal and the morale of the personnel.

6. The Force, of course, will remain under the exclusive command of its United Nations Commander and is to take no ordrers from any other source, whether United Arab Republic or national.

7. The Commander, his headquarters staff and the contingent commanders shall take every reasonable precaution to ensure the continuance of good relations with the local authorities and the local population.

8. In this regard, it should be made entirely clear by the Commander to the officers and other ranks in the Force that there is no discredit of the Force in this withdrawal and no humiliation involved for the reason that the Force has operated very successfully and with, on the whole, co-operation from the Government on the territory of an independent sovereign State for over ten years, which is a very long time; and, moreover, the reasons for the termination of the operation are of an overriding political nature, having no relation whatsoever to the performance of the Force in the discharge of its duties.

9. The Commander and subordinate officers must do their utmost to avoid any resort to the use of arms and any clash with the forces of the United Arab Republic or with the local civilian population.

10. A small working team will be sent from Headquarters by the Secretary-General to assist in the arrangements for, and effectuation of, the withdrawal.

11. The Commander shall take all necessary steps to protect United Nations installations, properties and stores during the period of withdrawal.

12. If necessary, a small detail of personnel of the Force or preferably of United Nations security officers will be maintained as long as necessary for the protection of United Nations properties pending their ultimate disposition.

13. UNEF aircraft will continue flights as necessary in connexion with the withdrawal arrangements but observation flights will be discontinued immediately.

14. Elements of the Force now deployed along the Line will be first removed from the Line, the international frontier and the armistice demarcation line, including Sharm el Sheikh to their camps and progressively to central staging.

15. The pace of the withdrawal will of course depend upon the availability of transport by air, sea and ground to Port Said. The priority in withdrawal should of course be personnel and their personal arms and equipment first, followed by contingent stores and equipment.

16. We must proceed on the assumption that UNEF will have the full co-operation of United Arab Republic authorities on all aspects of evacuation, and to this end a request will be made by me to the United Arab Republic Government through their Mission here.

17. As early as possible the Commander of UNEF should prepare and transmit to the Secretary-General a plan and schedule for the evacuation of troops and their equipment.

18. Preparation of the draft of the sections of the annual report by the Secretary-General to the General Assembly should be undertaken and, to the extent possible, completed during the period of the withdrawal.

19. In the interests of the Force itself and the United Nations, every possible measure should be taken to ensure against public comments or comments likely to become public on the withdrawal, the reasons for it and reactions to it.

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2. CONSULTATION WITH THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT: REPORT OF THE SECRETARY-GENERAL[28]

[Original text: English]
[15 September 1967]

1. In its resolution 2184 (XXI) of 12 December 1966 entitled "Question of Territories under Portuguese administration", the General Assembly requested the Secretary-General "to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution".

2. In its resolution 2202 (XXI) of 16 December 1966 entitled "The policies of *apartheid* of the Government of the Republic of South Africa", the General Assembly requested the Secretary-General "to consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with those of the present resolution, and to report to the General Assembly at its twenty-second session".

3. On 15 December 1966 the Secretary-General addressed a letter to the President of the Bank transmitting a copy of Assembly resolution 2184 (XXI) and requesting his views regarding the timing and modalities for the carrying out of the consultations. A copy of Assembly resolution 2202 (XXI) was also transmitted to the Bank by a letter dated 29 December.

4. At a meeting held on 20 December between the Secretary-General and the President of the Bank and after discussions between officials of the Secretariat of the United Nations and the Bank, it was decided that a written exchange of views should take place.

5. By a letter dated 6 March 1967, the Legal Counsel of the United Nations forwarded to the General Counsel of the Bank a memorandum entitled "The International Bank for Reconstruction and Development and implementation of United Nations General Assembly resolutions to withhold assistance of any kind to the Governments of Portugal and South Africa" prepared by the United Nations Secretariat. This memorandum is reproduced as annex I to the present report.

6. By a letter dated 5 May, the General Counsel of the Bank transmitted to the United Nations Secretariat a paper containing comments of the Legal Department of the Bank on the Secretariat memorandum. A relevant extract from the letter of transmittal together with the paper from the Bank is reproduced as annex II to the present report.

7. In a letter dated 20 July to the General Counsel of the Bank, the Legal Counsel of the United Nations replied to the General Counsel's letter of transmittal dated 5 May. The letter from the Legal Counsel of the United Nations is reproduced as annex III.

8. On 18 August 1967 the President of the Bank addressed a letter to the Secretary-General on the matter to which the Secretary-General replied by a letter dated 23 August. These two letters are reproduced as annexes IV and V, respectively, to the present report.

9. The Secretary-General feels that the discussion with the Bank has clarified the respective legal positions of the United Nations and the Bank, and he hopes that the exchange of letters referred to in paragraph 8 above between the President and himself will contribute to closer mutual understanding and co-operation.

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[28] Document A/6825, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 66.

Annexes

Annex I

The International Bank for Reconstruction and Development and implementation of United Nations General Assembly resolutions to withhold assistance of any kind to the Governments of Portugal and South Africa: memorandum by the Secretariat dated 3 March 1967

I. Introduction

1. On 20 December 1966, the President of the International Bank for Reconstruction and Development (IBRD) conferred with the Secretary-General of the United Nations, and they agreed that early consultations should be held between the two organizations regarding the question of the implementation of resolutions of the General Assembly of the United Nations which call for the withholding of assistance of any kind to the Governments of Portugal and South Africa. Subsequently, two meetings were held at which representatives of the Secretary-General and representatives of the President of the Bank agreed on an exchange of written views relating to the powers of and duties of the Bank to give due regard and effect to General Assembly resolutions requesting the Bank to refrain from granting assistance to the Governments of Portugal and South Africa.

2. The present memorandum sets forth the views of the United Nations Secretariat pursuant to the above-mentioned decision. The memorandum commences with a recapitulation of the relevant United Nations resolutions, the steps taken by the United Nations to obtain compliance with them, and the response of the Bank. Thereafter it examines the present position of the Bank in the light of what the United Nations Secretariat considers to be the correct legal interpretation of the relevant instruments.

II. Background to the question

A. *Establishment of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolutions 1514 (XV) of 14 December 1960 and 1654 (XVI) of 27 November 1961)*

3. On 14 December 1960 the General Assembly adopted resolution 1514 (XV) entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 1). This resolution declares, *inter alia*, "colonialism" to be contrary to the United Nations Charter and requires that immediate steps be taken to transfer power to the people in all Trust and Non-Self-Governing Territories. In implementation of this resolution at its next session the General Assembly, on 27 November 1961, adopted resolution 1654 (XVI) entitled "The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples". This resolution established a Special Committee "to examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration, and to report to the General Assembly at its seventeenth session".

In operative paragraph 8 of the same resolution the Assembly requested the "specialized agencies concerned to assist the Special Committee in its work within their respective fields".

B. *Initial contacts with a view to obtaining the assistance of the Bank in the work of the Special Committee*

4. On 15 March 1962 the United Nations Secretariat wrote to the President of IBRD enclosing a copy of General Assembly resolution 1654 (XVI) and drawing the President's attention especially to operative paragraph 8. The Bank acknowledged receipt of this letter "regarding operative paragraph 8 of General Assembly resolution 1654 (XVI)" on 19 March 1962.

5. At the 277th meeting of the Special Committee, on 3 July 1964, the representative of Syria asked the Secretary-General to obtain information on loans made by the Bank to Portugal and in particular "whether or not a representative of the Bank could be invited to enlighten the Committee on this question". On 16 July 1964 the United Nations Secretariat wrote to the President of the Bank and, after referring to what had occurred in the Special Committee, requested the Bank

for its observations on the points raised and inquired as to "the possibility of a representative of the Bank appearing before the Committee in order to provide clarification".

6. The United Nations Secretariat wrote a further letter to the President of the Bank on 17 July 1964, informing him of a decision taken by the Special Committee on 3 July to study the "activities of foreign economic and other interests, which are impeding the implementation of the Declaration on the granting of independence in the Territories under Portuguese administration," and inviting the President of the Bank to comment "as to what assistance you might be able to provide in connexion with this preliminary work". On 28 July 1964 the Bank furnished the information sought by the Special Committee on loans to Portugal and, in response to the United Nations letter of 17 July 1964, stated that it had no information which would be of assistance in the study referred to.

7. On 10 August 1964, as the Bank had not commented on the invitation extended in the United Nations letter of 16 July 1964 to send a representative to appear before the Special Committee, the United Nations Secretariat addressed a further letter to the Bank informing it of the date on which the Special Committee would resume consideration of the Territories under Portuguese administration and asking the Bank to comment on the invitation extended to it. The Bank replied, on 14 August 1964, stating that it had not planned to send a representative to appear before the Special Committee, but added, "if there are any development which call for further information or clarification on the report of the Bank, please let us know, and we shall be pleased to co-operate with the Committee in any way that we can".

8. On 10 June 1965 the Special Committee adopted a resolution containing an appeal addressed to the specialized agencies, including IBRD. In this resolution, entitled "Territories under Portuguese administration" (A/AC.109/124 and Corr.1), [29] the Committee, after condemning the colonial policy of Portugal and its refusal to carry out the resolutions of the General Assembly, the Security Council and the Special Committee,

> "6. *Appeals* to all the specialized agencies of the United Nations and in particular the International Bank for Reconstruction and Development and the International Monetary Fund, and requests them to refrain from granting Portugal any financial, economic or technical assistance so long as the Portuguese Government fails to renounce its colonial policy, which constitues a flagrant violation of the provisions of the Charter of the United Nations".

The text of this resolution was forwarded to the Bank on 17 June 1965 by the United Nations Secretariat, the Bank's attention being drawn in particular to operative paragraph 6. The Bank acknowledged receipt on 30 June 1965.

C. *General Assembly resolutions 2054 A (XX), 2105 (XX) and 2107 (XX) of 15, 20 and 21 December 1965*

9. On 15 December 1965 the General Assembly adopted resolution 2054 A (XX) entitled "The policies of *apartheid* of the Government of the Republic of South Africa" (appendix 2). [30] This resolution, after expressing concern at the continued implementation of *apartheid* by the Government of South Africa in violation of its obligations under the Charter and in defiance of resolutions of the Security Council and the General Assembly and after drawing the attention of the Security Council to the situation in South Africa as being a threat to international peace and security,

> "*Invites* the specialized agencies:
>
> "(*a*) To take the necessary steps to deny technical and economic assistance to the Government of South Africa . . .".

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[29] For the printed text of this document, see *Official Records of the General Assembly, Twentieth Session, Annexes*, addendum to agenda item 23, document A/6000/Rev.1, chap. V, para. 430.

[30] Previously, on the same subject, the General Assembly had, *inter alia*, established a Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa (resolution 1761 (XVII) of 6 November 1962) to keep the racial policies of that Government under review when the Assembly was not in session and to report to the General Assembly and the Security Council, as may be appropriate, from time to time. By its resolution 1978 A (XVIII) of 16 December 1963, the Assembly invited "the specialized agencies and all Member States to give to the Special Committee their assistance and co-operation in the fulfilment of its mandate".

10. On 20 December 1965 the General Assembly adopted resolution 2105 (XX) entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 3). This resolution, after referring to the continuation of colonial rule and the practice of *apartheid* as threatening "international peace and security" and constituting "a crime against humanity",

> "*Requests* all States and international institutions, including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination".

11. On 21 December 1965 the General Assembly adopted resolution 2107 (XX) entitled "Question of Territories under Portuguese administration" (appendix 4). This resolution, after condemning the colonial policy of Portugal and its refusal to carry out the resolutions of the General Assembly and the Security Council,

> "*Appeals* to all specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)".

D. *Further contacts with a view to obtaining the assistance of the Bank in the work of the Special Committee*

12. On 10 January 1966 the Secretary-General transmitted the text of General Assembly resolution 2054 (XX) to the President of the Bank and on 27 and 31 January 1966, respectively, the United Nations Secretariat forwarded to the Bank the texts of General Assembly resolutions 2105 (XX) and 2107 (XX). The Bank replied in all these cases that it had taken note of their contents.

13. It its 415th meeting on 18 May 1966, the Special Committee requested the Secretarys General to communicate with the specialized agencies in order to ascertain whether the requests and appeals addressed to them by the General Assembly and the Special Committee had been brought before their respective organs for decisions, and what action had been taken or was contemplated with respect to such requests and appeals. Pursuant to the Special Committee's request the United Nations Secretariat, on 6 June 1966, wrote to the President of the Bank and after advising him of the information sought by the Special Committee and referring to the material General Assembly and Special Committee resolutions, requested the President to furnish the Secretary-General with any information relevant to the Special Committee's inquiries.

14. On 14 June 1966 the Bank entered into two agreements granting loans to Portuguese companies, one with the Hidro-Electrica do Douro S.A.R.L. (Loan No. 452 P.O.) lending $US20 million, the other with the Empresa Termoelectrica Portuguesa S.A.R.L. (Loan No. 453 P.O.) lending $US10 million, and on the same date the Portuguese Republic entered into two agreements with the Bank guaranteeing the above two loans. On 8 September 1966, pursuant to an announcement made in July 1966, the Bank entered into an agreement with the South African Electricity Supply Commission granting a loan in the amount of $US20 million, and on the same date the Republic of South Africa entered into an agreement with the Bank guaranteeing this loan.

15. On 5 July 1966 the General Counsel of the Bank, in a written reply to the United Nation-Secretariat's letter of 6 June 1966, stated that copies of General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) had been circulated on 21 March 1966 to the Bank's Executive Directors. He did not indicate whether the Special Committee's resolution (A/AC.109/124 and Corr.1), forwarded to the Bank on 17 June 1965, had also been similary circulated (see para. 8 above).

E. *Statements made on behalf of the Bank at the twenty-first session of the General Assembly*

16. On 28 November 1966, in response to an invitation, the General Counsel of the Bank attended a meeting of the Fourth Committee of the General Assembly, which was considering the question of Territories under Portuguese administration and a report of the Special Committee established under General Assembly resolution 1654 (XVI). At this meeting the General Counsel explained the lending policies pursued by the Bank vis-à-vis Portugal. He stated *inter alia* that:

"Early in 1966 the Bank had been informed of the adoption by the General Assembly of resolutions 2105 (XX) and 2107 (XX), appealing to specialized agencies to withhold assistance from Portugal and South Africa. It was a matter of public record that the Bank had made loans for two projects in metropolitan Portugal and one project in South Africa after those resolutions had been adopted and brought to the Bank's attention." [31]

He also explained that copies of General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) had been circulated to the Bank's Executive Directors on 21 March 1966. On 29 March 1966 the President of the Bank, having referred the Directors to these resolutions and having informed them that the Bank was currently studying loan applications for projects in Portugal and South Africa, had made the following statement:

"The Bank's Articles provide that the Bank and its officers shall not interfere in the political affairs of any member and that they shall not be influenced in their decisions by the political character of the member or members concerned. Only economic considerations are to be relevant to their decisions. Therefore, I propose to continue to treat requests for loans from these countries in the same manner as applications from other members." [32]

The General Counsel further quoted the President as also having said on the same occasion:

"I am aware that the situation in Africa could affect the economic development, foreign trade and finances of Portugal and South Africa. It will therefore be necessary, in reviewing the economic position and prospects of these countries, to take account of the situation as it develops."[33]

17. The General Counsel then informed the Committee that some months later when the economic and project studies had been concluded, the President of the Bank had presented loan proposals to the Executive Directors for the two projects in Portugal and one in South Africa, and that these loans were approved by the Executive Directors. The General Counsel also explained that the Bank had felt free to grant the loans to Portugal and South Africa in 1966 without formal "consideration" of the recommendations contained in General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) on the ground that, because of lack of prior consultations, the Bank had not regarded such resolutions as being "formal recommendations" within the meaning of article IV, paragraph 2, of the Agreement between the United Nations and the International Bank for Reconstruction and Development which governs the relationship of the two bodies. In reply to questions, the General Counsel further explained that the Bank had not informed the Secretary-General of the United Nations of the reasons why it could not act on the General Assembly resolutions because these resolutions had not seemed to the Bank to be "formal recommendations" within the meaning of this article. He also said that even if these resolutions had been regarded as formal recommendations, the Bank, would have still considered itself precluded from taking such recommendations into account in reaching a decision whether or not to grant loans to Portugal or South Africa because of the provisions of section 10 of article IV of the Bank's own Articles of Agreement which deal with political activity by the Bank and its officers.

18. On 8 December 1966 the General Counsel wrote to the Chairman of the Special Political Committee of the General Assembly (A/SPC/115 dated 10 December 1966) (appendix 5) which was considering the policies of *apartheid* of the Government of South Africa. After referring to General Assembly resolution 2054 A (XX), he stated that his remarks in the Fourth Committee as to the Bank's position in regard to loans to Portugal were of equal application in regard to loans by the Bank to South Africa as the issues raised were identical in both cases.

F. *General Assembly resolutions 2184 (XXI), 2189 (XXI) and 2202 (XXI) of 12, 13 and 16 December 1966 and steps taken to implement them*

19. On 12 December 1966 the General Assembly adopted resolution 2184 (XXI) entitled "Question of Territories under Portuguese administration" (appendix 6). This resolution, in paragraph 9,

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[31] *Official Records of the General Assembly, Twenty-first Session, Fourth Committee*, 1645th meeting para. 39.

[32] *Ibid.*, para. 42.

[33] *Ibid.*

"*Appeals once again* to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance as long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)";

and further in paragraph 10,

"*Requests* the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution".

20. The Secretary-General of the United Nations wrote on 15 December 1966 to the President of the Bank (appendix 7), enclosing a copy of General Assembly resolution 2184 (XXI), drawing attention in particular to paragraphs 9 and 10 thereof, requesting the President's views regarding the timing and modalities for carrying out of the consultations referred to, expressing the view that such consultations fell within article IV, paragraph 2, of the Relationship Agreement and suggesting that the consultations should be held without delay.

21. On 13 December 1966 the General Assembly adopted resolution 2189 (XXI) entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 8). This resolution, in paragraph 6,

"*Declares* that the continuation of colonial rule threatens international peace and security and that the practice of *apartheid*, as also all forms of racial discrimination, constitutes a crime against humanity";

and in paragraph 9,

"*Requests* all States, directly and through action in the international institutions of which they are members, including the specialized agencies, to withhold assistance of any kind to the Governments of Portugal and South Africa . . .".

22. On 16 December 1966 the General Assembly adopted resolution 2202 A (XXI) entitled "The policies of *apartheid* of the Government of the Republic of South Africa" (appendix 9). This resolution, in paragraph 1.

"*Condemns* the policies of *apartheid* practised by the Government of South Africa as a crime against humanity";

and in paragraph 6,

"*Requests* the Secretary-General:

". . .

"(*d*) To consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with those of the present resolution, and to report to the General Assembly at its twenty-second session".

The Secretary-General wrote on 29 December 1966 to the President of the Bank enclosing a copy of resolution 2202 (XXI) and drawing attention *inter alia* to paragraph 6 (*d*) thereof.

23. It is against this background that the Secretary-General and the President of the Bank met on 20 December 1966 and agreed upon the consultations from which it was decided that the present written exchange of views should take place.

III. Examination of the position adopted by the Bank

24. From the statements of the General Counsel of the Bank to the Fourth Committee (see paras. 16-18 above), there appear to be two principal reasons advanced by the Bank for its failure to give effect to the relevant recommendations of the General Assembly. The first of these reasons relates to the requirement of "prior consultation" before either organization makes formal recommendations to the other, under article IV of the Agreement bringing the Bank into relationship with the United Nations,[34] which was concluded pursuant to Article 57 and 63 of the Charter

[34] United Nations, *Treaty Series*, vol. 16 (1948), No. 109, p. 346.

of the United Nations, and which came into force on 15 November 1947. The second reason is based upon the Bank's interpretation of its own Articles of Agreement,[35] which came into force on 27 December 1945, in particular section 10 of article IV thereof which prohibits political activities by the Bank and its officers. These two reasons are examined separately below.

A. *The question of "reasonable prior consultation" under article IV of the Relationship Agreement*

25. In regard to loans made by the Bank to Portugal during 1966, after the text of General Assembly resolutions 2105 (XX) and 2107 (XX) had been communicated to it, the Bank's position appears to be that as, in its view, there had been no consultation with the Bank prior to the adoption of these two resolutions by the General Assembly, the subsequent communication of the text of the resolutions did not have the effect of converting them into "formal recommendations" within the meaning of article IV, paragraph 2, of the Agreement between the United Nations and IBRD. In these circumstances the Bank did not feel obliged or free to give such resolutions the "consideration" required by paragraph 2 of article IV of the said Agreement.

26. Article IV of the Relationship Agreement reads as follows:

"*Consultation and recommendations*

"1. The United Nations and the Bank shall consult together and exchange views on matters of mutual interest.

"2. Neither organization, nor any of their subsidiary bodies, will present any formal recommandations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.

"3. The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgement in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms or conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects."

27. From the text of the above article, and the records of the discussion preceding its adoption, it is clear that the "reasonable prior consultation" is not a mere formality, but is required before formal recommendations are made by one organization to the other, so as to permit the latter to submit any views it may have on why such recommendations should not be made. However, there is nothing in the records or in the Agreement itself which assists in an interpretation as to what form, kind or extent of "reasonable prior consultation" is necessary in order to comply with the requirements of paragraph 2 of article IV.

28. As the records do not disclose what constitutes "reasonable prior consultation", this point is open to interpretation. In the light of the continued efforts of the Special Committee and the United Nations Secretariat from 15 March 1962, through transmission of resolutions, requests for information and invitations for the Bank to appear before the Committee, it may well be argued that reasonable consultation had taken place before Assembly resolutions 2105 (XX) and 2107 (XX) were adopted. Furthermore, the Bank had full knowledge of the type of recommendation contained in these resolutions prior to their adoption, as the United Nations Secretariat had previously transmitted to the Bank the resolution of 10 June 1965 (A/AC.109/124 and Corr.1) whereby the Special Committee appealed to and requested it to refrain from granting Portugal any financial assistance. However, the Bank failed to take advantage of the opportunity provided by the transmission of this resolution to indicate that it had reservations regarding the possibility of its giving effect to a resolution of this nature. It may therefore be maintained with some cogency that the Bank was under an obligation to treat resolutions 2105 (XX) and 2107 (XX)

[35] *Ibid.*, vol. 2 (1947), No 20 (*b*), p. 134.

as "formal recommendations" to be considered as soon as possible by the appropriate organs of the Bank. Even if the argument is not accepted, the wording of paragraph 2 of article IV of the Relationship Agreement does not preclude the Bank from considering and giving effect to recommendations which are not "formal recommendations", particularly in the circumstances here involved where the Bank was fully aware throughout of the developments taking place in the United Nations regarding Portugal and South Africa.

29. While it may be necessary to define what constitutes "reasonable prior consultation" for the future, it is no longer at issue in the existing situation. The present position appears to be that the discussion at the 1645th meeting of the Fourth Committee, in which the General Counsel participated as representative of the Bank, must be regarded as constituting the prior consultation required by paragraph 2 of article IV of the Relationship Agreement, at least in respect of General Assembly resolution 2184 (XXI). Similarly, adequate prior consultation has taken place regarding General Assembly resolution 2202 (XXI), the General Counsel of the Bank having communicated in writing (appendix 5) with the Special Political Committee of the Assembly when that Committee was considering the adoption of that resolution. Resolutions 2184 (XXI) and 2202 (XXI) both request the Secretary-General to obtain the Bank's compliance with the earlier General Assembly resolutions 2105 (XX) and 2107 (XX). Accordingly, it would seem that, as of the present time, objection by the Bank as to lack of prior consultation cannot be maintained and the Bank should properly under article IV, paragraph 2, of the Relationship Agreement consider giving effect to the resolutions in question.

B. *The question of the prohibition of political activities under section 10 of article IV of the Bank's Articles of Agreement*

30. The question remaining to be examined is the second aspect of the Bank's present position, namely, that in any event, its compliance with the relevant resolutions of the General Assembly to refrain from granting loans to Portugal and South Africa would be a breach of its own constitution and in particular an infringement of the requirements of section 10 of article IV of the Bank's Articles of Agreement. It is clear from the terms of this section that it applies to the President and other senior members of the staff, and also to the Bank as an institution together with its organs, the Board of Governors and the Executive Directors. However, the scope attributed by the Bank to the words "political affairs", "political character of the member" and "economic considerations", all of which appear in that section, does not appear to be justified by the history, wording or context of section 10.

31. In stating its position the Bank appears to claim, firstly, that the conduct of the Governments of Portugal and South Africa in failing to observe their international obligations under the United Nations Charter to give effect to Security Council and General Assembly resolutions relating to the maintenance of peace and security is a "political affair" or a reflection of the "political character" of those countries and, secondly, that the last sentence of section 10 of article IV requires the Bank to exclude from its consideration of loan applications all matters other than economic considerations and this provision in itself precludes the Bank from taking account of the relevant resolutions.

32. Section 10 of article IV of the Bank's Articles of Agreement reads as follows:

> "Section 10. *Political activity prohibited*
>
> "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I."

It is submitted that, contrary to the position presently adopted by the Bank, the sole purpose of section 10 is to prohibit interference in the internal political affairs of a Member State and discrimination against any member country because of the political character of its government. This is probably one of the reasons why the section goes on to provide, in contradistinction, that only "economic considerations" shall be relevant to the decisions of the Bank and its officers. This latter provision, therefore, merely serves to elaborate and emphasize those factors which must be excluded from consideration (internal political affairs) by making express reference to

certain factors (economic considerations) which obviously must be taken into consideration. Thus the last sentence of the section should not be regarded in isolation from the first sentence and interpreted as expressly confining the Bank to a consideration of nothing but the economic facts relevant to a particular loan and obliging it to disregard other material factors such as the international conduct of a member country and its repercussions upon international peace and security. That the Bank does not disregard other material factors is clear from the resolution it adopted regarding General Assembly resolution 377 (V), entitled "Uniting for peace", which is referred to in greater detail in paragraph 38 below.

33. In support of this interpretation of section 10 of article IV of the Articles of Agreement, it is of interest to consider the legislative history of this section. The original draft, submitted as section 11 to the United Nations Monetary and Financial Conference held at Bretton Woods in July 1944, reads as follows:

> "Section 11. *Political Activity Prohibited.*
>
> "The Bank and its officers shall scrupulously avoid interference in the political affairs of any member. This provision shall not limit the right of an officer of the Bank to participate in the political life of his own country.
>
> "The Bank shall not be influenced in its decisions with respect to applications for loans by the political character of the government of the member concerned with the loan. Only economic considerations shall be relevant to the Bank's decisions.
>
> "The Bank, acting with the strictest impartiality, shall pay particular regard, both in selecting the place of its borrowing and of its lending to maintaining the equilibrium of the international balance of payments of members." [36]

During the Conference, for reasons which the available records do not disclose, the passage relating to officers of the Bank being permitted to engage in the political affairs of the officer's country and the words "of the government" after the words "political character" were omitted. None the less, their inclusion in the original draft supports the view that the primary intention of this section of article IV is to prohibit actions by the Bank or its officers which involve participation or interference in the internal political life of a member country and also to ensure that the type or nature of the government within a member country is of no consequence to the Bank or its officers.

34. The relevant General Assembly resolutions deal, however, not with internal political affairs but with situations threatening international peace and security arising from the failure of Portugal and South Africa to observe their obligations under the Charter and international law. For example, General Assembly resolution 2105 (XX) in its preamble deplores "the negative attitude of certain colonial Powers, and in particular the unacceptable attitude of the Governments of Portugal and South Africa, which refuse to recognize the right of colonial peoples to independence",

> and later specifically stresses that "the continuation of colonial rule and the practice of *apartheid* as well as all forms of racial discrimination threaten international peace and security and constitute a crime against humanity".

General Assembly resolution 2107 (XX), also in its preamble, recites the General Assembly's conviction that "the attitude of Portugal towards the African population of its colonies and of the neighbouring States constitutes a threat to international peace and security",

> and goes on to condemn "the colonial policy of Portugal and its persistent refusal to carry out the resolutions of the General Assembly and the Security Council."

Finally, General Assembly resolution 2184 (XXI) expresses deep concern "at the critical and explosive situation which is threatening peace and security owing to the intensification of the measures of repression and military operation against the people of the Territories under Portuguese administration".

35. Security Council resolutions 180 (1963) of 31 July 1963 (appendix 10), 181 (1963) of 7 August 1963, 182 (1963) of 4 December 1963, 191 (1964) of 18 June 1964 and 218 (1965) of 23 November 1965 (appendix 11) also recognize the situation in South Africa and the situation

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[36] *Proceedings and Documents of the United Nations Monetary and Financial Conference*, vol. I (1948), p. 202.

resulting from the policies of Portugal as seriously disturbing international peace and security, and in resolution 218 (1965) the Security Council expressed its conviction that the implementation of its pertinent resolutions and those of the General Assembly was the only means to achieve a peaceful solution of the question of Portuguese Territories.

36. Neither the prohibition on political activity nor the enjoinder to have regard to economic considerations only, contained in section 10 of article IV of the Bank's Articles of Agreement, preclude a consideration by the Bank of the international conduct of a member country condemned in relevant General Assembly resolutions as being in violation of that country's fundamental Charter obligations and as threatening international peace and security. Therefore section 10 is not a sufficient legal justification for the Bank's failure to comply with General Assembly resolutions adopted in discharge of the Assembly's function in connexion with the maintenance of international peace and security and the observance of international law.

37. Acceptance of an interpretation of section 10 of article IV of the Articles of Agreement which does not preclude the Bank from taking into account conduct of a member country in the international field which is in breach of that State's obligations under the Charter relating to the maintenance of peace and security is consistent with the acceptance by the Bank representatives and the adoption by the Board of Governors of article VI of the Relationship Agreement, paragraph 1 of which provides as follows:

> "The Bank takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also Members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

38. It is clear that under this article the Bank, in addition to taking note of the separate obligations of its members under the Charter, itself assumed an obligation to have due regard, in the conduct of its activities, for the decisions of the Security Council relating to matters of peace and security. Is this "due regard" confined to decisions of the Security Council under Articles 41 and 42 of the United Nations Charter? Considerations of principle and of practice indicate that this question should be answered in the negative. As a matter of principle, article IV of the Relationship Agreement provides for the consideration of recommendations by the United Nations other than decisions of the Security Council under Articles 41 and 42 of the Charter. As a matter of practice, it is highly material to note that on 13 September 1951, without any relevant amendment of its Articles of Agreement, the Bank considered itself empowered to pass a resolution to the effect that "the Bank, in the conduct of its activities, shall have due regard for recommendations of the General Assembly made pursuant" to General Assembly resolution 377 (V), the "Uniting for peace" resolution. This action by the Board of Governors, the organ of the Bank expressly charged under article IX of the Bank's Articles of Agreement with authority to interpret those articles, is the strongest possible evidence that there is no constitutional objection to the Bank, in its "consideration" of General Assembly resolutions relating to Portugal and South Africa, having due regard for and complying with the recommendations contained in such resolutions.

39. By agreeing to the inclusion of article VI in the Relationship Agreement, the Bank accepted in principle that in the case of Security Council decisions relating to the maintenance of peace and security, section 10 of article IV of its Articles of Agreement did not preclude the Bank from having regard to the international conduct of a Member State. Likewise, by its resolution of 13 September 1951, the Bank recognized in principle that section 10 did not prevent it from having due regard to recommendations of the General Assembly relating to international peace and security. It is therefore inconsistent for the Bank now to insist that having regard to General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI), which relate to the international conduct of Portugal and South Africa and the threat which such conduct poses to international peace and security, would be a breach of its obligations under section 10 of article IV of its Articles of Agreement. If it is not a breach in the case of Security Council decisions, how can it in principle be a breach in the case of General Assembly resolutions relating to the same matters, namely maintenance of international peace and security, particularly as the Bank has

already recognized that it is not a breach in relation to another General Assembly resolution relating to international peace and security?

40. From the foregoing examination of the Bank's present position it appears that the interpretation of section 10 of article IV presently adopted by the Bank extends the scope of that section unnecessarily. Furthermore, such an interpretation is not consistent with the principle accepted by the Bank and adopted in article VI of the Relationship Agreement and evidenced by the resolution passed by the Bank on 13 September 1951. On the other hand, a more reasonable interpretation properly can be given to section 10 of article IV of the Articles of Agreement, which would reflect the principle underlying article VI of the Relationship Agreement, be in accord with the Board of Governor's decision of 13 September 1951, and at the same time permit the Bank to have regard for and comply with the relevant General Assembly resolutions requesting it to refrain from granting any form of of economic assistance to Portugal and South Africa.

41. Against the above legal background, it may also be useful to take account of the Bank's position as a member of the United Nations family of institutions. It seems hardly likely that the Bank would wish to ignore entirely the virtually unanimous condemnation by the international community, expressed through the United Nations as the organ having primary responsibility in this field, of the international conduct of Portugal and South Africa. The international institutions created the Second World War were intended to work in harmony in the maintenance of international peace and security and not in conflict. In the circumstances, it seems incongruous that, on the one hand, the General Assembly of the United Nations has found that the policies of certain States threaten international peace and security and that they are guilty of practices constituting "a crime against humanity", and on the other, the Bank feels bound to grant loans to those States on the basis solely of the economic considerations that the projects involved are sound and that repayment is guaranteed.

Appendix 1

GENERAL ASSEMBLY RESOLUTION 1514 (XV) ENTITLED "DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES"

[*For the text of the resolution, see* Official Records of the General Assembly, Fifteenth Session, Supplement No. 16.]

Appendix 2

GENERAL ASSEMBLY RESOLUTION 2054 A (XX) ENTITLED "THE POLICIES OF *apartheid* OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA"

[*For the text of the resolution, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14.]

Appendix 3

GENERAL ASSEMBLY RESOLUTION 2105 (XX) ENTITLED "IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES"

[*For the text of the resolution, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14.]

Appendix 4

GENERAL ASSEMBLY RESOLUTION 2107 (XX) ENTITLED "QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION"

[*For the text of the resolution, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14.]

Appendix 5

LETTER DATED 8 DECEMBER 1966 FROM THE GENERAL COUNSEL OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT TO THE CHAIRMAN OF THE SPECIAL POLITICAL COMMITTEE *

Our representative at the United Nations, Mr. Federico Consolo, has reported that he has learned that the Special Political Committee of the General Assembly has commenced consideration of the question of *apartheid* in South Africa. From our reading of the annual report to the General Assembly of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa (United Nations document S/7565, [37] 25 October 1966), it would appear that members of the Special Political Committee may well refer to the loan operations in South Africa of the International Bank for Reconstruction and Development in the context of General Assembly resolution 2054 A (XX).

On 28 November 1966, on the invitation of the Chairman of the Fourth Committee, I made a statement on behalf of the International Bank for Reconstruction and Development to the Committee during its considerations of the question of the Portuguese Territories in Africa. The record of this statement and of the subsequent questions of delegates and of my answers is to be found in United Nations document A/C.4/SR.1645, 1 December 1966. My statement also covered the question of the Bank's loan operations in South Africa. The question of the Bank's position with respect to General Assembly resolutions 2105 (XX) and 2107 (XX) was subsequently also discussed at some length at the 1653rd meeting of the Fourth Committee on 3 December 1966, at which meeting Mr. Constantin A. Stavropoulos, Legal Counsel of the United Nations, participated. The summary record of this meeting has not yet been received by us. You will also see that this question is reflected in the draft report of the Fourth Committee to the General Assembly (United Nations document A/C.4/L.846, [38] 5 December 1966), and in the draft resolution on this item, as adopted by the Fourth Committee (United Nations document A/C.4/L.842/Rev.1, [39] 5 December 1966).

The issues raised with respect to the Bank's loan operations in metropolitan Portugal are identical to those regarding loan operations in South Africa. I therefore thought it proper to bring the foregoing to your attention and I would be grateful if this letter could be circulated as a Committee document.

(Signed) A. BROCHES
General Counsel

Appendix 6

GENERAL ASSEMBLY RESOLUTION 2184 (XXI) ENTITLED "QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION"

[*For the text of the resolution, see* Official Records of the General Assembly, Twenty-first Session, Supplement No. 16.]

Appendix 7

LETTER DATED 15 DECEMBER 1966 FROM THE SECRETARY-GENERAL TO THE PRESIDENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

I have the honour to transmit herewith a copy of resolution 2184 (XXI) on the question of Territories under Portuguese administration adopted by the General Assembly at its 1490th plenary meeting, on 12 December 1966.

In forwarding this resolution, I wish to draw your attention, in particular, to operative paragraphs 9 and 10. In the former, the General Assembly appeals once again to all the specialized agencies, and the International Bank for Reconstruction and Development and the International

* Previously issued under the symbol A/SPC/115.

[37] For the text of this document, see *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 34, document A/6486.

[38] *Idem*, agenda item 67, document A/6554.

[39] *Idem, Twenty-first Session, Supplement No. 16*, resolution 2184 (XXI).

Monetary Fund, to refrain from granting any financial, economic or technical assistance to Portugal so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV).

In operative paragraph 10 of resolution 2184 (XXI), the General Assembly "requests the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution". The relevant operative paragraphs of General Assembly resolutions 2105 (XX) and 2107 (XX) read as follows:

[Resolution 2105 (XX)]

"11. *Requests* all States and international institutions, including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination";

[Resolution 2107 (XX)]

"9. *Appeals* to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)".

As you know, the present resolution was adopted after the Fourth Committee of the General Assembly had invited and had consulted with a representative of the International Bank in accordance with Article II, paragraph 3, and Article IV, paragraph 2, of the Agreement of 15 November 1947. Copies of the records of the debate and other relevant documents are being sent to you under separate cover.

In accordance with the request addressed to the Secretary-General in operative paragraph 10 of resolution 2184 (XXI), I have the honour to solicit your views regarding the timing and modalities for the carrying out of the consultations referred to. Such consultations would, in my opinion, fall within the framework of Article IV, paragraph 2, of the Agreement of November 1947, which provides that any formal recommendations made by either organization after consultation will be considered as soon as possible by the appropriate organ of the other.

Since General Assembly resolution 2184 (XXI) will be discussed by the Committee of Twenty-Four during its session commencing on 20 February 1967, and since the Rapporteur of the Fourth Committee expressed the hope of many delegations at the 1490th plenary meeting of the General Assembly that the results of the proposed consultations would be reported to the Special Committee of Twenty-Four as a matter of urgency, I consider that it would be desirable for the consultations to begin without delay.

(Signed) U THANT
Secretary-General

Appendix 8

GENERAL ASSEMBLY RESOLUTION 2189 (XXI) ENTITLED "IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES"

[*For the text of the resolution, see* Official Records of the General Assembly, Twenty-first Session, Supplement No. 16.]

Appendix 9

GENERAL ASSEMBLY RESOLUTION 2202 (XXI) ENTITLED "THE POLICIES OF *apartheid* OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA"

[*For the text of the resolution, see* Official Records of the General Assembly, Twenty-first Session, Supplement No. 16.]

Appendix 10

SECURITY COUNCIL RESOLUTION 180 (1963) OF 31 JULY 1963

[*For the text of the resolution, see* Official Records of the Security Council, Eighteenth Year, Resolutions and Decisions of the Security Council, 1963.]

Appendix 11

SECURITY COUNCIL RESOLUTION 218 (1965) OF 23 NOVEMBER 1965

[*For the text of the resolution, see* Official Records of the Security Council, Twentieth Year, Resolutions and Decisions of the Security Council, 1965.]

Annex II

Extract from a letter dated 5 May 1967 from the General Counsel of the International Bank for Reconstruction and Development to the United Nations Secretariat transmitting a paper containing comments of the Legal Department of the Bank on the memorandum prepared by the Secretariat

". . .

"I attach six copies of a memorandum of the Legal Department of the Bank containing detailed comments on the arguments set forth in the Secretariat memorandum; these comments, I believe, conclusively show that the prohibition contained in section 10 of article IV of the Articles of Agreement is clear and unequivocal.

"I should like to add that, in my opinion, the prohibition contained in express terms in section 10 of article IV of the Articles of Agreement of the Bank is no more than a reflection of the technical and functional character of the Bank as it is established under its Articles of Agreement.

"The purposes of the Bank set forth in article I of the Articles of Agreement are limited and the Bank must be guided in the exercise of its functions by those purposes alone. The member governments of the Bank have not deemed it appropriate to grant the Bank a larger function in the international community, and the characterization of the Bank as a financial and economic agency and not a political one was explicitly recognized by the United Nations in its Relationship Agreement with the Bank.

"The recommendations contained in the resolutions under consideration raise an important question of interpretation and application of the Bank's Articles of Agreement which, in my opinion, would have to be resolved before any decision on the merits of the recommendations themselves could be taken. As you know, question of interpretation of the Bank's Articles are to be decided by the Executive Directors in accordance with the provision of the Articles. In order to enable the Executive Directors to become familiar with the legal problems involved, I believe that it would be useful if I could distribute to them, with your permission, copies of the Secretariat memorandum of 3 March 1967 along with the comments of the Legal Department of the Bank." [40]

". . .

I

The confidential memorandum (hereinafter the "Secretariat memorandum") dated 3 March 1967, prepared by the United Nations Secretariat, is divided into three parts. The short introduction (Part I) notes that, pursuant to operative paragraph 10 of General Assembly resolution 2184 (XXI) and operative paragraph 6 (*d*) of General Assembly resolution 2202 (XXI), the Secretary-General of the United Nations and the President of the International Bank for Reconstruction and Development agreed that as soon as possible consultations would be held between the two organizations regarding questions arising in connexion with the General Assembly resolutions calling on the Bank to withhold assistance to Portugal and South Africa. The memorandum also notes that in the course of meetings between representatives of the two organizations it was agreed

[40] The Legal Counsel of the United Nations agreed to the distribution of the Secretariat memorandum as proposed by the General Counsel of the Bank.

that there should be a written exchange of views on the issues raised by these resolutions by virtue of the respective constitutional instruments of the two organizations and by virtue of the terms of the Relationship Agreement between them.

The memorandum goes on to state that in setting forth the views of the United Nations Secretariat it would:

(*a*) Recapitulate the relevant United Nations resolutions and "the steps taken by the United Nations to obtain compliance with them, and the response of the Bank" (Part II);

(*b*) Examine the position taken by the Bank on the issues raised by these resolutions "in the light of what the United Nations Secretariat considers to be the correct legal interpretation of the relevant instruments" (Part III).

Part II of the Secretariat memorandum thus provides a recapitulation of the history of the resolutions adopted by various United Nations organs on the question of South Africa and Portuguese Territories in Africa and in particular of those resolutions which requested the withholding of all assistance from South Africa and Portugal.

Part III of the memorandum then goes on to state the Secretariat's views on the Bank's position with respect to the relevant paragraphs of General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) as represented by the Bank's General Counsel in the course of his participation in the discussions of the Fourth Committee on the General Assembly. In these words of the memorandum:

"From the statements of the General Counsel of the Bank to the Fourth Committee . . ., there appear to be two principal reasons advanced by the Bank for its failure to give effect to the relevant recommendations of the General Assembly." (Annex I, para. 24.)

The memorandum indentifies the two principal issues as relating to:

(*a*) Wheter these resolutions had been preceded by "prior consultation" as required by article IV of the Relationship Agreement of 15 November 1947 between the United Nations and the Bank; [41]

(*b*) The proper interpretation of article IV, section 10, of the Articles of Agreement of the Bank, which came into force on 27 December 1945. [42]

While the views expressed in the Secretariat memorandum on the nature and timing of the consultation which must precede formal recommendations addressed by one organization to the other cannot be accepted without a number of reservations, the issue does not appear to have practical importance at this juncture. The Secretary-General of the United Nations and the President of the Bank having agreed to enter into consultation on the substance of the resolutions, this memorandum will deal only with the second principal issue discussed in the Secretariat memorandum which relates to the interpretation of article IV, section 10, of the Bank's Articles of Agreement.

II

Section 10 of article IV reads as follows:

"Section 10. *Political activity prohibited*

"The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations *shall be relevant to their decisions, and these considerations* shall be weighed impartially in order to achieve the purposes stated in Article I." [43]

Article I of the Articles of Agreement of the Bank provides:

"The purposes of the Bank are:

"(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration

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[41] United Nations, *Treaty Series*, vol. 16 (1948), No. 109, p. 346.

[42] *Ibid.*, vol. 2 (1947), No. 20 (*b*), p. 134.

[43] The original Secretariat memorandum (para. 32), in reproducing section 10, inadvertently omitted the italicized language. [That language has been inserted in the present printed version.]

of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

"(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

"(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.

"(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

"(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate post-war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

"The Bank shall be guided in all its decisions by the purposes set forth above."

The Secretariat memorandum states that the Bank's position is that:

" . . . its compliance with the relevant resolutions of the General Assembly to refrain from granting loans to Portugal and South Africa would be a breach of its own constitution and in particular an infringement of the requirements of section 10 of article IV of the Bank's Articles of Agreement." (Annex I, para. 30.)

This view of article IV, section 10, is dependent upon an interpretation of the words "political affairs", "political character of the member" and "economic considerations" which, according to the Secretariat memorandum, "does not appear to be justified by the history, wording or context of section 10" (annex I, para. 30). The Secretariat memorandum relies, for its view that section 10 does not preclude the Bank from complying with the relevant General Assembly resolutions, upon:

(*a*) the actual wording of the section;

(*b*) the drafting history of the section;

(*c*) the subsequent conduct of the parties—that is to say, of the members of the Bank acting through their representatives on the Board of Governors and the Board of Executive Directors.

This memorandum will in turn comment upon these arguments in the order followed in the Secretariat memorandum.

(a) *Actual wording of the section*

In examining the wording of section 10, the Secretariat memorandum asserts that the Bank wrongly classifies the General Assembly resolutions as "political" and therefore as falling within the prohibition set out in section 10. The memorandum argues that the real intent and meaning of the term "political", as it is used in the context of section 10 ("the political affairs of any member" and "the political character of the member or members concerned"), ". . . is to prohibit interference in the *internal* political affairs of a Member State and discrimination against any member country because of the political character of its government." (Annex I, para. 32; emphasis added.)

There is no justification for imparting to the term "political", as the Secretariat memorandum does, the qualification "internal". The prohibition against interference "in the political affairs of any member" is not limited to interference in a member's *internal* political affairs but extends as well to the relations of a member with other States, i.e. its *external* political affairs. Just as the Bank is precluded in making decisions on loans or guarantees from interfering in the domestic political activities of a member Government, so it is precluded from interfering or attempting to

interfere with the foreign policy of that Government. The adjective "political", as used in section 10, refers not only to those matters which relate to "politics" in the narrow (and sometimes derogatory) meaning of the word, but to all matters which pertain to the constitution of an organized society and the manner in which it manages its affairs. In this sense the relevant resolutions of the General Assembly do indeed deal with the political affairs of the Governments of Portugal and South Africa, and the conduct of the Portuguese and South African Governments condemned in those resolutions was in fact their political conduct. The policies and the conduct which are being condemned by the General Assembly constitue an essential element of the "political character" of those States. [44]

The Bank may and does take into consideration, and is influenced in its lending decisions by, the economic effects which stem from the political character of a member and from the censures and condemnations of that member by United Nations organs. [45] However, by virtue of article IV, section 10, of its Articles of Agreement, the Bank, in exercising its judgement, must consider such economic effects together with all other relevant economic factors, in the light of the purposes of the Organization. What it is precluded from considering is the political character of a member as an independent criterion for decision.

The Secretariat memorandum states (annex I, para. 32) that one of the reasons why the second sentence of section 10 provides that only economic considerations shall be relevant to the Bank's decisions and that such considerations should be weighed impartially, is simply: ". . . to elaborate and emphasize those factors which must be excluded from consideration (internal political affairs) by making express reference to certain factors (economic considerations) which obviously must be taken into considerations".

In this argument the word "internal" is interposed for the purpose of explaining the meaning of the adjective "political". There is no basis for such interposition, for the meaning of the adjective "political", which may not by itself be precise, becomes clear in the context of section 10 which, after expressing the negative injunction against interfering with *political* affairs or being influenced by the *political* character of a member, sets forth the positive injunction that only *economic considerations* are relevant to the Bank's decisions. The contrast is between "political" and "economic" judgements and not between "internal" and "external" affairs. Section 10 thus confirms the non-political, technical and functional nature of the Bank.

(b) *Drafting history of the section*

In support of its reading of section 10 the Secretariat memorandum relies in part upon a particular facet of the legislative history of section 10, namely, the language of the first two paragraphs of section 11 of the preliminary draft of the Articles of Agreement for the Bank, as presented to the United Nations Monetary and Financial Conference at Bretton Woods in July 1944. These paragraphs read:

Section 11. *Political Activity Prohibited.*

"The Bank and its officers shall scrupulously avoid interference in the political affairs of any member. This provision shall not limit the right of an officer of the Bank to participate in the political life of his own country.

"The Bank shall not be influenced in its decisions with respect to applications for loans by the political character of the government of the member concerned with the loan. Only economic considerations shall be relevant to the Bank's decisions." [46]

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[44] The practice of United Nations organs with respect to Article 2, paragraph 7, of the Charter serves to confirm the difficulty of delimiting a country's domestic affairs from its international and foreign affairs. See *Repertory of Practice of United Nations Organs*, vol. I (1955), pp. 55-159, and Supplement No. 1, vol. I (1958), pp. 25-71.

[45] In particular the Bank has agreed that in the conduct of its activities it will have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter and has undertaken to have due regard for the recommendations of the General Assembly made pursuant to the "Uniting for peace" resolution for the maintenance of international peace and security (see *infra*).

[46] The full drafting history of article IV, section 10, is to be found in *Proceedings and Documents of the United Nations Monetary and Financial Conference*, vol. I (1948), p. 202 (section 11 of the preliminary draft), and pp. 386, 496, 567, 569, 596, 613, 724, 848, 1027 and 1061.

On this point it must be noted that the above comments on the meaning of the terms "political affairs" and "political character" are equally applicable to the language of section 11 of the preliminary draft. The draft section 11 does not utilize the term "internal" and it clearly distinguishes between the respective requirements of: scrupulous non-interference in the political affairs of a member country; avoidance of discrimination based upon the political character of the member concerned; and, that ". . . Only economic considerations" should be relevant to the Bank's decisions.

These two paragraphs of section 11 followed an earlier draft prepared by the United States Treasury Department after discussion with the United Kingdom authorities. Their purpose is explained in a commentary paper prepared by the United States Treasury and entitled *Questions and Answers on the Bank for Reconstruction and Development* (June 10, 1944). On page 74 of this paper it is stated:

> ". . . The Bank is designed to be an international economic agency to facilitate productive international investment without regard to political considerations. In deciding on loan applications, the Bank is not to be influenced by the political character of the country requesting the credits. This provision is part of the general requirements that the Bank shall scrupulously avoid interference in the political affairs of members countries (IV-19)."

The same passage goes on to stress (p. 74) that only economic considerations should be taken into account in deciding whether or not to make a loan. It provides two important reasons why the Bank would be able to avoid political considerations in framing its loan policy:

> "The character of the Bank's operations should give further assurance that political considerations will not affect the decisions of the Bank. The greater part of the Bank's operations will be directed toward encouraging and facilitating international lending by private investors. . . It is reasonable to assume that private investment institutions would not give weight to political factors except as the stability of the government of the borrowing country affects the risk element in all foreign loans.
>
> "The international character of the Bank is also a protection against loans made for political purposes as previously discussed. . .[47] The Bank itself can have no policy outside the purely financial sphere. So far as concerns individual member countries, they do undoubtedly have important *international political interests.* However, it would be quite difficult for any member to utilize the Bank for furthering its political intrests." (p. 75; emphasis added.)

The interposition of the term "internal" into the clear language of section 10 and the reading of the second sentence in such a way as to justify this interposition finds no valid basis, therefore, in the legislative history of article IV, section 10. On the contrary, the intentions of those who prepared the original draft would appear to have been to ensure that the Bank did not become a forum for the settlement of political disputes or its loans and guarantees instruments of political negotiation and pressure.

(c) *Subsequent conduct of the parties*

The Secretariat memorandum cites certain subsequently adopted decisions of the Bank as further support for the Secretariat's interpretation of section 10 (see annex I, para. 37). The memorandum states that acceptance of the view that section 10 does not preclude the Bank from

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[47] At this point the United States Treasury paper refers to a prior passage in which there is a discussion of the question "why is an international agency necessary to encourage and facilitate the provision of long-term credits for international investment" (pp. 48-50). In that passage it is explained that an impartial international financial agency would encourage and facilitate the efficient use of international investment capital, in part because:

> "If national agencies should be established generally for the purpose of encouraging international investment, it is doubtful whether countries could altogether escape the use of their lending agencies for the purpose of furthering national political interests. The extension of credit to a particular country becomes a politicial matter to be settled by negotiation between the borrowing country and the lending country. Even if such political considerations could be kept to a minimum, it is doubtful whether national agencies would be as helpful as an international agency in developing international trade and removing the restrictive bilateralism that grew up in the decades before the war."

taking into account the international conduct of a State[48] would be "consistent with the acceptance by the Bank representatives and the adoption by the Board of Governors of article VI of the Relationship Agreement". The memorandum then goes on to quote from this particular provision of the Agreement between the Bank and the United Nations.

Article VI, paragraph 1, of the Relationship Agreement provides:

> "The Bank takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also Members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

In considering the relevance of article VI of the Relationship Agreement to any interpretation of article IV, section 10, of the Articles of Agreement based on a theory of interpretation such as that of the subsequent conduct of the parties, it is also necessary to consider certain other provisions of the Relationship Agreement, namely article I, paragraph 2, and article IV, paragraphs 2 and 3.

> "*Article I*
>
> "GENERAL
>
> ". . .
>
> "2. The Bank is a specialized agency established by agreement among its member Governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. By reason of the nature of its international responsibilities *and the terms of its Articles of Agreement, the Bank is, and is required to function as, an independent international organization.*" (emphasis added)

> "*Article IV*
>
> "CONSULTATION AND RECOMMENDATIONS
>
> ". . .
>
> "2. Neither organization, nor any of their subsidiary bodies, will present any formal recommendations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.
>
> "3. The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined *by the independent exercise of the Bank's own judgement in accordance with the Bank's Articles of Agreement.* The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms and conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction and development plans, programmes or projects." (Emphasis added.)

The Secretariat memorandum maintains that the terms of article VI of the Relationship Agreement confirm the validity of its interpretation of article IV, section 10, of the Articles of Agreement and constitute:

> ". . . the strongest possible evidence that there is no constitutional objection to the Bank, in its 'consideration' of General Assembly resolutions relating to Portugal and South Africa, having due regard for *and complying with* the recommendations contained in such resolutions." (Annex I, para. 38; emphasis added.)

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[48] It should be kept in mind that General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) do something more than call into account "the international conduct" of certain States. They also seek to prescribe the Bank's loan policy towards these States. Thus resolutions 2184 (XXI) and 2202 (XXI) call for consultations between the United Nations and the Bank in order "to secure" the Bank's "compliance with" General Assembly resolutions.

On the contrary, article VI of the Relationship Agreement when considered (i) in the light of the legislative history of the Relationship Agreement and of article VI in particular; (ii) in the light of the language employed in article VI; and (iii) in the light of the functional needs of the Bank, negates the Secretariat's interpretation of section 10.

(i) *Legislative history of the Relationship Agreement.* The legislative history of the Relationship Agreement and of article VI in particular confirms the interpretation of article IV, section 10, of the Bank's Articles of Agreement given by the General Counsel of the Bank to the Fourth Committee.

The Bank entered into the Relationship Agreement on the basis of the express and carefully limited authority set out in article V, section 8 (*a*), of its Articles of Agreement, which provides:

> "The Bank, *within the terms of this Agreement*, shall co-operate with any general international organization and with public international organizations having specialized responsibilities in related fields." (Emphasis added.)

The importance which the signatories of the Articles of Agreement attached to this limitation is underscored by the provision in the same section that "any arrangements for such co-operation *which would involve a modification of any provision of this Agreement* may be effected only after amendment to this Agreement under Article VIII" (emphasis added). Under article VIII, a majority of three fifths of the members having four fifths of the total voting power is required for such amendment. It may also be recalled that, under article V, section 2 (*b*) (v), power to make formal arrangements to co-operate with other international organizations is reserved to the Board of Governors and cannot be delegated to the Executive Directors.

After several months of discussions, final negotiation of the Relationship Agreement took place on 15 August 1947, between delegations representing the Bank and the International Monetary Fund and the Economic and Social Council Committee on Negotiations with Specialized Agencies.[49] The negotiators had before them two documents, a joint draft prepared after earlier discussions between the Bank and the Fund[50] and a counter-draft prepared by the United Nations.

The joint draft prepared by the Fund and the Bank contained a provision on the Security Council which reflected both organizations' unwillingness to accept the version of this section suggested by the United Nations Secretariat during the preliminary discussions. The 13 June 1947 United Nations draft of the Relationship Agreement[51] had provided:

> "*Article V*
>
> "ASSISTANCE TO THE SECURITY COUNCIL
>
> "The Bank agrees to co-operate to the greatest extent possible within the terms of its Articles of Agreement in rendering such assistance to the Security Council as that Council may request, including assistance in carrying out decisions of the Security Council for the maintenance of international peace and security."

As can be seen from the language of the joint draft submitted by the Bank and the Fund for discussion during the formal negotiations, this latter provision had not proved acceptable to the Bank and the Fund. Article V of the Bank's version of the joint Bank and Fund draft provided:

> "*Article V*
>
> "SECURITY COUNCIL
>
> "1. In determining whether or not any particular loan application falls within the purposes of the Bank, as set forth in its Articles of Agreement, and satisfies the conditions

[49] The history of the negotiations can be found in the minutes of the Committee on Negotiations with Specialized Agencies (United Nations documents E/C.1/SR.40, 41, 46, 54, 55, 56, 57 and 58).

[50] The Bank's version of the joint draft differed from that of the Fund in certain minor respects and by the inclusion of an additional paragraph in article IV, which became article IV, paragraph 3, of the final Relationship Agreement between the Bank and the United Nations.

[51] The text of this United Nations draft was attached to the letter dated 13 June 1947, from Mr. David Weintraub acting on behalf of the Assistant Secretary-General of the United Nations in charge of Economic Affairs (United Nations Ref. No. 463-5-3 GEY).

which such Articles of Agreement require to be met before the Bank may guarantee, participate in or make any loan, the Bank will pay due regard to any relevant measures being taken pursuant to decision of the Security Council for the maintenance or restoration of international peace and security under Article 41 or 42 of the United Nations Charter." [52]

It is significant to note that, in contrast, the provision on the Security Council in the United Nations counter-draft, also presented for discussion at the formal negotiations, provided:

"*Article VI*

"SECURITY COUNCIL

"1. In determining whether any particular loan application falls within the purposes of the Bank, as set forth in its Articles of Agreement, and satisfies the conditions which such Articles of Agreement require to be met when the Bank guarantees, participates in or makes any loan, the Bank will recognize the obligations which are imposed upon members of the United Nations by Article 48 of the Charter to carry out decisions of the Security Council, for the maintenance of international peace and security, both directly and through their action in the appropriate international agencies of which they are members." [53]

From the outset, the Bank's representative stressed the independent character of the Bank which resulted from its basic document, the time and conditions in which it was set up and its special, unique and delicate tasks and responsibilities. [54]

He explained that:

"The Bank was dependent upon its good relations with the investing public and upon the assurance of the latter that the Bank would only make productive loans on a business basis without regard to political considerations. Any suggestion which would have the effect of bringing the Bank's independence into question would jeopardize the Bank's ability to market its securities."

The foregoing serves to indicate that, whereas the Bank entered into negotiations with the United Nations with the aim of ensuring the greatest possible degree of co-operation between the two organizations, it had no intention, in negotiating the terms of the Relationship Agreement, of disregarding the letter and spirit of its Articles of Agreement. In stressing its non-political nature and independence, the Bank was simply seeking to ensure non-involvement in *international political affairs*, which were recognized as the essential function of the United Nations but which, by virtue of the Bank's Articles of Agreement, the Bank was precluded from taking into consideration.

The Bank's inability to agree to any commitment which ran counter to the letter and spirit of its Articles of Agreement explains the position taken by the Bank's representative on the subject of the article relating to the Security Council. [55] At the afternoon negotiation meeting, the United Nations introduced a new version of article VI (Security Council). Commenting on this new version of article VI, the Bank's representative felt that "the suggested wording, however, carried the indication that the Bank recognized as its own obligation the obligation of the Members under the Charter of the United Nations." He therefore proposed the wording which was ultimately accepted:

"1. The Bank takes note of the obligation assumed under paragraph 2 of Article 48 of the United Nations Charter by such of its members as are also Members of the United Nations to carry out the decisions of the Security Council through their action in the appropriate

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[52] This text was submitted by the President of the Bank to the United Nations by letter dated 21 July 1947 (United Nations document E/C.1/20, 22 July 1947).

[53] United Nations document E/C.1/35, 14 August 1947.

[54] The representative of the Fund at this point stressed that the Fund had similar institutional characteristics which had an important bearing on the extent and form of its co-operation with the United Nations and added that "the two institutions were established simultaneously at Bretton Woods, and as independent economic organizations *motivated solely by economic considerations*. The nature of the institutions as then defined could not now be contravened." (Emphasis added.)

[55] During the item-by-item discussion of the proposed Relationship Agreement the Bank consistently maintained the position that it was required to exercise its judgement solely on the basis of its Articles of Agreement.

specialized agencies of which they are members, and will in the conduct of its activities have due regard for the decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

In reply to a question from the representative of the Committee on Negotiations with Specialized Agencies as to the relevance of the reference to Article 42 of the Charter, the Bank's representative "explained that if the measures provided for in Article 41 proved inadequate, the Security Council might take military action *and this military action might have some economic effects*" (emphasis added). The matter of article VI was thereoupon postponed until the evening session of the negotiations, at which time it was "announced that the Negotiating Committee would accept the draft of this article, including the reference to Article 42 of the Charter." It was explained, however, that in the opinion of the Committee on Negotiations the first line should read: "The Bank recognizes the obligations assumed by the Member States of the United Nations". In response, the Bank's representative indicated a preference for the word "notes" to the word "recognizes" on the ground that word "recognizes" has "a technical connotation in law of the assumption of obligation". The representative of the Committee on Negotiations "assured the representative of the Bank that no such connotation existed in this case, and accepted the words 'takes note' ". The final text as adopted, therefore, remained that of the above-quoted Bank proposal.

The legislative history of the Relationship Agreement and of article VI in particular thus shows that the representatives of both sides recognized that article VI would not impose a duty on the Bank in any way in conflict with the letter and spirit of article IV, section 10, of the Bank's Articles of Agreement.

(ii) *Language of article VI of the Relationship Agreement.* These conclusions drawn from the legislative history of the Relationship Agreement are also confirmed by the subsequent discussions in the United Nations prior to the ratification of the Agreement by the General Assembly. The debate in both the Economic and Social Council and in the Joint Committee of the Second and Third Committees of the General Assembly [56] shows that many delegations were conscious of the differences between the Agreements negotiated with the Fund and the Bank and those negotiated with other specialized agencies. [57]

The report by the Economic and Social Council to the General Assembly at its second session, in recommending approval of the draft agreements with the Bank and the Fund, recognized the differences between these agreements and those negotiated with other specialized agencies and stressed that the differences stemmed from the constitutional requirements of the two organizations. [58] In its reports to the General Assembly, [59] the Joint Second and Third Committee of the Assembly also referred to the unique characteristics of the Agreements negotiated with the Bank and Fund.

The texts of the provisions relating to the Security Council in the various relationship agreements between the United Nations and other specialized agencies are particularly significant in this connexion, in that they reveal a sharp distinction between the language used in article VI of the Bank and Fund Agreements and that used in the equivalent provisions of the other

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[56] See especially United Nations, *Official Records of the General Assembly, Second Session, Joint Committee of the Second and Third Committees, Summary Record of Meetings*, 8 October-5 November 1947.

[57] This view is also supported by most commentaries on the Charter: Alf Ross, *Constitution of the United Nations* (New York, Rinehart & Company, 1950), pp. 52 and 53; Eduardo Jiménez de Aréchaga, *Derecho Constitucional de las Naciones Unidas* (Madrid, Escuela de Funcionarios Internacionales, 1958), p. 430; Ruth B. Russell and Jeannette E. Muther, *A History of the United Nations Charter* (Washington, D.C., The Brookings Institution, 1958), pp. 797 and 802; Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations* (Boston, World Peace Foundation, 1949), p. 351; and see especially C. Wilfred Jenks, "Co-ordination: A New Problem of International Organization", Académie de Droit nternational de La Haye, *Recueil des Cours* (1950-II), vol. 77, pp. 157-301, particulary pp. 187, 217 and 218.

[58] See especially paragraph 162 of the report (*Official Records of the General Assembly, Second Session, Supplement No. 3*):

"As regards the draft agreements with the Bank and with the Fund, the Committee on Negotiations with Specialized Agencies had regard to the responsibilities placed upon the two organizations *by their articles of association* with respect to the nature and method of their operations ..." (Emphasis added.)

[59] United Nations document A/449, 7 November 1947 (*Official Records of the General Assembly, Second Session, Plenary Meetings*, vol. II, annex 22).

agreements. Thus for example the ILO, FAO, UNESCO and ICAO Agreements contain an undertaking whereby the agency:

> ". . . agrees to co-operate with the Economic and Social Council in furnishing such information *and rendering such assistance to the Security Council as that Council may request, including assistance in carrying out decisions of the Security Council* for the maintenance or restoration of international peace and security." [60] (Emphasis added.)

The wording of article VI of the Bank's Relationship Agreement with the United Nations is in contrast with the foregoing. [61] It states that the Bank "takes note" of the obligation of Members of the United Nations in accordance with Article 48, paragraph 2, of the Charter and that it will have "due regard" in the conduct of its activities for decisions of the Security Council under Articles 41 and 42 of the Charter. The Bank is thus credited with the knowledge that certain of its members, also members of the United Nations, have certain specific obligations which by virtue of Article 48, paragraph 2, of the Charter might result in a conflict with their obligations under its Articles of Agreement. [62] The record of the negotiations shows clearly that the words "takes note" were specifically intended to avoid any possible suggestion that there was any obligation between the two organizations.

The fact that article VI of the Relationship Agreement was not meant to derogate from article IV, section 10, of the Articles of Agreement of the Bank was subsequently confirmed by the United Nations General Assembly's Collective Measures Committee. In its report to the General Assembly and the Security Council, this Committee referred specifically to the phrase "due regard" in the Bank and Fund Relationship Agreements and noted that:

> "151. Both the Bank and the Fund have included in their special agreements with the United Nations a provision that their operations would be carried on with 'due regard' to decisions of the Security Council, *retaining the right of final decision for themselves*, even though their member nations would be bound by such decisions." [63] (Emphasis added.)

The Secretariat memorandum also cites the fact that by a resolution of the Bank's Board of Governors dated 13 September 1951, the Bank unilaterally undertook in the conduct of its activities to have due regard for recommendations of the General Assembly made pursuant to Assembly resolution 377 (V) (for the "Uniting for peace" resolution). The Secretariat memorandum cites this resolution of the Bank's Board of Governors as "the strongest possible evidence that there is no constitutional objection to the Bank, in its 'consideration' of General Assembly resolutions relating to Portugal and South Africa, *having due regard for and complying with* the recommendations contained in such resolutions". (Annex I, para. 38; emphasis added.)

The willingness to have "due regard" for "Uniting for peace" recommendations has the same meaning and effect as the acceptance of the "due regard" provision in article VI of the Relationship Agreement. Since the Bank had agreed to have "due regard" for Security Council actions under Articles 41 and 42, it was logical that it should also note that developments in the structure and operations of the United Nations in the period between 1947 and 1951 had made it more likely that the United Nations would in the future take measures of the type envisaged under Articles 41 and 42 by recommendations of the General Assembly under the "Uniting for peace" resolution.

The Secretariat memorandum suggested, in this connexion, that the inclusion of article VI in the Relationship Agreement and the Board of Governors' resolution on the "Uniting for peace" resolution indicate that the Bank itself feels that there is no constitutional bar to the Bank's

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[60] The WHO and IMCO Agreements contain simpler language to the same effect.

[61] This is also the view of Goodrich and Hambro (*op. cit. supra*, pp. 346 and 352) who view article VI of both the Fund and Bank Relationship Agreements as among their distinctive features.

[62] Article 48, paragraph 2, of the Charter does not impose any obligation on the specialized agencies, but creates an obligation for Members of the United Nations. This was clearly recognized at San Francisco; see *Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State*, June 26, 1945 (Department of State Publication 2349, Conference Series 71), p. 99. See also Jenks, *op. cit. supra*, p. 185; Aréchaga, *op. cit. supra*, p. 329; Hans Kelsen, *The Law of the United Nations* (London, Stevens & Sons Limited, 1950), p. 745. Since the Secretariat memorandum did not go into the matter, this memorandum does not cover the question of the possibility of a conflict of obligations for Members of the United Nations also members of the Bank.

[63] *Official Records of the General Assembly, Sixth Session, Supplement No. 13* (A/1891), p. 19.

"*complying*" with the recommendations contained in General Assembly resolutions. It should be noted, however, that no suggestion of an undertaking to "comply with" in the sense of carrying out and giving effect to decisions and recommendations can be read into the words "have due regard". Such an interpretation, which would run counter to the provisions of the Articles of Agreement, the legislative history of the Relationship Agreement and the practice of the Bank, is not supported by the plain and ordinary meaning of the actual language of the provisions in question.

(iii) *Functional considerations.* The Bank, in entering into a Relationship Agreement with the United Nations within the terms of its Articles of Agreement, did not and could not modify its character as a technical and financial organization which was specifically enjoined by its member Governments from playing any political role. In imposing such a restriction on the Bank, the signatory Governments had a twofold purpose in mind.

First, in creating an organization to which member Governments with different political characters and aims or interests were about to furnish sizable but limited resources to be used for economic reconstruction and development, it was thought necessary to prevent the use of the leverage that would be provided by the granting or withholding of financial assistance to a particular member for the furtherance of the political aims of any member or any group of members, no matter how worthwhile such aims might appear to be.

Secondly, it was thought to be essential for the ability of the Bank to raise large amounts of capital from the savings of the investing public to assure that public that economic and not political considerations would influence and determine the Bank's financial decisions.

It should be noted in this connexion that the Relationship Agreement between the United Nations and the Bank was intended to described the *legal* rights and obligations of the two organizations arising from the relationship and therefore tends to emphasize the outside limits of their co-operation rather than the actual contents thereof. In fact, this co-operation has been intensive, has covered a wide range of matters of common concern and, in the Bank's opinion at least, has been highly beneficial for the countries which are members of the two organizations.

In practice, cases in which the Bank cannot respond affirmatively to a request or appeal of a United Nations organ are rare; the case of the resolutions of the General Assembly now under consideration is one of them, for the General Assembly's request is concerned with matters which have been deliberately kept outside the scope of the Bank's function and responsibilities by the signatories of its Articles of Agreement.

Annex III

Letter dated 20 July 1967 from the Legal Counsel of the United Nations to the General Counsel of the International Bank for Reconstruction and Development

I refer to your letter of 5 May 1967 and to our subsequent telegrams regarding the opportunity for further observations.

It is a matter for regret that the respective views on this important issue remain so far apart as to afford little prospect of their being reconciled by further legal argument.

It appears that your position rests on the acceptance of an interpretation of the Bank's Constitution and the Relationship Agreement which accords to the Bank, in the conduct of its activities, a positive independence of the need to have regard to any considerations other than economic considerations. In this connexion, the only observation I wish to make at this time is that such a measure of independence would, in my opinion, not only exceed that enjoyed by any national banking institution, but would seem difficult to reconcile with the common dedication of members of the United Nations system to the fulfilment of the purposes of the United Nations Charter.

Annex IV

Letter dated 18 August 1967 from the President of the International Bank for Reconstruction and Development to the Secretary-General of the United Nations

The Legal Counsel of the United Nations has, as you know, sent us a paper containing a closely reasoned legal argument why the World Bank should take certain actions under the General

Assembly's requests for the withholding of economic assistance to Portugal and South Africa. The Bank's General Counsel has replied with legal arguments to show that, under the terms of its Agreement with the United Nations, the Bank is not obligated to comply with such requests and, indeed, under the terms of its own Articles of Agreement, is not free to do so. The Legal Counsel of the United Nations has since written that he continues to adhere to his original views, to which the United Nations organs concerned will doubtless give great weight. However, the Executive Directors of the Bank who, as you know, are responsible for interpreting the Articles of Agreement, having carefully considered all the arguments advanced, have, although with some dissents, endorsed the position taken by the Bank's General Counsel. It seems to me unlikely that additional legal argumentation would change the situation.

In the circumstances, I should like at this point to leave legal argumentation aside and to assure you—and through you the various United Nations organs concerned—that the World Bank is keenly aware and proud of being part of the United Nations family. Its earnest desire is to co-operate with the United Nations by all legitimate means and, to the extent consistent with its Articles of Agreement, to avoid any action that might run counter to the fulfilment of the great purposes of the United Nations. I give you this assurance in the hope that it may be helpful in dissipating any misunderstanding of the Bank's attitude.

Annex V

Letter dated 23 August 1967 from the Secretary-General of the United Nations to the President of the International Bank for Reconstruction and Development

Thank you for your letter of 18 August, which I am transmitting to the members of the Committee of Twenty-Four and to the General Assembly for their information.

I welcome the assurance you have been good enough to convey to me and through me to the United Nations organs concerned, of the Bank's desire to co-operate with the United Nations by all legitimate means and, to the extent consistent with its Articles of Agreement, to avoid any action that might run counter to the fulfilment of the great purposes of the United Nations.

In view of the differences which exist regarding the interpretation of the basic legal texts, I share your feeling that additional legal argumentation would not be productive at the present stage, although this is an aspect on which I naturally cannot prejudge the views of the competent United Nations organs concerned. In welcoming your desire to clarify the attitude of the Bank, I need hardly stress how heavily the United Nations relies on the co-operation and support of all organizations which are members of the United Nations family.

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3. (A) UNITED NATIONS GENERAL ASSEMBLY—FIFTH SPECIAL SESSION QUESTION OF SOUTH WEST AFRICA (AGENDA ITEM 7)

Resolution [2248 (S-V)] adopted by the General Assembly

2248 (S-V). Question of South West Africa

The General Assembly,

Having considered the report of the *Ad Hoc* Committee for South West Africa, [64]

Reaffirming its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Reaffirming its resolution 2145 (XXI) of 27 October 1966, by which it terminated the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Govern-

[64] *Ibid., Fifth Special Session, Annexes*, agenda item 7, document A/6640.

ment of the Union of South Africa and decided that South Africa had no other right to administer the Territory of South West Africa,

Having assumed direct responsibility for the Territory of South West Africa in accordance with resolution 2145 (XXI),

Recognizing that it has thereupon become incumbent upon the United Nations to give effect to its obligations by taking practical steps to transfer power to the people of South West Africa,

I

Reaffirms the territorial integrity of South West Africa and the inalienable right of its people to freedom and independence, in accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) and all other resolutions concerning South West Africa;

II

1. *Decides* to establish a United Nations Council for South West Africa (hereinafter referred to as the Council) comprising eleven Member States to be elected during the present session and to entrust to it the following powers and functions, to be discharged in the Territory:

(*a*) To administer South West Africa until independence, with the maximum possible participation of the people of the Territory;

(*b*) To promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage;

(*c*) To take as an immediate task all the necessary measures, in consultation with the people of the Territory, for the establishment of a constituent assembly to draw up a constitution on the basis of which elections will be held for the establishment of a legislative assembly and a responsible government;

(*d*) To take all the necessary measures for the maintenance of law and order in the Territory;

(*e*) To transfer all powers to the people of the Territory upon the declaration of independence;

2. *Decides* that in the exercise of its powers and in the discharge of its functions the Council shall be responsible to the General Assembly;

3. *Decides* that the Council shall entrust such executive and administrative tasks as it deems necessary to a United Nations Commissioner for South West Africa (hereinafter referred to as the Commissioner), who shall be appointed during the present session by the General Assembly on the nomination of the Secretary-General;

4. *Decides* that in the performance of his tasks the Commissioner shall be responsible to the Council;

III

1. *Decides* that:

(*a*) The administration of South West Africa under the United Nations shall be financed from the revenues collected in the Territory;

(*b*) Expenses directly related to the operation of the Council and the Office of the Commissioner—the travel and subsistence expenses of members of the Council,

the remuneration of the Commissioner and his staff and the cost of ancillary facilities—shall be met from the regular budget of the United Nations;

2. *Requests* the specialized agencies and the appropriate organs of the United Nations to render to South West Africa technical and financial assistance through a co-ordinated emergency programme to meet the exigencies of the situation;

IV

1. *Decides* that the Council shall be based in South West Africa;

2. *Requests* the Council to enter immediately into contact with the authorities of South Africa in order to lay down procedures, in accordance with General Assembly resolution 2145 (XXI) and the present resolution, for the transfer of the administration of the Territory with the least possible upheaval;

3. *Further requests* the Council to proceed to South West Africa with a view to:

(*a*) Taking over the administration of the Territory;

(*b*) Ensuring the withdrawal of South African police and military forces;

(*c*) Ensuring the withdrawal of South African personnel and their replacement by personnel operating under the authority of the Council;

(*d*) Ensuring that in the utilization and recruitment of personnel preference be given to the indigenous people;

4. *Calls upon* the Government of South Africa to comply without delay with the terms of resolution 2145 (XXI) and the present resolution and to facilitate the transfer of the administration of the Territory of South West Africa to the Council;

5. *Requests* the Security Council to take all appropriate measures to enable the United Nations Council for South West Africa to discharge the functions and responsibilities entrusted to it by the General Assembly;

6. *Requests* all States to extend their whole-hearted co-operation and to render assistance to the Council in the implementation of its task;

V

Requests the Council to report to the General Assembly at intervals not exceeding three months on its administration of the Territory, and to submit a special report to the Assembly at its twenty-second session concerning the implementation of the present resolution;

VI

Decides that South West Africa shall become independent on a date to be fixed in accordance with the wishes of the people and that the Council shall do all in its power to enable independence to be attained by June 1968.

1518th plenary meeting,
19 May 1967.

* * *

At its 1524th plenary meeting, on 13 June 1967, the General Assembly, in pursuance of section II, paragraph 1, of the above resolution, elected the members of the United Nations Council for South West Africa.

The Council will be composed of the following Member States: CHILE, COLOMBIA, GUYANA, INDIA, INDONESIA, NIGERIA, PAKISTAN, TURKEY, UNITED ARAB REPUBLIC, YUGOSLAVIA *and* ZAMBIA.

At the same meeting, in pursuance of section II, paragraph 3, of the above resolution, the General Assembly considered the question of the appointment of the United Nations High Commissioner for South West Africa. On the proposal of the Secretary-General,[65] *the Assembly appointed* Mr. Constantin A. STAVROPOULOS, *Legal Counsel of the United Nations, as Acting United Nations High Commissioner for South West Africa.*

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3. (B) UNITED NATIONS GENERAL ASSEMBLY— TWENTY-SECOND SESSION (19 SEPTEMBER-19 DECEMBER 1967)

(1) INSTALLATION OF MECHANICAL MEANS OF VOTING: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 25)

(*a*) Report of the Sixth Committee[66]

[*Original text : English and Spanish*]
[*9 December 1967*]

Introduction

1. At its 1009th and 1010th meetings, on 28 and 29 November 1967, the Sixth Committee considered a proposal by Mexico (A/6862) to make certain changes to rules 89 and 128 of the rules of procedure in connexion with agenda item 25 entitled "Installation of mechanical means of voting". The President of the General Assembly had brought this question to the attention of the Sixth Committee by a letter dated 23 October 1967 (A/C.6/380), in which he stated that, since amendments to the rules of procedure were being suggested, he was referring the matter to the Sixth Committee in accordance with rule 164 and in conformity with the principle set forth in paragraph 1 (*c*) of annex II to the rules of procedure.

Consideration by the Sixth Committee of additions to the rules of procedure of the General Assembly

2. Rule 89 of the rules of procedure is concerned with voting by the General Assembly and rule 128 with voting by committees of the Assembly. In their present form these rules make no explicit provision for the use of mechanical means of voting. However, such means of voting are now available in the General Assembly Hall, and the Sixth Committee noted that this equipment is used not only by the Assembly itself but also on occasion by Main Committees. The Sixth Committee therefore considered that it was necessary to make provision both in rule 89 and in rule 128 for the use of mechanical means of voting by the Assembly and by committees, irrespective of the question of the further installation of such means in conference rooms at Headquarters. This latter question was not before the Sixth Committee in the present context and will be decided in due course by the General Assembly itself.

3. The Sixth Committee noted that, since the installation of mechanical means of voting in the General Assembly, the terms "recorded vote" and "non-recorded vote" have come into general usage. The Sixth Committee understands these terms as follows. When mechanical means of voting are employed, a "non-recorded vote" replaces a vote by show of hands or by standing in that no record is made on the corresponding voting sheet of the

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[65] *Ibid., document* A/6656, para. 3.

[66] Extract from document A/6960, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 25.

manner in which each delegation voted, the voting equipment and subsequently the relevant summary or verbatim records of the meetings indicating only the numerical results of the voting. Similarly, when mechanical means of voting are used, a "recorded vote" replaces a roll-call vote in that a record is made by the equipment of the way in which each delegation cast its vote, such a record subsequently being inserted in the relevant summary or verbatim records of the meeting together with the numerical results of the vote.

Decision of the Committee

4. At the 1009th meeting of the Sixth Committee on 28 November, a draft resolution was introduced on behalf of Czechoslovakia, Kenya, Mexico, New Zealand, Norway, Senegal, Thailand and the United Arab Republic (A/C.6/L.632/Rev.1), the text of which is as follows:

"*The General Assembly*,

"*Noting* that the introduction of voting by mechanical means makes desirable certain amendments to its rules of procedure,

"*Decides*, with effect from 1 January 1968, but without prejudging the question of the installation of mechanical means of voting in the committee rooms, to amend rules 89 and 128 of its rules of procedure as follows:

"(*a*) In rule 89:

"(i) Designate the existing text as paragraph (*a*);

"(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as a roll-call vote.

"(*b*) In rule 128:

"(i) Designate the existing text as paragraph (*a*);

"(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as a roll-call vote."

This draft resolution was unanimously adopted at the 1010th meeting of the Committee, on 29 November 1967.

Recommendation of the Sixth Committee

5. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted by the General Assembly without change. See "Resolution adopted by the General Assembly" below.*]

(*b*) Resolution adopted by the General Assembly

At its 1635th plenary meeting, on 16 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 5 above). For the final text, see resolution 2323 (XXII) below.

2323 (XXII). Installation of mechanical means of voting: amendments to rules 89 and 128 of the rules of procedure of the General Assembly

The General Assembly,

Noting that the introduction of voting by mechanical means makes desirable certain amendments to its rules of procedure,

Decides, with effect from 1 January 1968, but without prejudging the question of the installation of mechanical means of voting in the committee rooms, to amend rules 89 and 128 of its rules of procedure as follows:

(*a*) In rule 89:

(i) Designate the existing text as paragraph (*a*);

(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote."

(*b*) In rule 128:

(i) Designate the existing text as paragraph (*a*);

(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote."

1635th plenary meeting
16 December 1967

(2) URGENT NEED FOR SUSPENSION OF NUCLEAR AND THERMONUCLEAR TESTS: REPORT OF THE CONFERENCE OF THE EIGHTEEN-NATION COMMITTEE ON DISARMAMENT (AGENDA ITEM 30)

Resolution [2343 (XXII)] adopted by the General Assembly

2343 (XXII). Urgent need for suspension of nuclear and thermonuclear tests

The General Assembly,

Having considered the question of the urgent need for suspension of nuclear and thermonuclear tests and the interim report of the Conference of the Eighteen-Nation Committee on Disarmament, [67]

Recalling its resolutions 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965 and 2163 (XXI) of 5 December 1966,

Noting with regret the fact that all States have not yet adhered to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, signed in Moscow on 5 August 1963, [68]

Noting with increasing concern that nuclear weapon tests in the atmosphere and underground are continuing,

Taking into account the existing possibilities of establishing, through international co-operation, an exchange of seismic data, so as to create a better scientific basis for national evaluation of seismic events,

Recognizing the importance of seismology in the verification of the observance of a treaty banning underground nuclear weapon tests,

Realizing that such a treaty would also constitute an effective measure to prevent the proliferation of nuclear weapons,

1. *Urges* all States which have not done so to adhere without further delay to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;

2. *Calls upon* all nuclear-weapon States to suspend nuclear weapon tests in all environments;

3. *Expresses the hope* that States will contribute to an effective international exchange of seismic data;

4. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to take up as a matter of urgency the elaboration of a treaty banning underground nuclear weapon tests and to report to the General Assembly on this matter at its twenty-third session.

1640th plenary meeting
19 December 1967

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[67] *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda items 29, 30 and 31, document A/6951.

[68] United Nations, *Treaty Series*, vol. 480 (1963), No. 6964.

(3) INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (AGENDA ITEM 32)

Resolution [2345 (XXII)] adopted by the General Assembly

2345 (XXII). Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space [69]

The General Assembly,

Bearing in mind its resolution 2260 (XXII) of 3 November 1967, which calls upon the Committe on the Peaceful Uses of Outer Space to continue with a sense of urgency its work on the elaboration of an agreement on liability for damage caused by the launching of objects into outer space and an agreement on assistance to and return of astronauts and space vehicles,

Referring to the addendum to the report of the Committee on the Peaceful Uses of Outer Space, [70]

Desiring to give further concrete expression to the rights and obligations contained in the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, [71]

1. *Commends* the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, the text of which is annexed to the present resolution;

2. *Requests* the Depositary Governments to open the Agreement for signature and ratification at the earliest possible date;

3. *Expresses its hope* for the widest possible adherence to this Agreement;

4. *Calls upon* the Committee on the Peaceful Uses of Outer Space to complete urgently the preparation of the draft agreement on liability for damage caused by the launching of objects into outer space and, in any event, not later than the beginning of the twenty-third session of the General Assembly, and to submit it to the Assembly at that session.

1640th plenary meeting
19 December 1967

Annex

Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space

[Text reproduced in this *Yearbook*, p. 269]

[69] In accordance with a decision taken by the General Assembly at its 1640th plenary meeting, on 19 December 1967, the question dealt with in the addendum to the report of the Committee, on the Peaceful Uses of Outer Space was examined directly in plenary meeting, and the present resolution was adopted without reference to the First Committee. See also, with reference to item 32, resolutions 2260 (XXII) and 2261 (XXII).

[70] *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 32, document A/6804/Add.1.

[71] General Assembly resolution 2222 (XXI), annex.

(4) Draft Declaration on the Elimination of Discrimination against Women (agenda item 53)

Resolution [2263 (XXII)] adopted by the General Assembly

2263 (XXII). Declaration on the Elimination of Discrimination against Women

The General Assembly,

Considering that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Considering that the Universal Declaration on Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including any distinction as to sex,

Taking into account the resolutions, declarations, conventions and recommendations of the United Nations and the specialized agencies designed to eliminate all forms of discrimination and to promote equal rights for men and women,

Concerned that, despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women,

Considering that discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity,

Bearing in mind the great contribution made by women to social, political, economic and cultural life and the part they play in the family and particularly in the rearing of children,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women as well as men in all fields,

Considering that it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women,

Solemnly proclaims this Declaration:

Article 1

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(*a*) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

(*b*) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

Article 3

All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

Article 4

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

(*a*) The right to vote in all elections and be eligible for election to all publicly elected bodies;

(*b*) The right to vote in all public referenda;

(*c*) The right to hold public office and to exercise all public functions.

Such rights shall be guaranteed by legislation.

Article 5

Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.

Article 6

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:

(*a*) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;

(*b*) The right to equality in legal capacity and the exercise thereof;

(*c*) The same rights as men with regard to the law on the movement of persons.

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:

(*a*) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

(*b*) Women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;

(*c*) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 7

All provisions of penal codes which constitute discrimination against women shall be repealed.

Article 8

All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

Article 9

All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

(*a*) Equal conditions of access to, and study in, educational institutions of all types, including universities and vocational, technical and professional schools;

(*b*) The same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;

(*c*) Equal opportunities to benefit from scholarships and other study grants;

(*d*) Equal opportunities for access to programmes of continuing education, including adult literacy programmes;

(*e*) Access to educational information to help in ensuring the health and well-being of families.

Article 10

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(*a*) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(*b*) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

(*c*) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;

(*d*) The right to receive family allowances on equal terms with men.

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including childcare facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

Article 11

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

1597th plenary meeting
7 November 1967

(5) ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (*a*) IMPLEMENTATION OF THE UNITED NATIONS DECLARATION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (*b*) STATUS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (*c*) MEASURES TO BE TAKEN AGAINST NAZISM AND RACIAL INTOLERANCE (*d*) MEASURES FOR THE SPEEDY IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS AGAINST RACIAL DISCRIMINATION (AGENDA ITEM 55)

Resolution [2332 (XXII)] adopted by the General Assembly

2332 (XXII). Measures for the speedy implementation of international instruments against racial discrimination

The General Assembly,

Recalling its resolutions 1905 (XVIII) of 20 November 1963, 2017 (XX) of 1 November 1965 and 2142 (XXI) of 26 October 1966,

Expressing its profound concern that many Governments continue to violate fundamental human rights and the principles of the Charter of the United Nations through policies of *apartheid*, segregation and other forms of racial discrimination,

Concerned also that the principles of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination are being grossly violated in some parts of the world, particularly in South Africa, in the rebellious colony of Southern Rhodesia and in the Territory of South West Africa, which is under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa,

Noting that many States have not yet signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination,

1. *Urges* all eligible Governments which have not yet done so to sign, ratify and implement without delay the International Convention on the Elimination of All Forms of Racial Discrimination and the other conventions directed against discrimination in employment and occupation and against discrimination in education;

2. *Requests* the Secretary-General to make available to the Commission on Human Rights at its regular sessions the information submitted by Governments of Member States on measures taken for the speedy implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination;

3. *Requests* the Secretary-General, the specialized agencies and all organizations concerned to continue to take measures to propagate, through appropriate channels, the principles and norms set forth in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and in the International Convention on the Elimination of All Forms of Racial Discrimination;

4. *Requests* the International Conference on Human Rights to consider the question of giving effect to the provisions of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination and the question of the implementation of the conventions directed against discrimination in employment and occupation and against discrimination in education in so far as they relate to racial discrimination, especially in South Africa, in the rebellious colony of Southern Rhodesia and in the Territory of South West Africa, which is under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa;

5. *Recommends* that the Commission on Human Rights continue to give consideration, as a matter of priority, to measures for the speedy implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and that it report, through the Economic and Social Council, to the General Assembly at its twenty-third session;

6. *Condemns* the Government of South Africa and the illegal régime in Southern Rhodesia for their open and nefarious practices of racial discrimination and intolerance against the African and other non-white peoples in the Republic of South Africa, in the Territory of South West Africa, which is under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa, and in the rebellious colony of Southern Rhodesia;

7. *Calls upon* the Government of South Africa to desist from all such nefarious practices;

8. *Decides* to consider at its twenty-third session the question of the elimination of all forms of racial discrimination.

1638th plenary meeting
18 December 1967

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(6) Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights: report of the Secretary-General (agenda item 57)

Resolution [2337 (XXII)] adopted by the General Assembly

2337 (XXII). Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights

The General Assembly,

Recalling that in its resolution 2200 A (XXI) of 16 December 1966 it expressed the hope that the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights would be signed and ratified or acceded to without delay and come into force at an early date,

Noting that according to the report of the Secretary-General, submitted in pursuance of resolution 2200 A (XXI) on the status of ratifications of the Covenants and of the Optional Protocol, there have been no ratifications of or accessions to any of these instruments and that there have been only nineteen signatures to the International Covenant on Economic, Social and Cultural Rights, eighteen to the International Covenant on Civil and Political Rights, and eleven to the Optional Protocol,

Desiring to accelerate the ratifications of and accessions to the Covenants and the Optional Protocol,

Convinced that the purposes and principles of the Charter of the United Nations would be greatly enhanced by the coming into force of the Covenants and the Optional Protocol,

1. *Invites* States which are eligible to become parties to the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights to hasten their ratifications of or accessions to these instruments;

2. *Requests* the Secretary-General to submit a report on the status of the Covenants and the Optional Protocol to the International Conference on Human Rights to be held at Teheran in 1968 and to the General Assembly at its twenty-third session;

3. *Decides* to include this item in the provisional agenda of its twenty-third session.

1638th plenary meeting
18 December 1967

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(7) Question of South West Africa (*a*) Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (*b*) Report of the United Nations Council for South West Africa (*c*) Appointment of the United Nations Commissioner for South West Africa (agenda item 64)

Resolutions [2324 (XXII) and 2325 (XXII)] adopted by the General Assembly

2324 (XXII). Question of South West Africa

The General Assembly,

Recalling its resolution 2145 (XXI) of 27 October 1966, by which it terminated the Mandate for South West Africa and decided, *inter alia*, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations,

Gravely concerned about the arrest, deportation and trial at Pretoria of thirty-seven South West Africans by the South African authorities in flagrant violation of their rights and of the aforementioned resolution,

Recalling further the resolution adopted on 12 September 1967 by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples [72] and also the consensus adopted by the United Nations Council for South West Africa on 27 November 1967, [73]

Conscious of the special responsibilities of the United Nations towards the people and Territory of South West Africa,

1. *Condemns* the illegal arrest, deportation and trial at Pretoria of the thirty-seven South West Africans as a flagrant violation by the Government of South Africa of their rights, of the international status of the Territory and of General Assembly resolution 2145 (XXI);

2. *Calls upon* the Government of South Africa to discontinue forthwith this illegal trial and to release and repatriate the South West Africans concerned;

3. *Appeals* to all States and international organizations to use their influence with the Government of South Africa in order to obtain its compliance with the provisions of paragraph 2 above;

4. *Draws the attention* of the Security Council to the present resolution;

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[72] *Official Records of the General Assembly, Twenty-second Session, Annexes*, addendum to agenda item 23 (A/6700/Rev.1), chapter IV, para. 232.

[73] *Ibid.*, agenda item 64, document A/6919.

5. *Requests* the Secretary-General to report as soon as possible to the Security Council, the General Assembly, the United Nations Council for South West Africa and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on the implementation of the present resolution.

1635th plenary meeting
16 December 1967

2325 (XXII). Question of South West Africa

The General Assembly,

Having considered the report of the United Nations Council for South West Africa, [74]

Reaffirming the inalienable right of the people of South West Africa to freedom and independence in accordance with the Charter of the United Nations and with General Assembly resolution 1514 (XV) of 14 December 1960, which contains the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Reaffirming its resolution 2145 (XXI) of 27 October 1966, by which it terminated the Mandate for South West Africa and decided, *inter alia*, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations,

Reaffirming also its resolution 2248 (S-V) of 19 May 1967, and particularly paragraph 5 of section IV thereof,

Taking note of the refusal of the Government of South Africa to co-operate with the United Nations in the implementation of resolutions 2145 (XXI) and 2248 (S-V), as indicated in its communication of 26 September 1967 addressed to the Secretary-General, [75]

1. *Notes with appreciation* the report of the United Nations Council for South West Africa and the Council's efforts to discharge the responsibilities and functions entrusted to it;

2. *Requests* the United Nations Council for South West Africa to fulfill by every available means the mandate entrusted to it by the General Assembly;

3. *Condemns* the refusal of the Government of South Africa to comply with General Assembly resolutions 2145 (XXI) and 2248 (S-V), which provide for granting the people of South West Africa an opportunity to exercise their inalienable right to freedom and independence;

4. *Declares* that the continued presence of South African authorities in South West Africa is a flagrant violation of its territorial integrity and international status as determined by General Assembly resolution 2145 (XXI), as well as of the terms of General Assembly resolution 2248 (S-V);

5. *Calls upon* the Government of South Africa to withdraw from the Territory of South West Africa, unconditionally and without delay, all its military and police forces and its administration, to release all political prisoners and to allow all political refugees who are natives of the Territory to return to it;

6. *Urgently appeals* to all Member States, particularly the main trading partners of South Africa and those which have economic and other interests in South Africa and South West Africa, to take effective economic and other measures designed to ensure the immediate

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[74] *Ibid.*, document A/6897.

[75] *Ibid.*, document A/6822.

withdrawal of the South African administration from the Territory of South West Africa, thereby clearing the way for the implementation of General Assembly resolutions 2145 (XXI) and 2248 (S-V);

7. *Requests* the Security Council to take effective steps to enable the United Nations to fulfil the responsibilities it has assumed with respect to South West Africa;

8. *Further requests* the Security Council to take all appropriate measures to enable the United Nations Council for South West Africa to discharge fully the functions and responsibilities entrusted to it by the General Assembly;

9. *Decides* to maintain this item on its agenda.

1635th plenary meeting
16 December 1967

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(8) Report of the International Law Commission on the work of its nineteenth session (agenda item 85)

(*a*) Report of the Sixth Committee [76]

[*Original text: English and Spanish*]
[*17 November 1967*]

I. Introduction

1. At its 1564th plenary meeting, on 23 September 1967, the General Assembly decided to include the item entitled "Report of the International Law Commission on the work of its nineteenth session" in the agenda of its twenty-second session and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this item at its 957th to 968th meetings, from 26 September to 11 October 1967, and at its 970th to 974th meetings, from 12 to 18 October 1967.

3. At the 957th meeting, on 26 September 1967, at the invitation of the Chairman of the Sixth Committee, Sir Humphrey Waldock, Chairman of the International Law Commission at its nineteenth session, introduced the Commission's report on the work of that session (A/6709/Rev.1 and Corr.1). At the 968th meeting, on 11 October 1967, he commented on the observations which had been made during the debate on the report.

4. The report of the International Law Commission on the work of its nineteenth session, held at Geneva from 8 May to 14 July 1967, consisted of the following three chapters: I. Organization of the session; II. Special missions; III. Other decisions and conclusions of the Commission. Chapter II of the report contained the final text of the draft articles on special missions adopted by the Commission in 1967. An annex to the report reproduced the comments of Governments on the provisional draft articles on special missions adopted by the Commission in 1965.

II. Proposals and amendments

5. During the consideration of this item by the Sixth Committee, two draft resolutions were submitted, one taking note of the report of the International Law Commission and dealing with the Commission's future work and other matters mentioned in the report, and

[76] Document A/6898, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 85.

the other dealing exclusively with the topic of special missions. The two draft resolutions and the revisions, proposals or amendments thereto are reproduced in paragraphs 6 to 13.

A. Report of the International Law Commission

6. At the 964th meeting on 6 October 1967, Colombia, Ecuador and Guatemala submitted a draft resolution (A/C.6/L.617), which was introduced by Guatemala with the explanation that Nigeria had requested that it be included as a sponsor, although its name did not appear on the document. The draft resolution read as follows:

"*The General Assembly*,

"*Having considered* the report of the International Law Commission on the work of its nineteenth session,

"*Recalling* its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of State responsibility, succession of States and Governments and relations between States and inter-governmental organizations.

"*Emphasizing* the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations.

"*Noting with satisfaction* that at its nineteenth session the International Law Commission adopted the final text of its draft articles on special missions,

"*Noting further with appreciation* that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the Seminar was made possible by the generous collaboration of members of the Commission, that five Governments offered scholarships for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions,

"1. *Takes note* of chapters I and III of the report of the International Law Commission on the work of its nineteenth session;

"2. *Expresses its appreciation* to the International Law Commission for the work it has accomplished;

"3. *Notes with approval* the programme of work for 1968 proposed by the International Law Commission in chapter III of its report;

"4. *Recommends* that the International Law Commission should:

(*a*) Continue its work on succession of States and Governments and relations between States and inter-governmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

(*b*) Study the topic of most-favoured-nation clauses in the law of treaties;

(*c*) Carry out a review of its programme and methods of work;

(*d*) Expedite the study of the topic of State responsibility and take it up at the earliest opportunity;

"5. *Expresses the wish* that, in conjunction with future sessions of the International Law Commission, other seminars might be organized which should continue to ensure the participation of a reasonable number of nationals of developing countries;

"6. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-second session of the General Assembly on the report of the Commission."

7. Bulgaria, Colombia, Ecuador, Guatemala and Nigeria submitted a first revision of the draft resolution (A/C.6/L.617/Rev.1), circulated on 9 October 1967, in which the order of sub-paragraphs (*c*) and (*d*) of operative paragraph 4 of the original draft was reversed.

8. The sponsors of the revised draft resolution at the 967th meeting on 11 October 1967 submitted a second revision (A/C.6/L.617/Rev.2), introducing the following changes:

(*a*) The second preambular paragraph was redrafted to read:

"*Recalling* its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and inter-governmental organizations and State responsibility."

(*b*) The fifth preambular paragraph was changed to read:

"*Noting further with appreciation* that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the Seminar was made possible by the generous collaboration of members of the Commission, that more scholarships were made available for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions."

(*c*) In operative paragraph 4 the words "and take it up at the earliest opportunity" were deleted from sub-paragraph (*c*) (sub-paragraph (*d*) of the original draft).

B. Special missions

9. At the 968th meeting on 9 October 1967, Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria submitted a draft resolution (A/C.6/L.618), which read as follows:

"*The General Assembly*,

"*Having considered* chapter II of the report of the International Law Commission on the work of its nineteenth session, which contains final draft articles and commentaries on special missions,

"*Recalling* that in its resolutions 1687 (XVI) of 18 December 1961, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development of the topic of special missions, taking into account the views expressed in the General Assembly and the comments submitted by Governments, and that in its resolution 2167 (XXI) of 5 December 1966 it recommended that a final draft on special missions should be submitted to the Assembly by the Commission in its report on the work of its nineteenth session,

"*Noting further* that at its eighteenth and nineteenth sessions, in 1966 and 1967, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on special missions prepared at its sixteenth and seventeenth sessions and that at its nineteenth session the Commission finally adopted the draft articles,

"*Recalling* that, as stated in paragraph 33 of the report of the International Law Commission on the work of its nineteenth session, the Commission decided to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions,

"*Mindful* of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

"*Believing* that the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and the privileges and immunities of such missions,

"1. *Expresses its appreciation* to the International Law Commission for its valuable work on special missions and to the Special Rapporteur for his contribution to this work;

"2. *Invites* Member States to submit, not later than 1 July 1968, their written comments and observations on the final draft articles on special missions prepared by the International Law Commission;

"3. *Requests* the Secretary-General to circulate the comments submitted by Member States on the subject, so as to facilitate its consideration by the General Assembly at its twenty-third session, in the light of those comments;

"4. *Decides* to include an item entitled, 'Special Missions' in the provisional agenda of its twenty-third session."

10. At the 970th meeting on 12 October 1967, Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, the United Republic of Tanzania and Zambia submitted an amendment (A/C.6/L.620) to the draft resolution proposing that operative paragraph 4 be replaced by the following text:

"4. *Decides* to include an item entitled 'Draft Convention on Special Missions' in the provisional agenda of its twenty-third session, with a view to the adoption of such a convention by the General Assembly."

Subsequently, Somalia added its name to the list of sponsors of the amendment (A/C.6/L.620/Add.1).

11. At the 973rd meeting on 17 October 1967, Iraq introduced an amendment (A/C.6/L.622) adding operative paragraphs 5 and 6 to the draft resolution (A/C.6/L.618) reading as follows:

"5. *Requests* the Secretary-General to arrange for the presence of the Special Rapporteur on special missions as an expert during the debates on the topic at the twenty-third session, and to submit at that session all relevant documentation;

"6. *Invites* Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered."

12. At the same meeting the representative of Nigeria proposed orally that operative paragraph 4, as worded in document A/C.6/L.620, should be made operative paragraph 6 of the draft resolution and that operative paragraphs 5 and 6, as worded in document A/C.6/L.622, should become operative paragraphs 4 and 5 respectively. However, at the same meeting, the representative of Ecuador, supported by Guatemala, proposed orally that the order of operative paragraphs 4, 5 and 6, appearing in documents A/C.6/L.620 and A/C.6/L.622, should be kept.

13. Also at the 973rd meeting, the representative of the Secretary-General made a statement relating to the financial implications of paragraph 5 of the amendment proposed by Iraq in document A/C.6/L.622. He explained that since under that paragraph the Secretary-General would be requested to arrange for the presence of an expert at the twenty-third session of the General Assembly, the person referred to in the paragraph would be entitled to receive a fee and travel and subsistence expenses. The expenditure involved was tentatively estimated at $5,000.

III. Debate

14. Before turning to the matters dealt with in the report of the International Law Commission, many representatives congratulated the Commission on its work and emphasized the importance of the codification and progressive development of international law for the stability of international relations and the security of mankind. Far from being routine, the examination of the reports of the Commission was one of the most important tasks of the Sixth Committee. It was also a guarantee that the Commission's work would be directed towards furthering the interest of the international community.

15. The main aspects of the discussion of the Commission's report (A/6709/Rev.1 and Corr.1) are summarized below in two sections. The first section (paras. 16 to 78) is devoted to the discussion of the draft articles on special missions as set out in chapter II of the report (*ibid.*). The second section (paras. 79 to 96) is devoted to the discussion of the other decisions and conclusions of the Commission which form the subject matter of chapter III of the report (*ibid*).

A. Draft articles on special missions

16. Many representatives paid a warm tribute to the International Law Commission and its Special Rapporteur, Mr. Milan Bartoš, for the successful conclusion of the work on special missions by the adoption and submission to the General Assembly of fifty draft articles on the topic. The draft articles represented a valuable addition to the Commission's work on diplomatic and consular relations. Some representatives stressed the importance of the codification of the law on special missions for the stability of relations between States and the strengthening of friendship between nations. Others congratulated the Commission on having overcome the difficulties arising from the fact that there was not the same degree of uniformity in the practice of States in the case of special missions as in the case of permanent diplomatic or consular missions. The Commission had at times incorporated into the draft articles elements of *lex ferenda*, but it had on the whole maintained a proper balance between progressive development and codification of international law.

17. The debate on the draft articles on special missions is reviewed below under four headings. The first is devoted to observations of a general nature, the second to observations relating to specific provisions, the third to suggestions for the addition of new articles and the fourth to the discussion of the measures to be taken for the conclusion of a convention on special missions.

1. *General observations on the draft articles*

18. In their general observations on the draft articles, representatives referred mainly to the four questions which are dealt with below in subsections (*a*) to (*d*).

(a) *The effects of the requirement that a special mission must have a representative character*

19. A number of representatives recalled that the Chairman of the International Law Commission had pointed out that the hallmark of a special mission was its representative character, that is, its position as an organ representing the sending State. The Commission had introduced this element in the definition of special missions at its nineteenth session (sub-paragraph (*a*) of article 1). It had thus limited the scope of the draft articles by drawing a line between those missions which should attract the operation of the draft articles, including the provisions on privileges and immunities, and those which, because they did not represent the sending State, should be considered merely as visits under official auspices.

20. Several representatives pointed out that by limiting the scope of the draft articles to special missions of a representative character, the Commission had rendered unnecessary any distinction between various types of special missions, and in particular between low-level, standard and high-level missions. Low-level missions, usually of a technical nature, did not have a representative character and fell outside the scope of the draft articles. High-level missions were accorded the same status as standard missions but, as expressly stated in article 21, their members retained all the additional facilities, privileges and immunities accorded to them by international law.

(b) *The requirement of mutual consent and the right to derogate from the draft articles*

21. Several representatives noted with approval that the draft articles required the mutual consent of the sending and the receiving States for the establishment of a special mission. This consensual element, which was a corollary of the principle of the sovereign equality of States, gave a considerable degree of flexibility to the draft articles. Indeed, nothing in the draft articles prevented the sending and receiving States from agreeing to give a particular mission a status either smaller or greater than the one laid down as the general standard for special missions.

(c) *The extent of the facilities, privileges and immunities to be granted under the draft articles*

22. Many representatives noted that, as expressly stated by the Commission in its commentaries, the draft articles on special missions were based on the 1961 Vienna Convention on Diplomatic Relations.[77] Most of the provisions relating to facilities, privileges and immunities reproduced with minor changes the terms of the corresponding provisions of that Convention.

23. A number of representatives expressed the view that the assimilation in this respect of special missions to permanent diplomatic missions would lead to an unnecessary multiplication of facilities, privileges and immunities. They held that special missions and their members should enjoy only those facilities, privileges and immunities which were strictly necessary for the performance of their tasks. One representative doubted whether a simple transposition of diplomatic law, as expressed in the Vienna Convention on Diplomatic Relations, was really feasible. One of the main elements on which diplomatic privileges

[77] Vienna Convention on Diplomatic Relations, *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No. : 62.X.1) p. 82.

and immunities were based was the stability of the missions and the responsibility of the head of the mission for the conduct of his staff; yet special missions were by their very nature highly unstable. Another representative suggested that the draft articles should be modelled on the 1963 Vienna Convention on Consular Relations [78] rather than on the Convention on Diplomatic Relations.

24. Other representatives held, on the contrary, that the Commission had been justified in taking as a basis the Convention on Diplomatic Relations. In order to perform their task satisfactorily, special missions and their members required most of the facilities, privileges and immunities enjoyed by diplomatic missions and their members. Moreover, the limitation of the scope of the draft articles to special missions of a representative character and the possibility given to States to derogate by common agreement from the draft articles removed any danger of an undue extension of facilities, privileges and immunities.

(d) *Terminology*

25. Some representatives stated that the terminology employed in the draft articles lacked uniformity and that an attempt should be made to remedy the situation, with particular attention to the terms used in the Vienna Conventions. As an example of inconsistent terminology, one representative cited the expression "required for the performance of its functions" in article 22 and the expression "necessary for the performance of the functions of the special mission" in article 27. His delegation preferred the term "necessary". A representative pointed out that, in the French text, the Convention on Diplomatic Relations used the terms "*Etat accréditant*" and "*Etat accréditaire*" and the Convention on Consular Relations used the terms "*Etat d'envio*" and "*Etat de résidence*". In the draft articles on special missions, the latter term was replaced by "*Etat de réception*". He suggested that the terms "*Etat d'origine*", on the one hand, and "*Etat de résidence*" or "*Etat d'accueil*", on the other, should be adopted. Another representative expressed the view that the Spanish text of the draft articles could be slightly improved by deleting in several places, where the context was sufficiently clear, the expression "*que envía*" which followed the word "*Estado*".

2. *Observations on specific provisions*

26. In addition to their general observations, representatives made numerous references to the preamble and to specific provisions of the draft articles on special missions.

Preamble

27. A representative noted with approval that the preamble submitted by the Commission (see A/6709/Rev.1 and Corr.1, chap. II, annex) was similar to the preamble of the Vienna Conventions of 1961 and 1963. Another representative suggested that the preamble should include a statement of the principle that special missions were a form of diplomatic activity designed to promote the interests of international peace and security and to contribute to co-operation among States based on the principles of sovereignty and independence, equality of rights, non-interference in the domestic affairs of States and mutual advantage.

Article 1 (Use of terms)

28. Several representatives expressed satisfaction with the definition of a special mission contained in paragraph (*a*) of article 1, which brought out the three main criteria of such a mission, namely, its representative character, its temporary duration and the

[78] Vienna Convention on Consular Relations, *United Nations Conference on Consular Relations, Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

specific nature of its task. Some representatives, however, considered that the definition should have also included a reference to the requirement of mutual consent. It was pointed out that in the absence of such a reference the concept of special missions could be established only by a close reading of three separate provisions, namely, articles 1, 2 and 3.

29. It was suggested that the first criterion of the definition meant that the special mission must be invested with representative power by the sending State; in other words, that it must have the legal capacity to express the will of that State within the framework of its specified task. It was also maintained that the word "representative" should be interpreted in its broadest possible sense. The use of the word, however, did not imply that a special mission must be generally representative of the sending State. Actually, in most cases the task of a special mission would be limited to a particular aspect of the functions of its Government.

30. One member criticized the expression "representative character" as an anachronism from the days when diplomats had been regarded as representing the person of their sovereign and sharing his attributes. Other members held that the expression was ambiguous and that an attempt should be made to formulate an exact definition of its meaning. It was suggested that a representative mission should be defined as a mission sent by a State, constituted objectively according to the criteria of international law, or as a mission sent by any authority regarded by the receiving State as comparable to a subject of international law. It was also suggested that the question whether a particular special mission had a representative character was a matter to be determined by the sending State.

31. Referring to paragraph (*b*) of article 1, a representative noted that this paragraph contained a description of the term "permanent diplomatic mission", although that term was not defined in the 1961 Vienna Convention. He expressed the view that this was hardly a desirable step, since it might introduce new elements into international diplomatic law. Another representative suggested that paragraphs (*b*) and (*c*) of article 1 should be deleted, since they presupposed that the parties to the Convention on special missions would also be parties to the Vienna Conventions.

32. As regards paragraph (*h*), a representative said that although it could be assumed that the "members of the diplomatic staff" referred to in that provision were regular members of the diplomatic corps in the receiving State, it would be preferable to state so expressly in the text of the article or in the commentary. Another representative contended that the definitions in paragraphs (*h*) and (*i*) were tautological.

33. Referring to the Commission's commentary on article 1, a representative expressed the view that States as such were not the only recognized subjects of international law; nations struggling for their liberation and sometimes actually controlling a particular territory also had to be taken into account. He suggested that the right of those nations to send special missions should be recognized in a clear provision to that effect.

Article 2 (Sending of special missions)

34. A representative observed that the principle that international law was based on the will and agreement of States—a principle which had been strongly affirmed in article 2 of both the Convention on Diplomatic Relations and the Convention on Consular Relations—was expressed less forcefully in article 2 of the draft on special missions. The fact that the reference to the consent of the receiving State appeared only at the end of that provision seemed to detract from the importance of such consent. He therefore suggested that article 2 should be redrafted in order to lay more emphasis on the requirement of the consent of the receiving State.

Article 4 (Sending of the same special mission to two or more States)

35. Doubts were expressed about the advisability of retaining article 4 on the ground that it was based solely on political considerations. The situation referred to in the article was regulated, from the legal point of view, by the provisions of article 2, which made consent an indispensable condition for the sending of a special mission.

Article 7 (Non-existence of diplomatic or consular relations and non-recognition)

36. Article 7 was commended by several representatives, who pointed out that experience showed that special missions had played a particularly useful role when there were no diplomatic relations or recognition. Other representatives, however, expressed reservations about the article.

37. Several representatives shared the view expressed by the Commission in its commentary on article 7 that the question whether the sending or reception of special missions prejudged the problem of recognition lay outside the scope of the draft articles. Others held, on the contrary, that the question could not be ignored. One representative proposed the addition to article 7 of a third paragraph reading:

> "The sending or receiving of a special mission, as contemplated in paragraph 2 hereof, shall not of itself be construed as constituting an act of recognition of the receiving State by the sending State."

Article 9 (Composition of the special mission)

38. A representative welcomed the fact that the Commission had decided not to include in article 9 any provision similar to that of article 11 of the Convention on Diplomatic Relations, which authorized the receiving State to limit the size of a diplomatic mission.

Article 12 (Persons declared non grata *or not acceptable)*

39. It was suggested that the distinction made in article 12 between persons declared "*non grata*" and persons declared "not acceptable" was unnecessary.

Article 14 (Authority to act on behalf of the special mission)

40. Referring to the provision of paragraph 1 which authorized the head of a special mission to address communications to the receiving State, some representatives observed that the normal channel for such communications should be the permanent diplomatic mission of the sending State in the receiving State.

Article 16 (Rules concerning precedence)

41. Several representatives criticized the provision in paragraph 1 that precedence among special missions should be determined by the alphabetical order of the names of the States. One representative suggested that the alphabetical order should be supplemented by the principle of rotation. Another raised the problem of countries whose language did not have an alphabet. Some representatives held that the State on whose territory special missions were meeting should be free to apply in the matter the rules of its own protocol.

42. Recalling that the Commission had decided to make no distinction between special missions of various types, a representative suggested the deletion of paragraph 2 of article 16.

Article 17 (Seat of the special mission)

43. Some representatives doubted whether it was necessary to devote a provision of the draft articles to the seat of special missions since the latter were, by definition, of a temporary character.

Article 18 (Activities of special missions on the territory of a third State)

44. Some representatives noted with approval that paragraph 1 of article 18 expressly stated that the third State retained the right to withdraw its consent to the meeting of special missions on its territory.

Article 24 (Exemption of the premises of the special mission from taxation)

45. Doubts were expressed about the possibility of applying in practice the exemption from taxation provided for in article 24.

Article 25 (Inviolability of the premises)

46. It was suggested that a clause should be inserted in paragraph 1 to make it clear that when the special mission concerned was of a high level the head of the permanent diplomatic mission could not authorize the agents of the receiving State to enter the premises of the special mission without the consent of the head of the mission.

47. The last sentence of paragraph 1 was criticized on the ground that it might lead to dangerous abuses. Several representatives suggested that the paragraph should be redrafted so as to make it clear that entry into the premises of a special mission should never be allowed without the consent of a representative of the sending State. It was observed that the functions of special missions were similar to those of diplomatic missions whose premises could not be entered under any circumstances in accordance with the terms of the Vienna Convention of 1961. The following text was suggested:

> "The premises of the special mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the special mission."

Other representatives, however, recalled that the last sentence of paragraph 1 was modelled on a provision of article 31 of the Convention on Consular Relations. Since that provision had proved acceptable in the case of a consular office, there was no reason to fear its abuse with regard to a special mission, which was temporary in character and was likely to share buildings with other occupants by short-term lease or otherwise: this made it all the more imperative to retain the draft of the International Law Commission.

Article 28 (Freedom of communication)

48. It was suggested that in the second sentence of article 28, the words "in the receiving State" should be added after "wherever situated".

Article 29 (Personal inviolability)

49. It was suggested that the personal inviolability accorded to members of special missions should be strictly limited to the performance of their functions.

Article 30 (Inviolability of the private accommodation)

50. Some representatives criticized article 30 on the ground that it provided for excessive privileges and immunities. It was contended in support of that position that the receiving State could not be required to provide special protection for the private accommodation of members of special missions, which were usually hotel rooms.

Article 31 (Immunity from jurisdiction)

51. A representative expressed the view that article 31 sought to grant special missions greater privileges and immunities than were really necessary. Another suggested that it would be preferable to adopt for the drafting of the article the conservative approach reflected in article 22, under which the receiving State need accord only such facilities as

were required for the performance of the special mission's functions "having regard to [its] nature and task".

Article 33 (Exemption from dues and taxes)

52. A representative doubted that the exemptions granted under article 33 were justified. Another representative expressed the view that these exemptions were likely to give rise to serious difficulties in practice.

Article 35 (Exemption from customs duties and inspection)

53. As in the case of article 33, a representative doubted that the exemptions granted under article 35 were justified. Another representative expressed the view that it would be too much to expect developing countries to afford all temporary missions the same customs exemptions as were accorded to permanent missions. The extent of the privileges to be granted to temporary missions should be determined by the economic possibilities of the receiving State and should be viewed as a courtesy rather than an obligation.

Article 36 (Administrative and technical staff)

Article 37 (Members of the service staff)

Article 38 (Private staff)

54. Articles 36, 37 and 38 were criticized on the ground that they provided for excessive privileges and immunities.

Article 39 (Members of the family)

55. Referring to paragraph 2, one representative expressed the view that it was debatable whether certain privileges and immunities should be granted to members of the administrative and technical staff of the special mission and it was even more debatable whether such privileges and immunities should be extended to their families.

Article 42 (Settlement of civil claims)

56. Several representatives noted with satisfaction that the Commission had included in the draft articles this provision on the settlement of civil claims, which was based on the functional theory of diplomatic immunities.

Article 43 (Transit through the territory of a third State)

57. Some representatives expressed the view that article 43 was an improvement on article 40 of the Convention on Diplomatic Relations since it provided in paragraph 4 that the third State must be informed in advance of the transit of the members of the special mission. One representative, however, criticized the paragraph for treating a request for a visa as equivalent to a notification of intended transit. That might create considerable, and at times unnecessary, work for the third State concerned.

Article 49 (Professional activity)

58. One representative expressed the view that the use of the expression "*en vue d'un gain personnel*" in the French text of the article suggested that the persons concerned were permitted to practise professional or commercial activities for the benefit of other persons. He proposed that the expression should be replaced by the words "*dans un but de lucre*".

Article 50 (Non-discrimination)

59. A representative expressed the view that the inclusion in the draft articles of a provision on non-discrimination could not be justified by the precedent of the Vienna

Conventions. He pointed out that, while there was a diplomatic corps and a consular corps, there could be no corps of special missions, for the two notions were incompatible. The Commission might conceivably have adopted an article prohibiting discrimination between special missions sent by two or more States to deal with a question of common interest, which was the hypothesis of article 6, but the blanket provision in article 50 was inconsistent with the consensual element which was fundamental to special missions.

60. Another representative also questioned whether the principle of non-discrimination, as laid down in article 50, was valid in the case of special missions since the variety of purposes for which they were constituted might well justify differences in the treatment accorded them.

3. *Suggestions for the addition of new articles*

61. It was suggested that the term "representative. . . character" (see article 1, subparagraph (*a*)) should be clarified through the addition of an article specifying the method of accreditation by the sending State. The article should formulate the rules to govern the appointment of the principal members of special missions, as was done, for example, in article 6 of the draft articles on the law of treaties in respect of plenipotentiaries sent to negotiate and conclude treaties.

62. Some representatives suggested that a new article should be added to the draft expressly affirming the right of States to derogate by common agreement from the provisions relating to facilities, privileges and immunities. Others held, however, that this would not be necessary since the right in question was already recognized in paragraph 2 of article 50.

63. A representative asked whether it would not be possible, by analogy with the two Vienna Conventions, to draft some provisions regarding the functions of special missions. Another representative expressed the wish that an effort should be made to demarcate as precisely as possible the competence of a special mission in relation to the permanent mission, in order to avoid duplication and conflict in the advantages accorded; that might be done by specifying that the division of powers and functions could, in individual cases, be the subject of an agreement between the parties concerned.

64. On the question of high-level missions, it was observed that when a Head of State who had been on an official visit stayed on in the receiving State as a private visitor, he continued to enjoy, according to established practices, all the courtesies extended to him as an official visitor. Article 21, however, seemed to imply that the official visit terminated when the special mission was concluded. It might therefore be advisable to include a new article stating that the privileges and immunities to which a Head of State was entitled under international law could not be reduced and were additional to those accorded to him as a member of a special mission.

65. A representative noted with regret that, contrary to the expectations raised by the report of the Commission on the work of its eighteenth session, the draft articles did not contain any provisions similar to those contained in article 73 of the 1963 Vienna Convention concerning the relationship between the Convention and other international agreements.

4. *Discussion of the measures to be taken for the conclusion of a convention on special missions*

66. As regards the measures to be taken for the conclusion of a convention on special missions, the Committee had before it the following recommendation contained in paragraph 33 of the report of the International Law Commission (A/6709/Rev.1 and Corr.1):

"At the 941st meeting on 14 July 1967, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions."

67. In introducing the report at the 957th meeting of the Committee, the Chairman of the Commission noted that that recommendation was worded differently from the recommendation submitted in 1966 with respect to the draft articles on the law of treaties. In 1966 the Commission had recommended specifically the convening of an international conference for the purpose of concluding a convention on the law of treaties. He explained that the Commission wished to make it clear that the different form of recommendation submitted in 1967 in no way implied that it did not favour the convening of an international conference in the present instance. The Commission had framed its recommendation in that more general form only because it was aware of the crowded conference programme of the United Nations. It had had in mind that, if there was a risk of a long delay in completing the codification of the law of special missions, the General Assembly might wish to consider the possibility of using some other procedure for concluding a convention, such as having it drawn up by the Sixth Committee itself.

68. The Committee first held a general discussion on the questions raised by the Commission's recommendation and then examined the proposals and amendments which had been submitted in relation to it.

(a) *General discussion*

69. While some doubts were expressed about the feasibility of codifying the rules relating to special missions, in the form of a convention, most of the representatives who intervened in the debate took the position that it was possible and desirable to conclude a convention on the matter. Three main points of view emerged from the discussion in the Committee.

70. A number of representatives favoured the preparation of a convention on special missions by the Sixth Committee at a regular session of the General Assembly and the adoption of the convention by the Assembly at a plenary meeting. It was argued in support of that solution, which was eventually adopted by the Committee in draft resolution II (see para. 99 below), that it would avoid the considerable expense of convening an international conference. It would also accelerate the conclusion of the convention, since no conference could be convened before 1970 because of the crowded calendar of the Organization. Finally, the preparation of an international convention would enhance the role and the prestige of the Sixth Committee. The Committee's task would be facilitated by the fact that the draft articles on special missions covered familiar ground since they were based on the Convention on Diplomatic Relations. In the past the Committee—and other Main Committees of the General Assembly—had successfully prepared conventions which had been adopted by the Assembly. Some representatives suggested that in order to facilitate the task of the Sixth Committee a working group should meet before the next regular session of the Assembly to review the draft articles prepared by the International Law Commission and to consider any amendments or comments submitted by Governments in the interval.

71. Other representatives held, on the contrary, that the Sixth Committee was not the appropriate forum for the preparation of a convention on special missions. The delegations to the General Assembly lacked the necessary experts for the study of this very technical subject and, in particular, specialists in taxation and customs. Because of its other duties, the Committee would be able to devote only a limited number of meetings at each regular session to the preparation of the convention. No time or money would be saved in the long run. Moreover, in a plenipotentiary conference the discussion would

be in two stages, namely, the committee stage and the plenary stage, and the latter might take up a substantial part of the whole period of the conference. By contrast, if the matter were taken up by the Sixth Committee, it would be impossible for the General Assembly in plenary meeting to devote to the drafting of such an important convention the time and attention it deserved.

72. There were also representatives who considered that no decision on the matter should be taken at the present session. The procedure for the preparation of a convention could be chosen only after ripe reflection and the receipt of comments from Governments on the final version of the draft articles prepared by the International Law Commission. It was clear from the debate in the Committee that the draft articles still presented some serious problems in connexion with such points as the characteristics and purposes common to special missions, the privileges and immunities they should enjoy, the question of the recognition of States, and the relationship between the proposed convention and previous agreements.

(b) *Discussion of proposals and amendments*

73. As was indicated above in paragraphs 9 to 13, the Committee had before it a joint draft resolution and two amendments in documents A/C.6/L.618, A/C.6/L.620 and Add.1 and A/C.6/L.622. During the discussion of those documents the positions summarized in paragraphs 70, 71 and 72 above were restated and the following additional comments were made.

Joint draft resolution A/C.6/L.618

74. Some representatives pointed out in support of the joint draft resolution that its adoption would avoid the taking of any decision on the question of procedure at the present session and that it would allow Member States time to consider the most effective method of preparing an international convention which would command wide support. Other representatives, however, criticized the resolution on the ground that it failed to indicate how and when the convention should be prepared.

Amendment A/C.6/L.620 and Add.1

75. One of the sponsors of the amendment explained that, in providing for the consideration of the subject at the next session of the General Assembly, the sponsors had indicated their intention that the Sixth Committee should begin its work at the twenty-third session; if it had not concluded the work by the end of that session, it could of course continue it at the twenty-fourth session, or even at the twenty-fifth session. Another sponsor pointed out that the amendment set no time-limit for the preparation of the convention.

76. Some representatives criticized the amendment on the grounds that it would not allow sufficient time for the preparation of the substantive discussion of the draft articles on special missions. Moreover, the phrase "with a view to the adoption of such a convention by the General Assembly" prejudged the question of the methods by which a convention on special missions should be drafted.

Amendment A/C.6/L.622

77. In introducing the amendment, its sponsor pointed out that it was based on similar provisions appearing in previous General Assembly resolutions on codification conferences. He also recalled that the Special Rapporteur had devoted several years to the question of special missions and was one of the foremost experts on the matter. His

assistance to the Sixth Committee in the preparation of a convention on special missions would be most valuable.

78. Some representatives criticized the second paragraph of the amendment on the ground that it imposed an undue obligation on Member States. Other representatives, however, contended that the paragraph in no way infringed the sovereignty of Member States, since the invitation addressed to them included the words "as far as possible" and they had a perfect right to decline it.

B. Other decisions and conclusions of the International Law Commission

1. *Organization of work*

79. The observations made in the Sixth Committee on the items of the programme of work of the International Law Commission as set out in chapter III of its report may be summarized as follows:

(a) *Succession of States and Governments*

80. Several representatives noted with approval the Commission's efforts to expedite the consideration of this topic. It was observed that the matter was all the more urgent since a large body of rules of international law which had come into existence before the emergence of the less developed countries as independent States was still regarded in certain quarters as automatically binding on the new States. In addition, the majority of the so-called customary rules of international law governing the succession of States and Governments were both inequitable and inadequate.

81. A number of representatives expressed approval of the Commission's decision to assign more than one Special Rapporteur to the topic and to divide it into three main headings: (1) Succession in respect of treaties; (2) Succession in respect of rights and duties resulting from sources other than treaties; and (3) Succession in respect of membership of international organizations. One representative, however, observed that the division of the topic into three headings assigned to different special rapporteurs might adversely affect the unity of treatment of the topic and the uniformity of the terminology employed.

82. As regards the first heading—succession in respect of treaties—several representatives welcomed the Commission's decision to advance the work on the subject as rapidly as possible at its twentieth session. Hope was expressed that the second session of the conference on the law of treaties would be able to take into account the Commission's work on the matter. One representative did not think that it was absolutely necessary for the Commission to concentrate its attention exclusively on the production of draft articles, since article 69 of the draft articles on the law of treaties (see A/6309/Rev.1, part II, chap. II) already dealt with the question of State succession in the form of a general reservation. In his view, the Commission should rather confine itself to submitting a report on the implications of that reservation for the law of treaties as a whole.

83. It was suggested that the third heading—succession in respect of membership of international organizations—should be deleted and that the subject should be considered as a part of the topic on relations between States and inter-governmental organizations. That would enable the Commission to expedite its work on the essential aspects of succession of States and Governments which were of considerable importance to developing States.

(b) *State responsibility*

84. Some representatives expressed the hope that the Commissionwould be able to expedite the consideration of this topic, which had been on the agenda for many years.

One representative stated that he supported the Commission's decision that only basic and general rules should be laid down on the topic and that this should be done as succintly as possible. Other representatives considered that the Commission should study the responsibility of States for the violation of generally recognized principles of international law.

85. One representative observed that the number of foreign personnel in developing countries had risen sharply. A State's obligations towards such aliens and the obligations of those aliens towards the host country needed to be defined. While it was still true that individuals could have rights and duties under international law only if endowed with them by virtue of a treaty between States, the rights and duties so conferred could be, and were, directly exercisable by the individuals concerned vis-à-vis States. Two recent examples of international arrangements providing for direct settlement of disputes between States and individuals were the reorganization of the procedures of the Permanent Court of Arbitration in 1962,[79] and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,[80] which had come into effect in 1966.

(c) *Relations between States and inter-governmental organizations*

86. The hope was expressed that the Commission would receive and consider at its next session a report on this topic containing a full set of draft articles on the privileges and immunities of representatives of States to inter-governmental organizations. It was also suggested that due attention should be given to the development of practice and procedures now emerging from inter-state and international activities in Africa.

(d) *Additional topics suggested for inclusion in the programme of work*

87. Some representatives welcomed the Commission's decision to set aside topics of a limited scope for discussion at times when the larger issues could not be pursued. The fear was expressed, however, that to place topics in such a category would have the effect of belittling their importance since the impression would be given that they lent themselves to more leisurely study than the other problems before the Commission.

88. Several representatives noted with approval that the Commission had placed on its programme the topic of most-favoured-nation clauses in the law of treaties and had appointed a Special Rapporteur to deal with it. It was suggested in this connexion that the Commission might wish to ask the United Nations Conference on Trade and Development (UNCTAD) and perhaps also the General Agreement on Tariffs and Trade (GATT) to submit their comments or recommendations before it completed its final text on the topic.

89. Several representatives expressed the hope that the Commission would soon be able to study the right of asylum, both diplomatic and territorial, a subject which the General Assembly had referred to it in 1959 by resolution 1400 (XIV) and which was becoming increasingly important in connexion with the protection of human rights.

90. It was also suggested that the Commission might consider taking up the problem of the use of international rivers and studying model rules for conciliation which might lead to the formulation of new methods for the pacific settlement of disputes. After it had completed its examination of priority issues, the Commission might also study the possibility of revising the draft Declaration on Rights and Duties of States (General Assembly resolution 375 (IV), annex).

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[79] « Rules of Arbitration and Conciliation for Settlement of International Disputes between Two Parties of which Only One is a State », *American Journal of International Law*, vol. 57, 1963, p. 500.

[80] See *International Bank for Reconstruction and Development publications* (Washington, 1965); see also United Nations, *Treaty Series*, Vol. 575, No. 8359.

(e) *Review of the Commission's programme and methods of work*

91. Several representatives welcomed the Commission's decision to undertake at its next session a review of its programme and methods of work. It was observed in this connexion that there should be a continuing adjustment of the programme of work, so that the codification and progressive development of international law might always be responsive to the current needs of the community of States. It was also suggested that in the course of the review of its methods of work the Commission should undertake an evaluation of its Statute.

92. One representative expressed the view that it was preferable for the Commission to complete one item of considerable importance rather than to consider several items simultaneously without taking any action. Another observed, however, that the Commission should be able to deal with several items at one session. It was also suggested that the Commission could hold two short regular sessions each year, in preference to extending its summer session and holding a special winter session, as it had had to do recently.

93. Some representatives stressed the need to avoid referring to the Commission issues the political implications of which might hinder the accomplishment of its task.

2. *Co-operation with other bodies*

94. Several representatives noted with approval that the Commission had maintained during the past year its co-operation with regional legal bodies. One representative, however, regretted that the Commission had decided not to send an observer to the 1967 session of the Inter-American Juridical Committee on the ground that the items on the agenda of that session were unrelated to the Commission's present programme of work.

3. *Seminar on International Law*

95. Many representatives expressed satisfaction at the holding at Geneva of the third session of the Seminar on International Law for advanced students of the subject and young government officials responsible in their respective countries for dealing with questions of international law. Several representatives thanked the members of the Commission and of the Secretariat who had participated in the Seminar and the six Governments which had granted scholarships to young specialists from developing countries. Some representatives informed the Committee that their Governments had decided to grant scholarships to participants from developing countries for the next session of the Seminar.

96. Several representatives welcomed the Commission's recommendation that further sessions of the Seminar be held in conjunction with session of the Commission and voiced the hope that they would be continued and developed in the future. The wish was expressed that in the discussion of topics due account would be taken of the views of different schools of international law.

IV. Voting

A. Report of the International Law Commission

97. At its 970th meeting, on 12 October 1967, the Sixth Committee adopted unanimously the draft resolution submitted by Bulgaria, Colombia, Ecuador, Guatemala and Nigeria (A/C.6/L.617/Rev.2) (see paragraph 99, draft resolution I). At that meeting, the representatives of Bulgaria, Canada, the Dominican Republic, Italy, Morocco, the Netherlands, Norway and the United States explained the vote of their respective delegations.

B. SPECIAL MISSIONS

98. At its 973rd meeting, on 17 October 1967, the Sixth Committee voted on the draft resolution submitted by Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria (A/C.6/L.618). The voting was as follows:

(*a*) The amendment submitted by Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, Somalia, the United Republic of Tanzania and Zambia (A/C.6/L.620 and Add.1) was adopted by 74 votes to 1, with 22 abstentions.

(*b*) Paragraph 5 of the amendment submitted by Iraq (A/C.6/L.622) was adopted unanimously;

(*c*) Paragraph 6 of the amendment submitted by Iraq was adopted by 61 votes to none, with 29 abstentions;

(*d*) The oral proposal submitted by Ecuador, supported by Guatemala, to maintain the order of paragraphs as it appears in documents A/C.6/L.620 and Add.1 and A/C.6/L.622 was adopted by 72 votes to 2, with 16 abstentions;

(*e*) Draft resolution A/C.6/L.618, as amended, was then adopted by 92 votes to none, with 2 abstentions (see paragraph 99, draft resolution II). Statements in explanation of votes were made at the 973rd meeting by the representative of the Philippines, and at the 974th meeting by the representatives of Australia, Austria, Belgium, Canada, France, Sweden and the United Kingdom.

Recommendations of the Sixth Committee

99. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolutions:

[*Texts adopted by the General Assembly without change. See "Resolutions adopted by the General Assembly" below.*]

(*b*) Resolutions adopted by the General Assembly

At its 1615th plenary meeting, on 1 December 1967, the General Assembly adopted the draft resolutions submitted by the Sixth Committee (para. 99 above). For the final texts, see resolutions 2272 (XXII) and 2273 (XXII) below.

2272 (XXII). Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its nineteenth session, [81]

Recalling its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and intergovernmental organizations and State responsibility,

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and

[81] *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9* (A/6709/Rev.1 and Corr.1).

principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

Noting with satisfaction that at its nineteenth session the International Law Commission adopted the final text of its draft articles on special missions, [82]

Noting further with appreciation that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the Seminar was made possible by the generous collaboration of members of the Commission, that more scholarships were made available for participants from developing countries and that the Commission recommended that further seminars should be held in conjunction with its sessions,

1. *Takes note* of chapters I and III of the report of the International Law Commission on the work of its nineteenth session;

2. *Expresses its appreciation* to the International Law Commission for the work it has accomplished;

3. *Notes with approval* the programme of work for 1968 proposed by the International Law Commission in chapter III of its report;

4. *Recommends* that the International Law Commission should:

(*a*) Continue its work on succession of States and Governments and relations between States and inter-governmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

(*b*) Study the topic of most-favoured-nation clauses in the law of treaties;

(*c*) Expedite the study of the topic of State responsibility;

(*d*) Carry out a review of its programme and methods of work;

5. *Expresses the wish* that, in conjunction with future sessions of the International Law Commission, other seminars might be organized, which should continue to ensure the participation of a reasonable number of nationals of developing countries;

6. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-second session of the General Assembly on the report of the Commission.

1615th plenary meeting
1 December 1967

2273 (XXII). Special missions

The General Assembly,

Having considered chapter II of the report of the International Law Commission on the work of its nineteenth session,[83] which contains final draft articles and commentaries on special missions,

Recalling that in its resolutions 1687 (XVI) of 18 December 1961, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development

[82] *Ibid.*, chapter II.

[83] *Ibid., Supplement No. 9* (A/6709/Rev.1 and Corr.1).

of the topic of special missions, taking into account the views expressed in the General Assembly and the comments submitted by Governments, and that in its resolution 2167 (XXI) of 5 December 1966 it recommended that a final draft on special missions should be submitted to the Assembly by the Commission in its report on the work of its nineteenth session,

Noting further that at its eighteenth and nineteenth sessions, in 1966 and 1967, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on special missions prepared at its sixteenth and seventeenth sessions and that at its nineteenth session the Commission finally adopted the draft articles.

Recalling that, as stated in paragraph 33 of the report of the International Law Commission on the work of its nineteenth session, the Commission decided to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions,

Mindful of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that the Vienna Convention on Diplomatic Relations [84] and the Vienna Convention on Consular Relations [85] have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and the privileges and immunities of such missions,

1. *Expresses its appreciation* to the International Law Commission for its valuable work on special missions and to the Special Rapporteur for his contribution to this work;

2. *Invites* Member States to submit, not later than 1 July 1968, their written comments and observations on the final draft articles on special missions prepared by the International Law Commission;

3. *Requests* the Secretary-General to circulate the comments submitted by Member States on the subject, so as to facilitate its consideration by the General Assembly at its twenty-third session in the light of those comments;

4. *Decides* to include an item entitled "Draft Convention on Special Missions" in the provisional agenda of the twenty-third session, with a view to the adoption of such a convention by the General Assembly;

5. *Requests* the Secretary-General to arrange for the presence of the Special Rapporteur on special missions as an expert during the debates on the topic at the twenty-third session of the General Assembly and to submit at that session all relevant documentation;

6. *Invites* Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered.

1615th plenary meeting
1 December 1967

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[84] *United Nations Conference on Diplomatic Intercourse and Immunities, 1961, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

[85] *United Nations Conference on Consular Relations, 1963, Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

(9) LAW OF TREATIES (AGENDA ITEM 86)

(*a*) Report of the Sixth Committee[86]

[*Original text: English/Spanish*]
[*24 November 1967*]

I. Introduction

1. The General Assembly, at its 1564th plenary meeting on 23 September 1967, placed on the agenda of its twenty-second session an item entitled "Law of treaties" and decided to allocate it to the Sixth Committee.

2. The Sixth Committee examined this agenda item at its 964th, 967th, 969th, 971st and 974th through 983rd meetings, from 9 to 26 October 1967.

3. The item entitled "Law of treaties" was included in the provisional agenda of the twenty-second session in accordance with paragraph 11 of General Assembly resolution 2166 (XXI) of 5 December 1966, concerning the convening of an international conference of plenipotentiaries on the law of treaties in 1968 and 1969. That decision was taken with a view to further discussion of the draft articles on the law of treaties which were set forth in chapter II of the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, part II), which were submitted to the General Assembly at its twenty-first session and which were referred to the future international conference as the basic proposal for its consideration.

4. The General Assembly, in paragraph 9 of the same resolution (2166(XXI)), invited Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit their written comments and observations on the final draft articles on the law of treaties. The Secretary-General, in letters of 18 January 1967, requested these comments and observations. Those received from seventeen Member States, the Secretary-General, four specialized agencies and the International Atomic Energy Agency were published in documents A/6827 and Corr.1 and Add.1 and 2, and were before the Sixth Committee. The Committee also had before it a guide to the draft articles on the law of treaties (A/C.6/376) prepared by the Secretariat.

5. At the opening of the discussion at the 964th meeting of the Sixth Committee a statement (A/C.6/L.619) was made by Sir Humphrey Waldock, Chairman of the International Law Commission and formerly its Special Rapporteur on the law of treaties. Sir Humphrey Waldock also, at the 969th meeting of the Committee, replied to questions which had been put to him.

II. Proposals

6. A draft resolution proposed by Congo (Democratic Republic of), Dahomey, Ethiopia, Ghana, Kenya, Liberia, Morocco, Nigeria, Sierra Leone, Somalia, Tunisia, United Republic of Tanzania and Zambia (A/C.6/L.623), later joined by Cameroon (A/C.6/L.623/Add.1), was circulated on 23 October 1967. The draft resolution read as follows:

"*The General Assembly,*

"*Recalling* that by its resolution 2166 (XXI) of 5 December 1966 it decided that an international conference of plenipotentiaries should be convened at Geneva or at any other suitable place, the first session early in 1968 and the second early in 1969,

[86] Document A/6913, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 86.

to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate,

"*Recalling also* that it referred to the conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session as the basic proposal for consideration by that conference,

"*Having considered* the item entitled 'Law of treaties' at its twenty-second session,

"*Recognizing* that the exchange of views and the written comments of Governments on the draft articles on the law of treaties prepared by the International Law Commission at its eighteenth session may facilitate the work at the international conference,

"*Noting* that an invitation has been extended by the Austrian Government to hold at Vienna both sessions of the conference on the law of treaties convened by the General Assembly in resolution 2166 (XXI),

"1. *Decides* that the first session of an international conference of plenipotentiaries shall be convened at Vienna in March 1968;

"2. *Invites* participating States to submit to the Secretary-General not later than 15 February 1968, for circulation to Governments, any additional comments and draft amendments to the draft articles prepared by the International Law Commission which they may wish to propose in advance to the Conference.

"3. *Requests* the Secretary-General to transmit to the Conference the summary records relating to the consideration of this item at the twenty-second session of the General Assembly together with all other relevant documentation."

7. At the 980th meeting, on 25 October 1967, a revised draft resolution (A/C.6/L.623/Rev.1) which was submitted by Cameroon, Congo (Democratic Republic of), Czechoslovakia, Dahomey, Ethiopia, Ghana, Kenya, Liberia, Mongolia, Morocco, Nigeria, Poland, Sierra Leone, Somalia, Tunisia, the United Republic of Tanzania and Zambia, later joined by Central African Republic, Cyprus and Thailand, (1) added a new paragraph after the first paragraph of the preamble with the following wording: "*Recalling also* its request that the Secretary-General convoke that conference,"; and (2) revised the next preambular paragraph to begin "*Recalling further*" instead of "*Recalling also*". At the 982nd meeting, on 26 October 1967, the representative of Dahomey, on behalf of the sponsors, orally revised the draft resolution by (1) replacing the word "referred" in the third preambular paragraph by "decided to refer" and (2) replacing the words "an international conference of plenipotentiaries" in paragraph 1 by the words "the international conference of plenipotentiaries on the law of treaties". Thereafter the representative of Cameroon, on behalf of the sponsors, reworded paragraph 1 as follows:

"*Decides* that the first session of the international conference of plenipotentiaries on the law of treaties,[87] referred to in resolution 2166 (XXI), to be held in 1968, shall be convened at Vienna in March 1968".

The draft resolution as thus orally revised was reproduced in document A/C.6/L.623/Rev.2. That document was identical[87] with the draft resolution proposed by the Sixth Committee (see paragraph 66 below).

III. Debate

8. A number of representatives stressed the importance of the law of treaties in the contemporary world. It was said that treaties were now the most important source of international law, and would continue to be as long as the international society continued

[87] The words "international conference of plenipotentiaries on the law of treaties" were later changed to "United Nations Conference on the Law of Treaties."

to be an association of sovereign and independent States. All States, and in particular the small and middle-ranking ones, had a strong interest in a soundly based system of treaty law, which would protect their freedom and security, and would help to maintain the stability of their treaty arrangements.

A. Comments on the draft articles on the law of treaties

9. Many representatives congratulated the International Law Commission and its members on their work on the law of treaties, which took full account of the aspirations and the realities, including the legal systems, of the contemporary world. The Commission was commended for the outstanding ability and skill which it had devoted to the completion of its monumental work. Many representatives also paid tribute to the four successive Special Rapporteurs of the Commission on the topic, and particularly to Sir Humphrey Waldock, the most recent of them, with whose assistance the great task had been brought to fruition. The quality of the work accomplished by the Commission was good, although improvements might still be possible. In a few cases, some representatives said, the Commission's awareness of the need for accommodation and compromise led it to adopt articles which did not fully solve the problems dealt with; this was not, however, a criticism of the Commission, but was attributable to the present state of international relations.

10. It was pointed out that the debates in the Sixth Committee at the twenty-first and twenty-second sessions were no longer directed to the International Law Commission, but to Governments and to the future conference on the law of treaties; it was important that as much as possible should be known before the conference of the attitudes likely to be taken on major questions of principle and on detailed questions of drafting. Many representatives made comments on the draft articles prepared by the International Law Commission. The great majority of those who spoke reserved the right of their Governments to make additional comments and suggestions at a later stage.

11. A number of representatives commented on the basic principles underlying the draft articles. Several of them stressed the requirement of free consent of States. This requirement was said to be embodied in particular in the section on invalidity of treaties. The principle of good faith was also mentioned by several representatives; that principle, it was said, tended to uphold the stability of treaties. The functions of the draft in regard to the maintenance of justice and in regard to the maintenance of stability of treaties came to a meeting point in the section on procedure in cases of invalidity, termination and suspension, and the conciliation of the two aims would be one of the tasks of the forthcoming conference.

12. Several representatives remarked that the draft articles went beyond existing customary law in some respects. Some of them thought that the new developments in the draft were progressive and practical, and would have the effect of bringing the law into accord with contemporary realities. Others, however, thought that some of these developments, on which the Commission itself was sometimes not unanimous, could hardly be considered satisfactory by all Governments, and gave rise to misgivings. Of these representatives, a few expressed doubts as to the wisdom of what they regarded as an attempt to import into international law rules from the national law of States regarding the invalidity of contracts. Others said that some of the draft articles covered points which were not yet ripe for codification.

13. The majority of representatives who spoke on the scope of the draft articles approved the limitations adopted by the Commission. Prolonged study would be necessary before the precise extent of application of the general law of treaties to the agreements of

international organizations could be determined. State responsibility and State succession in the field of treaties were parts of other branches of international law already under separate study by the Commission. The most-favoured-nation clause was likewise under separate study. To attempt to deal with the effects of hostilities upon treaties would open up difficult questions relating to the provisions of the Charter of the United Nations forbidding the threat or use of force.

14. On the other hand, some representatives would have preferred that the draft articles be given a broader scope. One representative stated that the omission to deal with treaty-making by international organizations might prove unfortunate in view of the growing importance and number of such treaties. Others regretted the omission of rules concerning the most-favoured-nation clause, the succession of States in respect of treaties, and the international responsibility of a State with respect to a failure to perform a treaty obligation.

15. The more detailed comments of representatives on particular parts of the draft articles are sketched in general outline below.

Part I. Introduction (articles 1-4)

16. The majority of the representatives who spoke on the question favoured the limitation of the draft to treaties concluded between States in written form, as other kinds of agreements might require special rules. Some representatives stated, however, that the scope of the draft articles, which was dealt with in articles 1, 2 and 3 of the draft, should be clearly set out, in a single article if possible.

17. Several views were expressed about the meanings given to terms by article 2 (Use of terms). One thought that some of the definitions in the article might not be necessary, or could better be transferred to the parts of the text to which they directly referred.

18. Doubts were expressed by a few representatives that the meaning given to "treaty" was entirely satisfactory, as it did not contain all the characteristic elements; one representative thought that the article should specify that a treaty was intended to create rights and obligations, or to establish relationships governed by international law. One representative regretted that the Commission had given up the distinction between formal treaties and treaties in simplified form, as there could be differences regarding ratification. A few thought that a "general multilateral treaty" should have been defined, since in their view all States could become parties to such treaties, without discrimination of any kind.

19. One representative considered that, in the definition of "reservation", it should be specified that a reservation might purport to limit, as well as to exclude or vary, the legal effect of certain provisions. Another thought that reservations might also be intended to interpret or clarify a provision of the treaty. The view was also expressed that the definition of "party" should take account of developments in various parts of the world, where States were undertaking common action through joint diplomatic missions.

20. As regards article 3 (International agreements not within the scope of the present articles), one representative said that, in addition to the reservation as to the legal effect of agreements not in written form, a similar reservation should be made as to that of the various forms of tacit or implied consent, of which only some were dealt with in the draft articles.

21. As regards article 4 (Treaties which are constituent instruments of international organizations or are adopted within international organizations), some representatives found it generally acceptable; others, however, noting the complexity of the problems it dealt with and the various comments which had been made on the provision, felt that the

article should be thoroughly studied with a view to improvement or to deletion. One representative thought that the constituent instruments of international organizations should be fully subject to the rules laid down in the future convention, without any possibility of exceptions created by the rules of the organization itself. Another pointed out the problems the article might create if the constituent instruments of one international organization was adopted within an organ of another such organization. Others considered that the rules of international organizations should play only a secondary or supporting role in the law of treaties.

Part II. Conclusion and entry into force of treaties

Section I. Conclusion of treaties (articles 5-15)

22. Several representatives attached special importance to paragraph 1 of article 5 (Capacity of States to conclude treaties), which in their view embodied the principle of sovereign equality of States. Others, however, thought that the article did not go far enough, as in their view all States had not only the capacity but the right to participate in negotiating and to conclude multilateral treaties affecting their interests, including especially the future convention on the law of treaties. One representative said that only States possessing full internal and external sovereignty had the capacity to conclude treaties; if one party to a treaty enjoyed only limited and formal sovereignty, the treaty should be void. Another found that the use of the word "State" in the article was not wholly consistent.

23. As for paragraph 2 of article 5, one representative doubted that it was reasonable to equate the capacity of a component state of a federal union with that of a State under international law, as foreign States could not be expected to master the intricacies of federal constitutions, and another thought that the article required careful examination.

24. One representative thought that article 6 (Full powers to represent the State in the conclusion of treaties), was too detailed, and that it should only have stated certain conditions as a guide, leaving the details to be settled by national law.

25. In regard to article 8 (Adoption of the text), one representative thought that it did not adequately cover at least one of the new techniques of treaty-making, namely, adoption of the text of a treaty by an international organization pursuant to its inherent powers. The article should allow for tacit, as well as express, agreement to dispense with the unanimity rule. Another said that paragraph 2 of the article should apply only in the case of the adoption of general multilateral treaties; in other cases, especially of regional treaties, unanimous adoption might be desirable.

26. Articles 10 (Consent to be bound by a treaty expressed by signature), 11 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) and 12 (Consent to be bound by a treaty expressed by accession), one representative stated, were the result of compromises, and, since they left everything to the intention of States, had little legal content; it would have been desirable to provide a residuary rule for the infrequent cases where the intention of the parties cannot be discerned, to the effect that signature is the method of expression of consent to be bound, without the need of ratification. Similarly, in article 12 a legal presumption could have been established that accessions are not subject to ratification. On the other hand, another representative interpreted article 11 as making ratification the rule and binding signature the exception, a view which he favoured. Some others said that under their national constitutions all treaties required ratification.

27. In respect of the question of participation in treaties, a number of representatives regretted that the Commission had not provided that general multilateral treaties were open for accession by all States, without discrimination. In their view, such a rule was

an application of the principle of universality, and was a consequence of the principles of sovereign equality of States and equal rights of peoples which were embodied in the United Nations Charter. To give all States the opportunity to become parties to general multilateral treaties would strengthen the international community and contribute to the maintenance of peace. Recent practice of the United Nations, it was said, showed that non-recognition by some States was not a bar to participation in multilateral treaties. Some considered that what had been article 8 in the draft provisionally adopted by the Commission in 1962 [88] should have been retained. On the other hand, other delegations preferred the text adopted in 1966 by the Commission.

28. In regard to article 15 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force), one representative thought that it was premature in present circumstances to make the obligation begin as soon as a State had agreed to enter into negotiations for the conclusion of a treaty.

Section 2. Reservations to multilateral treaties (articles 16-20)

29. Some representatives found that the articles on reservations were on the whole satisfactory, subject to a few minor changes. Others, however, expressed doubts about them or thought that further study was required. One point on which some delegations had difficulty was the test of compatibility with the object and purpose of the treaty, mentioned in article 16 (Formulation of reservations); they considered that that test was subjective in content and uncertain in its application. Moreover, one of them considered that the legal effect of a reservation which did not meet that test was left uncertain. One representative found the relationship unclear between articles 16 and 17. Another suggested that the rule in article 16 should be reversed to provide that reservations were prohibited unless expressly authorized by the treaty.

30. In regard to article 17 (Acceptance of and objection to reservations), one representative doubted the appropriateness of paragraph 3. Others suggested that paragraph 4 (*b*) should be revised to provide that a treaty would enter into force between a State making a reservation and a State objecting thereto unless the latter expressed a contrary intention. As for paragraph 5 of that article, one representative thought that the period for making objections to reservations should be increased from one year to two years, while another thought that it should be shorter than one year. As for article 20 (Withdrawal of reservations), one representative considered that it should be specified that withdrawal of a reservation should be formulated in writing.

Part III. Observance, application and interpretation of treaties

Section 1. Observance of treaties (article 23)

31. Many representatives stressed that the principle *pacta sunt servanda* was the cornerstone of the law of treaties and was the main stabilizing force in the legal order of the international community, since it gave efficacity to treaties and confidence in that efficacity to States which concluded them. Some pointed out, however, that the principle was not absolute, as it applied only to treaties in force; consequently its application was subject to all the other rules stated or referred to in the draft articles under which a treaty might not be in force, including the peremptory norms of international law, the rule concerning fundamental changes of circumstances (*rebus sic stantibus*), Article 103 of the Charter, etc. Reference was also made to the requirement of good faith, which in the view of one representative meant equality of consideration and mitigated the harshness of agreements which

[88] See *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9* (A/5209), chap. II, p. 10.

became excessively burdensome for one party. International justice and equity, they said, could not be sacrified to maintain the stability of treaties. Thus, in their view, there could be no unqualified reliance on *pacta sunt servanda* to perpetuate anjust or obsolete treaty rights. A number of representatives said that the principle did not protect unequal treaties, which had been imposed by coercion of powerful States on weaker ones, and some wished that this had been more clearly stated in the draft articles. Others, however, supported the formulation by the Commission, and warned against endangering the principle by stating excessive restrictions to it.

Section 2. Application of treaties (articles 24-26)

32. One representative, pointing out that article 24 (Non-retroactivity of treaties) dealt exclusively with the question of retroactivity, suggested the inclusion of another article providing that a treaty, unless it otherwise provided, should become effective on the date of its entry into force. One representative considered that it was by no means clear that article 26 (Application of successive treaties relating to the same subject matter), dealt adequately with its very complex subject. Another suggested that that article should settle the question of the relationship between the obligations imposed by multilateral treaties and those imposed by bilateral treaties.

Section 3. Interpretation of treaties (articles 27-29)

33. One representative considered that the articles on interpretation might constitute a consensus that would obviate difficulties of interpretation. Some others, however, considered that the Commission should not have approached the problem simply as one of the elucidation of the meaning of the text, since equal importance should be given to establishing the intention of the parties from the *travaux préparatoires*. One representative stressed the importance of the intention of the parties and criticized the provision that treaties must be interpreted "in accordance with the ordinary meaning", since words did not usually have any "ordinary meaning" outside their context; in his view, all sources of evidence should be freely available to determine the intention of the parties, and the preparatory work should not be relegated to a secondary position. Others thought that it should have been specified that treaties are to be interpreted in the light of generally recognized rules of international law.

Section 4. Treaties and Third States (articles 30-34)

34. A number of representatives approved the articles in this section, which, they said, was based on the principle *pacta tertiis nec nocent nec prosunt* and reflected the principle of the sovereign equality of States. One representative suggested the deletion of the last sentence of paragraph 1 of article 32 (Treaties providing for rights for third States), establishing a presumption of the assent of a third State to a right conferred on it in a treaty between other States, as such a deletion would permit consistent application of the principle that treaties had no effect on a third State without the latter's express consent. In the view of another representative, article 32 should make it clearer that paragraph 1 did not prevent a party to a treaty from concluding with a State that was not a party an agreement that the treaty should apply to their mutual relations. One representative doubted that the subject covered by the section was ripe for codification, as there was not much State practice on it.

Part IV. Amendment and modification of treaties (articles 35-38)

35. One representative suggested that an article on additional protocols should be added, so as to regulate the procedure of amendment of existing treaties. Another said that the line between subsequent practice as a basis for interpretation and subsequent practice as a mode of modification of a treaty was not clear.

Part V. Invalidity, termination and suspension of the operation of treaties

36. More comments were made on this part than on any other part of the draft. A number of representatives thought that the draft articles were generally acceptable, and expressed support for particular articles, as in their view the interests of equity, justice and peaceful change were served by the text. One representative said that this part of the draft gave rise to certain risks, but that the risks would be worth taking if more adequate procedural safeguards than those provided in article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty), were afforded, and certain terms were defined more precisely.

37. On the other hand, some representatives had serious and far-reaching misgivings about part V, both as a whole and in detail. It was said that the articles went beyond existing practice and law; as a result several articles dealing with matters on which no practice or judicial opinion existed were in vague and general terms, even though they had the drastic consequence of invalidating treaties. Unless the content of terms such as "fraud", "corruption", "*jus cogens*" etc. could be clarified, it might be preferable not to seek to develop the law by stating all grounds of invalidity, but rather to refrain from affording easy excuses for evasion of treaty obligations. Another representative questioned whether the use in part V of such expressions as "void", "invalidity", "nullity" and "without any legal effect" was fully consistent. It was argued that in international practice cases where the validity of a treaty was not accepted by all parties were rare, and that the interests of all States, including newly independent ones, required stress on the validity of treaties. The articles as they stood, it was said, might have serious repercussions on the stability of international relationships. Some took the view that the concepts in part V would be more acceptable if the safeguards against abuse were strengthened.

Section 1. General provisions (articles 39-42)

38. One representative suggested that the question of separability of treaty provisions, dealt with in article 41 (Separability of treaty provisions), was not yet ripe for codification as there was little State practice regarding it. Another said that articles 41 and 57 (Termination or suspension of the operation of a treaty as a consequence of its breach) covered only material breaches of treaties, that is, breaches of a provision essential to the accomplishment of the object or purpose of the treaty; but it would have been desirable to provide also that lesser breaches of inessential provisions justified the termination of the articles violated, if they were separable.

39. With regard to article 42 (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty), one representative thought that the Commission had been right in not extending the rule to certain grounds of invalidity such as the illegal threat or use of force. Another suggested that the article should establish a fixed period after which claims of invalidity could not be made.

Section 2. Invalidity of treaties (articles 43-50)

40. One view expressed on this section was full approval of the articles on the ground that they gave striking evidence of courage and a sense of justice. Others had reservations or objections in respect of various articles, and one representative said that they hardly warranted the effort expended on them.

41. As regards article 43 (Provisions of internal law regarding competence to conclude a treaty), some representatives thought that it was not clear what was a "manifest" violation of internal law which could be invoked to invalidate a treaty. Another thought that any violation of internal law, whether manifest or not, could be so invoked. A suggestion

was also made that a paragraph should be added to the article indicating that only a manifest violation of internal law regarding the treaty-making capacity of a State member of a federal union could be invoked to invalidate a treaty concluded by such a State.

42. One representative suggested omission of article 47 (Corruption of a representative of the State) since in his view it almost amounted to recognition and acceptance of the existence of corruption of representatives.

43. A number of representatives welcomed the inclusion of articles 48 (Coercion of a representative of the State) and 49 (Coercion of a State by the threat or use of force) making treaties without legal effect or void if coercion by the threat or use of force had been used. Particularly in regard to article 49, it was said by some that the rule stated therein was *lex lata* in contemporary international law, and it was also a logical consequence of the United Nations Charter, which in regard to the prohibition of the threat or use of force embodied a peremptory norm of general international law. Some of these representatives thought that the article should be broadened to cover treaties whose conclusion had been procured by any form of coercion, whether by economic, political or other kind of pressure. One representative favoured adding another article on the invalidity of unequal treaties. Another thought that the principle of article 49 should apply to treaties procured by coercion even if they had been concluded before the modern rule prohibiting the threat or use of force came into being; such treaties had not ceased to have consequences at the time the rule was established.

44. Many representatives commented on articles 50 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*)) and 61 (Emergence of a new peremptory norm of general international law), dealing with the invalidity of treaties in conflict with a peremptory norm of general international law (*jus cogens*). There was an extensive discussion of the nature of *jus cogens*, and in reply to questions by a representative regarding the elements of *jus cogens* in the law of treaties, explanations were given by Sir Humphrey Waldock, Chairman of the International Law Commission. He said that there was a distinction between, on the one hand, rules of international law whose breach gave rise to international responsibility on the part of the guilty State, and, on the other hand, rules of *jus cogens*, whose breach made a treaty invalid. The breach of either kind of rule was a serious matter, but the consequences differed. Moreover, States were free to derogate by agreement from the first type of rule, but no agreement could be valid if it conflicted with a rule of *jus cogens*. In his view, the law of treaties, the very core of which was mutual consent, was not a promising area in which to look for rules of *jus cogens*; the rule *pacta sunt servanda* was not of itself a peremptory norm, since the parties bound by mutual obligations could agree to vary them or release each other from them. The notion of *jus cogens* did, however, have some bearing on the draft articles, and apart from article 50, it was relevant to article 49 and its influence was more or less evident in the other provisions dealing with free consent.

45. The majority of representatives agreed on the existence of peremptory norms of international law of the character described above, from which no derogation was permitted and which could be modified only by a subsequent norm of the same character. The creation of such norms, it was said, was an important development of modern international law, which, in the view of one representative, had become universalized and socialized. In that law the existence of a public order placed checks on unlimited freedom of contract so as to protect the smaller States against the danger of unequal and inequitable treaties. It was admitted by some that the identification of the rules of *jus cogens* was not without difficulty, but they thought the task was not impossible. Some thought that they could be more precisely defined on the basis of the United Nations Charter. The prohibition of the

threat or use of force was frequently cited as one example of such a rule. Others mentioned were the peaceful settlement of international disputes, non-intervention in the internal affairs of another State, the sovereign equality of all States, self-determination in accordance with the wishes of the population, and the principle embodied in Article 103 of the Charter. While some favoured leaving the identification of rules of *jus cogens* to be worked out in the practice of States and the jurisprudence of international tribunals, others wished that an effort be made to define them more precisely in the articles on the law of treaties. It was said that it would not be realistic to tie the acceptance of the existence of rules of *jus cogens* to compulsory adjudication of disputes. International law, and *jus cogens* in particular, did not lack binding force in the absence of compulsory adjudication, and there were many means for the peaceful settlement of international disputes, including recourse to the Security Council or the General Assembly; these bodies too could pronounce on disputes whether treaty provisions were inconsistent with *jus cogens*.

46. On the other hand, some delegations considered that present international law afforded no means of defining the rules of *jus cogens*, and that there appeared to be profound disagreement on the subject among States. It would prove extremely difficult for the Conference to deal in a specific and satisfactory way with the problem of *jus cogens*; in any event, one representative said, neither the General Assembly nor a United Nations multilateral convention could create a peremptory norm of general international law. The question was therefore, in the view of those representatives, not ripe for inclusion in the codification of the law of treaties. If there was a disagreement on the validity of a treaty, article 62 of the draft merely referred the parties to Article 33 of the Charter, but that Article did not require settlement by any impartial authority. In those circumstances, the incorporation of the concept of *jus cogens* in the articles on the law of treaties would mean opening the door to claims of invalidity of treaties on insubstantial grounds, would give undue advantage to States alleging the invalidity of treaties but refusing all modes of settlement of disputes arising out of such allegations, would prejudice the stability of treaties, and would make a sweeping and fundamental limitation, of vague and indeterminate extent, on the principle of *pacta sunt servanda*.

Section 3. Termination and suspension of the operation of treaties (articles 51-61)

47. In regard to article 53 (Denunciation of a treaty containing no provision regarding termination), some representatives said that it should have been provided that treaties should not be perpetual; one of them said that the possibility of denunciation should not turn on the vague criterion of the intention of the parties, but rather on the nature of the treaty. Another said that from the mere silence of the parties it could not be inferred that they had necessarily intended to exclude denunciation or withdrawal. It was also remarked that the provision of paragraph 2 for twelve months' notice of denunciation was too rigid, as in some cases the parties might have intended a longer or shorter period.

48. One representative suggested the deletion of paragraph 1 (*b*) of article 56, so as to prevent its misuse to escape obligations under an earlier treaty by a purely subjective interpretation that a later treaty was "incompatible" with it. Under article 57 (Termination or suspension of the operation of a treaty as a consequence of its breach), it was said by another, it would often be difficult to determine whether a breach of a treaty was "material". One representative thought that article 58 (Supervening impossibility of performance), should be clarified to indicate more precisely the type of case to which it was intended to apply.

49. With respect to article 59 (Fundamental change of circumstances), a number of representatives referred to the doctrine commonly called *rebus sic stantibus*, and approved the way it had been dealt with in the article, which they thought was essential to a draft

on the law of treaties. They considered that the restrictions laid down in article 59 and the procedures provided in article 62 provided sufficient safeguards against misuse, and protected the stability of treaties while promoting equity and justice. A few representatives, however, indicated that they would prefer that the article be formulated in the positive rather than in the negative. On the other hand, other representatives said that the article might in practice be used as a weapon against the security of treaties, because of the subjective element in it and the possibility of unilateral action. Here again they found that State practice was not sufficient to permit the formulation of a clear rule, and they urged the need, if such a provision were to be included, of providing an effective means for the settlement of disputes in article 62.

50. The comments on article 61 have already been described in connexion with article 50 (see para. 44 above).

Section.4. Procedure (articles 62-64)

51. Some representatives considered that article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) was fully satisfactory. The procedures referred to in the article were flexible, and allowed the parties in each case to choose a method of settlement appropriate to the particular circumstances. In their view, it would be inappropriate to go further than the provisions of Article 33 of the Charter on settlement of disputes, and in particular the Commission had been right in not providing for compulsory jurisdiction of the International Court of Justice, since many States did not accept compulsory jurisdiction.

52. One representative stated that while the Commission had probably been right in not going beyond Article 33 of the Charter in its draft, there was another aspect of the matter: the need of a fair balance between a State claiming the invalidity of a treaty and a State objecting to that claim. He doubted whether that was so under article 62, and the articles should in his view be re-examined from that standpoint.

53. On the other hand, other representatives considered that article 62 was not adequate for its purpose, and that some effective means of settling disputes over the validity of treaties ought to have been provided. Article 33 of the Charter left the choice of means of settlement to the agreement of the parties; those means included negotiation, and negotiation could be continued indefinitely without result, and without the possibility of claiming violation of article 62. The draft articles were ambiguous as to whether the treaty remained in force or not if the settlement procedures failed. Thus the articles, in their view, jeopardized the security of treaties, and unless some effective mode of peaceful settlement could be laid down, the success of the conference was put in question. Some representatives indicated their preferences as to means of settlement; several favoured the compulsory jurisdiction of the International Court of Justice, at least in the last resort, and some mentioned compulsory arbitration and, in appropriate cases, some form of fact-finding. One representative suggested that if the compulsory jurisdiction of the Court could not be provided in the future convention, there should at least be an optional protocol on compulsory settlement of disputes.

Part VI. Miscellaneous provisions (articles 69 and 70)

54. Several representatives attached importance to article 70 (Case of an aggressor State), and said that a definition of aggression was needed in that connexion.

Part VII. Depositaries, notifications, corrections and registration (articles 71-75)

55. In regard to article 71 (Depositaries of treaties), one representative thought that the recent practice of having several depositaries should be taken into account. In article 75 (Registration and publication of treaties), one representative said, some sanction similar to that in Article 102, paragraph 2, of the Charter should be provided for failure to register a treaty.

B. Comments in regard to the United Nations Conference on the Law of Treaties

56. The General Assembly, by resolution 2166 (XXI) of 5 December 1966, decided that an international conference of plenipotentiaries should be convened to consider the law of treaties having the draft prepared by the International Law Commission as its basic proposal, and to embody the result of its work in an international convention and such other instruments as it might consider appropriate. The Secretary-General was requested to convoke, at Geneva or at any other suitable place for which he received an invitation before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969. By a letter of 29 June 1967, the Minister for Foreign Affairs of Austria informed the Secretary-General of the decision of the Austrian Government to extend an invitation to the United Nations to hold both the 1968 and 1969 sessions of the conference at Vienna. The Secretary-General informed Governments of this invitation by a *note verbale* of 25 July 1967. By a letter of 14 September 1967, of which Governments were notified, the Secretary-General informed the Austrian Minister for Foreign Affairs that he had accepted the invitation extended by the Austrian Government, subject to the final decision to be taken by the General Assembly under resolution 2239 (XXI) of 20 December 1966 relating to the pattern of conferences.

57. In the discussions of the Sixth Committee at the twenty-second session of the General Assembly, many representatives stressed the importance and the difficulty of the task to be performed by the conference, and the need that all the arrangements concerning it should be favourable to the performance of that task. While some stressed the inherent difficulties of the subject-matter and raised doubts whether all of the questions dealt with in the draft were ripe for codification, others thought that imagination, energy and resourcefulness, coupled with a recognition of the situation in the modern world and a spirit of compromise would bring about the success of the conference.

58. In regard to the place the conference is to be held, all representatives who spoke on the matter expressed gratitude to the Government of Austria for its invitation, and gratification that the conference would be held in the same place as two previous successful codification conferences. The representative of Austria stated that his Government would do all in its power to facilitate the work of the conference.

59. As regards participation in the conference, some representatives, in the course of the debate and in explanations of vote, stressed that the draft resolution before the Committee did not deal with the question of participation, but they confirmed the position they had previously expressed to the effect that all States which wished to do so should be able to take part in the conference. The subject of the law of treaties was of a universal character, they said, and consequently a conference to draw up a convention on it should have been made open to all States. Some representatives said that they had voted for the draft resolution on the understanding that it was not intended to alter any of the matters which were decided by General Assembly resolution 2166 (XXI), in particular the participation in the conference.

60. The Sixth Committee was informed that the dates foreseen for the first session of the conference were from 26 March to 24 May 1968 (nine weeks), and that it was impracticable to extend this period. A few representatives doubted whether sufficient time remained before March 1968 to make preparations for the conference; one of them referred to the extensive international consultations which he considered indispensable, and another thought it necessary to create conditions in which an international consensus, or the unanimous consent of the international community, could be obtained. One of these representatives said that though his Government would have preferred postponement of the opening of the conference for one year, he had voted in favour of the draft resolution in view of the wishes of the majority. Another representative explained that he had abstained in the vote on the draft resolution because he thought that States should be allowed a two-year period for reflection and for careful preparation of the conference through diplomatic contacts.

61. The majority of speakers, however, favoured the holding of the conference as decided in General Assembly resolution 2166 (XXI) and the holding of the first session at the period foreseen. The law of treaties, they said, had been under discussion for many years, and the final report of the International Law Commission, which took account of the comments of Governments on the provisional draft, had been submitted in 1966; thereafter there had been debates on the draft at two sessions of the General Assembly, and also an opportunity for Governments to make written comments. In their view a further long delay in convening the conference would not only be useless but harmful as well. It was suggested, however, by several representatives in explaining their votes that the time available before the conference should be used by Governments for informal consultations on controversial points in order to reduce the areas of disagreement and to ensure the success of the conference. It was requested that this suggestion should be recorded in the present report, and one representative reserved the right to propose an amendment in this sense in the General Assembly.

62. It was pointed out by several representatives, however, that under present plans the first session of the conference, if it were to produce a complete text for adoption in plenary meeting at the second session, would have to proceed at a rate of almost two articles per working day, and it was felt that in view of the difficulties of the subject and the divergences of views that had appeared from the debates, it was necessary to increase the facilities for work at the first session. A few representatives suggested consideration of the possibility that there should be two main committees instead of a committee of the whole at the first session. Other representatives, however, pointed out that at the twenty-first session of the General Assembly it had been decided that there should be only one main committee, in the interest of the effective participation of the smaller countries in the work of the conference, and they believed that decision should be maintained. Nevertheless, it was generally felt that arrangements should be made for the holding of meetings of the drafting committee or of working groups at the same time as meetings of the committee of the whole, and that additional interpretation services should be provided to make this possible. It was agreed that the matter should be mentioned in the present report, and one representative said that his vote in favour of the resolution had been influenced by the prospect of more extensive working facilities. It was not possible for the Secretariat to confirm the extent to which such services could be provided from within existing resources, pending a final determination of the programme of conferences for 1968. However, the Legal Counsel gave the Sixth Committee at its 983rd meeting, in compliance with rule 154 of the rules of procedure of the General Assembly, a preliminary estimate of $30,000 as the probable additional cost which would be incurred should it be necessary to recruit additional interpreters for this purpose. It was understood that a detailed

statement of financial implications would be provided by the Secretary-General before the General Assembly took a final decision on the question.

63. It was considered useful that Governments should have a further opportunity to submit written comments, and that they should be invited to submit amendments in advance of the conference; the time set for submission was not later than 15 February 1968. Some representatives suggested inserting "if possible" after that date, but the sponsors thought that such an insertion would only complicate matters; the time-limit did not mean that comments and amendments could not be submitted after that date, but merely that those which were submitted by that date would be circulated to Governments in advance of the conference.

64. Some representatives referred to the documents to be produced by the Secretariat for the conference and expressed views relating thereto. One representative suggested that the Secretariat should prepare a study of the formal provisions of international organizations relating to the making of multilateral treaties, a study of certain problems of the amendment of multilateral treaties and an up-to-date volume on laws and practices concerning the conclusion of treaties. He also thought that the guide to the draft articles on the law of treaties (A/C.6/376), which had already appeared, should be thoroughly checked, expanded and organized on a different plan; other representatives, however, expressed satisfaction with the document. The Sixth Committee was informed that the Secretariat would prepare (1) a draft agenda; (2) provisional rules of procedure; (3) a memorandum on the methods of work and procedures; (4) a reprint of chapter II of the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, Part II), containing the draft articles on the law of treaties; (5) a guide to the draft articles on the law of treaties (A/C.6/376); (6) an addendum to the guide, presenting article by article the comments by Governments and international organizations on the final draft articles; (7) a revision of the *Handbook of Final Clauses*;[89] (8) a revision of the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements*;[90] (9) a bibliography; and (10) the summary records relating to the consideration of the item at the twenty-second session of the General Assembly.

IV. Voting

65. At its 983rd meeting held on 26 October 1967, the Sixth Committee voted on the twenty-Power draft resolution (A/C.6/L.623/Rev.2). The Committee adopted the draft resolution by 91 votes to none, with 1 abstention. One representative announced that had he been present in the conference room during the voting, he would have voted in favour of the draft resolution. Explanations of vote were given at the 982nd and 983rd meetings by the representatives of Sudan, France, Czechoslovakia, Malta, Mali, the Union of Soviet Socialist Republics, the United Kingdom, Mexico, Australia, the United Arab Republic, Somalia, Bulgaria, Guatemala, the United States, Venezuela and Austria (see paras. 59, 60, 61 and 62 above).

Recommendation of the Sixth Committee

66. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted without change by the General Assembly. See "Resolution adopted by the General Assembly" below.*]

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[89] ST/LEG/6.

[90] ST/LEG/7.

(*b*) Resolution adopted by the General Assembly

At its 1621st plenary meeting, on 6 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 66 above). For the final text see resolution 2287 (XXII) below.

2287 (XXII). United Nations Conference on the Law of Treaties

The General Assembly,

Recalling that by its resolution 2166 (XXI) of 5 December 1966 it decided that an international conference of plenipotentiaries should be convened at Geneva or at any other suitable place, the first session early in 1968 and the second early in 1969, to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

Recalling also its request that the Secretary-General convoke that conference,

Recalling further that it decided to refer to the conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session [91] as the basic proposal for consideration by the conference,

Having considered the item entitled "Law of treaties" at its twenty-second session,

Recognizing that the exchange of views and the written comments of Governments on the draft articles on the law of treaties prepared by the International Law Commission at its eighteenth session may facilitate the work at the international conference,

Noting that an invitation has been extended by the Austrian Government to hold at Vienna both sessions of the conference on the law of treaties convened by the General Assembly in resolution 2166 (XXI),

1. *Decides* that the first session of the United Nations Conference on the Law of Treaties referred to in General Assembly resolution 2166 (XXI), to be held in 1968, shall be convened at Vienna in March 1968;

2. *Invites* participating States to submit to the Secretary-General not later than 15 February 1968, for circulation to Governments, any additional comments and draft amendments to the draft articles prepared by the International Law Commission that they may wish to propose in advance of the Conference;

3. *Requests* the Secretary-General to transmit to the Conference the summary records relating to the consideration of this item at the twenty-second session of the General Assembly, together with all other relevant documentation.

1621st plenary meeting
6 December 1967

[91] *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1), part II.

(10) Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (agenda item 87)

(*a*) Report of the Sixth Committee [92]

[*Original text: English*]
[*11 December 1967*]

I. Introduction

1. At its 1564th plenary meeting, on 23 September 1967, the General Assembly decided to include item 87, entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", in the agenda of its twenty-second session and to allocate it to the Sixth Committee. In accordance with General Assembly resolution 2181 (XXI) of 12 December 1966, the item had previously been included in the provisional agenda of the session.

2. The item was considered by the Sixth Committee at its 992nd to 1006th meetings, from 6 to 22 November 1967.

3. The Committee had before it, as a basis for its consideration of the item, the report (A/6799) on the 1967 session of the Special Committee on Principles of Internatioanl Law concerning Friendly Relations and Co-operation among States. The report was introduced in the Committee at its 992nd meeting by the Rapporteur of the Special Committee. At the same meeting, the Chairman of the Special Committee and the Chairman of that Committee's Drafting Committee made separate statements on the activities of the Special Committee and of its Drafting Committee respectively.

4. The report on the 1967 session of the Special Committee was divided into the following six chapters: I, Introduction; II, Consideration of the four principles enumerated in paragraph 5 of General Assembly resolution 2181 (XXI) with a view to completing their formulation (the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations; the duty of States to co-operate with one another in accordance with the Charter; the principle of equal rights and self-determination of peoples; and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter); III, Consideration of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX); IV, Consideration of the two principles referred to in paragraph 7 of General Assembly resolution 2181 (XXI), with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee (the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; the principle of sovereign equality of States); V, Preambles and general provisions of a draft declaration on the seven principles; VI, Concluding stage of the Special Committee's session.

5. The Committee also had before it a letter (A/C.6/383) dated 8 November 1967 from the President of the General Assembly to the Chairman of the Sixth Committee

[92] Document A/6955, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 87.

transmitting a communication from the Chairman of the Fourth Committee, reproduced in the annex to that document. The communication referred to the Fourth Committee's decision to transmit to the Chairman of the Sixth Committee, in connexion with the latter's consideration of the item which is the subject of this report, the statements made by the representative of South Africa at the 1697th and 1704th meetings of the Fourth Committee on 19 and 27 October 1967, during the discussion on Southern Rhodesia in connexion with agenda item 23, entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples". The General Assembly had taken note of the Fourth Committee's decision at its 1594th plenary meeting, on 3 November 1967.

II. Consideration of the item prior to the twenty-second session of the General Assembly

6. After examining the item entitled "Future work in the field of the codification and progressive development of international law" at its sixteenth session, [93] the General Assembly adopted resolution 1686 (XVI) of 18 December 1961 in which it decided to place on the provisional agenda of its seventeenth session the question entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". Following its inclusion in the agenda of the seventeenth session, the item has been included in the agenda of subsequent sessions of the General Assembly. The debates on the item at the seventeenth, eighteenth, twentieth, and twenty-first sessions led to the adoption by the General Assembly, on the basis of recommendations by the Sixth Committee, of resolutions 1815 (XVII) and 1816 (XVII) of 18 December 1962, 1966 (XVIII) and 1967 (XVIII) of 16 December 1963, 2103 (XX) and 2104 (XX) of 20 December 1965, and 2181 (XXI) and 2182 (XXI) of 12 December 1966.

7. At its seventeenth session, [94] the General Assembly, in its resolution 1815 (XVII) of 18 December 1962, recognized "the paramount importance, in the progressive development of international law and in the promotion of the rule of law among nations, of the principles of international law concerning friendly relations and co-operation among States and the dutes deriving therefrom, embodied in the Charter of the United Nations, which is the fundamental statement of those principles", and resolved "to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application". Under operative paragraph 3 of resolution 1815 (XVII), the General Assembly also decided to study at its eighteenth session four of the seven principles listed in that resolution, namely:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

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[93] See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70.

[94] *Ibid., Seventeenth Session, Annexes*, agenda item 75 General Assembly resolution 1816 (XVII) concerned technical assistance to promote the teaching, study, dissemination and wider appreciation of international law. That question later became a separate item on the agenda of subsequent sessions of the General Assembly.

(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

(*d*) The principle of sovereign equality of States.

8. At its eighteenth session,[95] the General Assembly, in its resolution 1966 (XVIII) of 16 December 1963, decided to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The Special Committee was requested to draw up and submit to the General Assembly a report "containing, for the purpose of the progressive development and codification of the four principles" referred to in paragraph 7 above "so as to secure their more effective application, the the conclusions of its study and its recommendations. . ." The General Assembly also decided to examine at its nineteenth session the report of the Special Committee and to study the three other principles listed in resolution 1815 (XVII). Those principles are the following:

(*a*) The duty of States to co-operate with one another in accordance with the Charter;

(*b*) The principle of equal rights and self-determination of peoples;

(*c*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

9. At its eighteenth session, the General Assembly, in its resolution 1967 (XVIII) of 16 December 1963 on the question of methods of fact-finding, also invited Member States to submit in writing any views they might have on that subject and requested the Secretary-General to study the relevant aspects of the problem and to report on the results of his study to the General Assembly at its nineteenth session and to the Special Committee referred to in paragraph 8 above. Resolution 1967 (XVIII) also requested the Special Committee to include the above-mentioned subject-matter in its deliberations.

10. The Special Committee established under General Assembly resolution 1966 (XVIII) met at Mexico City from 27 August to 1 October 1964. The Special Committee was composed of twenty-seven Member States appointed by the President of the General Assembly in accordance with operative paragraph 1 of resolution 1966 (XVIII), "taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented". The Special Committee adopted a report on its work and submitted it to the General Assembly.[96]

11. The General Assembly was unable to resume consideration of the question which is the subject of the present report until its twentieth session. It then examined the report of the 1964 Special Committee, the three principles mentioned in paragraph 8 above, and the report of the Secretary-General on methods of fact-finding.[97] The item was considered by the Sixth Committee in conjunction with an item entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities".[98]

12. The Special Committee was reconstituted by General Assembly resolution 2103 A (XX) of 20 December 1965. The Special Committee, thus reconstituted, was composed

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[95] See *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda item 71.

[96] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

[97] *Ibid.*, document A/5694.

[98] *Ibid.*, document A/6165, paras. 6 and 7.

of thirty-one Member States, [99] the twenty-seven members of the 1964 Special Committee and the four other States mentioned in operative paragraph 3 of resolution 2103 A (XX). The Special Committee was requested to continue the consideration of the four principles studied by the 1964 Special Committee and to consider the three principles which the General Assembly had decided to begin to study, in accordance with the provisions of its resolution 1966 (XVIII). With a view to enabling the General Assembly to "adopt a declaration containing an enunciation of these principles", resolution 2103 (XX) requested the Special Committee to submit "a comprehensive report on the results of its study of the seven principles". Resolution 2103 B (XX) requested the Special Committee to take into consideration the request for the inclusion in the agenda of the item mentioned in paragraph 11 above, and the discussion of that item at the twentieth session of the General Assembly.

13. At its twentieth session, the General Assembly also adopted resolution 2104 (XX) of 20 December 1965, requesting the Secretary-General to make a supplementary study of the question of methods of fact-finding in relation to the execution of international agreements and inviting Member States to submit any further views they might have on the subject.

14. The Special Committee reconstituted under General Assembly resolution 2103 A (XX) of 20 December 1965 met at United Nations Headquarters, New York, from 8 March to 25 April 1966 and adopted a report [100] on its work, which it submitted to the General Assembly in accordance with the terms of the above-mentioned resolution.

15. The report of the 1966 Special Committee and the Secretary-General's supplementary study on the question of methods of fact-finding [101] were considered by the General Assembly at its twenty-first session in connexion with the present agenda item. The Assembly also had before it the comments received from Governments of Member States on the question of methods of fact-finding. [102]

16. At its twenty-first session, the General Assembly adopted two further resolutions on the subject. Under the first, resolution 2181 (XXI) of 12 December 1966, the Assembly decided to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to continue its work. The Special Committee's terms of reference were defined in operative paragraphs 5 to 8 of resolution 2181 (XXI).

17. By resolution 2182 (XXI) of 12 December 1966, the second of those adopted by the General Assembly at its twenty-first session in connexion with the present item, the Assembly decided to include the "Question of methods of fact-finding" as a separate item in the provisional agenda of its twenty-second session.

18. The Special Committee held its 1967 session at the United Nations Office at Geneva, from 17 July to 19 August 1967. During that session, in pursuance of resolution 2181 (XXI) of 12 December 1966, the Special Committee examined each of the seven principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. On the conclusion of its work,

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[99] Algeria, Argentina, Australia, Burma, Cameroon, Canada, Chile, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Kenya, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Syria, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

[100] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230.

[101] *Ibid.*, document A/6228.

[102] *Ibid.*, document A/6373 and Add.1.

the Special Committee adopted the report referred to in paragraphs 3 and 4 of the present report and submitted it to the General Assembly, in accordance with the provisions of operative paragraph 8 of resolution 2181 (XXI).

III. Proposals

19. The United States of America submitted the following draft resolution (A/C.6/L.627):

"*The General Assembly*,

"*Recalling* its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, and 2181 (XXI) of 12 December 1966, concerning friendly relations and co-operation among States,

"*Recalling further* that among the fundamental purposes of the United Nations are the maintenance of international peace and security and the development of friendly relations and co-operation among States,

"*Considering* that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and the improvement of the international situation,

"*Considering further* that the progressive development and codification of these principles, so as to secure their more effective application, will promote the realization of the purposes of the United Nations,

"*Convinced* of the significance of continuing the effort to achieve general agreement in the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

"*Having considered* the report of the 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States which met at Geneva from 17 July to 19 August 1967,

"1. *Takes note* of the report of the 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

"2. *Expresses its appreciation* to the Special Committee for its work;

"3. *Decides* to ask the Special Committee to complete, as a priority matter, the formulations of:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations;

"(*b*) The principle of equal rights and self-determination of peoples;

"4. *Further requests* the Special Committee, if time permits, to complete the formulation of the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"5. *Requests* the Special Committee, following the completion of its work on the three principles specified in paragraphs 3 and 4:

"(*a*) To examine additional proposals with a view to widening areas of agreement expressed in the formulations achieved in the Special Committee concerning the following principles:

"(i) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

"(ii) The principle of sovereign equality of States;

"(iii) The duty of States to co-operate with one another in accordance with the Charter;

"(iv) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;

"(*b*) To review the formulation of all seven principles and make such editing changes as may be necessary to make them consistent with one another;

"6. *Requests* the Special Committee to meet at United Nations Headquarters or at any other suitable place for which the Secretary-General receives an invitation;

"7. *Requests* the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

"8. *Decides* to include an item entitled 'Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations' in the provisional agenda of its twenty-third session."

20. Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Bulgaria, Cameroon, Ceylon, Chile, Colombia, the Congo (Brazzaville), the Congo (Democratic Republic of), Costa Rica, Czechoslovakia, Dahomey, the Dominican Republic, Ecuador, Ethiopia, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Jamaica, Kenya, Kuwait, Lebanon, Lesotho, Libya, Madagascar, Mali, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Paraguay, Poland, Romania, Rwanda, Sierra Leone, Sudan, Syria, Trinidad and Tobago, Tunisia, the United Arab Republic, the United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia and Zambia also submitted a draft resolution (A/C.6/L.628). Burma, Chad and the Central African Republic (A/C.6/L.628/Add.1), Peru and the Ukrainian Soviet Socialist Republic (A/C.6/L.628/Add.2) and the Byelorussian Soviet Socialist Republic, Mauritania, Panama and the Union of Soviet Socialist Republics (A/C.6/L.628/Add.3) subsequently became co-sponsors of this draft resolution. The sixty-seven Power draft resolution read as follows:

"*The General Assembly*,

"*Recalling* its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, and 2181 (XXI) of 12 December 1966, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

"*Recalling further* that among the fundamental purposes of the United Nations are the maintenance of international peace and security and the development of friendly relations and co-operation among States,

"*Considering* that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and the improvement of the international situation,

"*Considering further* that the progressive development and codification of those principles, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

"*Bearing in mind* that the Second Conference of Heads of State or Government of Non-Aligned Countries, which met at Cairo in 1964, recommended to the General Assembly the adoption of a declaration on these principles as an important step towards the enhancement of the role of international law in present-day conditions,

"*Convinced* of the significance of continuing the effort to achieve general agreement in the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

"*Having considered* the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which met a Geneva from 17 July to 19 August, 1967,

"1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

"2. *Expresses its appreciation* to that Committee for the valuable work it has performed;

"3. *Decides* to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to meet in 1968 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue its work;

"4. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth, twenty-first and twenty-second sessions of the General Assembly and in the 1964, 1966 and 1967 sessions of the Special Committee, to complete the formulation of:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) The principle of equal rights and self-determination of peoples;

"5. *Requests* the Special Committee to consider proposals compatible with General Assembly resolution 2131 (XX) of 21 December 1965 on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations, with the aim of widening the area of agreement already expressed in that resolution;

"6. *Calls upon* the members of the Special Committee to devote their utmost efforts to ensuring the success of the session of the Special Committee, in particular by undertaking, in the period preceding the session, such consultations and other preparatory measures as they may deem necessary;

"7. *Requests* the Special Committee to submit to the General Assembly at its twenty-third session a comprehensive report on the principles entrusted to it;

"8. *Requests* the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

"9. *Decides* to include in the provisional agenda of its twenty-third session an item entitled 'Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations'."

21. The Committee on Conferences, established under General Assembly resolution 2239 (XXI) of 20 December 1966, decided to recommend that, if draft resolution A/C.6/L.627 or draft resolution A/C.6/L.628 and Add.1-3 was approved, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States should be convened at United Nations Headquarters commencing 9 September 1968 for a period of three to four weeks. The Chairman of the Committee on Conferences informed the Chairman of the Sixth Committee of this recommendation in a letter dated 20 November 1967 (A/C.6/L.629). The Secretary-General submitted a statement (A/C.6/L.630) concerning the administrative and financial implications of these draft resolutions.

IV. Debate

A. General comments on the work done by the Special Committee in 1967 and on the aims of the work

22. In the opinion of many representatives, the progress made by the Special Committee in 1967, though limited, was laudable and represented a definite step towards the codification of the seven principles which the Special Committee had been asked to consider. Even though certain representatives reaffirmed their reservations in that regard, texts on the principle concerning the duty of States to co-operate with one another in accordance with the Charter and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter had been agreed upon by the Drafting Committee of the Special Committee, submitted to the Special Committee and included in the Special Committee's report (A/6799). On the other hand, agreement had been reached on further points relating to other principles, mainly the principle prohibiting the threat or use of force, and certain areas of disagreement had been more clearly defined. In view of those circumstances and the fact that the Special Committee had already adopted in 1966, subject to further improvement, formulations for two other principles —that of the peaceful settlement of disputes and that of sovereign equality of States— and that it had linked the principle of non-intervention in matters within the domestic jurisdiction of any State with General Assembly resolution 2131 (XX), some representatives considered that the results obtained were encouraging from the point of view of the adoption by the General Assembly of a declaration which would constitute a landmark in the progressive development and codification of those principles. Some representatives also mentioned that another positive result of the Special Committee's 1967 session had been the opportunity provided by it for States to display their determination to try harder to reach an agreement; it was significant that two new complete draft declarations had been examined by the Special Committee in 1967, as well as other proposals on each individual principle. One representative pointed out that the Special Committee had achieved those results in only some fifteen weeks of work, which was not a very long time, considering that the Special Committee was composed of jurists representing States and not of experts acting in their private capacity like those of the International Law Commission.

23. Other representatives however, expressed regret that more progress had not been made in 1967. In their view, the results achieved were not enough to justify the efforts that had been made; and they emphasized the lack of general agreement or consensus in

the Special Committee on the three principles most important for the maintenance of international peace and security, namely, the principle prohibiting the threat or use of force, the principle of equal rights and self-determination of peoples, and the principle of non-intervention in matters within the domestic jurisdiction of any State. Lastly, some representatives expressed the view that, although some progress had been made, the results were not satisfactory, since the wordings adopted were too limited and should be amplified or improved. Nor should it be forgotten that the two consensus texts of 1967 had so far been approved only by the Special Committee's Drafting Committee.

24. Some of the representatives who spoke recognized that the main reason why the results achieved by the Special Committee were incomplete was that the scope, variety and complexity of the subject made the task ambitious, arduous and difficult. Various representatives observed that the seven principles affected the international legal order as a whole and had a bearing on vital or sensitive sectors of inter-State relations. It was pointed out in that connexion that concessions made by a State in relation to a particular principle could subsequently be invoked against it and weaken its position in a future dispute. Others mentioned the fundamental divergence of view between those who wished to maintain the *status quo* and those who wished to adapt international law to the realities and needs of the contemporary international community. It was also pointed out that the debates in the Special Committee had simply reflected the profound differences of opinion which separated the great from the lesser Powers, the economically developed countries from those which were less developed and the States with long-established traditions from the new States. Others maintained that the failure to make greater progress was due to those who adopted imperialist attitudes and were supporters of power politics. It had also been said that the discussions in the Special Committee had been adversely affected in 1967 by the international situation. In the view of other representatives, the difficulties encountered were due not only to political and legal factors, but also to the procedures, methods and codification techniques employed, and they pointed out that the work had not been so thorough or on such a firm legal basis as could have been wished.

25. The representatives who spoke in the debate congratulated the Rapporteur of the Special Committee on that Committee's report (A/6799), which was of great value in the consideration of the item, since it clearly reflected the determining factors in the study of the seven principles.

26. Many representatives reaffirmed the necessity and importance of the codification and progressive development of the principles of international law concerning friendly relations and co-operation among States. The codification and progressive development of those basic principles of the Charter and of the international legal order would enable their scope and content to be determined with precision, thus helping to ensure the maintenance of international peace and security and to promote coexistence and peaceful co-operation between States with different political, economic and social systems. In their view, it was becoming increasingly urgent to strengthen the international legal system in view of the repeated violations of the Charter and of the fundamental principles of international law.

27. One representative emphasized that international law could and should guide the conduct of States, and that the rule of law in international life was perfectly compatible with the sovereign position of States in their mutual dealings. In his view, there was no need to resort to such concepts as the "supremacy" of international law in order to uphold the authority of the law. He added that, in seeking to define the principles, it was important to keep in mind the structure of international relations, and the prime moving forces—such as the nation—of the world's social and political evolution.

28. Various representatives emphasized the need to develop the principles, taking into account the realities of international life and the changes that had occurred since the adoption of the Charter. It was pointed out in particular that the number of Members of the United Nations had more than doubled since the adoption of the Charter. It was also emphasized that the progressive development of the principles should ensure the equality of all States, great and small, should make more effective the principle of the indivisibility of prosperity and should speed up decolonization. Some representatives affirmed that the great Powers had a special responsibility in that connexion. Stress was also placed on the part played by the small countries in the progress of law and international legal institutions.

29. Other representatives considered it illusory to seek the solution of conflicts in the formulation of rules. Attention was also drawn to the need to bear in mind the cardinal requirement that the formulations adopted for the principles should be such that they could be recognized and applied, and that therefore a balanced and painstaking effort, though slow, was preferable to undue haste, which might prevent the achievement of the aim in view. Some representatives said in this connexion that if it was desired that the principles should eventually be recognized as universal, it was necessary that they should be formulated in such a way that they would receive as wide a measure of support as possible.

30. One representative pointed out that, under Article 13, paragraph 1 a, of the Charter, the General Assembly could not, through its resolutions, adopt binding rules of international law, but only recommendations. So far as progressive development was concerned, he thought that the preparation of draft conventions was perhaps the most appropriate method at the General Assembly's disposal for carrying out its task. Another representative observed that the General Assembly had reaffirmed every year, almost unanimously, its previous decisions relating to the continuation of the Special Committee's work, without any change in the procedures and methods adopted. That, he added, was proof that the General Assembly had demonstrated its understanding of the limits of its own competence and powers in the matter of the development or creation of international law, in accordance with the provisions of the above-mentioned paragraph of Article 13 of the Charter.

31. One representative said that his delegation's position on the subject was based on two points. The first was that there should be clarity in the objectives which were being pursued, especially in view of the ambiguity of the legal status of resolutions of the General Assembly. Not enough attention, he added, had been given to the implications, from the point of view of the question that was being studied, of a declaration on the interpretation of the Charter as adopted at San Francisco. The second point was that the current efforts should not, as seemed to be the case with some of the provisional formulations, be intended to lead to any amendment of the Charter, through a procedure not provided for therein, by enlarging or narrowing the scope of the obligations which its provisions contained.

32. Some representatives stressed the relationship of the seven principles to each other, and concluded that any attempt to develop and codify one of them must take into account the existence and formulation of the others, especially if they were to be incorporated in a single declaration. One representative expressed the opinion that in the formulation of the principles for which consensus texts had been produced, there were certain basic points which would have to be borne in mind for the study of the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. Those points were, according to him, the following: (*a*) the recognition of the universal legal validity of the principles in question, as proclaimed in or deriving from the Charter; (*b*) the need for formulations which would respect the sovereign equality,

territorial integrity and political independence of States, and the obligation of States to co-operate among themselves, at the current stage of development of their relations in all fields; (*c*) the recognition of the importance of the Charter as one of the principal sources of universal international law and the recognition of the need to improve the work of the United Nations; (*d*) the need to take account of the general development of international law, as expressed in conventions adopted since the Charter, in State practice and, in particular, in the form of the instruments of the General Assembly and other international organizations and conferences, thus making it possible not only to define the principles but also to set out the legal rules concerning their application; (*e*) the interdependence of the seven principles, of which the greatest account had had to be taken in the course of formulating the four principles already enunciated.

33. Various representatives said that if it were desired to advance the work of the Special Committee and arrive at just and reasonable solutions it would be necessary to proceed by making mutual concessions, in a spirit of co-operation and goodwill. Some considered that it would be desirable to concentrate on less controversial questions, whereas others were of the opposite opinion. Some representatives also said that new agreements should not be sought at the expense of the texts already agreed upon.

B. Observations on the principles examined by the Special Committee in 1967

34. In the course of the debate, various representatives refrained from repeating the observations they had made on the seven principles examined by the Special Committee, and referred to what had been said on previous occasions by their respective delegations in the Sixth Committee or in the Special Committee. Many, however, repeated their views on general aspects of the principles and on their scope, content and formulation. It is those points of view which are summarized in the present section.

1. *Principles enumerated in operative paragraph 5 of General Assembly resolution 2181 (XXI)*

(a) *The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations*

35. A certain number of representatives considered it unfortunate that the Special Committee had been unable, at its 1967 session, to formulate the principle prohibiting the threat or use of force. Some attributed this to political reasons, believing that certain States were unwilling to have their freedom of action limited in this matter. Others stressed the need to improve upon the working methods which had thus far been followed, and one representative suggested that the Drafting Committee of the Special Committee should deal only with those aspects of the principle on which negotiation was feasible, as determined through informal negotiations prior to the next session of the Special Committee. It was also stated that negotiation would sometimes be facilitated if undue emphasis was not placed on purely formal differences. Others again pointed out that some of the difficulties were due to the very nature of the principle, and one representative noted that some elements of the principle were so closely interrelated that a separate formulation of them was not always possible or correct.

36. Many representatives, however, while acknowledging the fundamental differences which were still apparent, thought that in 1967 the Special Committee had done important exploratory work and had made progress with regard to the formulation of this principle.

A further serious effort should be made at the next session of the Special Committee, with a view to reaching a consensus on those aspects of the principle which were still in dispute. The representatives in question laid stress on the areas of agreement which had been reached in the Working Group that had considered the principle and which were set out in the report of the Working Group transmitted to the Special Committee by the Drafting Committee (A/6799, para. 107). These representatives considered the areas of agreement sufficient to justify the hope that a general formulation of the principle might be achieved in the near future. They felt that progress could best be made by preserving areas of agreement as and when they were reached. Some representatives considered that the proposal submitted to the Special Committee by its Latin American members (*ibid.*, para. 27) was constructive and valuable and could serve broadly as a basis for agreement. Others referred to the near-consensus text which had been produced by the 1964 Special Committee [103] as being one of those most likely to facilitate the formulation of the principle. Regret was expressed by certain representatives that some had tended to put aside this text which had, over a period of time, been agreed to by all members of the 1964 Special Committee. It was also explained that the joint proposal submitted to the Special Committee by Italy and the Netherlands (*ibid.*, para. 25) set out a programme *de lege ferenda*, bearing in mind the impossibility of achieving complete agreement at present and the fact that the adoption of a declaration of principles by the General Assembly was not an end in itself, but that the preparation of instruments and machinery would be required in order for the principles embodied therein to become a genuine force in international life.

37. Some representatives stressed the need to produce as soon as possible an adequate formulation of this fundamental Charter principle, which was the corner-stone of the international legal order, because repeated violations of it were creating situations of extreme gravity to world peace. A clear and unequivocal statement of the principle would facilitate its observance and application in international relations, thus contributing to stability and balance in the international community and to the maintenance and development of friendly relations and co-operation among States. The formulation of the principle should be in conformity with the Charter, taking into account the developments which had occurred in international law and State practice since the Charter had been drawn up. General Assembly resolution 2160 (XXI) of 30 November 1966 was mentioned by some representatives as an element which could serve to facilitate the codification and progressive development of the principle.

38. One representative traced the historical development of the principle proclaimed in Article 2, paragraph 4, of the Charter and stated that, in contemporary international law, the prohibition of the use of force had become a norm of *jus cogens*. It was also emphasized that the Charter had centralized the use of force in the United Nations by virtue of the powers and the authority conferred on its organs for the maintenance of international peace and security. It was only to the extent that the Organization was ineffective that certain limited aspects of the power to use force were retained by States within the framework of the exercise of the right of individual or collective self-defence, as recognized and regulated by the Charter.

39. Other representatives referred to the need to take into account the relationship between this principle and the others, especially the principle of non-intervention in matters within the domestic jurisdiction of any State, with a view to specifying the area protected by each of the principles and determining accordingly what elements should be included in each of them. One representative advocated devoting a few paragraphs to the relationship between the principle prohibiting the threat or use of force, the principle

[103] *Ibid.*, *Twentieth Session*, *Annexes*, agenda items 90 and 94, document A/5746, para. 106.

of non-intervention in matters within the domestic jurisdiction of any State and the principle of sovereign equality of States.

40. The representatives who referred to this point took the view that the prohibition of armed force stated in the principle extended to the prohibition of the use of irregular forces, volunteer or mercenary forces or armed bands, and to other acts of indirect aggression. The representatives in question asserted that States had an obligation to refrain from such acts and from inciting to civil war or fomenting acts of terrorism in other States, and they favoured the inclusion of an express provision on this point in the formulation of the principle prohibiting the threat or use of force, although they recognized that certain aspects of such acts were also related to the principle of non-intervention in matters within the domestic jurisdiction of any State.

41. A number of representatives maintained that the term "force" covered not only armed force, but also any form of coercion, including political, economic or any other kind of pressure directed against the territorial integrity or political independence of a State. They considered that political or economic pressure was sometimes quite as dangerous as the use of armed force, especially when such coercive action was taken against developing countries or countries which had recently become independent. In the view of these representatives, a broad interpretation of the term "force" in the context of article 2, paragraph 4 of the Charter was perfectly compatible with the provisions of the Charter, found support in the writings of legal experts, strengthened the principle prohibiting the threat or use of force, and was in keeping with developments since the entry into force of the Charter. In support of that interpretation, mention was made of the Charter of the Organization of American States, the Programme for Peace and International Co-operation adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held at Cairo in 1964, and General Assembly resolution 2160 (XXI), referred to above.

42. Several representatives condemned wars of aggression and some stressed the necessity and urgency of producing an adequate formulation of the principle of the responsibility of States which unleashed wars of aggression or committed other crimes against peace. One of these representatives stated that this gave rise to political and material responsibility of States and to penal liability of the perpetrators of those crimes, and he said that the principle of responsibility would be strengthened by the adoption of the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. Some representatives also said that States should enact domestic legislation prohibiting propaganda designed to encourage wars of aggression, and recalled that the League of Nations had considered the question and that the General Assembly of the United Nations had condemned all war propaganda in its resolutions 110 (II) of 3 November 1947 and 381 (V) of 17 November 1950 and had included a provision to that effect in article 20, paragraph 1, of the International Covenant on Civil and Political Rights, which it had adopted in its resolution 2200 A (XXI) of 16 December 1966. Armed reprisals were also condemned by some representatives as being contrary to the Charter.

43. On the question of the prohibition of the use of force in territorial disputes and frontier claims, one representative expressed the view that, since it was quite as illegal to use force to violate an "international line of demarcation" as it was to use it to alter a frontier, a reference to international lines of demarcation should therefore be included in the formulation of the principle. In the view of this representative, the application of Article 2, paragraph 4, of the Charter to international lines of demarcation would in no way imply that an armistice demarcation line was political in character or of indefinite duration; it would merely state that any change in such a demarcation line, as in the case of a border or frontier, could only be brought about by peaceful means.

44. The inviolability of State territory was regarded by a number of representatives as an essential element of the principle, especially for the newer or weaker States. Some of these representatives maintained that a State's territory could not be subjected—even temporarily—to military occupation or other measures involving the use of force by another State, directly or indirectly, for any reason whatsoever. One representative also condemned the peaceful occupation of foreign territories which the country exercising sovereignty over them was unable to protect because of its weakness. Several representatives took the view that the formulation of the principle should exclude the possibility of recognizing territorial acquisitions obtained by the threat or use of force or other forms of coercion, since international law could not sanction the consequences of unlawful acts which were incompatible with the Charter. In the view of one representative, the rule concerning the non-recognition of situations brought about by the threat or use of force, which had come to be known as the "Stimson Doctrine", had been implicit in the Briand-Kellogg Pact, in the Covenant of the League of Nations and in the United Nations Charter, and had been rendered explicit in many instruments of American States, in the 1964 Cairo Declaration of Non-aligned Countries and in the draft Declaration on Rights and Duties of States prepared by the International Law Commission in 1949. [104]

45. One representative stated that, where a territory was under dispute between two States and one of them refused to comply with Article 33 of the Charter, the latter State could not invoke the guarantee of "territorial integrity" provided in Article 2, paragraph 4, especially if both States had recognized the existence of the dispute and the United Nations had called upon the parties to settle the dispute by peaceful means.

46. The hope was also expressed that it would be possible to include in the formulation of the principle a statement concerning the desirability of making the United Nations security system more effective, because, while there were differing views as to how the Organization might best be equipped to fulfil its principal purpose, there appeared to be general agreement on the purpose itself. Other delegations emphasized that there should be an urgent appeal to States to secure general and complete disarmament under effective international control.

47. With regard to exceptions to the prohibition of the threat or use of force, certain representatives emphasized that the right of individual or collective self-defence should be limited strictly to the circumstances specified in Article 51 of the Charter. Some of these representatives also referred to the lawful use of force pursuant to a decision by a competent organ of the United Nations.

48. Some delegations expressed the view that the use of force by regional agencies, except in the case of self-defence, individual or collective, required the express authorization of the Security Council. In that connexion, it was noted that regional arrangements, such as the Rio de Janeiro Inter-American Treaty of Reciprocal Assistance of 1947 and the Charter of the Organization of American States, should be interpreted in the light of Articles 51 and 53 of the United Nations Charter. One representative agreed with that interpretation, on the understanding that in that context the expression "use of force" by regional agencies meant "use of armed force"; he also emphasized that any State which was subject to subversive or terrorist acts had the right to take reasonable and appropriate measures to safeguard its institutions, including the right to seek assistance from regional agencies. Another representative, however, took the view that any coercive measure taken by a regional organization against a Member of the United Nations without the cognizance of the Security Council would constitute a violation of the principle proclaimed in Article 2,

[104] See *Yearbook of the International Law Commission, 1949* (United Nations publication, Sales No.: 57.V.1), p. 287.

paragraph 4, of the Charter. One representative maintained that the Rio de Janeiro Treaty conflicted with the Charter, since it did not limit collective self-defence to cases where an armed attack occurred, as required by Article 51 of the Charter, and introduced new factors, such as any act or situation that might endanger the peace of America.

49. Several representatives expressed the view that the prohibition of the threat or use of force could not be interpreted as affecting the right of peoples to defend themselves against colonial domination in the exercise of their right of self-determination. They believed that self-defence against colonial domination should be regarded as an exception to the general rule, since—as some of these representatives stated—colonialism was an act of force and was actually aggression. In support of the legitimacy of the struggle against colonialism and of assistance to national liberation movements, some representatives cited General Assembly resolutions 1514 (XV) of 14 December 1960 and 2105 (XX) of 20 December 1965, and article 1 of the International Covenant on Civil and Political Rights, which had also been adopted by the General Assembly (resolution 2200 A (XXI)). Other representatives considered that every State should refrain from the use of force against those dependent peoples to which resolution 1514 (XV) applied. Others considered it unacceptable to extend the doctrine of self-defence into the colonial field, and felt that attempts to do so had been one of the major obstacles to agreement on the formulation of the principle.

(b) *The duty of States to co-operate with one another in accordance with the Charter*

50. The consensus text on this principle approved by the Drafting Committee of the Special Committee in 1967 (A/6799, para. 161) was considered by a number of representatives to be generally satisfactory, although some expressed the hope that its content could be expanded or improved in the future. One representative said he believed that the main objectives of co-operation were stated in that text.

51. During the debate, many speakers acknowledged the general importance of this principle and the necessity of codifying it as soon as possible because, in their view, the affirmation of the principle was essential to international stability and the maintenance of peace. Some representatives stated that it was a prerequisite for, or a corollary of, the concept of peaceful coexistence. In the view of one representative, its applicability extended to every aspect of international relations, and all States should co-operate, irrespective of their political, economic and social systems. Another representative stated in that connexion that it was the very task of his country, as a permanently neutral State, to co-operate with all States.

52. One representative observed that the duty to co-operate was quite clearly enunciated in various provisions of the Charter, particularly Article 1, paragraph 3, Article 2, paragraph 5, and Articles 25, 48, 49, 55 and 56. Some representatives felt that this principle implied the recognition not only of a duty but also of a right; in the view of one representative, to envisage it solely as a duty would result in an incomplete formulation, and he believed that the principle applied not only to States but also to such entities as groups of countries or international agencies. In addition, it was an institution which differed from the other principles under consideration because, while the latter could be stated in mere declarations, the system of rights and obligations which co-operation imposed required a whole body of functional rules.

53. Some representatives took the view that there was a close relationship between this principle and other principles of international law. If co-operation was lacking, the other principles studied by the Special Committee would remain of no effect. One representative considered that international co-operation was based on, and called for, the

promotion of respect for national sovereignty and independence, equal rights of States, non-intervention and mutual advantage. All these were constituent elements of the principle of co-operation and should be included in its definition, as his delegation had formally proposed in 1967 in the Special Committee; he hoped that that proposal would be considered in greater detail during the Special Committee's future deliberations.

54. Several representatives pointed out that the economic and social imbalance between countries was not conducive to the maintenance of friendly relations and co-operation among them. In the view of one representative, the purpose of economic and social co-operation should be to create, especially in developing countries, the conditions of stability, well-being and economic growth which were vital to the maintenance of peace and to world stability. It was recalled that the wealthier countries had a special responsibility in that respect, and the hope was expressed that it would be possible at some future date to establish the obligation of the wealthier peoples to come to the aid of the poorer peoples, as proclaimed in the Declaration of Philadelphia adopted by the International Labour Organisation on 10 May 1944.

55. Some representatives referred to the efforts made by developing countries through regional groupings of South-East Asia and Latin America. With regard to the latter, mention was made of the Central American Common Market and the Latin American Free-Trade Association. The purpose of those groupings was to co-operate for the welfare and development of their peoples, to protect their primary commodities, to promote investment and technical assistance accompanied by respect for the sovereignty of each State, and to bring about more complete independence vis-à-vis foreign Powers. In this connexion, one representative felt that the consensus text ignored one important element of the principle, namely, the duty of States to refrain from hindering other States which were co-operating among themselves in accordance with the Charter.

56. With respect to paragraph 1 of the text approved by the Drafting Committee of the Special Committee, some representatives expressed gratification at the reaffirmation of the concept of co-operation among States having different political, economic and social systems, without any discrimination based on such differences. Other representatives, however, considered that the text would have derived greater strength from an open acknowledgement of the fact that non-discrimination was an essential part of the duty to co-operate. One representative took the view that, in order to make such co-operation universal, all discrimination between States must be prohibited, and that that could be achieved by the adoption of the proposals in paragraphs 115 and 123 of the report of the Special Committee (A/6799). Another representative regretted the failure to mention, among the aims listed in paragraph 1 of the formulation of the principle, the eradication of colonialism, the persistence of which ran counter to the maintenance of peace, economic progress and general well-being. To mention it in the context of that principle would not mean that it could not be included in the formulation of the principle of equal rights and self-determination of peoples.

57. Several delegations felt that the Drafting Committee had rightly given primacy of place, in paragraph 2 of its text, to the duty of States to co-operate with one another in the maintenance of international peace and security. Some of them stressed the importance of the obligation to-operate with the United Nations in this vital area. One representative, however, stated that sub-paragraph (a) of that paragraph simply reproduced what had already been said in paragraph 1 and that, in his view, the repetition added nothing to the content of the principle.

58. Many representatives said they were gratified at the inclusion, in paragraph 2, of sub-paragraph (b) concerning human rights and fundamental freedoms and the elimination

of all forms of racial discrimination and religious intolerance—an addition which represented an improvement upon the text nearly agreed to in 1966. Several representatives spoke of the importance which their delegations attached to the idea of the legal obligation in that field, especially in view of the persistent violation of human rights and fundamental freedoms by certain Governments. One representative considered that sub-paragraph (b) should be interpreted as broadly as possible. Another representative took the view that that sub-paragraph was in conformity with Article 55 of the Charter and that the principle would be applied without distinction as to race, sex, language or religion. Yet another representative considered that, in view of the fact that the General Assembly had recently adopted the Declaration on the Elimination of Discrimination against Women (resolution 2263 (XXII)), the words "and the elimination of discrimination against women", should be added at the end of sub-paragraph (b), since that aspect did not appear to be covered by the formulation as it stood.

59. One representative was of the opinion that the reference in paragraph 2 (c) to the principles of sovereign equality of States and non-intervention in matters within the domestic jurisdiction of any State was not very clear. Another representative expressed his satisfaction with the provision contained in paragraph 2 (d); so general a clause could not resolve the issues which had divided the membership of the Organization, but it represented considerable progress.

60. Some representatives stressed the fact that paragraph 3 of the consensus text did not speak of a legal duty; its sole purpose was to promote co-operation in the area to which it referred and to encourage States towards a desirable future goal. Another representative felt that that text established a happy balance between the existing positions and opened the door to a beneficial evolution. Some others, however, expressed regret that paragraph 3 was only in the form of an exhortation. One of these representatives felt that the fact that paragraph 1 imposed a legal obligation but paragraph 3 did not weaken, and indeed appeared to contradict, the relevant provisions of the Charter. Another representative expressed the belief that, if it was not possible to give that concept a legal content, it would have been preferable to omit it from a text which formulated legal obligations stemming from the Charter principles, with a view to their codification.

(c) *The principle of equal rights and self-determination of peoples*

61. A number of representatives expressed regret that there were aspects of this principle on which the Working Group concerned had been unable to reach agreement in 1967, and that the Drafting Committee had arrived at the conclusion that the points on which agreement had been reached were insufficient to justify reference to the Special Committee. In the opinion of various representatives, that situation was the result of the divergency of opinions on the content of the principle, divergencies which existed despite the sincere efforts that had been made by some delegations to reconcile the opposing viewponts. In that connexion, one representative regretted the fact that the Working Group's report had not been published, for it would have enabled delegations not represented in the Special Committee to study those points of agreement. A number of representatives said that in their opinion it was urgent that the Special Committee should succeed in giving that basic principle a generally acceptable legal formulation, and at the same time they expressed the hope that further discussion in the Special Committee would prove more fruitful. In one representative's opinion, the current international situation had given urgency to the task. Various representatives considered that the existing differences of view were not so great as to prevent that aim from being achieved, which it could be if all delegations were prepared to co-operate. One representative said he hoped

that future endeavours would take into account the areas of agreement that had been reached in the Working Group.

62. Some representatives recalled that the principle was embodied in the Charter, explicitly in Articles 1, paragraph 2, and 55, and implicitly in Chapters XI, XII and XIII, and that it had been reaffirmed in numerous resolutions of the General Assembly, particularly resolutions 1514 (XV) and 2160 (XXI), in other international instruments such as the International Covenants on Human Rights (see General Assembly resolution 2200 A (XXI)), and in declarations by international conferences, such as the Conferences of non-aligned States. Some representatives said that the principle was the basis of one of the characteristic features of our time, namely the national emancipation movement, which in the last twenty years had enabled more than fifty countries, today united in the organized international community, to achieve independence and sovereignty. In the opinion of those representatives that was the most important success which the United Nations had achieved. The principle continued to be of decisive importance to peoples still living under colonial domination.

63. A number of representatives said that the principle could not be regarded as a mere moral or political postulate but constituted an established rule of contemporary international law. In the view of one representative, it was also one of the pillars of the present international order; it defined, in his opinion, one of the constituent elements of the community of nations—a community of peoples based on self-determination and equal rights—in which subject peoples did not exist. In the view of another representative, the principle was part of the foundations on which the United Nations had been built. One representative said that there was no basis in the discussions at San Francisco or in the practice of the General Assembly for the view that only the principles set out in Article 2 of the Charter were legal principles. Various representatives said that the maintenance of international peace and security, the development of friendly and co-operative relations between States and the promotion of the economic, social and cultural advancement of mankind largely depended on the unequivocal recognition of the principle.

64. With respect to the content of the principle, some representatives referred to the freedom of any State to choose, without foreign interference, the political, economic and social system which it considered desirable; one representative expressed his disagreement with a proposal aimed at replacing self-determination by the idea of uniting divided countries, which in his view bore no relation to the principle in question. Reference was also made by some representatives to the exercise of full sovereignty and the right of any State to dispose freely of its wealth and natural resources.

65. Some representatives expressed the view that any formulation of the principle must be based on the relevant provisions of the Charter and on the letter and spirit of General Assembly resolutions 1514 (XV), 1541 (XV) and 2131 (XX). One representative said that in studying the principle it was essential to bear in mind that the right of peoples to self-determination resulted from the principle of equal rights, and that it must therefore be recognized without any reservation by all States. Other representatives considered that the formulation should include a statement to the effect that the right of self-determination was inalienable. On that point, some representatives expressed support for certain of the proposals put forward by the Special Committee in 1967.

66. One representative expressed disagreement with another of those proposals, in which the right of peoples to self-determination was recognized as being more in the nature of an individual right, within the context of human rights. In his opinion, the truth was rather that respect for the right of peoples to self-determination—one of the foundations of peaceful and friendly relations among States and of international co-operation according

to the Charter—was on the contrary the basis for the enjoyment of human rights, which in turn was one of the components of the notion of peaceful relations. One representative expressed the view that since self-determination was an individual as well as a collective right, its exercise involved certain duties which must be regulated through codification.

67. Some representatives drew attention to the existence of differences of opinion regarding the definition of "people" and the recognition of the rights of peoples as differentiated entities in international law. One representative observed that while for some States "people" meant primarily independent States, other States held that the principle applied essentially to peoples still living under colonial domination. In the view of one representative, the question of definition was not an insurmountable obstacle to agreement. In the judgement of other representatives, the proposals submitted to the Special Committee in 1967 confirmed the vast scope of the principle, which applied to all peoples. Nevertheless, one representative repeated that it was desirable to use the term "all subject peoples" instead of "all peoples", for the use of the latter expression would encourage secessionist movements in multinational States and thus endanger the territorial integrity and political independence of certain States.

68. A number of representatives expressed agreement with the idea that the principle should not be used in such a way as to affect the national sovereignty and territorial integrity of States. In the opinion of one of them, the principle could not be invoked by minorities living in the territory of a State to bring about the dismemberment of that State; respect for minorities, in his opinion, was at once a duty and a right laid down by international instruments, and it was the responsibility of the United Nations to enforce it while protecting the territorial integrity of States.

69. In the opinion of some representatives, self-determination could not, moreover, be exercised by the populations of territories which were the subject of a legal dispute between States, especially, in the opinion of one of those representatives, if such territories had been acquired by force or through unjust treaties imposed by the threat or use of force. In the opinion of another representative, such disputes could furthermore not be left to the population which had been placed in that territory by the State which illegally had possession of it; the issue, in his view, was a dispute which could be settled in only accordance with juridical principles.

70. One representative affirmed that the idea that a State should refrain from any action aimed at the disruption of the national unity and territorial integrity of other States was foreign to the principle, and belonged rather to the principle of non-intervention in matters within the domestic jurisdiction of any State, or the principle prohibiting the threat or use of force. Another representative, however, said that subversive activities aimed at changing the régime of another State by violence were a violation of the principle and constituted intervention.

71. On the subject of the legality of the colonial system, one representative said that he could not accept the doctrine that any colonial relationship was illegal merely because it was colonial; in his view, the existence of Chapter XI of the Charter contradicted that contention. Some representatives, however, considered that colonial situations were only *de facto* situations without any legal basis. In their view, the provisions of Chapter XI of the Charter had, of course, legal validity, but far from providing a foundation for colonialism they could be applied only in the context of the right of peoples to self-determination and subject to the implementation of that right. In the view of one representative, even if it was granted that the colonial system had been based on customary rules, the latter had lost their binding force through the absence of an *opinio necessitatis*. Another representative reached the conclusion that if particular obligations were mentioned in the formulation of

the principle on the basis of Chapter XI of the Charter, he would be obliged to ask that the principle should be made applicable to all existing situations involving colonial territories. The view was also expressed, by another representative, that all States should render assistance to the United Nations in bringing about an immediate end to colonialism and transferring all powers to the peoples of territories which had not yet achieved independence. He also considered that territories under colonial domination did not constitue an integral part of the territory of States exercising colonial rule over them.

72. In the view of some representatives, the affirmation of the colonial peoples' so-called right of self-defence had raised a very serious obstacle to agreement on the formulation of the principle. Another representative, on the other hand, considered that people deprived of their freedom and their right to self-determination were entitled to exercise their right of self-defence by every means, without the rules of the Charter relating to the non-use of force being applicable to them. Those peoples, they added, might receive assistance from other States by virtue of that right.

(d) *The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter*

73. Several representatives expressed satisfaction at the results achieved in 1967 in connexion with this principle despite the difficulties involved in its formulation. Most of the observations made during the discussion concerned mainly the text agreed upon in 1967 in the Special Committee's Drafting Committee (A/6799, para. 285); but general opinions on the principle were also expressed. One representative, for example, felt that the principle was fully justified; since it involved the rule *pacta sunt servanda*, which was the basis of contemporary international law, observance of it was the prerequisite for the observance of all the other principles under consideration. Others noted that it was founded upon mutual trust between States having different political, economic and social systems, a trust which was vital at a time when the complexity and diversity of international relations were increasing. In the opinion of one representative, the fact that his country, as a permanently neutral State, had renounced any active use of force implied that it depended in its international relations on the good faith of other States in fulfilling their obligations. Another representative, however, said that the principle seemed to be only very remotely connected with friendly relations and co-operation among States. One representative also found it disturbing to note that the principle was not applied in practice by certain countries, and that was one of the causes of the current international tension.

74. The 1967 Drafting Committee's text was praised for its brevity and succinctness, but certain criticisms were also voiced. In the view of one representative, the text presented difficulties in that it dealt with delicate and complex questions which had not been adequately explored from either a theoretical or a practical point of view, such as the relationship between the Charter and treaty law, between the Charter and customary international law, and between treaty law and customary international law. Another representative considered that the text was not entirely satisfactory, for such expressions as "good faith" and "the generally recognized principles and rules of international law" had not been defined, and he thought they might later be given divergent and even conflicting interpretations.

75. Several representatives welcomed the fact that the formulation of the principle not only proclaimed the legal requirement that the paramount obligations deriving from the Charter should be fulfilled, but also properly reflected the need for compliance with the obligations arising from both customary and conventional international law. That formulation, in the opinion of one representative, strengthened those obligations. Another felt that it went beyond a mere paraphrase of the provisions of the Charter; in his opinion, it was a reaffirmation of the vital importance, in an interdependent world, of the fulfilment

of such Charter obligations as the duty to refrain from the threat or use of force against the territorial integrity or political independence of any State. In the view of a third representative, the formulation correctly placed those obligations in perspective, striking a satisfactory balance between the obligations of conventional and customary international law, thus clarifying and elaborating the relevant provisions of the Charter. One representative also expressed satisfaction that the text had implicitly recognized some of what he considered to be exceptions to the principle; for example, a State was not required to fulfil obligations assumed in violation of the Charter or of the generally recognized principles and rules of international law.

76. A number of representatives referred to the duty to fulfil obligations arising from treaties, as formulated in paragraph 3 of the consensus text. In that connexion one representative said that in his opinion only obligations deriving from treaties that were still valid must be fulfilled. Another representative considered that paragraph 3 interpreted the rule *pacta sunt servanda* in the light of the principles of the Charter and in a way complemented the relevant provisions of the draft articles on the law of treaties prepared by the International Law Commission. Some representatives also stressed that the duty to fulfil obligations arising from treaties did not apply to treaties resulting from the threat or use of force, and reference was made in that connexion also to the work of the International Law Commission. Another representative said it was entirely in order that treaties which conflicted with a peremptory norm of international law should be declared void. One representative also affirmed that the wording of the principle should allow for the *rebus sic stantibus* clause. Several representatives referred to the fact that in 1967 the Drafting Committee of the Special Committee had rejected the proposal to add to paragraph 3 the words "freely concluded on a basis of quality". They expressed approval of that decision, for the proposal in question was related to complex and controversial problems of treaty law, which were to be the subject of a profound examination at the forthcoming United Nations Conference on the Law of Treaties, to be held at Vienna. One representative also noted that the International Law Commission had postponed a detailed consideration of the problem of unequal treaties as being more appropriate to its future work on the succession of States. Other representatives, however, expressed regret that there was no explicit provision in the consensus text that only those international agreements which were concluded freely and on the basis of equality were valid. In the absence of such a provision and with the hope that that idea might still be specifically included, they accepted the formulation arrived at by the Drafting Committee, on the understanding that the text in question covered that vital point.

77. One representative noted in that connexion that in recent years new States had emerged which had had to choose between different economic and social systems, a choice which had given a new direction to international law because it implied the right to refuse to be bound by the treaties concluded under the former régime. Another representative expressed a similar view, referring to the draft articles on the law of treaties prepared by the International Law Commission; he conceded, however, that there were some unequal treaties which were justified, such as a treaty under which one country; without any *quid pro quo*, granted permanent access to the sea to another country that was land-locked.

78. Some representatives expressed satisfaction that paragraph 4 of the consensus text clearly recognized the supremacy of the obligations arising from the Charter over other obligations of States Members of the United Nations. In the view of one representative, that paragraph clearly brought out the interdependence of two basic provisions of the Charter, those of Article 2, paragraph 2, and Article 103. Another representative said that although the provision in paragraph 4 was correct, the wording of the consensus text might

lead to misinterpretation, for it was not sufficiently clear whether the provision in that paragraph also applied to the obligations of Member States under generally recognized principles and rules of international law. In his opinion, paragraph 4 of the consensus text should be made to cover the obligations referred to in paragraph 2 thereof. One representative said that his country's status of permanent neutrality did not prevent it from fulfilling in good faith its obligations as a Member of the United Nations because it was convinced that that special status, which had been duly notified, would be taken into account by the Security Council and all States Members of the United Nations.

79. Some representatives recognized the supremacy of international legal obligations over those deriving from domestic law and regretted that the Drafting Committee of the Special Committee had been unable to include that point in the consensus text. In that connexion, one representative recalled that that supremacy had already been affirmed by the International Law Commission in article 13 of the draft Declaration on the Rights and Duties of States, and that the General Assembly had taken note of that draft in its resolution 375 (IV) of 6 December 1949. Another representative, however, expressed the opinion that the consensus text in its present wording incorporated that idea, since the very function of the entire text was to call the attention of States to their international legal obligations.

2. *The principle set forth in operative paragraph 6 of General Assembly resolution 2181 (XXI): the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

80. The situation which had arisen in the Special Committee with regard to this principle was a matter of concern to a number of representatives, who felt that there was a broad area of agreement on it in General Assembly resolution 2131 (XX) of 21 December 1965, containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. Some of those representatives attributed the lack of progress at the Special Committee's 1967 session to the fact that certain delegations, in ignoring the Special Committee's terms of reference as specified in operative paragraph 6 of General Assembly resolution 2181 (XXI) of 12 December 1966, and the Special Committee's own decision taken in 1966, [105] had submitted proposals which, far from widening the area of agreement expressed in resolution 2131 (XX), had had the effect of restricting that agreement or ignoring it, and thus cutting down the content of the principle and reducing its scope. The fact that not all the members of the Special Committee had adhered unequivocally to resolution 2131 (XX), and that some of them had sought to change the agreement already set forth in that resolution, had had the effect, in the opinion of the representatives in question, of preventing the fulfilment of the terms of reference given to the Special Committee by resolution 2181 (XXI) and paralysing the Special Committee's work on the principle. Consequently, it had not been possible to widen the area of agreement expressed in resolution 2131 (XX). Some representatives said they had supported the proposal in document A/AC.125/L.54 (see A/6799, para. 307) —that the Special Committee should include the operative paragraphs of resolution 2131 (XX) in the formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State—with the idea of checking any attempts to weaken the resolution.

[105] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 341.

81. However, some representatives considered that although resolution 2131 (XX) was an important political document, it was not legal in character. Some of them were of the opinion that the delegations responsible for the situation which had arisen in the Special Committee in connexion with this principle had been those whose interpretation of the mandate contained in resolution 2181 (XXI) was to the effect that the Special Committee did not even have the authority to make formal changes in the text of resolution 2131 (XX). It was pointed out that the restrictive interpretation given to the Special Committee's mandate was at variance to what resolution 2181 (XXI) had been understood to mean. Some of these representatives indicated that they could not accept an interpretation which made it inadmissible to introduce the slightest modification to any of the paragraphs of resolution 2131 (XX). Other representatives maintained that what in reality had virtually paralysed the Special Committee had been not so much disagreement on substance as disagreement on how the principle was to be formulated. In their opinion, the resulting stalemate should cause delegations to reflect on the desirability of continuing on the course which had been pursued so far. For the purposes of the formulation of the principle, it was pointless to talk about the existence of a consensus which did not reflect reality, for to do so would only delay the solution of the problem. What was required was effort to harmonize the positions in so far as they were in conflict or divergent, bearing in mind that the basis for agreement already existed, and to prevent procedural or drafting questions from continuing to stand in the way of a consensus. It was recalled in that connexion that both operative paragraph 2 of resolution 2131 (XX) and the proposal submitted to the Special Committee by the United Kingdom (see A/6799, para. 306) contained the substance of the idea that had been at the centre of the discussion, namely, that coercive intervention involving measures of an economic, political or other nature constituted a violation of international law and of the Charter.

82. Some representatives indicated that, although for them the content of resolution 2131 (XX) was definitive, they respected the position of those delegations which did not share that view and they would be prepared to enter into negotiations, not, of course, on the content or form of resolution 2131 (XX) but on a wording which would not do violence to the fundamental positions of all delegations and which would allow the Special Committee to continue its work.

83. Resolution 2131 (XX) was regarded by many representatives as the expression of a universal juridical conviction of the principle of non-intervention in matters within the domestic jurisdiction of any State and not merely as a political declaration. Stressing the importance of the content of the resolution, the fact that it had been adopted with no votes cast against it, the elements that gave it the character of general State practice, and the fact that it embodied a principle recognized in several international instruments for over a century, those representatives considered that resolution 2131 (XX) was the accepted minimum on which the Special Committee should base its work on the principle. They felt that the operative part of the resolution should be included in the formulation of the principle, and some of them were in favour of including the preamble also, or at least certain ideas expressed in the preamble. In their view, the agreement expressed in resolution 2131 (XX) could be widened, but a formulation of the principle which did not fully reflect the resolution would be unacceptable and contrary to what had already been decided by the General Assembly. One representative pointed out that those who criticized the Declaration in resolution 2131 (XX) for containing vague ideas which lent themselves to varying interpretations forgot that a number of current legal concepts ("due process of law", "due diligence", "*ordre public*" etc.) were in effect no less precise than some of the terms used in the resolution so often referred to. Another representative considered the text of resolution 2131 (XX) entirely appropriate for a formulation of the principle, since the

purpose was to adopt not a treaty but a declaration which would be approved by the General Assembly and which would have the same legal standing as resolution 2131 (XX). A third representative felt that if the Special Committee could not agree on the extent to which the area of agreement expressed in resolution 2131 (XX) should be widened, it would be better so to inform the General Assembly instead of criticizing certain terms or limiting the scope of the resolution.

84. Some representatives found it strange that it should be so difficult to draft a legal text in language all could accept when there existed a large measure of agreement, expressed in the near-unanimous support for resolution 2131 (XX). One representative, while fully endorsing all the provisions of the resolution, did not consider it a legal document in the strict sense and thought that the Special Committee should formulate the principle in legal terms after giving due consideration to the area of agreement marked by the resolution.

85. Other representatives were of the opinion that the General Assembly had done well to adopt resolution 2131 (XX) as an expression of its concern at the many violations of the principle but they thought that the wording of the resolution was open to differing interpretations and was therefore not suitable for a legal text. For example, the resolution dealt with some of the most fundamental principles of the United Nations without clearly defining their relationship to non-intervention. One representative pointed out that the wording of the resolution's operative part was so sweeping as to appear to prohibit any action which, whether intentionally or not, might adversely affect the interest of other States, thus ignoring the fact that that was often only a consequence of the interdependence among nations that existed in the present-day world.

86. Some representatives stressed the need to affirm and strengthen the principle, in view of the fact that intervention was becoming more frequent, assuming varied forms, violating the basic principles of peaceful coexistence and endangering peace. They considered non-intervention a central principle of international law, general and universal in character and of special importance to developing countries, countries not very strong or which had only recently acceded to independence.

87. Others took the view that the complexity of international relations urgently required that the formulation of the principle should define what forms of intervention could not be tolerated and should therefore be outlawed. One representative emphasized that a careful distinction must be made between lawful and unlawful intervention on the one hand, and aggression and self-defence on the other, lest the victim of aggression be labelled the aggressor. On the other hand, another representative expressly opposed the tendency to consider the principle a mere limitation of an alleged right of intervention.

88. It was also pointed out that in formulating the principle it was necessary to bear in mind its relationship to the principle of sovereign equality, the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. In the view of one representative, the prohibition of the use of force would be a specific manifestation of the principle of non-intervention in matters within the domestic jurisdiction of any State.

89. In reviewing the historical evolution of the principle, representatives observed that it had been laid down in one form or another in many international instruments, including the Convention on Rights and Duties of States concluded at Montevideo in 1933, the Charter of the Organization of American States, the Charter of the Organization of African Unity and the Charter of the United Nations. Some representatives said that the history of Latin America was the history of the principle of non-intervention in matters within the domestic jurisdiction of any State. For the peoples of Latin America the prin-

ciple, far from being a mere formal clause, reflected their profound convictions and constituted the main juridical defence of their independence and sovereignty.

90. It was also emphasized by certain representatives that Article 2, paragraph 7, of the Charter dealt with only one aspect of non-intervention, namely interference in the internal affairs of another State. One representative expressed the view that in Article 2, paragraph 7, the term "United Nations" meant both the Organization and any of its Members and the word "essentially" referred to matters in respect of which States had exclusive competence.

91. Some representatives called on the Special Committee to attempt to define the limits of the principle of non-intervention in matters within the domestic jurisdiction of any State by indicating what was to be regarded as falling within the domestic jurisdiction of States. One representative considered as not coming within that jurisdiction such acts as genocide, crimes against humanity, the denial of the right of self-determination to peoples under colonial or alien rule, or acts committed in violation of international agreements. Another representative felt that the principle could not be construed to mean that a country could violate the fundamental human rights of its citizens without such violations becoming the concern of the entire world community and that it could not be understood to refer to Governments which had not been voluntarily created by the people.

92. Recalling that military intervention was only one of the possible forms of intervention, which tended to assume clandestine and concealed forms, some representatives felt that the formulation of the principle should deal with intervention in any form, whether open or indirect, in the foreign or domestic affairs of a State for political, military, economic, ideological or other reasons. Others emphasized the obligation not to interfere in the internal affairs of a State, condemning as unlawful not only the various forms of aggression but also subversive activities, the activities of infiltrators and mercenaries, and propaganda campaigns aimed at changing the system of another State by violence. It was added that certain apparently passive attitudes could also constitute acts of intervention. One representative was of the opinion that the formulation of the principle must exclude any possibility of subjective evaluations, so as to prevent interventionists from trying to justify their intervention. Certain representatives also condemned acts of intervention for the maintenance of colonialism or neo-colonialism, and felt that the obligation laid down in the principle did not apply to aid given to peoples under colonial rule with a view to accelerating their accession to independence.

3. *Principles referred to in operative paragraph 7 of General Assembly resolution 2181 (XXI)*

(a) *The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered*

93. Various representatives expressed regret that the Special Committee, despite a further exchange of views, had been unable in 1967 to amplify the consensus text adopted on this principle in 1966.[106] Some representatives thought, however, that an amplification could still be achieved by taking into account some of the proposals submitted to the Special Committee in 1967.

94. It was affirmed that this principle, which is closely akin to the principle prohibiting the threat or use of force, should be respected by all States, since the establishment of peaceful international relations depends on its implementation. In the opinion of one representative, the formulation of the principle must be compatible with Chapter VI of

[106] *Ibid.*, para. 248.

the Charter, in that States must be allowed to choose among the various means of peaceful settlement listed in Article 33. He drew attention to the adoption on 21 July 1964 by the Organization of African Unity, in accordance with article XIX of its Charter, of a Protocol on Mediation, Conciliation and Arbitration.

95. Various representatives commented on some aspects of the principle in relation to the consensus text of 1966. One of them considered that that text was open to misinterpretation because it ignored the principle which appeared in Article 95 of the United Nations Charter. Another representative expressed the view that, with regard to the right of States members of a regional agency to have direct recourse to the United Nations, the consensus text struck a just balance by recommending that such States should make all possible efforts to bring about the peaceful settlement of disputes of a local character by means of those agencies. On this subject, however, another representative maintained that the formulation could be improved by insertion of the amendment proposed in the Special Committee by Chile.[107] According to another representative, the formulation should stress that only the United Nations, through its appropriate organs, could use force to impose its decisions, except in cases of self-defence against an armed attack pending action by the United Nations. Lastly, another representative expressed support for the five-Power proposal[108] relating to the application and interpretation of general multilateral agreements, since the fact that such agreements were carefully drafted with the participation of the entire international community seemed sufficient reason to recommend that the parties should deny themselves the power to decide unilaterally on the interpretation or application of them.

96. A number of representatives expressed the opinion that the procedure for judicial settlement, and in particular the role of the International Court of Justice, should be taken into account in the final formulation of the principle. One representative stressed the need for the compulsory jurisdiction of the Court in legal disputes arising from treaties or conventions, and for compulsory resort to arbitration in disputes of any other kind. Another representative, however, thought it unwise to include any reference to the Court or to the recognition of its jurisdiction as compulsory, owing to the present structure and membership of the Court. On this point, some representatives stressed the need for a truer and fairer geographical representation in the Court of all legal systems and of the principal forms of civilization.

97. Lastly, one representative said that the new States would have to be given a larger role in the creation of international law. In his opinion, the codification and progressive development of the principles studied by the Special Committee afforded those States that possibility. Recalling that the new States had played no part in the creation of the rules of international law which were in existence at the time they became independent, he expressed the view that in so far as the new rules that were being formulated were the legal expression of existing practice and met the just aspirations of the new States, the latter would be more inclined to submit freely to their application.

(b) *The principle of sovereign equality of States*

98. In the opinion of one representative, the formulation of this principle in the Special Committee in 1966[109] had been augured well for the subsequent consideration of the principles as a whole, for it had implied the reaffirmation of the principle on which the international relations of States and their participation in internation organizations were based. According to another representative, the principle implied that States had the

[107] *Ibid.*

[108] *Ibid.*, para. 159.

[109] *Ibid.*, para. 403.

sovereign right to determine their reciprocal relations, and were strictly equal, so that no State, acting individually or with others, could lawfully claim superiority or authority of any kind over any other State.

99. One representative said he supported the consensus text because it reproduced, in the main, the wording adopted at San Francisco in 1945, with the addition, in paragraph 2 (*e*), of a reference to the right of every State freely to choose and develop its political, social, economic and cultural system. The inclusion of that clause had represented, in the opinion of another representative, a real advance in the codification of the basic principle enunciated in Article 2, paragraph 1, of the Charter. One representative, however, was of the opinion that the second sentence in paragraph 1 of the consensus text adopted in 1966 was not clear, and that it seemed to mean that States were equal in law in spite of their inequalities in economic, social, political or other fields. That would legalize some *de facto* inequalities between States. In order to avoid such an erroneous interpretation, and in view of the fact that the implications of the words "differences" and "different systems" were not the same, his delegation had suggested that the sentence should read as follows: "They have equal rights and duties and are equal members of the international community, notwithstanding the different economic, social and political systems or other way of life they have adopted."

100. A number of representatives referred to specific aspects which in their opinion should have been included in the text with a view to widening the area of agreement. For example, frequent mention was made of the matter of the right of States to dispose freely of their national wealth and natural resources. Several representatives noted with satisfaction that in 1967 the Special Committee had agreed in principle that a matter of such great importance to the developing countries should be included in the formulation of the principle, and expressed the hope that appropriate agreement on a specific wording would finally be reached. On that point, in the view of one representative, the formulation of the principle should be made in the light of General Assembly resolutions 1803 (XVII), 2158 (XXI) and 2200 A (XXI).

101. One representative expressed his gratification at the agreement in principle of the Special Committee in 1967 with respect to the possible mention in the formulation of the principle of the right of every State to participate in the solution of international questions affecting its legitimate interests.

102. Finally, certain representatives strongly supported the right of every State to be admitted to international organizations, to become a party to multilateral treaties that affect its legitimate interests, to eliminate foreign military bases established on its territory and to prohibit aircraft carrying nuclear weapons from flying over its territory. Emphasis was also laid on the primacy of international law.

C. Considerations on future work and methods of work

103. There was general agreement on the need to continue the work of codification and progressive development of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, and the idea that an item with that title should be included in the provisional agenda for the twenty-third session of the General Assembly was approved. Certain representatives, however, expressed reservations about the procedures or methods of work adopted so far and some stated that the final position of their Governments on any texts that might be adopted would depend on the adequacy of the methods of legal codification and development to be followed in the Special Committee.

1. *Convening of the Special Committee*

104. It was generally recognized that the best way of continuing the examination and formulation of the principles was again to invite the Special Committee reconstituted by General Assembly resolution 2103 A (XX) of 20 December 1965 to continue its work. Although some representatives expressed doubts about the advisability of convening the Special Committee at too early a date, in view of the United Nations heavy programme of legal activities for 1968, the majority of those who spoke in the debate declared themselves in favour of holding a new session of the Special Committee in 1968, as provided for in operative paragraph 3 of draft resolution A/C.6/L.628 and Add.1-3 (see para. 20 above). It was agreed that in view of the administrative facilities and the time available, the 1968 session of the Special Committee should last three or four weeks.

2. *Mandate of the Special Committee for its 1968 session*

105. In the general debate, there were various trends of opinion on this question. Some representatives urged that the Special Committee should try to finish its work at its 1968 session. Others, however, considered it more realistic, in view of the time the Special Committee would have available, to keep its task in 1968 limited, bearing in mind the state of work on each of the principles and the draft declaration as a whole. Certain representatives considered that the Special Committee should adopt a programme of work in three stages, namely: (*a*) formulation of the principles on which there had been no consensus; (*b*) widening of the points of agreement on the other principles; (*c*) preparation of a legal document or draft declaration on all the principles.

106. Some representatives were of the opinion that the Special Committee should resume its work in 1968 at the point where it had left off at the close of its 1967 session and that the seven principles should therefore be referred to it with an order of priority which took into account the state of the work on each of them. Many representatives, on the contrary, expressed the opinion that in 1968 the Special Committee should concentrate on those principles on which there had not been any agreement. In that connexion, some mentioned the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. It was urged by others that the principle of non-intervention in matters within the domestic jurisdiction of any State should also be referred to the Special Committee. Some favoured the referral of this principle but insisted that consideration should be limited to only those proposals relating to it that were compatible with General Assembly resolution 2131 (XX), with a view to widening the area of agreement already expressed in that resolution. Others favoured the referral but would have the Special Committee deal with the principle only after work had been completed on the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. Some representatives were opposed to referring the principle of non-intervention in matters within the domestic jurisdiction of any State to the Special Committee in such terms that its study would be unduly restricted. Certain representatives thought that it would be preferable to seek the improvement of the texts on which agreement had already been reached when the final text of the draft declaration was drafted. Finally, one representative considered that the new mandate given to the Special Committee should not depart from that laid down in General Assembly resolution 2181 (XXI).

107. Operative paragraphs 3, 4 and 5 of draft resolution A/C.6/L.627 and operative paragraphs 4, 5 and 7 of draft resolution A/C.6/L.628 and Add.1-3 set forth the mandate of the Special Committee for its 1968 session. The position of representatives on those paragraphs was determined on the basis of the following main questions: (*a*) whether an

order of priority should be expressly established for the consideration of the principles referred to the Special Committee; (*b*) whether it was appropriate to refer to it all seven principles or only those on which there had not yet been any agreement; (*c*) whether reference should be made to General Assembly resolution 2131 (XX) in connexion with the principle of non-intervention in matters within the domestic jurisdiction of any State, and if so, how the task to be performed by the Special Committee on that principle should be defined; (*d*) whether the Special Committee should try to widen the area of agreement on the principles already formulated; (*e*) whether it was appropriate to entrust the Special Committee with the task of revising the drafting of the seven principles in order to harmonize the texts and in what terms that task should be defined; (*f*) whether it would be opportune to ask the Special Committee to prepare a draft declaration, including the preamble and final clauses; (*g*) whether the Special Committee should be expressly requested to submit a complete report on the principles it was asked to consider. Differences with regard to the third of these questions had a decisive effect on the nature of the voting.

3. *Consensus and majority*

108. Several representatives considered that the method of consensus or general agreement should be an incentive for negotiation and compromise, but not an absolute rule or immutable dogma. They emphasized that unanimity or consensus was a legally desirable and important goal to be aimed at, but they were opposed to its abuse as a kind of right of veto to prevent or hinder the progressive development of international law. It was unacceptable that a small number of States should oppose that development by refusing to recognize rules of international law that were almost universally accepted. Furthermore, the main concern should be with the substance of the rules and not with trying at all costs to reach a consensus in which their content was sacrificed. A clear formulation accepted by a great majority of States would be preferable to an inadequate or defective rule adopted unanimously. One representative added that most of the present rules of international law had originated in the practice of some States only and that even for the adoption of the Charter of the United Nations the procedure of a qualified majority vote had been used. All these representatives agreed that the Special Committee should do everything possible to reach a consensus, but that if that proved impossible because of unjustified opposition by some States, the Special Committee should give up the rigid procedure of consensus and adopt majority decisions. Some representatives said that in that event they would prefer the procedure of a qualified majority. Pointing out that the rules of procedure of the General Assembly applied to the proceedings of the Special Committee, some representatives welcomed the reference to them in the sixth preambular paragraph of draft resolution A/C.6/L.628 and Add.1-3. Finally, it was also observed that the consensus of a body with limited membership like the Special Committee did not necessarily represent the consensus of the international community.

109. Other representatives, on the other hand, expressed concern at the fact that doubt had been cast on the advisability of following the consensus method in dealing with the development of principles of international law and opposed any attempt to substitute majority vote for consensus. To those representatives, the method of consensus, based on a spirit of mutual co-operation, was not only the most appropriate method, but in fact the only possible one. Noting the great importance attached to consensus in the Sixth Committee and the International Law Commission, those representatives stated that if that method was abandoned there would be less effort to overcome differences and to compromise and that there would be appreciably less possibility of universal recognition and application of formulations which were adopted by majority vote and lacked the support of all or almost all States. A text adopted by consensus, however imperfect,

would be more likely to be faithfully respected and observed by all States in their relations with each other. Consequently, those representatives felt that the codification and development of principles by means of a simple majority vote would be harmful to the unity and indivisibility of the international legal order. One of them said that codification achieved through such a procedure would merely reveal the existence of open disagreement among States, which might mean that the development of the principles of international law under consideration would move backwards rather than forwards. It was added that only if the declaration on those principles ultimately adopted by the General Assembly met with the quasi-unanimous approval of the Members of the United Nations could it be said to express a universal legal conviction and thus be considered a source of law under Article 38, paragraph 1 c, of the Statute of the International Court of Justice. Lastly, it was also asserted that undue haste would only place the texts already adopted by consensus in jeopardy and undermine the authority of the United Nations by drawing attention to its limitations.

110. One representative felt that the Special Committee should continue to employ the method of unanimity, unless it might be desirable in the future to resort to a majority vote in order not to have to abandon the formulation of principles on which unanimity could not be achieved. Some representatives pointed out that a minority position in the Special Committee could become a majority position in the General Assembly and the Sixth Committee. One representative believed that the Special Committee should continue to adopt its formulations by consensus but that the General Assembly and the Sixth Committee should take decisions on them by majority vote. He added that where the Special Committee failed to achieve a consensus on a particular text because of a slight difference of opinion, it could authorize its Rapporteur to note and examine the differences and to recommend an objective formulation in his report.

4. *Need to improve future methods of work*

111. The suggestions made by the Italian representative in the Special Committee in his statement on methods and procedures for future work (A/6799, paras. 481 and 482) were received with interest and some representatives considered that the Special Committee should study the question seriously at its next session.

112. Certain representatives maintained that the Special Committee should base its work on a serious legal study of the theoretical positions and practices of all States, old and new, also taking into account the instruments and declarations concerning the principle under study. In point of fact, they said, the Special Committee's work had been based on proposals which mainly reflected the States' own points of view on those aspects of the principles in which they were particularly interested.

113. Others stressed the advantages of making better use of the working groups set up within the Drafting Committee of the Special Committee. It was suggested that these groups should meet before the next session of the Special Committee and that any States which so desired should be allowed to participate in their discussions. Some representatives saw the working groups' activity as a general preparation for the debate in the Drafting Committee. It was also suggested that the results of the working groups' proceedings could be submitted to the Special Committee itself.

114. Certain representatives considered it essential that possible compromise formulations should be discussed outside the conference rooms or by unofficial groups composed of representatives of the countries upholding different points of view. One representative was in favour of reducing the time allowed by the Special Committee for general statements on the principles, in order to increase the time allocated to the detailed study of the texts

submitted, and another thought that the Special Committee should have a free exchange of views on a principle as a whole studying the formulation of each of its particular elements.

115. With regard to the appointment of special rapporteurs by the Special Committee, the special rapporteur would at the same time be a representative of one of its Member States; he thought it might be preferable to entrust the preparatory work to a body of experts such as the International Law Commission.

5. *Preparatory consultations*

116. Many representatives said that the Special Committee's work could be advanced if the Governments of Member States gave more attention to the preparation of its sessions; particular importance should be attached to unofficial contacts and preliminary consultations between sessions. That would facilitate the planning and co-ordination of the Special Committee's work. These representatives emphasized their agreement with the recommendation contained in operative paragraph 6 of draft resolution A/C.6/L.628 and Add.1-3.

6. *Work after 1968*

117. A few representatives thought that, if the Special Committee did not complete its work in 1968, the General Assembly should decide at its twenty-third session on the way in which the work should be pursued. One representative said that, to hasten the adoption of the declaration, whatever draft resolution was adopted at the present session of the General Assembly should indicate that if the Special Committee did not reach general agreement in 1968, the Assembly itself would undertake the task of codifying the principles. It was also said that the Special Committee could not be reconstituted indefinitely.

7. *Adoption of a General Assembly declaration on the principles*

118. Several representatives reaffirmed the aim of the Special Committee's work, which was the adoption by the General Assembly of a declaration setting forth the principles of international law concerning friendly relations and co-operation between States, adding that no effort should be spared to see that the declaration was adopted as soon as possible.

119. Some representatives stressed the close connexion between the principles under consideration and took the view that they should be included in a single declaration forming a coherent whole, accompanied by a preamble and the necessary final clauses. Others stated that, if the existing differences of opinion prevented the adoption of a declaration on the seven principles, they would not be opposed to the approval of separate declarations on the principles upon which agreement had been reached.

120. Certain representatives thought that each of the seven principles and the draft declaration as a whole should be formulated and adopted by the Special Committee in accordance with the appropriate procedures before their adoption by the General Assembly. Others, on the contrary, considered that the General Assembly would have to take a decision on the questions upon which the Special Committee had not been able to agree, with a view to the final adoption of the draft declaration.

121. It was also suggested by certain representatives that when the Special Committee prepared its final draft declaration, all Member States should be given the opportunity to express their opinions explicitly and in detail by the submission of written observations, as was done for the drafts prepared by the International Law Commission. One representative suggested that the International Law Commission should be requested to comment on the final formulation of the seven principles before they were sent to the Sixth Committee for examination.

122. Several representatives emphasized that the adoption of a declaration by the General Assembly was only an important step, a "landmark" in the codification and progressive development of the seven principles under study. Some thought that it would ultimately be necessary to consider the possibility that the formulation of the principles, or at least of some of them, would be the subject of conventions which would give them the status of conventional norms.

123. After pointing out that codification and progressive development were very different operations and indicating the General Assembly's competence in that respect, one representative said that the declaration, when adopted, would be important in so far as it expressed not merely a political desire but the recognition of those principles by all the Member States through a formulation on which they obviously intended to confer a legal character. That would encourage the generalization of a practice which might become established as a custom within the meaning of paragraph 1 b of Article 38 of the Statute of the International Court of Justice.

V. Voting

124. At its 1006th meeting, the Sixth Committee decided to vote on the draft resolutions (see paras. 19 and 20 above). It voted first on the sixty-seven-Power draft (A/C.6/L.628 and Add.1-3). The voting took place as follows:

(*a*) Paragraph 5 of the operative part of the draft resolution, on which a separate vote was requested by the representative of the United States, was adopted by a roll-call vote—requested by the representative of Nigeria—by 72 votes to 13, with 7 abstentions. The result of the vote was as follows:

In favour: Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Ceylon, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia, France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malayisia, Mali, Mauritania, Mexico, Mongolia, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Rwanda, Sierra Leone, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Australia, Belgium, Denmark, Iceland, Japan, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Austria, Canada, Finland, Italy, Somalia, Sweden, Turkey.

(*b*) On the proposal of the representative of Cameroon, a vote was taken on the remainder of the draft resolution. It was adopted by 88 votes to none, with 3 abstentions.

(*c*) The draft resolution was then put to the vote as a whole. By a roll-call vote, requested by the representative of Mexico, it was adopted by 78 votes to none, with 15 abstentions. The result of the vote was as follows:

In favour: Afghanistan, Algeria, Argentina, Austria, Barbados, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia,

France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Lesotho, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Rwanda, Sierra Leone, Somalia, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: None.

Abstaining: Australia, Belgium, Denmark, Finland, Iceland, Japan, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

125. At the same meeting, the representatives of Australia, Austria, Belgium, Canada, Finland, France, Italy, the Netherlands, New Zealand, Pakistan, the Philippines, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, and the United States of America gave explanations of the votes of their delegations.

Recommendation of the Sixth Committee

126. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted by the General Assembly without change. See "Resolution adopted by the General Assembly" below.*]

(*b*) Resolution adopted by the General Assembly

At its 1636th plenary meeting, on 18 December 1966, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 126 above). For the final text, see resolution 2327 (XXII) below.

2327 (XXII). Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965 and 2181 (XXI) of 12 December 1966, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

Recalling further that among the fundamental purposes of the United Nations are the maintenance of international peace and security and the development of friendly relations and co-operation among States,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and the improvement of the international situation,

Considering further that the progressive development and codification of those principles, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

Bearing in mind that the Second Conference of Heads of State or Government of Non-Aligned Countries, which met at Cairo in 1964, recommended to the General Assembly the adoption of a declaration on these principles as an important step towards the enhancement of the role of international law in present-day conditions,

Convinced of the significance of continuing the effort to achieve general agreement in the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, [110] which met at Geneva from 17 July to 19 August 1967,

1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

2. *Expresses its appreciation* to that Committee for the valuable work it has performed;

3. *Decides* to ask the Special Committee, as reconstituted by the General Assembly in resolution 2103 (XX), to meet in 1968 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue its work;

4. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth, twenty-first and twenty-second session of the General Assembly and in the 1964, 1966 and 1967 sessions of the Special Committee, to complete the formulation of:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(*b*) The principle of equal rights and self-determination of peoples;

5. *Requests* the Special Committee to consider proposals compatible with General Assembly resolution 2131 (XX) of 21 December 1965 on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations, with the aim of widening the area of agreement already expressed in that resolution;

6. *Calls upon* the members of the Special Committee to devote their utmost efforts to ensuring the success of the Special Committee's session, in particular by undertaking, in the period preceding the session, such consultations and other preparatory measures as they may deem necessary;

7. *Requests* the Special Committee to submit to the General Assembly at its twenty-third session a comprehensive report on the principles entrusted to it;

8. *Requests* the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

9. *Decides* to include in the provisional agenda of its twenty-third session an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".

1637th plenary meeting
18 December 1967

[110] *Ibid.*, document A/6799.

(11) Question of methods of fact-finding (agenda item 88)

(*a*) Report of the Sixth Committee[111]

[*Original text: English, French and Spanish*]
[*15 December 1967*]

I. Introduction

1. The item concerning methods of fact-finding was first placed on the agenda of the General Assembly at its twentieth session as a sub-item of the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". In its resolution 1967 (XVIII) of 16 December 1963, the Assembly had requested the Secretary-General to study the problem and referred the question to the 1964 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. At its twentieth session, the Assembly examined the relevant reports of the Secretary-General[112] and of the 1964 Special Committee[113] and adopted resolution 2104 (XX) of 20 December 1965, in which it requested the Secretary-General to prepare a second report on the question and invited Member States to submit any further views they might have on that subject. At its twenty-first session, the General Assembly, having been unable to consider the substance of the question, decided in its resolution 2182 (XXI) of 12 December 1966 to include an item entitled "Question of methods of fact-finding" in the provisional agenda of the twenty-second session and to renew its invitation to Member States to submit any views, or further views, they might have on that subject.

2. At the twenty-second session of the General Assembly, the General Committee recommended that the item entitled "Question of methods of fact-finding" should be allocated to the Sixth Committee and the Assembly approved that recommendation at its 1564th plenary meeting, on 23 September 1967.

3. At the 973rd meeting of the Sixth Committee, on 17 October 1967, in the course of a discussion on the organization of work, a representative recalled that at the twenty-first session a number of delegations had expressed themselves in favour of establishing a working group on the question of methods of fact-finding. As it had been planned to allocate only five meetings to the item during the twenty-second session, he thought that the Chairman should be authorized to appoint a working group whose task would be to draw conclusions concerning the question. In reply to that suggestion, some representatives pointed out that such a group would not be able to work efficiently without knowing the views of delegations. The Committee finally decided, therefore, to devote part of its scheduled meetings to a general debate during which the question of the possible establishment of a working group would also be considered, on the understanding that if an affirmative conclusion was reached on that point, a working group would be established and the results of the deliberations of the group subsequently considered by the Committee at its remaining meetings.

4. The Sixth Committee devoted its 989th, 990th and 991st meetings, held on 2 and 3 November 1967, to the general debate and decided, at the conclusion of that debate, to establish a working group. After receiving the report of the Working Group (A/C.6/

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[111] Document A/6995, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 88.

[112] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694.

[113] *Ibid.*, document A/5746.

L.639), the Committee again took up the item at its 1023rd and 1024th meetings, held on 13 December 1967.

5. In studying the item, the Committee had before it the observations and additional comments received from Governments in pursuance of General Assembly resolution 2182 (XXI) (A/6686 and Corr.1 and Add.1-3).

II. Proposal

6. On 12 December 1967 a draft resolution (A/C.6/L.642), identical with the compromise proposal approved unanimously by the Working Group (annex I, para. 17, below), was circulated under the sponsorship of the delegations of Czechoslovakia, Ecuador, Finland, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia and Togo. The draft resolution was adopted without change by the Sixth Committee (see paragraph 24 below).

III. Discussion

A. First stage

1. *General debate*

7. All speakers emphasized the importance of fact-finding for the pacific settlement of disputes. Different views were expressed, however, concerning the adequacy of the existing machinery for fact-finding and the reasons that machinery was not always used It was nevertheless generally recognized that the Sixth Committee's consideration of the topic, the written comments of Governments and the reports prepared by the Secretary-General had usefully served to draw attention to the possibilities of greater recourse to methods of fact-finding.

8. The question of fact-finding procedures gave rise to a variety of suggestions, one of which was the establishment of a permanent body for fact-finding purposes. In support of this suggestion it was argued that such a body would have a number of advantages over the existing machinery, in particular, that of separating inquiry from conciliation. It would also have the advantage of being already in existence, whereas the machinery provided for in the instruments now in force was only brought into being after a dispute had arisen, that is, at a time when the general climate was not conducive to co-operation and agreement between the parties. Thirdly, the harmonization and centralization of fact-finding procedures, which had hitherto been somewhat lacking in coherence, might facilitate and thus encourage recourse to methods of impartial inquiry, and would also make it possible to derive the greatest benefit from past experience and to acquire appropriate experience for the future. The proposed body would not only be engaged in establishing facts concerning disputes; it might also lend its services to States parties to treaties which provided for inquiry as a means of ensuring their execution, and to international organizations which had to take decisions on the basis of established facts. It was made clear that the proposed new body was intended to supplement and not to supersede existing machinery and that States would still be completely free to decide whether or not to make use of its services.

9. Several delegations supported this suggestion, but many others took opposing views. Three main arguments were adduced against the establishment of a permanent international fact-finding body. In the first place, some delegations said that the establishment in the United Nations system of a permanent body which would have powers assigned to the Security Council would be contrary to the provisions of the Charter. In reply, it was argued that the proposed body could be used for fact-finding in many situations other than those in which the Council had competence, and that it would function in matters within

the Council's competence only in so far as the Council decided to have recourse to it. That argument was countered by the observation that the Security Council could always establish an *ad hoc* organ if it saw fit and that there was no need for a permanent body. Secondly, it was pointed out that in addition to regional fact-finding machinery there were already institutions of a general character in that field, and that in all cases it was the prerogative of States, as sovereign entities, to decide what fact-finding body was most appropriate in a given instance. It was also pointed out that the present stage of development of international law did not permit the centralization of existing fact-finding procedures. Thirdly, it was claimed that there were no grounds for assuming that a permanent body would be more effective than the existing procedures. Experience had proved, on the contrary, that what had made these procedures successful was their flexibility and diversity, and that therefore nothing would be gained by trying to centralize or codify them.

10. In addition to the suggestion that a permanent fact-finding body should be established, it was asked what steps might be taken to improve the existing facilities for fact-finding and why those facilities were not used more frequently. In the course of the discussion it was suggested that the Assembly might again invite Member States to consider submitting names for inclusion in the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III), thereby taking up the suggestion made in the report of the Secretary-General on the question submitted at the twentieth session. More frequent recourse to the services of rapporteurs and mediators was also advocated in cases submitted to the Security Council or the General Assembly. Reference was made to a number of other facilities, such as those provided for in the Hague Conventions of 1899 and 1907 and the 1928 General Act for the Pacific Settlement of International Disputes.[114] Various regional facilities were also mentioned.

11. Other delegations supported the idea of a panel consisting of nationals of all Member States and representing a complete range of specialized fields, from which the States concerned would be invited to choose, in the light of the technical requirements of the inquiry, the members of each *ad hoc* commission, who would thus retain the confidence of the parties to the dispute. One delegation indicated that it was not adverse to the establishment of a special unit in the United Nations Secretariat for assisting and advising any *ad hoc* bodies which might be established.

2. *Establishment of a working group*

12. During the general debate on the question, the Committee also examined the proposal for the establishment of a working group on the question of methods of fact-finding. A formal proposal (A/C.6/L.624) was submitted by Colombia, Ecuador, Jamaica, Japan, Liberia, Madagascar, Mexico, the Netherlands, Pakistan, Somalia, Togo, and Turkey and read as follows:

"*The Sixth Committee*,

"*Desiring* to make every effort to give adequate consideration to agenda item 88 entitled 'Question of methods of fact-finding',

"*Mindful* that the item has been included in the agenda of the twenty-second session pursuant to General Assembly resolution 2182 (XXI), which requested its inclusion in the provisional agenda with a view to considering what further action might be appropriate,

"*Noting* that, with regard to methods of fact-finding in international relations, a considerable documentation has now been made available by the reports of the

[114] League of Nations, *Treaty Series*, vol. XCIII (1929-1930), No. 2123, p. 345.

Secretary-General [115] on practice in relation to settlement of disputes as well as in respect to the execution of international agreements, by chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, [116] and furthermore by the views expressed and the proposals made by Member States since the seventeenth session of the General Assembly, including the written comments by Governments submitted in pursuance of Assembly resolutions 1967 (XVIII), 2104 (XX) and 2182 (XXI), [117]

"*Considering* that the above-mentioned documentation shows that the main points of view on the subject have been expressed,

"*Considering* further that the examination of the agenda item in question would be greatly facilitated by the establishment of a working group, the more so since the Committee's heavy programme of work permitted it to allow only a very limited number of meetings for the consideration of the item,

"1. *Decides* that a working group shall be established as soon as possible whose task will be to report and to make recommendations to the Sixth Committee on possibilities for further action, in the light of the reports of the Secretary-General, the views expressed and the proposals made;

"2. *Requests* the Secretariat to prepare a document listing all the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding;

"3. *Requests* its Chairman after consultations to propose to the Committee the composition of the working group containing no more than fifteen members and being so designated as to ensure a balanced representation of the various geographic groups within the United Nations."

13. This proposal was supported by many representatives. In favour of the proposed measure, reference was made to the encouraging precedent of the Working Group on the Draft Declaration on Territorial Asylum and to the recommendations, unanimously approved by the General Assembly in its resolution 1898 (XVIII), of the *Ad Hoc* Committee on the Improvement of the Methods of Work of the General Assembly. A number of delegations, however, criticized the text of the proposal. In the first place, it was stated that the phrase "on possibilities for further action" in operative paragraph 1 was unclear and that a working group could not achieve positive results unless there was agreement at the outset among the members of the Committee on clearly defined terms of reference. In addition, the expression "balanced representation" in operative paragraph 3 was considered an unfortunate innovation. In reply, it was said that the sponsors had used the words "further action" because that wording was used in operative paragraph 2 of General Assembly resolution 2182 (XXI) and that their intention had been to employ the usual formulation of "equitable representation".

14. At the 990th meeting on 3 November 1967, the United Arab Republic submitted the following amendments (A/C.6/L.626):

"1. In operative paragraph 1, after the word 'recommendations' replace the existing text by the following: 'on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee';

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[115] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694; *ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6228.

[116] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

[117] *Ibid.*, documents A/5725 and Add.1-7; *ibid., Twenty-first Session, Annexes*, agenda item 87, documents A/6373 and Add.1; A/6686 and Corr.1 and Add.1-3.

"2. In operative paragraph 3, third line, replace the words 'a balanced' by the word 'equitable'."

15. In view of those amendments and the above-mentioned observations, the co-sponsors submitted a revised version (A/C.6/L.624/Rev.1) of their text, in which the words "on possibilities for further action" in operative paragraph 1 were replaced by the words "on the subject in question", and the words "a balanced representation of the various geographic groups within the United Nations" in operative paragraph 3 by the words "equitable geographical representation". At the 991st meeting, the representative of the United Arab Republic announced that he was withdrawing the second of his amendments (see paragraph 14 above), which was no longer relevant, and the co-sponsors submitted orally a second revised version of operative paragraph 1, incorporating the first of the amendments submitted by the United Arab Republic. Operative paragraph 1 thus would read as follows:

"*Decides* that a working group shall be established as soon as possible whose task will be to report and to make recommendations on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee, in the light of the reports of the Secretary-General, the views expressed and the proposals made;".

16. At the 991st meeting, on 3 November 1967, the proposal (A/C.6/L.624/Rev.1), as amended, was adopted by 72 votes to none, with 12 abstentions. It was agreed that, in accordance with a proposal made during the debate, the Rapporteur of the Committee would attend the meetings of the Working Group.

17. At the 998th meeting, on 15 November 1967, the Committee unanimously decided to increase the membership of the Working Group, which it had originally fixed at fifteen, to sixteen. It was agreed that the Group would be composed of the following States: Ceylon, Czechoslovakia, Ecuador, Finland, France, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia, Togo, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

B. Second stage—Consideration of the report of the Working Group on the Question of Methods of Fact-Finding

18. At its 1023rd and 1024th meetings, held on 13 December 1967, the Sixth Committee considered the report submitted by the Working Group (A/C.6/L.639). The Sixth Committee also had before it a draft resolution (A/C.6/L.642), co-sponsored by the States listed in paragraph 6 above, identical in its terms with that submitted by the Working Group. It was stated in the course of the Sixth Committee's discussions that the Legal Counsel had given his opinion that, in accordance with standard United Nations practice, it was not necessary for the draft resolution, which had been unanimously adopted by the Working Group, to be sponsored by individual Member States; the opening words of paragraph 17 of the Working Group's report had nevertheless been chosen so as not to prevent States from sponsoring the proposal if they wished to do so.

19. All representatives speaking on the item during the second stage of the Sixth Committee's debate expressed their support for the draft resolution which had been proposed. A tribute was paid to the efforts of the Working Group, which, despite the difficulties encountered, had successfully led to a reconciliation of the different views held on the question of methods of fact-finding. Although the results achieved had not been spectacular, they represented a positive if modest step towards wider acceptance of the importance

of recourse to impartial methods for the settlement of international disputes. In this sense the item could be said to have made distinct progress since its first inclusion in the agenda of the General Assembly. Several delegates, speaking in explanation of vote, wished to emphasize that the draft resolution was based on the assumption that no permanent organ would be established. They pointed out that the majority of members had not in fact favoured any advance along those lines; the draft resolution did not therefore institute any change in the obligations of Member States.

20. It was pointed out that the draft resolution distinguished the concept of fact-finding from that of conciliation, called upon States to make more effective use of the existing methods—thereby suggesting that they were not being effectively used at present—and incorporated the idea that the Secretary-General should prepare a register of persons proposed by Member States whose services might be used for purposes of fact-finding. Several delegations expressed regret that, although the draft resolution affirmed in general terms the importance of fact-finding, it had not gone further and included some of the other constructive ideas which had been put forward, such as the proposal that the Secretary-General should continue to consider favourably giving appropriate assistance with regard to fact-finding in response to requests made by States. A number of speakers also mentioned the formulation which had been examined by the Working Group whereby more explicit reference would have been made in the draft resolution to the main facilities for fact-finding which now exist and which had been specified in paragraph 13 of the Working Group's report.

21. It was agreed, in response to a request by one representative, that the report of the Working Group should be annexed to the present report (annex I below), and, in accordance with a recommendation of the Working Group itself (A/C.6/L.639, para. 4), that the document prepared by the Secretariat listing the suggestions made by Member States and by the Secretary-General in relation to methods of fact-finding (A/C.6/SC.9/L.1) should also be annexed to the report (annex II below).

22. In answer to a question raised by one representative, the Chairman of the Working Group, who was also one of the co-sponsors of draft resolution A/C.6/L.642, confirmed that the request made to Member States in operative paragraph 4 of the proposal to nominate up to five of their nationals for inclusion in the proposed register of experts did not constitute an obligation for Member States to comply with the request. On this understanding, the representative concerned agreed not to request a separate vote on operative paragraph 4 in order to record the abstention of his delegation.

IV. Voting

23. At its 1024th meeting, on 13 December 1967, the Sixth Committee unanimously adopted draft resolution A/C.6/L.642 without recourse to a formal vote. Statements in explanation of vote were made by the representatives of the Union of Soviet Socialist Republics, Italy and Nigeria.

Recommendation of the Sixth Committee

24. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted without change by the General Assembly. See "Resolution adopted by the General Assembly" below.*]

ANNEXES

Annex I

Report of the Working Group on the Question of Methods of Fact-Finding*

I. Establishment of the Working Group, membership and documentation

1. At its 991st meeting, on 3 November 1967, the Sixth Committee adopted a resolution, the operative part of which was worded as follows:

"1. *Decides* that a working group shall be established as soon as possible whose task will be to report and to make recommendations on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee, in the light of the reports of the Secretary-General, the views expressed and the proposals made;

"2. *Requests* the Secretariat to prepare a document listing all the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding;

"3. *Requests* its Chairman after consultations to propose to the Committee the composition of the working group containing no more than fifteen members and being so designated as to ensure equitable geographical representation."

2. At its 998th meeting the Committee decided, on the proposal of the Vice-Chairman, to increase the membership from fifteen to sixteen; the following States were designated as members of the Working Group: Ceylon, Czechoslovakia, Ecuador, Finland, France, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia, Togo, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America. It was also agreed that the representative of Mexico would attend the debates of the Group in his capacity as Rapporteur of the Sixth Committee.

3. The Group held seven meetings on 17, 22 and 27 November and 4, 8 and 11 December 1967. At its first meeting, convened on 17 November by the Rapporteur of the Sixth Committee, it unanimously elected Mr. El-Erian (United Arab Republic) Chairman and Mr. Francis (Jamaica) Rapporteur. The Chairman, having been called away on other duties, was replaced as from the third meeting by the Rapporteur of the Group.

4. The document prepared by the Secretariat listing the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding (A/C.6/SC.9/L.1) was submitted to the Working Group by the Secretariat, pursuant to paragraph 2 of the above-mentioned resolution. The Working Group recommends to the Sixth Committee that this document should be included as an annex to the Committee's report to the General Assembly.

II. Discussion

5. In accordance with a suggestion made by the Chairman, the Group proceeded first, on the basis of the Secretariat document (A/C.6/SC.9/L.1), to the general debate on the methods to be followed, bearing in mind the terms of reference laid down by the Sixth Committee.

6. On the question of methods, it was stated that account should be taken of the tenor of the debate in the Sixth Committee, which had revealed that there was complete unanimity on the importance of fact-finding. It was also stressed that the Working Group should avoid becoming embroiled in unnecessary repetitions and should concentrate, as the Sixth Committee had asked it to do, on reconciling the different views that had been expressed. On the one hand, during the Sixth Committee's debate, some speakers had advocated the establishment of a permanent organ, while many delegations stated their position in favour of maintaining the *status quo*. A number of speakers also stressed the need to investigate what measures could be taken to improve existing machinery for fact-finding. Some representatives suggested that the authors of specific suggestions which required explanation should be invited to state their views to the Working Group. However, it was pointed out that, if each member presented his own analysis of the situation, the points of agreement would be more clearly apparent; it would then be possible to see whether the number of supporters for a given suggestion made it worth while to have the details elucidated.

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* Previously issued under the symbol A/C.6/L.639.

7. In connexion with the Secretariat document (A/C.6/SC.9/L.1), it was stated that, as it had been intended solely to list the suggestions made in relation to the question of fact-finding, the document inevitably reflected only one of the schools of thought which had found expression during the debate in the Sixth Committee; at least it made it apparent that, even among the authors of specific suggestions. there were very few who proposed the establishment of a permanent organ for fact-finding. In reply to that, it was stated, firstly, that the Working Group as representative of all points of view, and, secondly, that the suggestions listed in the Secretariat document showed that there was a whole spectrum of shades of opinion on the basis of which it should be possible to find a generally acceptable formula. After a number of delegations had pointed out that only twelve Member States had made specific suggestions, one member stated that silence on the part of some States was not necessarily an indication of a negative attitude but might reflect some uncertainty as to the best way of resolving the problem. Another representative pointed out that his delegation had stated in the Sixth Committee that it was neither necessary nor useful to set up a permanent organ of inquiry but that, if the majority decided to proceed with the study of the question, that delegation's suggestion, as reproduced in the Secretariat document, should be taken into account.

8. Three working papers were submitted with a view to arriving at a common text which the Group would recommend to the Sixth Committee for adoption. They were produced by Finland, the Netherlands and Czechoslovakia respectively.

9. The text submitted by Finland was worded as follows:

"I. The Finnish delegation would like to put forward the following outline, proposed for the consideration of the Working Group.

"1. The General Assembly should adopt a resolution calling attention to the importance of fact-finding in connexion with international disputes.

"2. The General Assembly should request the Secretary-General to invite Member States to submit names for inclusion in a register of persons who would be competent in legal and other fields and who could be called upon to find the facts in relation to specific disputes. Member States would be asked to submit the names of a limited number (up to five) of their nationals for inclusion in such a register. The register would be published by the Secretary-General on the basis of the replies received from Member States.

"3. In the event of a dispute the States involved might, by agreement, each nominate one person from the register; the persons nominated would, in turn, select a Chairman, who might not necessarily be drawn from the register. The task of the fact-finding organ so established would be to ascertain the facts relating to the dispute and to submit a report to the States concerned.

"4. The task of the fact-finding organ would be confined exclusively to the finding of the facts relating to the dispute and would not extend to the making of proposals regarding the solution of the dispute.

"5. The expenses of the fact-finding organ would be divided between the parties to the dispute in the way assessed by that organ.

"6. The General Assembly should also recommend that greater use be made of existing machinery for fact-finding within the framework of international organizations.

"II. Consideration might be given, in addition to the above, to the possibility that individual members of the International Court of Justice might be asked to act as Chairmen of the fact-finding bodies established under paragraph 3 above.

"III. On the basis of the above, the Finnish delegation would like to submit the following operative paragraphs of a draft resolution for the attention of the Working Group:

" '*The General Assembly*,

" '. . .

" '1. *Asks* the Secretary-General to prepare a register of experts nominated by Government of Member States, to be used as a basis for the selection of *ad hoc* organs for fact-finding;

" '2. *Requests* Member States to nominate not more than five of their nationals who would be competent in legal and other fields, for inclusion in the register of experts;

" '3. *Invites* Member States, if possible, in the event of a dispute, to agree to have recourse to the register of experts for the purpose of establishing an *ad hoc* organ for fact-finding;

" '4. *Suggests* that, in principle, one person should be nominated by each of the States parties to a dispute. The persons so nominated would select a chairman, who might not necessarily be drawn from the register;

" '5. *Agrees* that the task of any *ad hoc* organ so established would be to ascertain the facts relating to the dispute and to submit a report to the States concerned;

" '6. *Agrees* further that the expenses of the *ad hoc* fact-finding organ would be divided between the States parties to the dispute in the way assessed by the organ'."

10. Several delegations noted with satisfaction that the formula proposed by Finland meant the setting up of *ad hoc* organs and had the advantage of allowing States complete freedom; approval of the suggested system of financing was also voiced. Nevertheless, it was pointed out that other methods of fact-finding already existed, that other suggestions had been made and that it might not be desirable to lay stress on one of those methods to the detriment of the others, especially as the Panel for Inquiry and Conciliation established by General Assembly resolution 268 D (III) had not fulfilled the hopes placed in it. One representative stated that some aspects of the suggested formula called for more thorough study and that the Working Group might be departing from its terms of reference if it made so specific a proposal. Nevertheless, in the interest of compromise, many delegations expressed willingness to support the main idea of the Finnish proposal, and it was decided to include the proposal in the text of the draft resolution recommended by the Working Group (see para. 17 below).

11. The text submitted by the Netherlands read as fellows:

"*The General Assembly,*

"*Recalling* its resolution 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

"*Noting with appreciation* the two reports submitted by the Secretary-General in pursuance of the above-mentioned resolutions,

"*Noting* the comments submitted by Member States pursuant to paragraph 1 of resolution 1967 (XVIII), paragraph 2 of resolution 2104 (XX) and paragraph 1 of resolution 2182 (XXI), and the views expressed during its eighteenth, twentieth, twenty-first and twenty-second sessions,

"*Noting* chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established under General Assembly resolution 1966 (XVIII) of 16 December 1963,

"*Considering* that, in Article 33 of the Charter of the United Nations, inquiry is mentioned as one of the peaceful means by which the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution, and that inquiry, investigation and methods of fact-finding are also referred to in other instruments of a general or regional nature,

"*Recognizing* the importance of effective impartial fact-finding as a means towards the settlement of disputes and the need to promote its further development and strengthening,

"*Bearing in mind* that an early ascertainment of facts may be instrumental in preventing disputes and failure to comply with obligations,

"*Considering* that recourse to or acceptance of a procedure for impartial fact-finding, including any obligation freely undertaken to submit existing or future disputes concerning the facts to any such procedure, shall not be regarded as incompatible with sovereign equality,

"*Having* examined certain specific proposals put forward in the course of the discussions of this subject in the Assembly,

"*Considering* that certain facilities for impartial fact-finding by the method of inquiry already exist for use by the international community,

"*Believing* that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions,

"1. *Reaffirms* the importance of impartial fact-finding in appropriate cases, for the settlement and the prevention of disputes;

"2. [Paragraph on a fact-finding organ or the Panel for Inquiry and Conciliation as proposed by the Finnish or Netherlands delegation, if the Working Group decides to include one of these proposals];

"3. *Urges* Member States and United Nations organs in appropriate cases to make use of existing fact-finding machinery with a view to facilitating the settlement of disputes and compliance with multilateral and bilateral agreements;

"4. *Calls upon* Member States to make nominations to the Panel for Inquiry and Conciliation established by General Assembly resolution 268 D (III) of 28 April 1949 and to keep in mind the possibility of using that Panel in appropriate instances;

"5. *Recalls* the facilities for international commissions of inquiry to be formed *ad hoc* under the Hague Conventions of 1899 and 1907 and the facilities in connexion with fact-finding procedures offered by the Permanent Court of Arbitration established by those Conventions;

"6. *Appeals* to Member States which have not yet done so to accede to the Revised General Act for the Pacific Settlement of International Disputes;

"7. *Urges* organs of the United Nations and other organizations, in considering regional problems, and regional organizations to develop and use procedures of impartial fact-finding, wherever such procedures might assist in handling disputes with which they may be concerned;

"8. *Invites* the Secretary-General in the course of his routine examination of the Secretariat's structure to consider suggestions made for the facilities in the Secretariat to assist States desiring to use methods of fact-finding;

"9. *Invites* the Secretary-General to consider sympathetically requests for assistance in making qualified persons, staff and facilities available on the request of the parties to a dispute, and to assist them in carrying out fact-finding tasks;

"10. *Requests* the Secretary-General each year to communicate to the General Assembly and the Security Council the last consolidated list of persons designated by Member States to serve on the Panel for Inquiry and Conciliation;

"11. *Expresses the hope* that in the course of any study which the United Nations Institute for Training and Research may make on this subject it will take account of the studies, proposals and suggestions made and the views expressed during the consideration of this question by the General Assembly;

"12. *Requests* the Secretary-General to transfer the studies, proposals and suggestions made and the views expressed during the consideration of this question by the General Assembly to the International Law Commission if that Commission takes up this question."

12. The representative of the Netherlands pointed out that the fifth and eleventh preambular paragraphs of his proposal were based on preambular paragraphs contained in Assembly resolution 1967 (XVIII) and that the eighth preambular paragraph followed the wording agreed upon by the Special Committee on Principles of International Law concerning Friendly Relations and co-operation among States with regard to the principle of the peaceful settlement of disputes. As to operative paragraphs 4 and 6, he explained that they reflected the suggestions put forward by the Secretary-General in his report; [118] operative paragraph 10 was also to be read in the same context. Operative paragraphs 5 and 7 were founded on the proposals made by the United Kingdom and Japan (A/C.6/SC.9/L.1, paras. 16 and 11 respectively. Operative paragraphs 8 and 9 took up the ideas put forward by Ceylon and Nigeria (*ibid.*, paras. 7 and 13 respectively). Operative

[118] See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694, para. 386.

paragraph 11 was based on the report of the United Nations Institute for Training and Research, [119] while operative paragraph 12 should be considered in the light of the report of the International Law Commission on the work of its nineteenth session. [120]

13. In connexion with this text, the Working Group gave careful consideration to a proposal whereby reference would have been made in the preamble of the draft resolution put forward by the Group to some of the main facilities for factfinding which now exist, such as those available under the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III), the facilities for the formation of *ad hoc* international commission of inquiry under The Hague Conventions of 1899 and 1907, the facilities with respect to fact-finding existing within the framework of the Permanent Court of Arbitration and under the provisions of the Pacific Settlement of International Disputes. A formulation along these lines was not acceptable, General Act for the Pacific Settlement of International Disputes. A formulation along these lines was not acceptable, however, to certain members of the Group. It was eventually agreed, after informal discussions, that the following text should be included in the preamble of the proposed draft resolution (see para. 17 below):

"*Recalling* the possibility of the continued use of existing facilities for fact-finding,".

At the same time, the Group accepted that it should be stated in its report that the facilities referred to included those provided by the Panel for Inquiry and Conciliation set up under General Assembly resolution 268 D (III), the facilities for the formation of *ad hoc* international commissions of inquiry under The Hague Conventions of 1889 and 1907 and the facilities within the framework of the Permanent Court of Arbitration and under the provisions of the General Act for the Pacific Settlement of International Disputes. A few delegation stressed the fact that this statement was without prejudice to their position in regard to those facilities.

14. Operative paragraphs 7 and 9 of the Netherlands draft were not accepted. Some delegations said that they contained suggestions that were of interest. One representative observed, however, that if some of the suggestions that had been made were mentioned it might be necessary to list all of them, thus causing the whole attempt at reconciliation to break down. Paragraph 11 was also not accepted. Some delegations felt that there would be no danger in drawing attention to the study which the United Nations Institute for Training and Research intended to make, since to do so would not prejudice anyone's position. Others, however, took the view that an express reference to the work of the Institute was unnecessary in the context.

15. The representative of Czechoslovakia pointed out that his proposal, the text of which is given below, was based upon consultation with a large number of delegations:

"*The General Assembly*,

"*Recalling* its resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

"*Noting* the comments submitted by Member States pursuant to paragraph 1 of resolution 2182 (XXI) and the views expressed during its twenty-second session,

"*Taking into account* that *ad hoc* bodies constitute one of the methods of fact-finding,

"*Reaffirming* its belief that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by recourse to the methods of fact-finding within the framework of international organizations or under appropriate arrangements,

"1. *Invites* States to take into consideration, whenever it appears indispensable, in the selection of means for the solution of their disputes, also the possibility of entrusting the ascertaining of facts relating to the dispute to the existing competent organizations or to *ad hoc* bodies, in conformity with the principles of international law and the Charter of the United Nations and without prejudice to the right to seek other peaceful means of settlement of their own choice;

"2. *Draws attention* to the fact that, whenever methods for the peaceful settlement of disputes are applied in accordance with Article 33 of the Charter of the United Nations,

[119] *Ibid., Twenty-first Session, Annexes*, agenda item 48, document A/6500, para. 37 and annex II, para. 9 (*g*).

[120] *Ibid., Twenty-second Session, Supplement No. 9*, para. 46.

in every concrete case recourse should be had according to the possibilities, if it appears appropriate, to investigation for fact-finding purposes in accordance with the provisions of the Charter."

16. Some comments were made concerning the third preambular paragraph, which appeared to refer only to *ad hoc* fact-finding bodies to the exclusion of permanent organs. With respect to operative paragraph 1, some delegations requested that a reference should be made to permanent fact-finding organs, if only through the use of the wording "*ad hoc* or other bodies". However, this was not acceptable to other delegations. It was ultimately decided to include in the text of the draft resolution the following wording: "to competent international organizations and bodies established by agreement between the parties concerned". In connexion with paragraph 2, some delegations stressed that, besides Article 33 of the Charter, Article 2, paragraph 3, among others, also applied, and that the paragraph should be worded accordingly. Agreement was ultimately reached on the following text, which it was decided to include in the Working Group's draft resolution:

"*Draws special attention* to the possibility of recourse by States in particular cases, where appropriate, to procedures for the ascertainment of facts, in accordance with Article 33 of the Charter of the United Nations,".

III. Recommendation of the Working Group

17. In the light of the above report and of the discussions which took place, the Working Group on the Question of Methods of Fact-Finding unanimously adopted the following draft resolution, which it submits for the consideration of the Sixth Committee:

"*The General Assembly*,

"*Recalling* its resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

"*Noting* the comments submitted by Member States pursuant to the above-mentioned resolutions, and the views expressed in the United Nations,

"*Noting with appreciation* the two reports submitted by the Secretary-General in pursuance of the above-mentioned resolutions,

"*Recognizing* the usefulness of impartial fact-finding as a means towards the settlement of disputes,

"*Believing* that an important contribution to the peaceful settlement of disputes and to the prevention of disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions or through other appropriate arrangements,

"*Affirming* that the possibility of recourse to impartial methods of fact-finding is without prejudice to the right of States to seek other peaceful means of settlement of their own choice,

"*Reaffirming* the importance of impartial fact-finding, in appropriate cases for the settlement and the prevention of disputes,

"*Recalling* the possibility of the continued use of existing facilities for fact-finding;

"1. *Urges* Member States to make more effective use of the existing methods of fact-finding;

"2. *Invites* Member States to take into consideration, in choosing means for the peaceful settlement of disputes, the possibility of entrusting the ascertainment of facts, whenever it appears appropriate, to competent international organizations and bodies established by agreement between the parties concerned, in conformity with the principles of international law and the Charter of the United Nations or other relevant agreements;

"3. *Draws special attention* to the possibility of recourse by States in particular cases, where appropriate, to procedures for the ascertainment of facts, in accordance with Article 33 of the Charter;

"4. *Requests* the Secretary-General to prepare a register of experts in legal and other fields, whose services the States parties to a dispute may use by agreement for fact-finding in relation to the dispute, and requests Member States to nominate up to five of their nationals to be included in such a register."

Annex II

Document prepared by the Secretariat listing the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding*

INTRODUCTION

1. At its 991st meeting, on 3 November 1967, the Sixth Committee adopted a resolution establishing a Working Group on the Question of Methods of Fact-Finding. In operative paragraph 1 of the resolution it was stated that the task of the Working Group would be

> "to report and to make recommendations on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee, in the light of the reports of the Secretary-General, the views expressed and the proposals made".

2. In operative paragraph 2 of the resolution the Sixth Committee requested the Secretariat

> "to prepare a document listing all the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding".

The present document, which has been prepared in response to this request, does not attempt to recapitulate all the views that Member States have expressed at various times since the topic was first raised, but only to list the specific suggestions which have been made regarding either existing or possible improved methods of fact-finding. A more extensive study would, in any case, be difficult to execute in the limited time available, having regard to the fact that the Working Group is to report to the Sixth Committee at the present session of the General Assembly.

3. The present document has been prepared on the basis of the following:

(*a*) The discussion of agenda item 71 in the Sixth Committee at the eighteenth session of the General Assembly; [121]

(*b*) The discussions at the first session in 1964 of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; [122]

(*c*) The discussion of agenda items 90 and 94 in the Sixth Committee at the twentieth session of the General Assembly; [123]

(*d*) The report of the Secretary-General on methods of fact-finding; [124]

(*e*) Comments received from Governments of Member States; [125]

(*f*) Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; [126]

(*g*) The discussion of agenda item 87 in the Sixth Committee at the twenty-first session of the General Assembly; [127]

(*h*) Comments received from Governments of Member States; [128]

(*i*) Comments received from Governments of Member States; [129]

(*j*) The discussion of agenda item 88 in the Sixth Committee at the twenty-second session of the General Assembly; [130]

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* Previously issued under the symbol A/C.6/SC.9/L.1.

[121] *Official Records of the General Assembly, Eighteenth Session, Sixth Committee*, 803rd to 825th, 829th and 831st to 834th meetings.

[122] A/AC.119/SR.36, 37 and 39.

[123] *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 870th to 872nd, 874th to 893rd, and 898th meetings.

[124] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694.

[125] *Ibid.*, documents A/5725 and Add.1-7.

[126] *Ibid.*, document A/5746.

[127] *Ibid., Twenty-first Session, Sixth Committee*, 924th to 942nd meetings.

[128] *Ibid., Twenty-first Session, Annexes*, agenda item 87, documents A/6373 and Add.1.

[129] A/6686 and Corr.1 and Add.1-3.

[130] *Official Records of the General Assembly, Twenty-second Session, Sixth Committee*, 989th to 991st meetings.

In addition, reference is made in one case to a statement made in the General Assembly.

4. The suggestions are set out in the alphabetical order of the Member States making the suggestions, followed by the suggestion of the Secretary-General. No reference is made to the comments of other Member States regarding the suggestions made.

SUGGESTIONS

Establishment of a special body reporting to the Security Council (Cameroon)

5. In submitting its comments in response to General Assembly resolution 1967 (XVIII), the Government of Cameroon stated:

> "As for the question of methods of fact-finding, it would be desirable for consideration to be given to the establisment of a special body reporting to the Security Council. Such a body should draw up an inventory of existing national customs and legal media, develop and improve them and make them effective. It should also study the most up-to-date methods of impartial fact-finding". [131]

Maintenance of a panel by the General Assembly (Ceylon)

6. In the course of his statement at the 990th meeting of the Sixth Committee, on 3 November 1967, the representative of Ceylon stated that:

> "His Government might be willing to consider the maintenance by the General Assembly of a panel which would include nominees from all Member States and offer a complete range of specialization. While the parties should be encouraged to select the members of a particular commission of inquiry from such a panel, their choice should not be limited to the panel. In that way, the flexibility of the investigating organ's terms of reference would be matched by the flexibility of its composition. That would allow for the fact that the report of an organ of inquiry was inevitably coloured to some extent by the individual judgements of its members, and would at the same time ensure that the membership continued to enjoy the confidence that the parties had placed in it. The *ad hoc* approach would ensure the representation on an organ of inquiry of persons trained in the particular disciplines demanded by the nature of the investigation, and would reduce the membership to the number required for the efficient discharge of the organ's funtions."

7. He added that:

> "If the General Assembly were to establish a roster of names, the Secretariat might be asked to supply the requisite staff and administrative support, initially perhaps on a part-time basis. The staff might be headed by an executive secretary whose functions would be confined to providing organs of inquiry with the facilities and services required for the discharge of their functions, and who would seem well qualified to act as repository of the body of experience that would develop from the work."

Establisment of a special international body for fact-finding or, alternatively, the conferring of appropriate powers on existing organizations (Ecuador)

8. In its written comments submitted in response to Assembly resolution 2182 (XXI), the Government of Ecuador declared that it would be desirable to establish a special international body for fact-finding. As an alternative, however, the Government considered that

> "appropriate powers should be conferred on existing organizations which are capable of undertaking the work of fact-finding in international relations". [132]

A number of other Governments have made similar proposals.

9. Speaking in the General Assembly on 26 September 1967, the representative of Ecuador stated that

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[131] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5725.

[132] See A/6686/Add.1.

"consideration must be given to the possibility of creating a special international body for fact-finding, which must be of a standing nature and endowed with sufficiently flexible terms of reference to permit it to enjoy the assistance of specialists or experts in every case. The presence of such a body in a dispute would be a guarantee of effectiveness and impartiality in the dealings among the parties thereto. [133]

Compilation of a list of experts (Finland)

10. In response to Assembly resolution 2182 (XXI), the Government of Finland stated that, in its opinion, the importance of fact-finding as a means of settling international disputes depended primarily upon the fact finders' special expert knowledge and technical experience of the matter which was the subject of the dispute. The Finnish Government accordingly held the view that

"it would be of great importance to consider the possibilities of setting up a list of experts similar to the register of experts and scholars in international law (A/6677 and Add.1), which has been prepared on the initiative of the Secretary-General with a view to furthering the appreciation of international law by providing technical assistance. Likewise, consideration should be given to the way in which international organizations representing special technical and economic fields could offer their help to States needing, for the settlement of disputes, fact-finding carried out by an impartial body." [134]

Stationing of United Nations representatives in various geographical regions of the world (Japan)

11. The Japanese Government, in indicating its support for the idea of establising a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities, has on several occasions expressed the view that regard should be had to questions of feasibility and of relative expenditure. With these considerations in mind, the Japanese Government suggested that study should be given to the idea

"of posting representatives of the United Nations in some form or other in the various geographical areas of the world. It would naturally be desirable if such representatives, for example, as representatives of the Secretary-General, were stationed permanently in each part of the world, especially in such unstable regions as South-East Asia, the Middle-East, Africa and Latin America. The Japanese Government considers that securing such a United Nations presence in various regions would make possible speedy fact-finding activities by these representatives upon recommendation either by the Security Council or the General Assembly and would greatly contribute to the pacific settlement of disputes. If the posting of permanent representatives were not feasible, roving institutions in some form or other might also serve the purpose." [135]

Establishment of a permanent organ (Netherlands)

12. The Netherlands has made a number of suggestions for the establishment of a permanent organ. The most detailed suggestion is that contained in document A/6373. [136] The main features of that suggestion are that the organ should supplement the function of existing institutions, that the co-operation of States, should be voluntary, and that the means used should be flexible. The organ's terms of reference would be limited to the establishment of facts concerning disputes, or which are relevant to the execution of international agreements, or which are required for informational purposes in the taking of decisions at international level. The organ would be a standing body, composed of independent persons of high moral standing and acknowledged impartiality; it was suggested that fifteen members would be a suitable number. The organ would be placed at the disposal of the United Nations and the specialized agencies, or of two or more States. The terms of reference of the organ would be determined by its statute and by the mandate issued

[133] See *Official Records of the General Assembly, Twenty-second Session, Plenary Meetings,* 1568th meeting, para. 30.

[134] See A/6686/Add.3.

[135] See A/6686/Add.1.

[136] *Official Records of the General Assembly, Twenty-first Session, Annexes,* agenda item 87.

to it for each separate inquiry. As regards procedure, the initiative to institute an inquiry should rest exlusively with States or intergovernmental organizations. The granting of admission to a territory or other facilities for the execution of a fact-finding mandate would, as a rule, be mentioned or implied in the inquiry agreement between the States concerned, but might also be given by a third State if its co-operation was required. The report of the organ would be by majority vote, with mention of any differences of opinion amongst members, if requested to be recorded. The organ might be established and its statute adopted by a resolution of the General Assembly, or by any other means that might be appropriate.

Special department in the United Nations Secretariat (Nigeria)

13. In its comments regarding Assembly resolution 2182 (XXI), the Government of Nigeria stated, *inter alia:*

> "The Government of Nigeria is not averse to the establishment within the United Nations Secretariat of a special department to be ready and at hand to advise and help any *ad hoc* fact-finding body that may be established from time to time. Since the questions which will be subject to fact-finding are of different kinds and may necessitate employing the services of experts in the field covered by an inquiry, an *ad hoc* body will have definite advantages over a permanent body." [137]

Formation of ad hoc *fact-finding committees by the Secretary-General (Philippines)*

14. In submitting its comments in response to Assembly resolution 1967 (XVIII), the Government of the Philippines declared that, in preference to the establishment of a permanent fact-finding body within the United Nations, the Government considered that

> "it would be more feasible to authorize the Secretary-General to form *ad hoc* fact-finding committees whenever situations arise necessitating the determination of the nature of a dispute or the causes thereof." [138]

Establishment of a special international body for fact-finding (Singapore)

15. The Singapore Government states that it welcomes "the establishment of a special international body for fact-finding." [139]

Use of the Permanent Court of Arbitration (United Kingdom)

16. In its comments submitted in response to Assembly resolution 2182 (XXI), the Government of the United Kingdom suggested that an examination of existing instruments for fact-finding, with a view to their possible adaptation, should go hand in hand with consideration of the question of whether or not it would be useful to establish a new permanent organ for fact-finding. In this connexion the Government expressed the view that:

> "For example, it is quite likely that the Permanent Court of Arbitration at The Hague already provides the foundation for whatever may be required, at least in the realm of the settlement or prevention of international disputes. The growth of the membership of the Permanent Court of Arbitration from forty-five in 1946 to sixty-five in 1966, as well as the direct experience of the Government of the United Kingdom in the use of that Court in the case of the 'Red Crusader', encourages them in this view." [140]

A similar suggestion was made by the Government of Turkey. [141]

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[137] See A/6686/Add.2.

[138] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5725/Add.7.

[139] See A/6686/Add.1.

[140] See A/6686.

[141] *Ibid.*

Reconstruction of the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III) or greater use of rapporteurs and conciliators in cases before the General Assembly and the Security Council (United States of America)

17. Speaking in the Sixth Committee at its 990th meeting on 3 November 1967, the representative of the United States suggested that, as regards methods of fact-finding,

> "perhaps the Panel for Inquiry and Conciliation should be reconstructed, or perhaps greater use should be made of rapporteurs and conciliators in cases before the Security Council and the General Assembly".

Appeal to Member States to accede to the General Act for the Pacific Settlement of International Disputes and to participate in the Panel for Inquiry and Conciliation (Secretary-General)

18. At the conclusion of his report on methods of fact-finding, the Secretary-General gave an account of the evolution of the institutions of international inquiry. [142] After dealing with the previous efforts made, in particular those of the League of Nations, the Secretary-General drew attention to the ways in which the United Nations had tried to maintain these endeavours. Besides the inclusion of Article 33 in the Charter of the United Nations, in its resolution 268 (III) of 28 April 1949 the General Assembly had sought to renew previous efforts and to give them a fixed status. In resolution 268 A (III) the General Assembly restored to its original efficacy the General Act for the Pacific Settlement of International Disputes (which had been adopted by the Assembly of the League of Nations in 1928), by introducing into its text a number of amendments, which took into account the fact that the organs of the League of Nations and the Permanent Court of International Justice had ceased to function. [143] In resolution 268 D (III), after expressing the view that it was desirable to facilitate in every practicable way the compliance of Member States with the obligation contained in Article 33 of the Charter, the General Assembly decided to establish a panel of persons, with a view to the constitution of commissions of inquiry or conciliation, as a means of promoting the use and effectiveness of procedures of inquiry and conciliation. The Assembly accordingly invited each Member State to designate from one to five persons well fitted to serve as members of such commissions, and adopted a set of articles relating to the composition and use of the Panel thus designated. [144] The Panel, which so far consists of persons designated by only fifteen Member States, [145] has never been used either by States or by the United Nations organs for which it was intended. In addition, only six States [146] have so far acceded to the General Act for the Pacific Settlement of International Disputes, as revised by the General Assembly in 1949. The Secretary-General concluded as follows:

> "This being so, and in view of the large number of States which have become Members of the United Nations since the adoption of the above-mentioned resolution by the General Assembly, it would perhaps be desirable for the Assembly to appeal to Member States which have not yet done so to accede to the Revised General Act and participate in the establishment of the Panel, with a view to the constitution of commissions of inquiry or conciliation. At the same time, the appeal could urge them to make use of the Panel in selecting members of commissions entrusted with inquiry or conciliation functions, constitued either by United Nations organs or by parties to a dispute. Obviously this suggestion is entirely without prejudice to the solution of the general question of the feasibility and desirability of establishing a special international body for fact-finding, or of entrusting fact-finding responsibilities to

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[142] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694, paras. 374-386.

[143] *Ibid.*, paras. 109-118, which contain a description of the measures adopted by the Assembly.

[144] *Ibid.*, paras. 156 and 157.

[145] Austria, Brazil, Ceylon, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Haiti, Israel, Netherlands, Pakistan, Sweden, United Arab Republic, United Kingdom of Great Britain and Northern Ireland.

[146] Belgium, Denmark, Luxembourg, Norway, Sweden, Upper Volta (as at 1 November 1967).

an existing organization—the subject of the last preambular paragraph in General Assembly resolution 1967 (XVIII)." [147]

19. This suggestion was endorsed by a number of Governments of Member States, including in particular the Government of Sweden. [148]

(*b*) Resolution adopted by the General Assembly

At its 1637th plenary meeting, on 18 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 24 above). For the final text, see resolution 2329 (XXII) below.

2329 (XXII). Question of methods of fact-finding

The General Assembly,

Recalling its resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

Noting the comments submitted by Member States pursuant to the above-mentioned resolutions, and the views expressed in the United Nations,

Noting with appreciation the two reports submitted by the Secretary-General [149] in pursuance of the above-mentioned resolutions,

Recognizing the usefulness of impartial fact-finding as a means towards the settlement of disputes,

Believing that an important contribution to the peaceful settlement of disputes and to the prevention of disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions or through other appropriate arrangements,

Affirming that the possibility of recourse to impartial methods for fact-finding is without prejudice to the right of States to seek other peaceful means of settlement of their own choice,

Reaffirming the importance of impartial fact-finding, in appropriate cases, for the settlement and the prevention of disputes,

Recalling the possibility of the continued use of existing facilities for fact-finding,

1. *Urges* Member States to make more effective use of the existing methods of fact-finding;

2. *Invites* Member States to take into consideration, in choosing means for the peaceful settlement of disputes, the possibility of entrusting the ascertainment of facts, whenever it appears appropriate, to competent international organizations and bodies established by agreement between the parties concerned, in conformity with the principles of international law and the Charter of the United Nations or other relevant agreements;

3. *Draws special attention* to the possibility of recourse by States in particular cases, where appropriate, to procedures for the ascertainment of facts, in accordance with Article 33 of the Charter;

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[147] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694, para. 386.

[148] *Ibid.*, document A/5725/Add.2.

[149] *Ibid.*, document A/5694; *ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6228.

4. *Requests* the Secretary-General to prepare a register of experts in legal and other fields, whose services the States parties to a dispute may use by agreement for fact-finding in relation to the dispute, and requests Member States to nominate up to five of their nationals to be included in such a register.

1637th plenary meeting
18 December 1967

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(12) Draft Declaration on Territorial Asylum (agenda item 89)

(*a*) Report of the Sixth Committee[150]

[*Original text: English and Spanish*]
[*30 November 1967*]

I. Introduction

1. By paragraph 3 of its resolution 2203 (XXI) of 16 December 1966, the General Assembly decided "to place an item entitled 'Draft Declaration on Territorial Asylum' on the provisional agenda of its twenty-second session, with a view to the final adoption of a declaration on this subject". At the twenty-second session of the General Assembly, the General Committee recommended that this item should be included in the agenda and allocated to the Sixth Committee (A/6840). The General Assembly so decided at its 1564th plenary meeting on 23 September 1967. Subsequent consideration of the item by the Sixth Committee has resulted in the unanimous recommendation to the General Assembly of the draft resolution containing a declaration on territorial asylum, which will be found at the conclusion of the present report.

2. The present report, after briefly outlining some of the relevant facts in the previous history of the item, summarizes the proceedings relating to it in the Sixth Committee at the twenty-second session of the General Assembly. This summary includes an article-by-article account of the points made in the debate on the declaration recommended for adoption by the General Assembly (see paras. 9 to 61 below), together with the proposal submitted and the discussion thereon (see paras. 62 to 69 below).

II. History of the item prior to the twenty-second session of the General Assembly

3. The elaboration of a declaration on asylum has been under consideration by various United Nations organs for a considerable number of years.[151] In 1960, by its resolution 772 E (XX), the Economic and Social Council transmitted to the General Assembly the text of a draft declaration on the right of asylum prepared by the Commission on

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[150] Document A/6912, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 89.

[151] For a more detailed account of the history of the item prior to the twentieth session of the General Assembly, including a summary with relevant documentary references to the proceedings of the Commission on Human Rights, the Economic and Social Council, and the Third Committee of the General Assembly, see *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.564.

Human Rights, consisting of a preamble and five articles.[152] On the basis of this text the Third Committee, at the seventeenth session of the General Assembly, in 1962, adopted the preamble and article 1[153] of a draft declaration.[154] Because of pressure of other work at subsequent sessions, the Third Committee was unable to complete the text of the draft declaration. The General Assembly therefore decided to transfer the item to the Sixth Committee at the twentieth session, as it did not have such a heavy agenda as the Third Committee and as the item involved many legal questions, in order to finalize the draft declaration at the earliest opportunity.

4. At the twentieth session of the Assembly, in 1965, the Sixth Committee established a Working Group to examine the various procedural questions which arose in connexion with the transfer of the item from the Third to the Sixth Committee, in order to expedite its further consideration.[155] The Sixth Committee also recommended to the General Assembly a draft resolution, adopted by the latter as resolution 2100 (XX) of 20 December 1965, the last operative paragraph of which provided that the item should be taken up again at the twenty-first session, "with a view to completing the text of a draft Declaration as a whole".[156]

5. At the twenty-first session a further Working Group was set up by the Sixth Committee, with the task of preparing a preliminary draft declaration on the right of territorial asylum, taking into account the text of the draft declaration adopted by the Commission on Human Rights; the text of the preamble and article 1 adopted by the Third Committee; the amendments and comments submitted in writing by Member States; specific suggestions made during the discussion of the item at the twenty-first session of the General Assembly and the existing international instruments relating to the matter. The Working Group submitted a report, containing the text of a draft declaration on territorial asylum, which forms an annex to the report of the Sixth Committee to the General Assembly on the item.[157] As the report of the Working Group was submitted towards the close of the session, the Sixth Committee decided to postpone substantive consideration of the text of the draft declaration drawn up by the Working Group until the twenty-second session of the General Assembly. The Sixth Committee therefore recommended to the Assembly a draft resolution, providing *inter alia* that the text of the draft declaration, together with the report of the Sixth Committee thereon, should be transmitted to Governments for their further consideration. The General Assembly adopted this draft in its resolution 2203 (XXI), to which reference has already been made.

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[152] *Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 8*, para. 147, and *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 46, document A/5359, para. 6.

[153] An amendment to article 1, accepted by the Third Committee that reference be made expressly to "territorial asylum", indicated that the draft declaration was to be limited to that form of asylum. An express limitation of this nature had not appeared in the text prepared by the Commission on Human Rights, but arose as a necessary implication of the provisions of that text. See *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 46, document A/5359, paras. 18, 24 and 25.

[154] *Ibid.*, para. 35 and annex.

[155] *Ibid., Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.581, paras. 1-3.

[156] For the discussion of this item at the twentieth session, see *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 872nd, 882nd and 895th meetings; and *ibid., Plenary Meetings*, 1404th meeting. For the reports of the Sixth Committee and of the Working Group see *ibid., Annexes*, agenda item 63, documents A/6163 and A/C.6/L.581.

[157] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 85, document A/6570. For the discussion of the item at the twenty-first session, see *ibid., Sixth Committee*, 919th to 923rd, 925th, 926th and 953rd meetings, and *ibid., Plenary Meetings*, 1496th meeting.

III. Consideration of the item by the Sixth Committee at the twenty-second session of the General Assembly

A. Meetings and documentation

6. At the twenty-second session of the General Assembly, the Sixth Committee considered item 89 entitled "Draft Declaration on Territorial Asylum" at its 983rd to 989th meetings, between 26 October and 2 November 1967.

7. The Committee had before it the report it had adopted at the twenty-first session of the General Assembly, with the annexed report of the Working Group containing the text of a draft declaration on territorial asylum prepared by the latter. The Committee also had available a brief note by the Secretary-General (A/6698), drawing attention to the relevant documentation, and informing the General Assembly that the Secretary-General, pursuant to Assembly resolution 2203 (XXI), had drawn the attention of Member States by a letter of 25 January 1967, to the draft declaration and to the Sixth Committee's report.

8. At the 988th meeting of the Sixth Committee, on 1 November 1967, after the Committee had considered in detail the draft declaration prepared by the Working Group, a draft resolution (A/C.6/L.625) was introduced on behalf of twenty-four Member States, embodying *inter alia* the text of the draft declaration recommended by the Working Group. An oral amendment, which did not alter the substance of the proposed declaration, was also introduced at the same meeting. The draft resolution, an amendment to it and the debate thereon are considered in greater detail in paragraphs 62 to 69 below.

B. Discussion of the draft declaration

9. In the discussion of the draft declaration on territorial asylum which had been drawn up by the Working Group at the twenty-first session and was embodied in the draft resolution before the Sixth Committee at the twenty-second session, representatives made general comments on the acceptability of the text and on the purpose and legal effect of the adoption of the declaration by the General Assembly. Representatives also commented upon the various specific provisions of the draft. These comments are summarized in the present section of this report.

1. *General comments*

(a) *Acceptability of the text of the draft declaration prepared at the twenty-first session*

10. In their general comments on the text of the draft declaration prepared by the Working Group, many delegations congratulated the Group on the valuable results it had achieved. It was stated that the Group had been able to build upon many years of previous work on the institution of asylum in the United Nations, and had succeeded in bringing that work close to fruition so far as a declaration on territorial asylum was concerned. The text it had prepared was a well-balanced one, representing a compromise between the many different views which had been advanced on the question and a reconciliation of the various interests and requirements of those immediately concerned, namely refugees seeking asylum, the State of origin, the State of refuge and the international community. The text which had emerged from the Working Group gave due weight both to the sovereign rights of States and to the humanitarian considerations underlying the institution of asylum.

11. It was further said that, as the Working Group's text was a compromise, it was bound not to be wholly satisfactory to each delegation. However, if the members of the

Sixth Committee wished to proceed expeditiously and to succeed in securing the proclamation of the declaration at the current session, they would have to exercise restraint in suggesting amendments which might destroy the balance achieved by the Working Group without any assurance that a better draft would result. While individual representatives might have misgivings on the scope of the draft declaration and on the wording of certain parts of the text which they believed might be open to improvement and greater precision, it would be necessary not to press their reservations in the interest of the consensus arrived at by the Working Group.

12. It was therefore the virtually unanimous view in the Sixth Committee that, as a compromise text, the one proposed by the Working Group was generally acceptable, since it contained the essential elements of a declaration on territorial asylum and represented the widest area of agreement at present obtainable. Members of the Committee expressed their gratification that, after consideration of the items by the Committee at two previous sessions, it was now possible to proceed with the final proclamation of the declaration.

(b) *Purpose and effect of the proclamation of the declaration*

13. The great majority of delegations stressed that the draft declaration under consideration was not intended to propound legal norms, but to lay down broad humanitarian and moral principles upon which States might rely in seeking to unify their practices relating to asylum. In this respect it would constitute a valuable elaboration of article 14 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III), which dealt with asylum. The declaration on territorial asylum, when adopted, like any other recommendation of the General Assembly addressed to Governments in the field of human rights, would not of itself be a legally enforceable instrument or give rise to legal obligations, and for that reason would not affect existing international undertakings or national legislation relevant to the subject of asylum and related matters. To the extent that the declaration might, in some respects, go beyond the present state of international law, existing law would continue in effect until such time as the relevant provisions of the declaration were incorporated into positive international law.

14. Other representatives, while agreeing that the declaration would not be binding on States, pointed out that if it achieved its purpose of serving as a guide for State practice it might eventually, through the unification of such practice, lead to the establishment of new customary rules of international law, creating new obligations for States.

15. The view was expressed also that the adoption of the declaration by the General Assembly would be a legal expression of will and, as such, would have legal effects.

16. It was also said that the practical effect given to the declaration by States would help to indicate whether or not the time was ripe for the final step of elaborating and codifying precise legal rules relating to asylum. In this respect, many representatives expressed the conviction that the declaration, when adopted, should be regarded as a transitional step, which should lead in the future to the adoption of binding rules of law in an international convention. They drew attention to the fact that asylum was on the programme of work of the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959. The declaration now to be adopted would be one of the elements to be considered by the Commission in its work. Certain of these representatives expressed the hope that, when it took up the codification of the institution of asylum, the Commission would correct some of the ambiguities in the terms of the Declaration and would also extend the subject to cover other forms of asylum, such as diplomatic asylum, on which there was extensive treaty law in Latin America and an extensive practice, both in Latin America and elsewhere. It was also said that the existence of the Declaration should not

in any way diminish the scope or depth of the work to be undertaken when the International Law Commission took up the subject of asylum.

17. A number of representatives, while expressing the hope that the Declaration would help to gain new adherents for a liberal policy on the right of asylum and be a valuable sequel to the 1951 Convention relating to the Status of Refugees, [158] wished to place on record that they considered the draft declaration to represent a minimum, not a maximum. They stated that it must not be interpreted as placing a limitation upon the policy of their Governments relating to asylum, which already went further than the draft declaration in safeguarding the interests of persons seeking asylum.

18. Several representatives stressed that the current session of the General Assembly would be particularly auspicious for the proclamation of a declaration elaborating upon article 14 of the Universal Declaration of Human Rights, in view of the fact that in 1968 the United Nations would be celebrating both the twentieth anniversary of the Universal Declaration and the International Year for Human Rights. Certain representatives stated that their Governments attached particular importance to the early proclamation of a declaration on territorial asylum in view of the necessity for strengthening the institution of asylum at the present time, when there were certain areas in the world where serious refugee problems were appearing. As long as racial discrimination, religious intolerance and political persecution remained, the institution of asylum would continue to be a vital humanitarian necessity. The adoption of a declaration on the subject should, however, serve to alleviate some of the problems that arose, facilitate the work of the United Nations High Commissioner for Refugees, strengthen the growth of friendly relations and co-operation among States, further the maintenance of international peace and security and promote the purposes and principles of the United Nations. It would also serve as yet another landmark in the history of United Nations declarations furthering the cause of human rights.

2. *Title, preamble and recommendatory paragraph*

(a) *Text*

19. The Working Group had recommended that the declaration, in final form, be entitled "Declaration on Territorial Asylum", and had proposed the following preamble and recommendatory paragraph:

> "*Noting* that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations, and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,
>
> "*Mindful* of the Universal Declaration of Human Rights, which declares in article 14 that '(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations',
>
> "*Recalling* also article 13, paragraph 2, of the Universal Declaration of Human Rights which states 'Everyone has the right to leave any country, including his own, and to return to his country',

[158] United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

"*Recognizing* that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State,

"*Recommends* that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:"

The above text was included verbatim in the draft resolution introduced in the Sixth Committee at the twenty-second session.

(b) *Title*

20. Many representatives welcomed the fact that the Working Group had made it explicit that the declaration was limited to territorial asylum by making express reference to "territorial asylum" in the title of the declaration and the recommendatory paragraph. [159] They said that territorial asylum was the most important element of the institution of asylum and the one with regard to which the widest State practice existed. While the view was expressed that the text of the declaration might be improved by referring to "territorial asylum" throughout, rather than to "asylum", no formal amendment to this effect was introduced, in view of the reference to "territorial asylum" in the title and the recommendatory paragraph.

21. Some representatives, however, regretted that it had not proved possible to extend the scope of the declaration to diplomatic asylum, in view of the essentially humanitarian nature of the declaration and of the substantial practice of certain countries, particularly in Latin America, relating to diplomatic asylum. These representatives expressed the hope that, when the International Law Commission undertook its study of asylum it would be able to extend any draft it prepared to cover diplomatic asylum. It was also suggested that the Sixth Committee might consider setting up another working group to prepare a draft declaration on diplomatic asylum, but no formal proposal to this effect was pressed.

(c) *First preambular paragraph*

22. Several representatives expressed approval of the change made by the Working Group in the first paragraph of the preamble as adopted by the Third Committee so that it referred to "nations" rather than "States" for reasons of conformity with Article 1, paragraph 2, of the Charter of the United Nations. [160]

(d) *Second preambular paragraph*

23. A number of representatives felt that the second paragraph of the preamble, recalling article 14 of the Universal Declaration of Human Rights, was of particular importance in determining the scope and spirit of the draft Declaration on Territorial Asylum as a whole. These representatives said that this, and other paragraphs of the preamble, clearly indicated that the draft Declaration dealt with questions relating to persecuted persons fighting for purposes and principles proclaimed in the Charter.

(e) *Third preambular paragraph*

24. Reservations were expressed by a few representatives regarding the third preambular paragraph of the draft declaration, which recalled article 13, paragraph 2, of the Universal Declaration of Human Rights, proclaiming the right of everyone to leave any

[159] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 85, document A/6570, annex, para. 12.

[160] *Ibid.*, para. 10.

country, including his own, and to return to his country. These representatives thought that the paragraph was unnecessary in a declaration on territorial asylum, since it fell outside the scope of the question of asylum. The view was also advanced that the paragraph should be understood to mean that practical questions pertaining to the right to leave one's country should be decided in accordance with the procedures established by the country concerned.

25. Certain other representatives, however, were of the opinion that, because of the reference to the right of return in the preamble, it was not necessary to include an article on that subject in the substantive part of the declaration, the preambular reference being sufficient for the purposes of the draft. These representatives cited with approval the decision of the Working Group to delete article 5 of the draft prepared by the Commission on Human Rights, which had dealt expressly with the right of return.[161] Regret was expressed by one representative that it had not proved possible to replace article 5 of the draft of the Commission on Human Rights by another article of a similar nature regarding the termination of asylum, either through the person enjoying asylum acquiring permanent residence in the country of asylum or through his departure from that country.

(f) *Fourth preambular paragraph*

26. The inclusion of the fourth preambular paragraph of the draft declaration, recognizing that the grant of asylum was a peaceful and humanitarian act which cannot be regarded as unfriendly by any other State, was particularly welcomed by some representatives. They expressed the hope that it would go a long way towards avoiding misunderstandings among States, and that it would serve as a basis for rejecting uncalled-for and provocative threats, which were sometimes made by the State of origin of refugees against the State granting asylum.

(g) *Recommendatory paragraph*

27. Certain representatives were of the opinion that the words "without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons", appearing in the recommendatory paragraph of the draft declaration, were superfluous, since the Declaration could not affect in any way existing legal obligations. Other representatives, however, welcomed the inclusion of the phrase, and some of them indicated that they understood it to cover all existing instruments dealing with the status of refugees and stateless persons, whether or not they were legally binding instruments. It was also stated that, while a separate article on the matter might have been preferable, a formal amendment to that effect was not necessary because of the reference to the question in the preamble.

28. While the view was expressed that the clarity of the phrase in question might have been improved by the addition of the word "international" before the word "instruments", it was argued, on the other hand, that the phrase should be understood to cover not only international instruments, but also national instruments, such as constitutions. Constitutional or other legislative provisions in some countries were more liberal in the matter of asylum than the draft declaration, which must not be considered as calling for a restrictive interpretation of liberal provisions of that nature.

29. It was suggested also that the phrase was perhaps too narrowly drawn, since it did not refer specifically to other instruments, such as extradition treaties, the addition of a reference to which would make the paragraph clearer. In a statement agreeing not to press an amendment to that effect, it was said that the phrase must necessarily be under-

[161] *Ibid.*, paras. 73-78.

stood also to cover existing extradition treaties. Doubt was expressed also as to whether the term "instrument" was the best choice in the circumstances, in view of the fact that that term was used in the International Law Commission's draft articles on the law of treaties to refer to instruments of ratification, accession, reservation or withdrawal, rather than to the texts of conventions themselves. However, no formal change was proposed in this respect.

30. In addition to the foregoing remarks on the recommendatory paragraph, a number of representatives welcomed the decision of the Working Group to replace, in the text adopted by the Third Committee, the words "States Members of the United Nations and members of the specialized agencies" by the more general term "States".[162] It was said that the change emphasized that the Declaration should be of a universal character and that its scope should not be restricted with respect to the States to which it was addressed.

3. *Article 1*

(a) *Text*

31. Article 1 of the Working Group's text read as follows:

"1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

"2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

"3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum."

(b) *Paragraph 1*

32. Representatives cited with approval the express recognition in paragraph 1 of the fact that the grant of asylum was a sovereign right of States and was not a right of admission upon which individuals were entitled to insist. It was pointed out, in this connexion, that the drafters of the Universal Declaration of Human Rights had themselves rejected a wording for article 14 to the effect that an individual had the right both to seek and to be granted asylum.

33. The decision whether or not to grant asylum, it was said, was within the sole prerogative of the State concerned, as part of its indisputable right of control over individuals within its territory, from which derived the competence to admit or to refuse admission to those seeking asylum at that State's discretion and in accordance with its own legal system. However, this right was balanced by the humanitarian aspect of asylum, which gave every individual the right to seek and, if it was granted, to enjoy in other countries asylum from persecution. In exercising their legal rights, States should bear in mind that humanitarian considerations should prevail over all others.

34. There was considerable discussion in the Sixth Committee concerning the insertion in paragraph 1 of the phrase "including persons struggling against colonialism". Many representatives said that they attached particular importance to the phrase, which was a key provision of the draft declaration, in view of the legitimacy of the struggle against colonialism and in view of the special consideration and protection which should be given to

[162] *Ibid.*, para. 14.

those who were performing an international duty by struggling for the independence and freedom of their peoples.

35. A suggestion was made, but not pressed, that the phrase should be further strengthened to read "and in particular persons struggling against colonialism". It was also said that the reference continued to be a particularly timely one and in line with the realities of modern life, as there were still territories which had not been liberated from the yoke of foreign colonial rule and as the prompt implementation of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples was a matter of major international concern.

36. Several delegations considered that the phrase strengthened the over-all tenor of the declaration, which, they said, dealt with the granting of asylum to persons persecuted because they were fighting for peace and for the realization of the purposes and principles of the United Nations. The view was also expressed that the declaration was not concerned with individuals who had left their countries for economic, social or other similar reasons and been given refuge in certain States, where they had engaged in activities against their countries of origin. The grant of asylum in such cases was improper and without legal foundation, and the draft declaration might have been further strengthened if it had contained an express provision that such persons could not be considered to be refugees applying for asylum.

37. Other representatives, however, regretted the inclusion of the phrase in question, on the ground that it injected political overtones into a declaration which was essentially humanitarian and might consequently weaken its humanitarian impact. It was said that the category of persons to whom paragraph 1 applied were those entitled to invoke article 14 of the Universal Declaration of Human Rights. A person struggling against colonialism might come within the ambit of that article, in which case the specific reference to such a person was unnecessary; if he did not come within the scope of that article, the reference was wrong and confusing. Either all specific categories of persons entitled to seek asylum should be enumerated, and not just a single example, or the definition of such persons should remain a general one.

38. Furthermore, it was said that the word "colonialism" was often used in a variety of meanings. In this connexion the view was expressed that the phrase could not apply to persons involved in wars of national liberation. It was further argued that colonialism was a vanishing phenomenon, and mention of it in the declaration would weaken a document which should be of general and long-lasting validity.

39. The view was also expressed that the confining of paragraph 1 to persons entitled to invoke article 14 of the Universal Declaration of Human Rights was perhaps unnecessarily limitative, a fault which should be corrected at a later stage of United Nations work on the institution of asylum.

40. The text of paragraph 1 was widely commended for its express recognition that a grant of asylum by one State was to be respected by all other States. It was said that, as a result, the State of origin was under an obligation not to regard the grant of asylum as a hostile act justifying retaliation.

(c) *Paragraph 2*

41. There was some discussion in the Sixth Committee concerning the reference, at the beginning of paragraph 2, to "the right to seek and to enjoy asylum". It was said that this phrase was perhaps misleading, in that the granting of asylum was the sovereign prerogative of States and not a right of individuals to gain admission to other countries. In this respect a number of delegations cited with approval, and wished to have placed again

on record, the view expressed in the Working Group's report [163] that the word "right" was to be interpreted as a moral right and not as a legal right which imposed obligations upon States.

42. Certain delegations welcomed the inclusion of paragraph 2 in the text, and stressed the importance they attached to it. They said that all States had an obligation not to grant asylum to persons who had committed crimes against peace, war crimes, or crimes against humanity. On the contrary, States had the obligation to prosecute such persons. The terms of paragraph 2, it was argued, reflected existing rules of contemporary international law to be found in the Charter of the International Military Tribunal at Nürnberg, [164] the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, [165] the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, [166] the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War [167] and in a number of General Assembly resolutions, particularly resolution 95 (I) of 11 December 1946 entitled "Affirmation of the principles of international law recognized by the Charter of the Nürnberg Tribunal".

43. It was also stressed that asylum should not be granted to persons who had committed common crimes, and reference was made to provisions made in extradition treaties for the return to the State of origin of persons who had committed therein offences qualified as common crimes by the laws of both the State of origin and the State of refuge. It was pointed out that the incorporation of the text of article 14 of the Universal Declaration of Human Rights in the preamble to the draft declaration under discussion and the reference to that article in article 1, paragraph 1, clearly established that persons seeking to escape prosecution for common crimes were excluded from the benefits of the draft declaration.

(d) *Paragraph 3*

44. A number of representatives, while supporting the inclusion of paragraph 3, stressed and wished to have recorded their view that in evaluating the grounds for the grant of asylum the State concerned was obliged to exercise its right in good faith and in a non-arbitrary manner.

45. Other representatives pointed out that the right of a State to evaluate the grounds for the grant of asylum derived from the principles of the sovereignty and equality of States, and that the exercise of such a right could not be considered an unfriendly act. Nevertheless, States, while paying full regard to humanitarian considerations, should satisfy themselves that persons seeking asylum had not committed any acts contrary to the purposes and principles of the United Nations, or any war crimes, crimes against peace, crimes against humanity or common crimes.

4. *Article 2*

(a) *Text*

46. Article 2 of the Working Group's text read as follows:

"1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

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[163] *Ibid.*, para. 27.

[164] United Nations, *Treaty Series*, vol. 82 (1951), II, No. 251, p. 284.

[165] *Proclaimed* at Tokyo on 19 January 1946.

[166] United Nations, *Treaty Series*, vol. 78 (1951), No. 1021, p. 278.

[167] *Ibid.*, vol. 75 (1950), No. 973, p. 287.

"2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State."

(b) *Paragraph 1*

47. A number of representatives welcomed the inclusion of paragraph 1 as an explicit recognition that the situation of persons compelled to seek asylum was a matter of concern to the international community. The paragraph demarcated the sphere of international competence with respect to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, and enshrined the principle of the co-operation of all States with a view to ensuring respect for human rights and the protection of individuals. It was said that the paragraph reflected one of the main considerations on which any declaration on asylum should be based.

(c) *Paragraph 2*

48. A number of representatives considered that paragraph 2 was a valuable one which broadened the essentially humanitarian scope of the draft declaration and which would lighten the burden of States that had found their resources overtaxed by an influx of refugees. It was most important to provide expressly for the possibility of international assistance in cases where a State found difficulty in granting or continuing to grant asylum, and the inclusion of this paragraph in the declaration would assist refugee organizations in their work. Since the draft declaration called upon States to adopt a liberal policy in matters of asylum, it was only right that States so doing should be able to make certain claims on the international community in seeking to alleviate the suffering of refugees who were dispossessed and destitute of the means of subsistence.

49. Certain representatives, however, expressed reservations regarding paragraph 2 and indicated that they would have preferred it to have been amended or deleted. It was said, in this connexion, that the paragraph was unnecessary, since it went beyond the scope of the declaration, which dealt with asylum and not with international aid. It was also argued that in its present wording the paragraph might be open to the interpretation that it permitted a violation of State sovereignty and intervention in domestic affairs. The paragraph would therefore have been more satisfactorily worded if it had ended with the words "at its request", thus making it plain that only the State granting asylum could define whether or not it was in difficulty and wished for assistance from other States. Such an approach was inherent in the very idea of international solidarity, but the text should in any event be understood as not introducing any new elements into relations between States.

50. Other representatives were of the opinion that the wording, as it stood, did not imply any possibility of infringement of State sovereignty or interference in domestic affairs. It was pointed out that State sovereignty was expressly reaffirmed in paragraph 1 of the same article. Paragraph 2 was to be understood to mean that States might request assistance if they deemed it necessary as a consequence of difficulties confronting them in granting or continuing to grant asylum.

5. *Article 3*

(a) *Text*

51. Article 3 of the Working Group's text read as follows:

"1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

"2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

"3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State."

(b) *Paragraph 1*

52. Many representatives stressed the importance which they attached to article 3 as a whole, and to paragraph 1 in particular, which embodied the principle of non-*refoulement* and which was perhaps the key provision in the draft declaration. It was said that the article sought to strike a fair balance between the sovereign rights of States and the protection to which an individual should be entitled on humanitarian grounds.

53. Some representatives believed, however, that paragraph 1 might have been more precisely drafted. Certain of these representatives considered that the words "if he has already entered the territory in which he seeks asylum" were redundant, since a person could not be subjected to expulsion from a territory to which he had not been admitted. They were of the opinion that the deletion of these words would improve the text by making it more forceful and clear and by establishing more closely the link between rejection at the frontier and expulsion or compulsory return, all of which should be considered as qualified by the phrase "to any State where he may be subjected to persecution". The principle of non-*refoulement*, of which the prohibition of rejection at the frontier was a part, was only valid with respect to a State where the person seeking asylum would be exposed to persecution if he were returned.

54. The words "where he may be subjected to persecution" were also the subject of comment. While some delegations preferred this formulation, others considered that it lacked precision, and would require a subjective evaluation in each case. These representatives indicated their continuing preference for the original draft of the Commission on Human Rights, which had referred to a "well-founded fear of persecution endangering his life, physical integrity, or liberty". It was said that in order to benefit from the provisions of paragraph 1, the person seeking asylum must prove, to the satisfaction of the authorities of the State involved, that he was really in danger of persecution. The representatives concerned indicated that they would continue to understand the present wording in the sense originally indicated by the Commission on Human Rights, as the wording in paragraph 1 was a less precise formulation of the same notion as a "well-founded fear of persecution endangering his life, physical integrity or liberty".

(c) *Paragraph 2*

55. With respect to paragraph 2, dealing with exceptions to the principle of non-*refoulement*, a number of representatives indicated that they found the present wording somewhat vague, and regretted that it had not been possible to express the concept involved more precisely. They feared that the present text might, in practice, be used to encourage unwarranted departures from the principle of non-*refoulement*, but recognized that any change would present considerable problems at this stage, the text, as it stood, representing a compromise reached with some difficulty in the Working Group. [168]

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[168] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 85 document A/6570, annex, paras. 56-59.

56. Representatives who spoke on the point recorded their understanding that paragraph 2 permitted exceptions to the principle of non-*refoulement* in instances other than those expressly mentioned in the paragraph. However, such an exception in their view, could be made under this paragraph only if the case involved was comparable in seriousness to a mass influx of persons. It was further stated that, in deciding whether or not to make exceptions, it was necessary to take into account the conditions prevailing at the time in the territory concerned in determining what measures were necessary to safeguard the population. It was also stressed that, where a State invoked paragraph 2, paragraph 3 became relevant, and the persons concerned should be accorded the opportunity to go to another country.

(d) *Paragraph 3*

57. There was little specific comment on the provisions of paragraph 3 in the Sixth Committee. It was pointed out, however, that implementation of the paragraph might give rise to difficulties for land-locked States which formed enclaves surrounded by the territory of the State of origin of the persons seeking asylum. In such cases it might in practice prove necessary to negotiate transit facilities for the persons concerned through the territory of the State of origin.

6. *Article 4*

58. Article 4 of the Working Group's text read as follows:

> "States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations."

59. A number of representatives welcomed the inclusion of article 4, which was said to be well drafted and modest but none the less indispensable, as persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

60. Some representatives regretted, however, that specific mention had not been made, in article 4 or elsewhere in the Declaration, of the right of States to exercise surveillance over persons to whom asylum had been granted or to direct them to reside in certain areas. It was said, furthermore, that a State would become internationally responsible if it permitted and in fact encouraged a person enjoying asylum in efforts to subvert his State of orgin. These representatives indicated that they would have found the text more acceptable if it had prohibited persons enjoying asylum from being used "for purposes of espionage, subversion or sabotage against other States". It was also said that the text would be improved if it provided that asylum should be terminated in such cases, or when a refugee otherwise abused the hospitality afforded him. Refugees should be obliged to respect the laws of the State granting asylum and to refrain from acts involving the use of force or violence against the State of origin or any other acts which might prejudice friendly relations between that State and its neighbours or other States with which the former maintained relations.

61. Other representatives considered that article 4 could have been deleted without adversely affecting the Declaration, since its terms were vague, it might be open to widely differing interpretations, and it was difficult to see how persons could engage in activities contrary to the purposes and principles of the United Nations, such purposes and principles being applicable to States and not to individuals. If the present text were to stand, it should include some examples of the kind of activities that were prohibited. Even though the wording was derived from the Universal Declaration of Human Rights, that did not preclude its improvement. These representatives feared that the provision might in practice be invoked to justify the adoption of measures unnecessarily restricting the liberty of

persons enjoying asylum, and wished to place on record their understanding that the article did not call for restrictions on the liberty of individuals or require States to take additional powers to impose such restrictions.

C. Consideration of the draft resolution and amendment

1. *Draft resolution*

62. As mentioned in paragraph 8 above, a draft resolution (A/C.6/L.625) was introduced at the 988th meeting of the Sixth Committee on 1 November 1967. The opening paragraphs of this draft, which was sponsored by the delegations of Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Somalia, Uruguay and Venezuela, read as follows:

"*The General Assembly*,

"*Recalling* its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

"*Considering* the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

"*Adopts* the following Declaration:

"*Declaration on Territorial Asylum*".

The draft resolution then incorporated verbatim the text of the declaration as drawn up by the Working Group in 1966 and as set out above, article by article, in paragraphs 19 to 61 of the present report.

63. It was explained on behalf of the sponsors that, although they considered that the draft declaration prepared by the Working Group might have dealt with additional aspects of the institution of asylum, it represented the culmination of many years of effort by the Commission on Human Rights, the Third Committee and the Sixth Committee and was a well-balanced document which did justice to the humanitarian ends which it pursued. The sponsors had therefore decided to incorporate the Working Group's text verbatim in their draft resolution, and were confident that the Declaration, together with the rules of international law which had been codified in Latin America to regulate the institution of asylum, such as the 1928 Havana Convention on Asylum, also the Convention on Diplomatic Asylum and the Convention on Territorial Asylum, both signed at the Tenth Inter-American Conference at Caracas in 1954, would in the future constitute a direct source of inspiration for a universal convention on the subject.

64. It was further explained that the sponsors had found it necessary, in order to stress that the adoption of a declaration on territorial asylum would not bring to an end the work of the United Nations in codifying the rules and principles relating to the institution of asylum, to make a reference at the very beginning of the draft resolution, in a preambular paragraph to the proposed declaration, to the work of codification on the right of asylum to be undertaken by the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959.

65. Some other delegations, while accepting such a reference, recorded their understanding that the preambular paragraph in question should not be understood as modifying

or prejudicing in any way the order of priorities for the consideration of items, already established by the International Law Commission and by the General Assembly.

2. *Amendment*

66. At the 988th meeting of the Sixth Committee, shortly after the introduction of the draft resolution, the representative of Sweden orally proposed an amendment to it, to the effect that the title of the Declaration contained therein should be followed by the words "*The General Assembly*", so that the relevant portion would read as follows:

"*Adopts* the following Declaration:

"*Declaration on Territorial Asylum*

"*The General Assembly*,"

67. In support of this amendment, it was pointed out that while the paragraphs of the draft resolution preceding the text of the proposed declaration were necessary and useful, they were not an integral part of the declaration itself. It was therefore necessary to insert a reference to the General Assembly at the beginning of the declaration, so that the name of the declaring body would appear in the text of the declaration when it was published as a separate document. Declarations of this nature were bound to have a very wide circulation and should be complete in themselves. The Swedish amendment, designed to complete the declaration, was in line with previous precedents in similar General Assembly resolutions, such as resolution 217 A (III) of 10 December 1948 proclaiming the Universal Declaration of Human Rights.

68. One representative, while indicating that he would not vote against the Swedish amendment, felt that, as the draft resolution itself opened with the words "*The General Assembly*," it was repetitious to insert them at the beginning of the declaration, and that might also diminish the force of the preambular paragraph prefacing the declaration which referred to the work of codification to be undertaken by the International Law Commission. He therefore wished it placed on record that the adoption of the resolution would not bring this work of codification to an end.

3. *Voting*

69. The Sixth Committee voted on the Swedish amendment and on the twenty-four-Power draft resolution at its 988th meeting. The amendment was adopted by 68 votes to none, with 25 abstentions. The resolution, as amended, was then adopted without objection. Points made by the delegations of Australia, Belgium, Hungary, Iran, Iraq, Japan, Madagascar, Portugal, Romania, the Union of Soviet Socialist Republics, the United Kingdom, Yugoslavia and Zambia in explanation of vote regarding the text and the effect of the Declaration on Territorial Asylum have been recorded in the immediately preceding section of this report, in connexion with the article-by-article consideration of the Declaration (see, in particular, paragraphs 10-13, 17, 18, 24, 26-28, 40, 41, 44, 47-50, 52, 54, 56, 60, 61, 65 and 67 above).

Recommendation of the Sixth Committee

70. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted without change by the General Assembly. See "Resolution adopted by the General Assembly" below.*]

(*b*) Resolution adopted by the General Assembly

At its 1631st plenary meeting, on 14 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 70 above). For the final text, see resolution 2312 (XXII) below.

2312 (XXII). Declaration on Territorial Asylum

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

Considering the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

Adopts the following Declaration:

DECLARATION ON TERRITORIAL ASYLUM

The General Assembly,

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Mindful of the Universal Declaration of Human Rights, which declares in article 14 that:

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution,

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also article 13, paragraph 2, of the Universal Declaration of Human Rights, which states:

"Everyone has the right to leave any country, including his own, and to return to his country",

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2

1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

Article 3

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Article 4

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

1631st plenary meeting
14 December 1967

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(13) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: Report of the Secretary-General (agenda item 90)

Resolution [2313 (XXII)] adopted by the General Assembly

2313 (XXII). United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Recalling its resolutions 2099 (XX) of 20 December 1965 and 2204 (XXI) of 16 December 1966 regarding the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law,

Noting with appreciation the report of the Secretary-General on the implementation of the Programme [169] and the recommendations made to the Secretary-General by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which are contained in that report,

Emphasizing that, in ensuring the execution of the Programme, the United Nations should bear in mind the need to continue its efforts to encourage and coordinate the activities of the States and international organizations concerned in assisting the promotion of the teaching, study, dissemination and wider appreciation of international law,

Considering that in the conduct of the Programme it is desirable to use as far as possible the ressources and facilities which may be made available by the international organizations concerned, Member States and others, in accordance with the procedures and rules of United Nations technical assistance programmes or other relevant rules and consistent with the purposes and direction of the Programme,

Considering that in the organization and conduct of regional seminars and training and refresher courses due regard should be paid to reflecting United Nations efforts towards the codification and progressive development of international law and, in so far as appropriate, the legal thinking of the principal legal systems of the world,

1. *Authorizes* the Secretary-General to carry out in 1968 the activities specified in his report, and in particular the provision of:

(*a*) Fifteen fellowships at the request of Governments of developing countries;

(*b*) The advisory services of experts, if requested by developing countries, within the framework of existing technical assistance programmes or from such voluntary contributions as may be received for that purpose;

(*c*) A set of United Nations legal publications to up to twenty institutions in developing countries;

2. *Notes with thanks* the offer of Ecuador to provide facilities for the regional seminar to be held in Latin America in 1968;

3. *Expresses its appreciation* to the United Nations Educational, Scientific and Cultural Organization for its participation in the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, in particular for its co-operation in the conduct of the regional training and refresher course held in Africa in 1967;

4. *Expresses its appreciation* to the United Nations Institute for Training and Research for its activities in the field of international law, in particular for its decision to conduct regional seminars in international law, beginning with a regional seminar to be held in Latin America in 1968, and for undertaking to conduct studies relating to the codification and progressive development of international law within the framework of the United Nations;

5. *Reiterates* its invitation to Member States, interested bodies and individuals to make voluntary contribution towards the financing of the Programme and expresses its appreciation to those Member States which have made voluntary contributions for this purpose;

6. *Approves* in principle, subject to further consideration by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination

[169] *Ibid., Twenty-second Session, Annexes*, agenda item 90, document A/6816.

and Wider Appreciation of International Law before the twenty-third session of the General Assembly, the Secretary-General's recommendations regarding the execution of the Programme after 1968;

7. *Requests* the Secretary-General to report to the General Assembly at its twenty-third session on the implementation of the Programme during 1968 and, following consultations with the Advisory Committee, to submit recommendations regarding the execution of the Programme in 1969;

8. *Decides* to include in the provisional agenda of its twenty-third session an item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

1631st plenary meeting
14 December 1967

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(14) Treaty for the Prohibition of Nuclear Weapons in Latin America (agenda item 91)

Resolution [2286 (XXII)] adopted by the General Assembly

2286 (XXII). Treaty for the Prohibition of Nuclear Weapons in Latin America

The General Assembly,

Recalling that in its resolution 1911 (XVIII) of 27 November 1963 it expressed the hope that the States of Latin America would carry out studies and take appropriate measures to conclude a treaty that would prohibit nuclear weapons in Latin America,

Recalling also that in the same resolution it voiced its confidence that, once such a treaty was concluded, all States, and particularly the nuclear Powers, would lend it their full co-operation for the effective realization of its peaceful aims,

Considering that in its resolution 2028 (XX) of 19 November 1965 it established the principle of an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers,

Bearing in mind that in its resolution 2153 A (XXI) of 17 November 1966 it expressly called upon all nuclear-weapon Powers to refrain from the use, or the threat of use, of nuclear weapons against States which might conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories,

Noting that that is precisely the object of the Treaty for the Prohibition of Nuclear Weapons in Latin America, [170] signed at Tlatelolco, Mexico, by twenty-one Latin American States, which are convinced that the Treaty will constitute a measure that will spare their peoples the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, that it will be a stimulus to the peaceful use of nuclear energy in the promotion of economic and social development and that it will act as a significant contribution towards preventing the proliferation of nuclear weapons and as a powerful factor for general and complete disarmament,

Noting that it is the intent of the signatory States that all existing States within the zone defined in the Treaty may become parties to the Treaty without any restriction,

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[170] Text reproduced in this *Yearbook*, p. 272.

Taking note of the fact that the Treaty contains two additional protocols open, respectively, to the signature of States which, *de jure* or *de facto*, are internationally responsible for territories which lie within the limits of the geographical zone established in the Treaty and to the signature of States possessing nuclear weapons, and convinced that the co-operation of such States is necessary for the greater effectiveness of the Treaty,

1. *Welcomes with special satisfaction* the Treaty for the Prohibition of Nuclear Weapons in Latin America, which constitutes an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security and which at the same time establishes the right of Latin American countries to use nuclear energy for demonstrated peaceful purposes in order to accelerate the economic and social development of their peoples;

2. *Calls upon* all States to give their full co-operation to ensure that the régime laid down in the Treaty enjoys the universal observance to which its lofty principles and noble aims entitle it:

3. *Recommends* States which are or may become signatories of the Treaty and those contemplated in Additional Protocol I of the Treaty to strive to take all the measures within their power to ensure that the Treaty speedly obtains the widest possible application among them;

4. *Invites* Powers possessing nuclear weapons to sign and ratify Additional Protocol II of the Treaty as soon possible.

1620th plenary meeting
5 December 1967

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(15) Need to expedite the drafting of a definition of aggression in the light of the present international situation (agenda item 95)

Resolution [2330 (XXII)] adopted by the General Assembly

2330 (XXII). Need to expedite the drafting of a definition of aggression in the light of the present international situation

The General Assembly,

Considering that in conformity with the Charter of the United Nations all Members of the United Nations must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Considering that one of the main purposes of the United Nations is to maintain international peace and security and, to that end, to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace,

Convinced that a primary problem confronting the United Nations in the maintenance of international peace remains the strengthening of the will of States to respect all obligations under the Charter,

Considering that there is a widespread conviction that a definition of aggression would have considerable importance for the maintenance of international peace and for the adoption of effective measures under the Charter for preventing acts of aggression,

Noting that there is still no generally recognized definition of aggression,

1. *Recognizes* that there is a widespread conviction of the need to expedite the definition of aggression;

2. *Establishes* a Special Committee on the Question of Defining Aggression, composed of thirty-five Member States to be appointed by the President of the General Assembly, taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented;

3. *Instructs* the Special Committee, having regard to the present resolution and the international legal instruments relating to the matter and the relevant precedents, methods, practices and criteria and the debates in the Sixth Committee and in plenary meetings of the Assembly, to consider all aspects of the question so that an adequate definition of aggression may be prepared and to submit to the General Assembly at its twenty-third session a report which will reflect all the views expressed and the proposals made;

4. *Requests* the Secretary-General to provide the Special Committee with the necessary facilities and services;

5. *Decides* to include in the provisional agenda of its twenty-third session an item entitled "Report of the Special Committee on the Question of Defining Aggression".

1638th plenary meeting
18 December 1967

* * *

The President of the General Assembly, in pursuance of paragraph 2 of the above resolution, appointed the members of the Special Committee on the Question of Defining Aggression. [171]

The Special Committee will be composed of the following Member States: ALGERIA, AUSTRALIA, BULGARIA, CANADA, COLOMBIA, CONGO (DEMOCRATIC REPUBLIC OF), CYPRUS, CZECHOSLOVAKIA, ECUADOR, FINLAND, FRANCE, GHANA, GUYANA, HAITI, INDONESIA, IRAN, ITALY, JORDAN, MADAGASCAR, MEXICO, NORWAY, ROMANIA, SIERRA LEONE, SPAIN, SUDAN, SYRIA, TURKEY, UGANDA, UNION OF SOVIET SOCIALIST REPUBLICS, UNITED ARAB REPUBLIC, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED STATES OF AMERICA, URUGUAY *and* YUGOSLAVIA.

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(16) QUESTION OF DIPLOMATIC PRIVILEGES AND IMMUNITIES (*a*) MEASURES TENDING TO IMPLEMENT THE PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES OF MEMBER STATES TO THE PRINCIPAL AND SUBSIDIARY ORGANS OF THE UNITED NATIONS AND TO CONFERENCES CONVENED BY THE UNITED NATIONS AND THE PRIVILEGES AND IMMUNITIES OF THE STAFF AND OF THE ORGANIZATION ITSELF, AS WELL AS THE OBLIGATIONS OF STATES CONCERNING THE PROTECTION OF DIPLOMATIC PERSONNEL AND PROPERTY (*b*) REAFFIRMATION OF AN IMPORTANT IMMUNITY OF REPRESENTATIVES OF MEMBER STATES TO THE PRINCIPAL AND SUBSIDIARY ORGANS OF THE UNITED NATIONS AND TO CONFERENCES CONVENED BY THE UNITED NATIONS (AGENDA ITEM 98)

(*a*) Report of the Sixth Committee [172]

[*Original text: English and Spanish*]
[*14 December 1967*]

I. Introduction

1. At its 1592nd plenary meeting, held on 25 October 1967, the General Assembly decided to include the following item in the agenda of its twenty-second session:

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[171] See A/7061.

[172] Document A/6965, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98.

"98. Question of diplomatic privileges and immunities:

"(*a*) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;

"(*b*) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations."

2. At the same meeting, the General Assembly allocated the item to the Sixth Committee for consideration and report. The Sixth Committee examined the item at its 1010th to 1017th meetings, held between 29 November and 7 December 1967.

3. In a note dated 20 September 1967 (A/6832) the Secretary-General had requested the inclusion in the agenda of the twenty-second session of an item entitled "The situation which has arisen between Guinea and the Ivory Coast involving section 11 of the Convention on the Privileges and Immunities of the United Nations". The situation referred to had previously been the subject of a report by the Secretary-General to the Security Council and to the general membership. In a note issued on 27 September 1967 (A/6832/Rev.1) the Secretary-General requested the inclusion of an item entitled "Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations". In the explanatory memorandum attached to his note, the Secretary-General stated that in the light of recent developments he considered that the immediate practical issue had been resolved and expressed the hope it would now be possible for the two Governments concerned to renew close and friendly ties. Nevertheless, he felt that an immediate question of principle had arisen concerning the privileges and immunities specified in Article 105 of the Charter of the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations. The Assembly might therefore consider it timely to reaffirm those principles and to call upon all Member States to ensure that their representatives to United Nations organs and to conferences convened by the United Nations enjoyed immunity from arrest or detention during their journeys to and from the meetings. The Secretary-General declared that he regarded the item as now having a purely legal and formal character, which the Assembly might wish to consider only as a matter of general principle within a legal and formal framework.

4. The General Committee considered the Secretary-General's request at its 170th, 171st and 172nd meetings, on 29 September, 5 October and 18 October 1967. Following the 171st meeting, the United States representative sent a letter to the President of the General Assembly (A/6837), repeating a request which had been made in the General Committee that the topic to be considered by the General Assembly should be widened by the inclusion in the agenda of an additional item entitled

"Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, as well as the obligations of States concerning the protection of diplomatic personnel and property."

He also stated that it was the intention of the United States to renew in the General Committee a proposal that this item, together with that of the Secretary-General, should be included in the agenda as separate sub-headings of an item entitled "Question of diplomatic privileges and immunities". The combined agenda item would read as follows:

"Question if diplomatic privileges and immunities:

"(*a*) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations;

"(*b*) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, as well as the obligations of States concerning the protection of diplomatic personnel and property."

5. At the 172nd meeting of the General Committee, on 18 October 1967, the representative of Jordan proposed that the item submitted by the United States be amended by the insertion of the phrase "and the privileges and immunities of the staff and of the Organization itself" after the words "convened by the United Nations". The amendment was accepted by the representative of the United States. An amendment put forward by the representative of Dahomey, reversing the order of sub-items (*a*) and (*b*) proposed by the United States, was accepted by the General Committee. The agenda item, as so revised, was then adopted by the General Committee and, subsequently, by the General Assembly (see para. 1 above).

6. Besides the documents referred to above, reference was also made during the Sixth Committee's discussions to a Secretariat study entitled "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" (A/CN.4/L.118 and Add.1 and 2).

II. Proposals

7. A draft resolution proposed by Algeria, Burundi, Congo (Brazzaville), Mauritania, Somalia, Sudan, Uganda, the United Arab Republic, the United Republic of Tanzania and Zambia (A/C.6/L.633) was circulated on 29 November 1967. The draft resolution read as follows:

"*The General Assembly*,

"*Having considered* agenda item 98 (*b*) entitled 'Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations', which was inscribed on the proposal of the Secretary-General,

"*Recalling* the provisions of Article 105 of the Charter of the United Nations and, in particular paragraph 2 thereof, which, *inter alia*, accords to representatives of the States Members of the United Nations such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

"*Recalling further* section 11 of the Convention on the Privileges and Immunities of the United Nations and, in particular, the specific immunity from personal arrest or detention accorded by the Convention to representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations during their journey to and from the place of meeting,

"1. *Reaffirms* the provisions of Article 105 of the Charter of the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations;

"2. *Urgently requests* all Member States to ensure that representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences

convened by the United Nations enjoy, during their journey to and from the place of meeting, the privileges and immunities to which they are entitled."

8. A draft resolution which was circulated on 1 December 1967, sponsored by Dahomey, Madagascar, Niger and Rwanda (A/C.6/L.634), later joined by Cameroon, Central African Republic and Chad (A/C.6/L.634/Add.1) and, subsequently, by Togo (A/C.6/L.634/Add.2), provided as follows:

"*The General Assembly*,

"*Having considered* the question of diplomatic privileges and immunities,

"*Recalling* Article 105 of the Charter of the United Nations,

"*Recalling* its resolution 22 (I) of 13 February 1946 relating to the General Convention on the Privileges and Immunities of the United Nations, and its resolution 179 (II) of 21 November 1947 relating to the Convention on the Privileges and Immunities of the Specialized Agencies,

"*Recalling also* the Vienna Convention on Diplomatic Relations, which came into force on 24 April 1964,

"*Convinced* that the purpose of these Conventions will be fully achieved only if all States accede to them and respect their provisions,

"1. *Reaffirms* the provisions of Article 105 of the Charter of the United Nations and the provisions of the above-mentioned Conventions;

"2. *Further reaffirms* the obligations on States arising from these Conventions, especially as regards the protection of diplomatic staff and property;

"3. *Requests* the Member States which are not parties to these Conventions to accede to them as soon as possible and, pending accession, to grant the benefits of the privileges and immunities provided for in the said conventions;

"4. *Appeals* to the States parties to these Conventions to ensure that the privileges and immunities specified in them are respected and to take all action necessary to ensure the application of the said Conventions;

"5. *Reaffirms* the procedure provided for in these Conventions for the settlement of disputes arising out of the interpretation or application thereof, and in particular the procedure provided for in section 30 of the Convention on the Privileges and Immunities of the United Nations in so far as that Convention is concerned."

9. A draft resolution was submitted on 4 December 1967 by Austria, Chile, Dominican Republic, Guatemala, Honduras, India, Mexico, Uruguay and Yugoslavia (A/C.6/L.635). The draft resolution read as follows:

"*The General Assembly*,

"*Recognizing* the importance of the work of the organs of the United Nations and of conferences convened by it and also of the contribution of the Organization itself and its officials to the maintenance of peaceful relations and co-operation among States,

"*Conscious* that the unimpeded functioning of the diplomatic channels for communication and consultation between Governments is vital to avoid dangerous misunderstanding and friction,

"*Recognizing* that, for the independent exercise of their functions, it is essential that representatives of Member States, the United Nations itself and its officials, as well as diplomatic agents, shall enjoy the necessary privileges and immunities,

"*Recalling* that Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of its Members such privileges and

immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

"*Recalling further* that the Convention of 1946 on the Privileges and Immunities of the United Nations confirms and specifies the provisions of Article 105 of the Charter and lays down rules, *inter alia*, regarding the immunity of the property and the inviolability of the premises of the Organization, regarding facilities for its official communications and regarding the privileges and immunities of representatives of Members to organs of the United Nations and conferences convened by it while exercising their functions and during their journey to and from the place of meeting,

"*Recalling* that the rules of international law governing diplomatic relations embodied in the Vienna Convention of 1961 aim at protecting diplomatic missions and diplomatic representatives and otherwise facilitating their functions,

"*Conscious* of its duty to strengthen by every means peaceful relations and co-operation among States,

"1. *Deplores* all departures from the rules of international law governing diplomatic privileges and immunities and the privileges and immunities of the Organization;

"2. *Urges* States Members of the United Nations which have not yet done so to accede to the Convention on Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

"3. *Urges* States Members of the United Nations, whether or not they have acceded to the Convention on Privileges and Immunities of the United Nations, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to the Organization, to the representatives of Members and to the officials of the Organization;

"4. *Urges* States which have not yet done so to ratify or accede to the Vienna Convention on Diplomatic Relations of 18 April 1961;

"5. *Urges* States, whether or not they are parties to the Vienna Convention on Diplomatic Relations, to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations, and in particular to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law."

At the 1015th meeting of the Sixth Committee, the representative of India, on behalf of the sponsors, revised the draft resolution so as to include in the preamble, immediately after the words "*The General Assembly*", a paragraph beginning "*Having considered* the item entitled:", followed by the title of the item (A/C.6/L.635/Rev.1). The sponsors listed above were joined by Finland, Indonesia and Nigeria (A/C.6/L.635/Rev.1) and by Belgium, Denmark and Norway (A/C.6/L.635/Rev.1/Add.1). The draft resolution, as revised, was identical with that adopted and proposed by the Sixth Committee (see para. 25 below).

III. Debate

A. General observations

10. There was widespread agreement on the importance of diplomatic privileges and immunities for the maintenance of friendly relations between States and for the effective conduct of international organizations. As many speakers noted, it had been recognized since the earliest times that the representatives sent on behalf of one State to another

should enjoy a special status so as to enable them to perform their functions under conditions of adequate security and without being subject to pressures or constraint on the part of transit or receiving States. The same considerations applied, *mutatis mutandis*, in the case of representatives of Member States to the United Nations and with respect to the Organization itself and its staff. The development of international organizations since 1945, the availability of rapid means of transport and the increase in the number of independent States had, indeed, all served to emphasize the significance of the relevant international rules and agreements.

11. As one representative observed, privileges and immunities were not a favour which was granted but a prerequisite for the fulfilment of diplomatic functions, and they were designed to ensure the maintenance of official contacts at all times. Because the recognized principles and practices of diplomatic privileges and immunities were essential for the meaningful conduct of international affairs, it was said that a failure to observe those principles and practices constituted not merely a threat to the relations between the States immediately involved, but was of concern to the international community as a whole. Having regard to this fact and to the central position of the United Nations in present-day international relations, all speakers endorsed the suggestion that the General Assembly should take the opportunity to reaffirm unequivocally the importance of scrupulous respect for privileges and immunities. While representatives and States were under an obligation, for their part, not to abuse the privileges and immunities which were granted, it was felt that an appeal should be made to States to take all proper measures to secure the implementation of the rules concerned. By so doing, it was said, the General Assembly would help to reverse the apparent trend to disregard the privileges and immunities owed to official missions and their staff.

12. The rules governing privileges and immunities were stated to have acquired the status of norms of international law, major steps in this process being the adoption in 1946 of the Convention on the Privileges and Immunities of the United Nations and in 1961 of the Vienna Convention on Diplomatic Relations, both prepared under United Nations auspices. As one representative pointed out, the topic under discussion involved no difficulty with regard to the content of the law, which from a juridical standpoint was clear and well-developed, but there was difficulty in ensuring that the provisions in question were invariably respected. As a means towards that end, many speakers expressed the hope that States which had not yet done so would become parties to the 1946 Convention and to the Vienna Convention on Diplomatic Relations. It was stated by one of the sponsors of draft resolution A/C.6/L.635 that the appeal made in that proposal to the effect that States which had not yet done so should become parties to those Conventions was without prejudice to the constitutional and administrative procedures required in various countries.

13. During the debate, reference was made to a number of specific incidents and disputes involving the application of privileges and immunities, in particular to the situation referred to in the Secretary-General's report to the Security Council and to all Member States. Many representatives expressed their appreciation of the efforts of the Secretary-General, which had contributed to the practical resolution of that situation.

B. Observations relating particularly to the privileges and immunities of the representatives of Member States to the United Nations, and of the Organization and its staff

14. The need for the representatives of Member States to the United Nations, the Organization and its staff to enjoy appropriate privileges and immunities was recognized by all speakers. It was emphasized that if Member States wished the work of the

Organization to be properly carried out, they must be prepared to observe strictly the immunities designed to secure the free and successful performance of its functions. It was generally agreed that the Organization itself had an interest in the enjoyment by the representatives of Member States of the privileges and immunities necessary to enable them to carry out their tasks and that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned were respected.

15. As regards the content of those privileges and immunities, reference was made to the provisions of Article 105 of the Charter of the United Nations and to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly in 1946 in order to determine the details of the application of paragraphs 1 and 2 of that Article. The view was expressed that the contents of the 1946 Convention now formed part of general international law as between the Organization and its Members and were accordingly binding on States, even in the absence of an express act of accession. Attention was also drawn to the obligations imposed on Member States under Article 105 of the Charter, irrespective of their specific accession to the 1946 Convention. In the light of the appeal in paragraph 2 of draft resolution A/C.6/L.635/Rev.1 and Add.1 that Member States which had not yet done so should accede to the 1946 Convention, two representatives explained that, despite the statement by one of the sponsors of that draft resolution that the request was without prejudice to internal constitutional and administrative procedures, their delegations would be obliged to abstain in a separate vote on that provision. One of the two representatives also abstained in the vote on the draft resolution.

16. As regards the position at United Nations Headquarters, reference was made to the fact that the host State was not yet a party to the Convention on the Privileges and Immunities of the United Nations. It was stated that it was anomalous that although the Headquarters Agreement and the 1946 Convention were stated in the former instrument to be complementary, the United States had nevertheless not acceded to the latter. The hope was expressed that the United States would in fact take the necessary steps to become a party to the 1946 Convention and so regularize the situation. Some representatives drew attention to what they considered were other unsatisfactory features of the present arrangements. Besides references to specific incidents which had occurred, the application by the host State of the principle of reciprocity in determining the treatment to be given to the representatives of individual Member States was criticized on the ground that this principle was inappropriate outside the framework of bilateral relations. One representative declared that the practice whereby permanent observer status was given only to the representatives of States which, although not members of the United Nations, were members of one or more of the specialized agencies and were generally recognized by Members of the United Nations, was arbitrary and discriminatory.

17. In replying to the criticisms made regarding the position at United Nations Headquarters, the representative of the United States declared that his country had made, and was making, every effort to solve problems as they arose and to discharge its responsibilities under the Charter and other governing legal instruments, in good faith and to the best of its ability. He denied that his Government had in any way created difficulties hampering the legitimate functioning of the delegation of any Member State. While there were, of course, unavoidable inconveniences and even injuries, which occurred despite the best efforts of governmental authorities to prevent them, these should be sharply distinguished from incidents involving the tacit or deliberate participation of Governments, which constituted the main threat to the viability of the system of privileges and immunities.

18. At the close of the Sixth Committee's discussion of the item at its 1016th meeting on 6 December 1967, the Legal Counsel, speaking as the representative of the Secretary-General, made a statement (see above, document A/C.6/385).

19. At the conclusion of the Legal Counsel's statement, the Chairman proposed that the Committee should not discuss the statement but that this action should not be taken to imply that the Sixth Committee had adopted any position with regard to it. On this understanding, it was unanimously decided that the entire statement should be circulated as a Committee document.

IV. Voting

20. At its 1016th meeting, on 6 December 1967, the Sixth Committee decided to vote first on draft resolution A/C.6/L.635/Rev.1 and Add.1. The representative of Algeria announced that the sponsors of draft resolution A/C.6/L.633 would not insist that it be put to the vote. The representative of Dahomey announced that the sponsors of draft resolution A/C.6/L.634 and Add.1 and 2 would not insist that it be put to the vote if draft resolution A/C.6/L.635/Rev.1 and Add.1 was adopted. The Committee then proceeded to vote on draft resolution A/C.6/L.635/Rev.1 and Add.1.

21. At the request of the representative of Venezuela, a separate vote was taken by roll-call on paragraph 2 of the draft resolution, which was adopted by 84 votes to none, with 4 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Yugoslavia, Zambia.

Against: None.

Abstaining: Botswana, Colombia, Portugal, Venezuela.

22. In a separate vote, requested by the representative of France, paragraph 3 of the draft resolution was adopted by 83 votes to 2, with 2 abstentions.

23. In a roll-call vote requested by the representative of Guinea, the draft resolution as a whole was adopted by 88 votes to none with 1 abstention.

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Lesotho, Liberia, Libya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Venezuela, Yugoslavia, Zambia.

Against: None.

Abstaining: Colombia.

24. Statements in explanation of vote were made before the vote at the 1016th meeting by the representatives of Syria, Australia, the United Arab Republic, Iran, Spain and Venezuela and, following the vote, by the representatives of Guinea, the Ivory Coast and France. At the 1017th meeting of the Committee, on 7 December 1967, the representative of Cameroon stated that by an error his delegation had not been present during the voting but that if it had been present it would have voted for paragraphs 2 and 3 and for the draft resolution as a whole. At the same meeting a statement in explanation of vote was made by the representative of Colombia. The representative of Venezuela also made a statement at that meeting regarding the voting procedure followed by the Sixth Committee with respect to the draft resolution.

Recommendation of the Sixth Committee

25. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

[*Text adopted by the General Assembly without change. See "Resolution adopted by the General Assembly" below.*]

(*b*) Resolution adopted by the General Assembly

At its 1637th plenary meeting, on 18 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 25 above). For the final text, see resolution 2328 (XXII) below.

2328 (XXII). Question of diplomatic privileges and immunities

The General Assembly,

Having considered the item entitled:

"Question of diplomatic privileges and immunities:

"(*a*) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;

"(*b*) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations",

Recognizing the importance of the work of the organs of the United Nations and of conferences convened by it and also of the contribution of the Organization itself and its officials to the maintenance of peaceful relations and co-operation among States,

Conscious that the unimpeded functioning of the diplomatic channels for communication and consultation between Governments is vital to avoid dangerous misunderstanding and friction,

Recognizing that, for the independent exercise of their functions, it is essential that representatives of Member States, the United Nations itself and its officials, as well as diplomatic agents, shall enjoy the necessary privileges and immunities,

Recalling that Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

Recalling further that the 1946 Convention on the Privileges and Immunities of the United Nations [173] confirms and specifies the provisions of Article 105 of the Charter and lays down rules, *inter alia*, regarding the immunity of the property and the inviolability of the premises of the Organization, regarding facilities for its official communications and regarding the privileges and immunities of representatives of Members to organs of the United Nations and conferences convened by it while exercising their functions and during their journey to and from the place of meeting,

Recalling that the rules of international law governing diplomatic relations embodied in the Vienna Convention of 1961 [174] aim at protecting diplomatic missions and diplomatic representatives and otherwise facilitating their functions,

Conscious of its duty to strengthen by every means peaceful relations and co-operation among States,

1. *Deplores* all departures from the rules of international law governing diplomatic privileges and immunities and the privileges and immunities of the Organization;

2. *Urges* States Members of the United Nations which have not yet done so to accede to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

3. *Urges* States Members of the United Nations, whether or not they have acceded to the Convention on the Privileges and Immunities of the United Nations, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to the Organization, to the representatives of Members and to the officials of the Organization;

4. *Urges* States which have not yet done so to ratify or accede to the Vienna Convention on Diplomatic Relations of 18 April 1961;

5. *Urges* States, whether or not they are parties to the Vienna Convention on Diplomatic Relations, to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations, and in particular to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law.

1637th plenary meeting
18 December 1967

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[173] United Nations, *Treaty Series*, vol. 1 (1946), No. 4, p. 15.

[174] *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publications, Sales No.: 62.X.1), p. 82.

B. Decisions, recommendations and reports of a legal character by inter-governmental organizations related to the United Nations

1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Procedure for handling communications in individual cases involving human rights in education, science and culture (72 Ex/29)—Decision 8.3 adopted by the Executive Board at its 77th session [175]

The Executive Board,

1. *Having considered* document 77 Ex/29 concerning the procedure for handling communications on individual cases involving human rights in education, science and culture,

2. *Bearing in mind* the resolutions adopted by the Executive Board at its 30th session (1952) and at its 37th session (1954) postponing any final decision to a later date,

3. *Having considered* the procedure at present followed by the United Nations Commission on Human Rights, in accordance with Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959,

4. *Finds* that UNESCO is not authorized under its Constitution to take any measures in connexion with complaints regarding human rights, which can be entertained only in accordance with the Covenants and Protocols subscribed to by Member States;

5. *Decides*, therefore, that communications addressed to UNESCO in connexion with individual cases alleging a violation of human rights in education, science and culture shall be handled by it in the same manner as is stipulated in Economic and Social Council resolution 728 F (XXVIII), except in cases where the author of the complaint does not wish that his name should be mentioned;

6. *Requests* the Director-General, in accordance with the said procedure to bring the communications in question to the notice of the Special Committee on Discrimination in Education;

7. *Decides* to extend the terms of reference of the Committees for this purpose;

8. *Expresses the hope* that the study of procedures at present being carried out by the United Nations and its specialized agencies will lead in the near future to a satisfactory solution.

2. INTERNATIONAL CIVIL AVIATION ORGANIZATION

Resolution adopted by the Council on nationality and registration of aircraft operated by international operating agencies

The Council,

Considering the provisions of Article 77 of the Convention on International Civil Aviation, the last sentence of which reads: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.",

Considering the Report on this subject of the Legal Committee, Doc 8704-LC/155, 22/9/67, Annex C,

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[175] Extract from document 77 EX/Decisions.

Considering the conclusions of the Legal Committee as expressed in the said Report,

Agreeing that, without any amendment to the Convention on International Civil Aviation, the provisions of the Convention can be made applicable, by a determination of the Council under said Article 77, to aircraft which are not registered on a national basis, such as aircraft "jointly registered" or "internationally registered" (which concepts are defined in Appendix 1 hereto) subject, however, to fulfilment of certain basic criteria, which have been established by the Council,

Holding that a determination by the Council pursuant to, and within the scope of, said Article 77 of the Convention, and made in accordance with the procedures indicated below, will be binding on all Contracting States and that, accordingly, in the case of aircraft which are jointly registered or internationally registered and in respect of which the basic criteria which have been established by the Council are fulfilled, the rights and obligations under the said Convention would be applicable as in the case of nationally registered aircraft of a Contracting State,

Resolves that the process of determination contemplated in said Article 77 shall include the application of the basic criteria which have been established by the Council to each particular plan for joint or international registration which might be brought before it, with appropriate and definite information relating to and describing such plan, by States constituting the international operating agency concerned;

Decides, with regard to the establishment of the basic criteria referred to in the three preceding paragraphs, as follows:

(*a*) In cases of joint registration, to adopt the basic criteria specified in Part I of Appendix 2 hereto;

(*b*) In cases of international registration, to be guided by Part II of Appendix 2 hereto;

Notes, in connection with the foregoing process of determination, that, while the Council has discretion to arrive at such determination as it deems appropriate, in the case of joint registration described in Appendix 3 hereto, there should be little problem in regard to the fulfilment of the basic criteria specified in Part I of Appendix 2 hereto and, therefore, a determination by the Council in such or similar cases should merely be formal and could automatically be given;

Notes also that other cases of joint registration and all cases of international registration may well require different approaches;

Decides that, upon completion of the process of determination as specified above for a particular plan which in the opinion of the Council would satisfy the basic criteria specified in Appendix 2 hereto, the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:

(1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State, and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention shall be applied *mutatis mutandis*;

(2) Without prejudice to the rights of other Contracting States as provided for in C of Appendix 2 hereto and in Note 2 therein, each such aircraft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency;

(3) For the application of Articles 25 and 26 of the Convention, the State which maintains the joint register or the relevant part of the joint register pertaining to a

particular aircraft shall be considered to be the State in which the aircraft is registered, and

Declares that:

(1) This Resolution applies only when all the States constituting the international operating agency are and remain parties to the Chicago Convention.

(2) This Resolution does not apply to the case of an aircraft which, although operated by an international operating agency, is registered on a national basis.

Appendix 1

For the purpose of this Resolution

—the expression "joint registration" indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency, and

—the expression "international registration" denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis but with an international organization having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.

Appendix 2

BASIC CRITERIA

Part I—In the case of *joint registration*

A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.

B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States. (See also Note I below)

C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention. (See also Note 2 below)

D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the aircraft and personnel of the international operating agency when engaged in international air navigation shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

Part II—In the case of *international registration* the Council, in arriving at its determination shall be satisfied that any system of international registration devised by the States constituting the international operating agency gives the other member States of ICAO sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C and D above shall, in any event, be applicable, it being understood that additional criteria may be adopted by the Council.

Note 1: In connection with B above, in the case of joint registration the functions of a State of registration under the Convention (in particular, the issue of certificates of registration and the issue and validation of certificates of airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

Note 2: In connection with C above, and with reference to the undermentioned Articles of the Chicago Convention, it is noted as follows:

Article 7 (Cabotage): The mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area.

Article 9 (Prohibited Areas) and *Article 15* (Airport and Similar Charges): The mere fact of joint or international registration under Article 77 will not affect the application of these Articles.

Article 27 (Patent Claims): The requirement of this Article being that a given State should be not only a party to the Chicago Convention but also a party to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case the interests of that State are not protected by the terms of Article 27.

Appendix 3

In connection with the present Resolution the Council had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

(*a*) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.

(*b*) The joint register may be undivided or consist of several parts. In the former case the register will be maintained by one of the States constituting the international operating agency and in the latter case each part will be maintained by one or other of these States.

(*c*) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.

(*d*) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.

(*e*) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

(*f*) Notwithstanding (*e*) above, the responsibilities of a State of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

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3. INTERNATIONAL TELECOMMUNICATION UNION

Resolution No. 619—Question of the Territory of South West Africa [176]

The Administrative Council,

Noting

that on 11 November 1966, the Government of the Republic of South Africa deposited with the General Secretariat an instrument of accession, on its own behalf and on behalf of the Territory of South West Africa, to the International Telecommunication Convention (Montreux, 1965);

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[176] *Ref.* Docs. 3643, 3689 and 3713/CA22—May 1967.

Noting however

that on 27 October 1966, the General Assembly of the United Nations had adopted Resolution No. 2145 (XXI) under which it decided:

> "that the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations";

Considering

that a majority of the Members of the Union approved the proposal of the Council contained in circular-telegram 15/18 of 18 May 1967;

Resolves

that the Government of the Republic of South Africa no longer has the right to represent the Territory of South-West Africa within the Union;

Instructs the Secretary-General

to bring this Resolution to the attention of Members of the Union and to that of the Secretary-General of the United Nations.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. AGREEMENT ON THE RESCUE OF ASTRONAUTS, THE RETURN OF ASTRONAUTS AND THE RETURN OF OBJECTS LAUNCHED INTO OUTER SPACE.[1] SIGNED AT LONDON, MOSCOW AND WASHINGTON ON 22 APRIL 1968

The Contracting Parties,

Noting the great importance of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which calls for the rendering of all possible assistance to astronauts in the event of accident, distress or emergency landing, the prompt and safe return of astronauts, and the return of objects launched into outer space,

Desiring to develop and give further concrete expression to these duties,

Wishing to promote international co-operation in the peaceful exploration and use of outer space,

Prompted by sentiments of humanity,

Have agreed on the following:

Article 1

Each Contracting Party which receives information or discovers that the personnel of a spacecraft have suffered accident or are experiencing conditions of distress or have made an emergency or unintended landing in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any State shall immediately:

(*a*) Notify the launching authority or, if it cannot identify and immediately communicate with the launching authority, immediately make a public announcement by all appropriate means of communications at its disposal;

(*b*) Notify the Secretary-General of the United Nations, who should disseminate the information without delay by all appropriate means of communication at his disposal.

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[1] By its resolution 2345 (XXII) of 19 December 1967, the General Assembly commended the Agreement and expressed its hope for the widest possible adherence to it. (See p. 139 of this *Yearbook*).

Article 2

If, owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party, it shall immediately take all possible steps to rescue them and render them all necessary assistance. It shall inform the launching authority and also the Secretary-General of the United Nations of the steps it is taking and of their progress. If assistance by the launching authority would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations, the launching authority shall co-operate with the Contracting Party with a view to the effective conduct of search and rescue operations. Such operations shall be subject to the direction and control of the Contracting Party, which shall act in close and continuing consultation with the launching authority.

Article 3

If information is received or it is discovered that the personnel of a spacecraft have alighted on the high seas or in any other place not under the jurisdiction of any State, those Contracting Parties which are in a position to do so shall, if necessary, extend assistance in search and rescue operations for such personnel to assure their speedy rescue. They shall inform the launching authority and the Secretary-General of the United Nations of the steps they are taking and of their progress.

Article 4

If, owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party or have been found on the high seas or in any other place not under the jurisdiction of any State, they shall be safely and promptly returned to representatives of the launching authority.

Article 5

1. Each Contracting Party which receives information or discovers that a space object or its component parts has returned to Earth in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any State, shall notify the launching authority and the Secretary-General of the United Nations.

2. Each Contracting Party having jurisdiction over the territory on which a space object or its component parts has been discovered shall, upon the request of the launching authority and with assistance from that authority if requested, take such steps as it finds practicable to recover the object or component parts.

3. Upon request of the launching authority, objects launched into outer space or their component parts found beyond the territorial limits of the launching authority shall be returned to or held at the disposal of representatives of the launching authority, which shall, upon request, furnish identifying data prior to their return.

4. Notwithstanding paragraphs 2 and 3 of this article, a Contracting Party which has reason to believe that a space object or its component parts discovered in territory under its jurisdiction, or recovered by it elsewhere, is of a hazardous or deleterious nature may so notify the launching authority, which shall immediately take effective steps, under the direction and control of the said Contracting Party, to eliminate possible danger of harm.

5. Expenses incurred in fulfilling obligations to recover and return a space object or its component parts under paragraphs 2 and 3 of this article shall be borne by the launching authority.

Article 6

For the purposes of this Agreement, the term "launching authority" shall refer to the State responsible for launching, or, where an international intergovernmental organization is responsible for launching, that organization, provided that that organization declares its acceptance of the rights and obligations provided for in this Agreement and a majority of the States members of that organization are Contracting Parties to this Agreement and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies.

Article 7

1. This Agreement shall be open to all States for signature. Any State which does not sign this Agreement before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Agreement shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.

3. This Agreement shall enter into force upon the deposit of instruments of ratification by five Governments including the Governments designated as Depositary Governments under this Agreement.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Agreement, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promply inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Agreement, the date of its entry into force and other notices.

6. This Agreement shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article 8

Any State Party to the Agreement may propose amendments to this Agreement. Amendments shall enter into force for each State Party to the Agreement accepting the amendments upon their acceptance by a majority of the States Parties to the Agreement and thereafter for each remaining State Party to the Agreement on the date of acceptance by it.

Article 9

Any State Party to the Agreement may give notice of its withdrawal from the Agreement one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

Article 10

This Agreement, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Agreement shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the indersigned, duly authorized, have signed this Agreement.

2. TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA [2]—DONE AT MEXICO, DISTRITO FEDERAL, ON 14 FEBRUARY 1967

PREAMBLE

In the name of their peoples and faithfully interpreting their desires and aspirations, the Governments of the States which sign the Treaty for the Prohibition of Nuclear Weapons in Latin America,

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on the sovereign equality of States, mutual respect and good neighbourliness,

Recalling that the United Nations General Assembly, in its Resolution 808 (IX), adopted unanimously as one of the three points of a co-ordinate programme of disarmament "the total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type",

Recalling that military denuclearized zones are not an end in themselves but rather a means for achieving general and complete disarmament at a later stage,

Recalling United Nations General Assembly Resolution 1911 (XVIII), which established that the measures that should be agreed upon for the denuclearization of Latin America should be taken "in the light of the principles of the Charter of the United Nations and of regional agreements",

Recalling United Nations General Assembly Resolution 2028 (XX), which established the principle of an acceptable balance of mutual responsibilities and duties for the nuclear and non-nuclear powers, and

Recalling that the Charter of the Organization of American States proclaims that it is an essential purpose of the Organization to strengthen the peace and security of the hemisphere,

Convinced:

That the incalculable destructive power of nuclear weapons has made it imperative that the legal prohibition of war should be strictly observed in practice if the survival of civilization and of mankind itself is to be assured,

That nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian population alike, constitute, through the persistence of the radio-activity they release, an attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable,

That general and complete disarmament under effective international control is a vital matter which all the peoples of the world equally demand,

That the proliferation of nuclear weapons, which seems inevitable unless States, in the exercise of their sovereign rights, impose restrictions on themselves in order to prevent it, would make any agreement on disarmament enormously difficult and would increase the danger of the outbreak of a nuclear conflagration,

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[2] By its resolution 2286 (XXII) of 5 December 1967, the General Assembly welcomed the Treaty with special satisfaction, called upon all States to give their full co-operation to ensure that the régime laid down in it enjoyed universal observance, recommended States which were or might become signatories of the Treaty and those contemplated in Additional Protocol I to strive to take all the measures within their power to ensure that the Treaty speedily obtained the widest possible application among them and invited Powers possessing nuclear weapons to sign and ratify Additional Protocol II as soon as possible (see p. 252 of this *Yearbook*).

That the establishment of militarily denuclearized zones is closely linked with the maintenance of peace and security in the respective regions,

That the military denuclearization of vast geographical zones, adopted by the sovereign decision of the States comprised therein, will exercise a beneficial influence on other regions where similar conditions exist.

That the privileged situation of the signatory States, whose territories are wholly free from nuclear weapons, imposes upon them the inescapable duty of preserving that situation both in their own interests and for the good of mankind,

That the existence of nuclear weapons in any country of Latin America would make it a target for possible nuclear attacks and would inevitably set off, throughout the region, a ruinous race in nuclear weapons which would involve the unjustifiable diversion, for warlike purposes, of the limited resources required for economic and social development,

That the foregoing reasons, together with the traditional peace-loving outlook of Latin America, give rise to an inescapable necessity that nuclear energy should be used in that region exclusively for peaceful purposes, and that the Latin American countries should use their right to the greatest and most equitable possible access to this new source of energy in order to expedite the economic and social development of their peoples,

Convinced finally:

That the military denuclearization of Latin America—being understood to mean the undertaking entered into internationally in this Treaty to keep their territories forever free from nuclear weapons—will constitute a measure which will spare their peoples the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, and will also constitute a significant contribution towards preventing the proliferation of nuclear weapons and a powerful factor for general and complete disarmament, and

That Latin America, faithful to its tradition of universality, must not only endeavour to banish from its homelands the scourge of a nuclear war, but must also strive to promote the well-being and advancement of its peoples, at the same time co-operating in the fulfillment of the ideals of mankind, that is to say, in the consolidation of a permanent peace based on equal rights, economic fairness and social justice for all, in accordance with the principles and purposes set forth in the Charter of the United Nations and in the Charter of the Organization of American States,

Have agreed as follows:

Obligations

Article 1

1. The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

(*a*) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and

(*b*) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.

2. The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.

Definition of the Contracting Parties

Article 2

For the purposes of this Treaty, the Contracting Parties are those for whom the Treaty is in force.

Definition of territory

Article 3

For the purposes of this Treaty, the term "territory" shall include the territorial sea, air space and any other space over which the State exercises sovereignty in accordance with its own legislation.

Zone of application

Article 4

1. The zone of application of this Treaty is the whole of the territories for which the Treaty is in force.

2. Upon fulfillment of the requirements of article 28, paragraph 1, the zone of application of this Treaty shall also be that which is situated in the western hemisphere within the following limits (except the continental part of the territory of the United States of America and its territorial waters): starting at a point located at 35° north latitude, 75° west longitude; from this point directly southward to a point at 30° north latitude, 75° west longitude; from there, directly eastward to a point at 30° north latitude, 50° west longitude; from there, along a loxodromic line to a point at 5° north latitude, 20° west longitude; from there, directly southward to a point at 60° south latitude, 20° west longitude; from there, directly westward to a point at 60° south latitude, 115° west longitude; from there, directly northward to a point at 0 latitude, 115° west longitude; from there, along a loxodromic line to a point at 35° north latitude, 150° west longitude; from there, directly eastward to a point at 35° north latitude, 75° west longitude.

Definition of nuclear weapons

Article 5

For the purposes of this Treaty, a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.

Meeting of signatories

Article 6

At the request of any of the signatory States or if the Agency established by article 7 should so decide, a meeting of all the signatories may be convoked to consider in common questions which may affect the very essence of this instrument, including possible amendments to it. In either case, the meeting will be convoked by the General Secretary.

Organization

Article 7

1. In order to ensure compliance with the obligations of this Treaty, the Contracting Parties hereby establish an international organization to be known as the "Agency for the Prohibition of Nuclear Weapons in Latin America", hereinafter referred to as "the Agency". Only the Contracting Parties shall be affected by its decisions.

2. The Agency shall be responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set forth in this Treaty and to the supervision of compliance with the obligations arising therefrom.

3. The Contracting Parties agree to extend to the Agency full and prompt co-operation in accordance with the provisions of this Treaty, of any agreements they may conclude with the Agency and of any agreements the Agency may conclude with any other international organization or body.

4. The headquarters of the Agency shall be in Mexico City.

Organs

Article 8

1. There are hereby established as principal organs of the Agency a General Conference, a Council and a Secretariat.

2. Such subsidiary organs as are considered necessary by the General Conference may be established within the purview of this Treaty.

The General Conference

Article 9

1. The General Conference, the supreme organ of the Agency, shall be composed of all the Contracting Parties; it shall hold regular sessions every two years, and may also hold special sessions whenever this Treaty so provides or, in the opinion of the Council, the circumstances so require.

2. The General Conference:

(*a*) May consider and decide on any matters or questions covered by this Treaty, within the limits thereof, including those referring to powers and functions of any organ provided for in this Treaty.

(*b*) Shall establish procedures for the control system to ensure observance of this Treaty in accordance with its provisions.

(*c*) Shall elect the Members of the Council and the General Secretary.

(*d*) May remove the General Secretary from office if the proper functioning of the Agency so requires.

(*e*) Shall receive and consider the biennal and special reports submitted by the Council and the General Secretary.

(*f*) Shall initiate and consider studies designed to facilitate the optimum fulfilment of the aims of this Treaty, without prejudice to the power of the General Secretary independently to carry out similar studies for submission to and consideration by the Conference.

(*g*) Shall be the organ competent to authorize the conclusion of agreements with Governments and other international organizations and bodies.

3. The General Conference shall adopt the Agency's budget and fix the scale of financial contributions to be paid by Member States, taking into account the systems and criteria used for the same purpose by the United Nations.

4. The General Conference shall elect its officers for each session and may establish such subsidiary organs as it deems necessary for the performance of its functions.

5. Each Member of the Agency shall have one vote. The decisions of the General Conference shall be taken by a two-thirds majority of the Members present and voting in

the case of matters relating to the control system and measures referred to in article 20, the admission of new Members, the election or removal of the General Secretary, adoption of the budget and matters related thereto. Decisions on other matters, as well as procedural questions and also determination of which questions must be decided by a two-thirds majority, shall be taken by a simple majority of the Members present and voting.

6. The General Conference shall adopt its own rules of procedure.

The Council

Article 10

1. The Council shall be composed of five Members of the Agency elected by the General Conference from among the Contracting Parties, due account being taken of equitable geographic distribution.

2. The Members of the Council shall be elected for a term of four years. However, in the first election three will be elected for two years. Outgoing Members may not be re-elected for the following period unless the limited number of States for which the Treaty is in force so requires.

3. Each Member of the Council shall have one representative.

4. The Council shall be so organized as to be able to function continuously.

5. In addition to the functions conferred upon it by this Treaty and to those which may be assigned to it by the General Conference, the Council shall, through the General Secretary, ensure the proper operation of the control system in accordance with the provisions of this Treaty and with the decisions adopted by the General Conference.

6. The Council shall submit an annual report on its work to the General Conference as well as such special reports as it deems necessary or which the General Conference requests of it.

7. The Council shall elect its officers for each session.

8. The decisions of the Council shall be taken by a simple majority of its Members present and voting.

9. The Council shall adopt its own rules of procedure.

The Secretariat

Article 11

1. The Secretariat shall consist of a General Secretary, who shall be the chief administrative officer of the Agency, and of such staff as the Agency may require. The term of office of the General Secretary shall be four years and he may be re-elected for a single additional term. The General Secretary may not be a national of the country in which the Agency has its headquarters. In case the office of General Secretary becomes vacant, a new election shall be held to fill the office for the remainder of the term.

2. The staff of the Secretariat shall be appointed by the General Secretary, in accordance with rules laid down by the General Conference.

3. In addition to the functions conferred upon him by this Treaty and to those which may be assigned to him by the General Conference, the General Secretary shall ensure, as provided by article 10, paragraph 5, the proper operation of the control system established by this Treaty, in accordance with the provisions of the Treaty and the decisions taken by the General Conference.

4. The General Secretary shall act in that capacity in all meetings of the General Conference and of the Council and shall make an annual report to both bodies on the work of the Agency and any special reports requested by the General Conference or the Council or which the General Secretary may deem desirable.

5. The General Secretary shall establish the procedures for distributing to all Contracting Parties information received by the Agency from governmental sources and such information from non-governmental sources as may be of interest to the Agency.

6. In the performance of their duties the General Secretary and the staff shall not seek or receive instructions from any Government or from any other authority external to the Agency and shall refrain from any action which might reflect on their position as international officials responsible only to the Agency; subject to their responsibility to the Agency, they shall not disclose any industrial secrets or other confidential information coming to their knowledge by reason of their official duties in the Agency.

7. Each of the Contracting Parties undertakes to respect the exclusively international character of the responsibilities of the General Secretary and the staff and not to seek to influence them in the discharge of their responsibilities.

Control system

Article 12

1. For the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with article 1, a control system shall be established which shall be put into effect in accordance with the provisions of articles 13-18 of this Treaty.

2. The control system shall be used in particular for the purpose of verifying:

(*a*) That devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons,

(*b*) That none of the activities prohibited in article 1 of this Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduced from abroad, and

(*c*) That explosions for peaceful purposes are compatible with article 18 of this Treaty.

IAEA safeguards

Article 13

Each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities. Each Contracting Party shall initiate negotiations within a period of 180 days after the date of the deposit of its instrument of ratification of this Treaty. These agreements shall enter into force, for each Party, not later than eighteen months after the date of the initiation of such negotiations except in case of unforeseen circumstances or *force majeure*.

Report of the Parties

Article 14

1. The Contracting Parties shall submit to the Agency and to the International Atomic Energy Agency, for their information, semi-annual reports stating that no activity prohibited under this Treaty has occurred in their respective territories.

2. The Contracting Parties shall simultaneously transmit to the Agency a copy of any report they may submit to the International Atomic Energy Agency which relates to matters that are the subject of this Treaty and to the application of safeguards.

3. The Contracting Parties shall also transmit to the Organization of American States, for its information, any reports that may be of interest to it, in accordance with the obligations established by the Inter-American System.

Special reports requested by the General Secretary

Article 15

1. With the authorization of the Council, the General Secretary may request any of the Contracting Parties to provide the Agency with complementary or supplementary information regarding any event or circumstance connected with compliance with this Treaty, explaining his reasons. The Contracting Parties undertake to co-operate promptly and fully with the General Secretary.

2. The General Secretary shall inform the Council and the Contracting Parties forthwith of such requests and of the respective replies.

Special inspections

Article 16

1. The International Atomic Energy Agency and the Council established by this Treaty have the power of carrying out special inspections in the following cases:

(*a*) In the case of the International Atomic Energy Agency, in accordance with the agreements referred to in article 13 of this Treaty;

(*b*) In the case of the Council:

(i) When so requested, the reasons for the request being stated, by any Party which suspects that some activity prohibited by this Treaty has been carried out or is about to be carried out, either in the territory of any other Party or in any other place on such latter Party's behalf, the Council shall immediately arrange for such an inspection in accordance with article 10, paragraph 5.

(ii) When requested by any Party which has been suspected of or charged with having violated this Treaty, the Council shall immediately arrange for the special inspection requested in accordance with article 10, paragraph 5.

The above requests will be made to the Council through the General Secretary.

2. The costs and expenses of any special inspection carried out under paragraph 1, sub-paragraph (*b*), sections (i) and (ii) of this article shall be borne by the requesting Party or Parties, except where the Council concludes on the basis of the report on the special inspection that, in view of the circumstances existing in the case, such costs and expenses should be borne by the Agency.

3. The General Conference shall formulate the procedures for the organization and execution of the special inspections carried out in accordance with paragraph 1, sub-paragraph (*b*), sections (i) and (ii) of this article.

4. The Contracting Parties undertake to grant the inspectors carrying out such special inspections full and free access to all places and all information which may be necessary for the performance of their duties and which are directly and intimately connected with the suspicion of violation of this Treaty. If so requested by the authorities of the Contracting Party in whose territory the inspection is carried out, the inspectors designated by the General Conference shall be accompanied by representatives of said authorities, provided that this does not in any way delay or hinder the work of the inspectors.

5. The Council shall immediately transmit to all the Parties, through the General Secretary, a copy of any report resulting from special inspections.

6. Similarly, the Council shall send through the General Secretary to the Secretary-General of the United Nations, for transmission to the United Nations Security Council and General Assembly, and to the Council of the Organization of American States, for its information, a copy of any report resulting from any special inspection carried out in accordance with paragraph 1, sub-paragraph (*b*), sections (i) and (ii) of this article.

7. The Council may decide, or any Contracting Party may request, the convening of a special session of the General Conference for the purpose of considering the reports resulting from any special inspection. In such a case, the General Secretary shall take immediate steps to convene the special session requested.

8. The General Conference, convened in special session under this article, may make recommendations to the Contracting Parties and submit reports to the Secretary-General of the United Nations to be transmitted to the United Nations Security Council and the General Assembly.

Use of nuclear energy for peaceful purposes

Article 17

Nothing in the provisions of this Treaty shall prejudice the rights of the Contracting Parties, in conformity with this Treaty, to use nuclear energy for peaceful purposes, in particular for their economic development and social progress.

Explosions for peaceful purposes

Article 18

1. The Contracting Parties may carry out explosions of nuclear devices for peaceful purposes—including explosions which involve devices similar to those used in nuclear weapons—or collaborate with third parties for the same purpose, provided that they do so in accordance with the provisions of this article and the other articles of the Treaty, particularly articles 1 and 5.

2. Contracting Parties intending to carry out, or to co-operate in carrying out, such an explosion shall notify the Agency and the International Atomic Energy Agency and the International Atomic Energy Agency, as far in advance as the circumstances require, of the date of the explosion and shall at the same time provide the following information:

(*a*) The nature of the nuclear device and the source from which it was obtained,

(*b*) The place and purpose of the planned explosion,

(*c*) The procedures which will be followed in order to comply with paragraph 3 of this article,

(*d*) The expected force of the device, and

(*e*) The fullest possible information on any possible radio-active fall-out that may result from the explosion or explosions, and measures which will be taken to avoid danger to the population, flora, fauna and territories of any other Party or Parties.

3. The General Secretary and the technical personnel designated by the Council and the International Atomic Energy Agency may observe all the preparations, including the explosion of the device, and shall have unrestricted access to any area in the vicinity of the site of the explosion in order to ascertain whether the device and the procedures followed during the explosion are in conformity with the information supplied under paragraph 2 of this article and the other provisions of this Treaty.

4. The Contracting Parties may accept the collaboration of third parties for the purpose set forth in paragraph 1 of the present article, in accordance with paragraphs 2 and 3 thereof.

Relations with other international organizations

Article 19

1. The Agency may conclude such agreements with the International Atomic Energy Agency as are authorized by the General Conference and as it considers likely to facilitate the efficient operation of the control system established by this Treaty.

2. The Agency may also enter into relations with any international organization or body, especially any which may be established in the future to supervise disarmament or measures for the control of armaments in any part of the world.

3. The Contracting Parties may, if they see fit, request the advice of the Inter-American Nuclear Energy Commission on all technical matters connected with the application of this Treaty with which the Commission is competent to deal under its Statute.

Measures in the event of violation of the Treaty

Article 20

1. The General Conference shall take note of all cases in which, in its opinion, any Contracting Party is not complying fully with its obligations under this Treaty and shall draw the matter to the attention of the Party concerned, making such recommendations as it deems appropriate.

2. If, in its opinion, such non-compliance constitutes a violation of this Treaty which might endanger peace and security, the General Conference shall report thereon simultaneously to the United Nations Security Council and the General Assembly through the Secretary-General of the United Nations, and to the Council of the Organization of American States. The General Conference shall likewise report to the International Atomic Energy Agency for such purposes as are relevant in accordance with its Statute.

United Nations and Organization of American States

Article 21

None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the Parties under the Charter of the United Nations or, in the case of States Members of the Organization of American States, under existing regional treaties.

Privileges and immunities

Article 22

1. The Agency shall enjoy in the territory of each of the Contracting Parties such legal capacity and such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. Representatives of the Contracting Parties accredited to the Agency and officials of the Agency shall similarly enjoy such privileges and immunities as are necessary for the performance of their functions.

3. The Agency may conclude agreements with the Contracting Parties with a view to determining the details of the application of paragraphs 1 and 2 of this article.

Notification of other agreements

Article 23

Once this Treaty has entered into force, the Secretariat shall be notified immediately of any international agreement concluded by any of the Contracting Parties on matters

with which this Treaty is concerned; the Secretariat shall register it and notify the other Contracting Parties.

Settlement of disputes

Article 24

Unless the Parties concerned agree on another mode of peaceful settlement, any question or dispute concerning the interpretation or application of this Treaty which is not settled shall be referred to the International Court of Justice with the prior consent of the Parties to the controversy.

Signature

Article 25

1. This Treaty shall be open indefinitely for signature by:

(*a*) All the Latin American Republics, and

(*b*) All other sovereign States situated in their entirety south of latitude 35° north in the western hemisphere; and, except as provided in paragraph 2 of this article, all such States which become sovereign, when they have been admitted by the General Conference.

2. The General Conference shall not take any decision regarding the admission of a political entity part or all of whose territory is the subject, prior to the date when this Treaty is opened for signature, of a dispute or claim between an extra-continental country and one or more Latin American States, so long as the dispute has not been settled by peaceful means.

Ratification and deposit

Article 26

1. This Treaty shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

2. This Treaty and the instruments of ratification shall be deposited with the Government of the Mexican United States, which is hereby designated the Depositary Government.

3. The Depositary Government shall send certified copies of this Treaty to the Governments of signatory States and shall notify them of the deposit of each instrument of ratification.

Reservations

Article 27

This Treaty shall not be subject to reservations.

Entry into force

Article 28

1. Subject to the provisions of paragraph 2 of this article, this Treaty shall enter into force among the States that have ratified it as soon as the following requirements have been met:

(*a*) Deposit of the instruments of ratification of this Treaty with the Depositary Government by the Governments of the States mentioned in article 25 which are in existence on the date when this Treaty is opened for signature and which are not affected by the provisions of article 25, paragraph 2;

(*b*) Signature and ratification of Additional Protocol I annexed to this Treaty by all extra-continental or continental States having *de jure* or *de facto* international responsibility for territories situated in the zone of application of the Treaty;

(*c*) Signature and ratification of Additional Protocol II annexed to this Treaty by all powers possessing nuclear weapons;

(*d*) Conclusion of bilateral or multilateral agreements on the application of the Safeguards System of the International Atomic Energy Agency in accordance with article 13 of this Treaty.

2. All signatory States shall have the imprescriptible right to waive, wholly or in part, the requirements laid down in the preceding paragraph. They may do so by means of a declaration which shall be annexed to their respective instrument of ratification and which may be formulated at the time of deposit of the instrument or subsequently. For those States which exercise this right, this Treaty shall enter into force upon deposit of the declaration, or as soon as those requirements have been met which have not been expressly waived.

3. As soon as this Treaty has entered into force in accordance with the provisions of paragraph 2 for eleven States, the Depositary Government shall convene a preliminary meeting of those States in order that the Agency may be set up and commence its work.

4. After the entry into force of this Treaty for all the countries of the zone, the rise of a new power possessing nuclear weapons shall have the effect of suspending the execution of this Treaty for those countries which have ratified it without waiving requirements of paragraph 1, sub-paragraph (*c*) of this article, and which request such suspension; the Treaty shall remain suspended until the new power, on its own initiative or upon request by the General Conference, ratifies the annexed Additonal Protocol II.

Amendments

Article 29

1. Any Contracting Party may propose amendments to this Treaty and shall submit its proposals to the Council through the General Secretary, who shall transmit them to all the other Contracting Parties and, in addition, to all other signatories in accordance with article 6. The Council, through the General Secretary, shall immediately following the meeting of signatories convene a special session of the General Conference to examine the proposals made, for the adoption of which a two-thirds majority of the Contracting Parties present and voting shall be required.

2. Amendments adopted shall enter into force as soon as the requirements set forth in article 28 of this Treaty have been complied with.

Duration and denunciation

Article 30

1. This Treaty shall be of a permanent nature and shall remain in force indefinitely, but any Party may denounce it by notifying the General Secretary of the Agency if, in the opinion of the denouncing State, there have arisen or may arise circumstances connected with the content of this Treaty or of the annexed Additional Protocols I and II which affect its supreme interests or the peace and security of one or more Contracting Parties.

2. The denunciation shall take effect three months after the delivery to the General Secretary of the Agency of the notification by the Government of the signatory State concerned. The General Secretary shall immediately communicate such notification to the other Contracting Parties and to the Secretary-General of the United Nations for the

information of the United Nations Security Council and the General Assembly. He shall also communicate it to the Secretary-General of the Organization of American States.

Authentic texts and registration

Article 31

This Treaty, of which the Spanish, Chinese, English, French, Portuguese and Russian texts are equally authentic, shall be registered by the Depository Government in accordance with article 102 of the United Nations Charter. The Depository Government shall notify the Secretary-General of the United Nations of the signatures, ratifications and amendments relating to this Treaty and shall communicate them to the Secretary-General of the Organization of American States for its information.

TRANSITIONAL ARTICLE

Denunciation of the declaration referred to in article 28, paragraph 2, shall be subject to the same procedures as the denunciation of this Treaty, except that it will take effect on the date of delivery of the respective notification.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Treaty on behalf of their respective Governments.

DONE at Mexico, Distrito Federal, on the Fourteenth day of February, one thousand nine hundred and sixty-seven.

ADDITIONAL PROTOCOL I

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards strengthening a world at peace, based on mutual respect and sovereign equality of States,

Have agreed as follows:

Article 1. To undertake to apply the statute of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, *de jure* or *de facto*, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty.

Article 2. The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the provisions regarding ratification and denunciation contained in the Treaty shall be applicable to it.

Article 3. This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

In witness whereof the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, sign this Protocol on behalf of their respective Governments.

ADDITIONAL PROTOCOL II

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments,

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons,

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards promoting and strengthening a world at peace, based on mutual respect and sovereign equality of States,

Have agreed as follows:

Article 1. The statute of denuclearization of Latin America in respect of warlike purposes, as defined, delimited and set forth in the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this instrument is an annex, shall be fully respected by the Parties to this Protocol in all its express aims and provisions.

Article 2. The Governments represented by the undersigned Plenipotentiaries undertake, therefore, not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof.

Article 3. The Governments respresented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

Article 4. The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the definitions of territory and nuclear weapons set forth in articles 3 and 5 of the Treaty shall be applicable to this Protocol, as well as the provisions regarding ratification, reservations, denunciation, authentic texts and registration contained in articles 26, 27, 30 and 31 of the Treaty.

Article 5. This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers, found in good and due form, hereby sign this Additional Protocol on behalf of their respective Governments.

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3. PROTOCOL RELATING TO THE STATUS OF REFUGEES[3]— DONE AT NEW YORK ON 31 JANUARY 1967[4]

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 [5] (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I

General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 nclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . ." and the words ". . . as a result of such events", in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (*a*) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

Article II

Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to this Protocol undertake to provide them, in the appropriate form, with the information and statistical data requested concerning:

(*a*) The condition of refugees;

(*b*) The implementation of the present Protocol;

(*c*) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

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[3] Entered into force on 4 October 1967.

[4] See *Juridical Yearbook*, *1966*, pp. 242-243.

[5] United Nations, *Treaty Series*, vol. 189, p. 137.

Article III

Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V

Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

Federal clause

In the case of a federal or non-unitary State, the following provisions shall apply:

(*a*) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the federal Government shall to this extent be the same as those of States Parties which are not federal States;

(*b*) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(*c*) A federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

Reservations and declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1,

3, 4, 16 (1) and 33 whereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declaration made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI

Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

A. R. PAZHWAK
President of the General Assembly of the United Nations

U THANT
Secretary-General of the United Nations

B. Treaties concerning international law concluded under the auspices of inter-governmental organizations related to the United Nations

1. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Amendments to Article V.1 of the FAO Constitution relative to the increase in the number of Council seats[6] and to alternates attending Council sessions[7]

Article V*

1. A Council of the Organization consisting of [thirty-one] *thirty-four* Member Nations shall be elected by the Conference . . . Each Member of the Council may appoint [an alternate] *alternates*, associates and advisors to its representative.

. . .

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2. INTERNATIONAL CIVIL AVIATION ORGANIZATION

International Agreement on the procedure for the establishment of tariffs for scheduled air services.[8] Opened for signature in Paris on 10 July 1967.

THE GOVERNMENTS SIGNATORY HERETO,

CONSIDERING that the establishment of tariffs for scheduled international air services is governed in different ways by numerous bilateral air transport agreements, or is not provided for at all between States,

DESIRING that the principles and procedures for establishing such tariffs should be uniform and that wherever possible use should be made of the procedures of the International Air Transport Association,

HAVE AGREED AS FOLLOWS:

Article 1

The present Agreement:

(*a*) shall establish the tariff provisions applicable to scheduled international air services between two States Parties to the present Agreement:

(i) when such States have no bilateral agreement between them to cover such services,

(ii) when such a bilateral agreement exists but contains no tariff clause;

(*b*) shall replace the tariff clauses in any bilateral agreement already concluded between two States Parties to the present Agreement for so long as the latter remains in force between the two States.

Article 2

(1) In the following paragraphs, the term "tariff" means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail.

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* Italic words to be added, bracketed words to be deleted.

[6] FAO Conference resolution 12/67.

[7] FAO Conference resolution 13/67.

[8] Prepared under the auspices of the European Civil Aviation Conference.

(2) The tariffs to be charged by the airlines of one Party for carriage to or from the territory of the other Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, and the tariffs of other airlines.

(3) The tariffs referred to in paragraph 2 of this Article shall, if possible, be agreed by the airlines concerned of both Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

(4) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Parties at least ninety days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.

(5) This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty days from the date of submission, in accordance with paragraph 4 of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 4, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty days.

(6) If a tariff cannot be agreed in accordance with paragraph 3 of this Article, or if, during the period applicable in accordance with paragraph 5 of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of any tariff agreed in accordance with the provisions of paragraph 3, the aeronautical authorities of the two Parties shall, after consultation with the aeronautical authorities of any other State whose advice they consider useful, endeavour to determine the tariff by mutual agreement.

(7) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 4 of this Article, or on the determination of any tariff under paragraph 6 of this Article, the dispute shall be settled in accordance with the provisions in the relevant bilateral air transport agreement for the settlement of disputes.

(8) A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve months after the date on which it otherwise would have expired.

Article 3

(1) If there is no bilateral air transport agreement between the two Parties, or if there is a bilateral agreement which does not include provisions for the settlement of disputes, and a dispute arises of the kind referred to in paragraph 7 of Article 2, the two Parties may agree to refer the dispute for settlement to some person or body, or, at the request of either of them, they may agree to refer the matter to a tribunal of three arbitrators.

(2) To constitute such a tribunal, each of the Parties shall nominate an arbitrator within a period of sixty days from the date of the agreement of the other Party to the request for arbitration, and the third arbitrator shall be appointed by the two so nominated within a further period of sixty days from the nomination of the second arbitrator.

(3) If within the respective periods, either of the Parties fails to nominate an arbitrator, or the third arbitrator is not appointed, the President of the Council of the International Civil Aviation Organization may be requested by either Party to complete the tribunal. In such case, the third arbitrator shall be a national of a third State and act as president of the tribunal.

(4) Unless the Parties have otherwise agreed, the tribunal shall determine its own procedure. All its decisions shall be reached by a majority of votes and shall be final.

Article 4

Without prejudice to paragraph 7 of Article 2 and to Article 3, any dispute between two or more Parties concerning the interpretation or application of the present Agreement which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article 5

The present Agreement shall be open for signature on behalf of any State Member of the European Civil Aviation Conference.

Article 6

(1) The present Agreement shall be subject to ratification or approval by the signatory States.

(2) The instruments of ratification and notifications of approval shall be deposited with the International Civil Aviation Organization.

Article 7

(1) The present Agreement shall enter into force on the thirtieth day after five States Members of the European Civil Aviation Conference have either deposited their instruments of ratification or notified their approval.

(2) It shall enter into force for each State ratifying or approving it thereafter on the thirtieth day after the deposit of its instrument of ratification or its notification of approval.

Article 8

(1) The present Agreement shall, after it has entered into force, be open for accession by any State Member of the United Nations or of any of the Specialized Agencies.

(2) The accession of a State shall be effected by the deposit of an instrument of accession with the International Civil Aviation Organization and shall take effect on the thirtieth day after the date of deposit.

Article 9

The present Agreement may be denounced by any Party by notification addressed to the International Civil Aviation Organization. Denunciation shall take effect one year from the receipt of the said notification.

Article 10

(1) Any Party may, at the time of signature, ratification or approval of the present Agreement or accession thereto, declare that it does not consider itself bound by Article 4. The other Parties shall not be bound by that Article with respect to any Party which has made such a reservation.

(2) Any Party which has made a reservation in accordance with the preceding paragraph may at any time withdraw it by notification to the International Civil Aviation Organization.

Article 11

(1) As soon as the present Agreement enters into force, it shall be registered with the Secretary-General of the United Nations by the International Civil Aviation Organization.

(2) The International Civil Aviation Organization shall transmit a certified copy of the present Agreement to all States Members of the United Nations or of any of the Specialized Agencies.

(3) The International Civil Aviation Organization shall notify all States Members of the United Nations or of any of the Specialized Agencies of:

(*a*) any signature of the present Agreement;

(*b*) the deposit of any instrument of ratification, any notification of approval or any instrument of accession and the date thereof;

(*c*) any notification of denunciation;

(*d*) any reservation notified in accordance with Article 10 and any withdrawal of such a reservation.

IN WITNESS WHEREOF the undersigned, having been duly authorized, have signed the present Agreement.

DONE at Paris, the tenth day of July one thousand nine hundred and sixty-seven, in a single copy in the English, French and Spanish languages, all three texts being equally authoritative.

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3. WORLD METEOROLOGICAL ORGANIZATION

Amendments to the Convention of the World Meteorological Organization:[9] resolutions adopted by the fifth Congress

(*a*) RESOLUTION 1 (CG-V) ADOPTED ON 11 APRIL 1967: AMENDMENTS TO ARTICLES 4 (*b*) AND 12 (*c*) OF THE WMO CONVENTION

The Congress,

Considering:

(1) That the number of Members of the Organization has considerably increased,

(2) The advisability of having on the Executive Committee wider consultation, thus not only improving the representation of the Regions, but also increasing the number of the Directors of Meteorological Services taking an active part in the operation of the Organization,

Decides:

(1) That the text of Article 4 (*b*) of the Convention be replaced by the following:

"(*b*) There shall be a President and three Vice-Presidents of the Organization who shall also be President and Vice-Presidents of the Congress and of the Executive Committee.";

(2) That the first sentence of Article 12 (*c*) of the Convention be replaced by the following:

[9] United Nations, *Treaty Series*, vol. 77, p. 143.

"(*c*) Fourteen Directors of Meteorological Services of Members of the Organization, who can be replaced at sessions by alternates, provided . . .";

(3) That these amendments shall come into force on 11 April 1967.

(*b*) RESOLUTION 2 (CG-V) ADOPTED ON 26 APRIL 1967: AMENDMENT TO THE FRENCH TEXT OF ARTICLE 13 (*a*) OF THE WMO CONVENTION

The Congress,

Noting:

(1) That there is a discrepancy between the English and French texts of Article 13 (*a*),

(2) That the English text of this article represents the will and intent of Members,

Decides that the French text of Article 13 (*a*) be replaced by the following:

" *a*) de mettre à exécution les décisions prises par les Membres de l'Organisation, soit au Congrès, soit par correspondance, et de conduire les activités de l'Organisation conformément à l'esprit de ces décisions."

(*c*) RESOLUTION 3 (CG-V) ADOPTED ON 26 APRIL 1967: AMENDMENTS TO THE WMO CONVENTION

The Congress,

Noting:

(1) Resolution 2 (Cg-IV),

(2) Resolution 1 (Cg-V),

Considering that the Convention as the principal working instrument of the Organization should be kept up to date in order that its efficiency may not be impaired,

Having examined the amendments proposed by Members in accordance with the provisions of Article 27 of the Convention and by the Executive Committee,

Decides:

(1) To approve the amendments to the Convention of the Organization listed in the annex to this resolution;

(2) That these amendments come into force on 28 April 1967.

Annex to Resolution 3 (Cg-V)

AMENDMENTS TO THE CONVENTION OF THE WORLD METEOROLOGICAL ORGANIZATION

(1) Amend the text of Article 2 (Purposes), paragraph (*d*), to read:

"(*d*) To further the application of meteorology to aviation, shipping, water problems, agriculture, and other human activities; and"

(2) Insert a new article in Part IV of the Convention, entitled "Organization", after the present Article 4 to read:

"Article 5

The activities of the Organization and the conduct of its affairs shall be decided by the Members of the Organization.

(*a*) Such decisions shall normally be taken by Congress in session;

(*b*) However, except on matters reserved in the Convention for decisions by Congress, decisions may also be taken by Members by correspondence, when urgent action is required

between sessions of Congress. Such a vote shall be taken upon receipt by the Secretary-General of the request of a majority of the Members of the Organization, or when so decided by the Executive Committee.

Such votes shall be conducted in accordance with Articles 11 and 12 of the Convention and with the General Regulations (hereinafter referred to as the "Regulations")."

The addition of this new article requires all following articles to be renumbered and all references to these articles throughout in the Convention to be corrected accordingly.

(3) Amend Article 9* (Meetings) to read:

"Article 10—Sessions

(*a*) Congress shall normally be convened at intervals as near as possible to four years, at a place and on a date to be decided by the Executive Committee;

(*b*) An extraordinary Congress may be convened by decision of the Executive Committee;

(*c*) On receipt of request for an extraordinary Congress from one third of the Members of the Organization, the Secretary-General shall conduct a vote by correspondence and if a simple majority of the Members are in favour, an extraordinary Congress shall be convened.

Also, as a consequence of this amendment, add Article 10 (*c*) to the enumeration of articles contained in the last sentence of paragraph (*b*) of Article 10* (Voting).

(4) Amend the first sentence of Article 13* (Functions) [in Part VII (Executive Committee)] to read:

"The Executive Committee is the executive body of the Organization and is responsible to Congress for the co-ordination of the programmes of the Organization and for the utilization of its budgetary resources in accordance with the decisions of Congress."

(5) Insert the following new sub-paragraph (*b*) in the text of Article 13* (Functions) [in Part VII (Executive Committee)] and change the letters identifying the present sub-paragraphs (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) accordingly:

"(*b*) To examine the programme and budget estimates for the following financial period prepared by the Secretary-General and to present its observations and its recommendations thereon to Congress."

(6) Insert in Article 15* (Voting) [in Part VII (Executive Committee)] the following new paragraph as paragraph (*b*):

"Between sessions, the Executive Committee may vote by correspondence. Such votes shall be conducted in accordance with Articles 16 (*a*) and 17 of the Convention."

(7) Amend Article 32* to read:

"Article 33

Subject to the provisions of Article 3 of the present Convention, accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America, which shall notify each Member of the Organization thereof."

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* Pre-amendment numbering of articles, as given in the 1963 edition of the "Basic Documents", WMO Publication No. 15 BD.1.

Chapter V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations [1]

1. JUDGEMENT NO. 104 (14 APRIL 1967): [2] GILLEAD v. SECRETARY-GENERAL OF THE UNITED NATIONS

Summary dismissal for serious misconduct of a staff member holding a permanent appointment

The applicant was summarily dismissed for serious misconduct—a dismissal which, by definition, dispenses with referral to the Joint Disciplinary Committee—on the grounds that, during the twentieth session of the General Assembly, he had circulated through the United Nations distribution channel to delegations of the Member States copies of an anonymous paper bearing close resemblance to General Assembly documents and containing information regarding internal administrative matters and a proposal for General Assembly action. He requested the Tribunal to rescind the decision by which the Secretary-General had dismissed him.

The Tribunal rejected the application. It recalled that, according to its earlier judgements, the conception of serious misconduct had been introduced to deal with acts incompatible with continued membership of the staff and that the disciplinary procedure should be dispensed with only in those cases where the misconduct was patent and where the interest of the service required immediate and final dismissal. The Tribunal concluded from an examination of the facts of the case that there had been both patent and serious misconduct and that it was unable to disagree with the summary dismissal ordered by the respondent.

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nation is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. Article 14 of the Statute states that the competence of the Tribunal may be extended to any specialized agency upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. By the end of 1967, two agreements of general scope, dealing with the non-observance of contracts of employment and of terms of appointment, had been concluded, pursuant to the above provision, with two specialized agencies: The International Civil Aviation Organization; the Inter-Governmental Maritime Consultative Organization. In addition, agreements limited to applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund had been concluded with the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the International Civil Aviation Organization, the World Meteorological Organization and the International Atomic Energy Agency.

The Tribunal is open not only to any staff member, even after his employment has ceased, but also to any person who has succeeded to the staff member's rights on his death, or who can show that he is entitled to rights under any contract or terms of appointment.

[2] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; L. Ignacio-Pinto, Member.

2. JUDGEMENT NO. 105 (17 APRIL 1967):[3] FRANCIS v. SECRETARY-GENERAL OF THE UNITED NATIONS

Request for rescission of a decision of the Joint Appeals Board ruling that an appeal was not receivable

The applicant lodged an appeal with the Joint Appeals Board against the termination of her appointment in the secretariat of the Rangoon office of the Technical Assistance Board and the Joint Appeals Board decided not to entertain the appeal because it had been lodged after the expiry of the time limit laid down in staff rule 111.3. The applicant requested the Tribunal to rescind the Board's decision.

The Tribunal concluded that the part of staff rule 111.3 regarding time limits applied only to staff members at Headquarters. On the basis of an agreement between the respondent and the applicant requesting the Board to consider the appeal on its merits, the Tribunal held that it was competent to hear the application on the substance and decided that, unless the parties settled the matter, the applicant might file with the Tribunal an explanatory memorandum and pleas dealing both with the merits of and the time limits applicable to the case.

3. JUDGEMENT NO. 106 (20 APRIL 1967):[4] VASSEUR v. SECRETARY-GENERAL OF THE UNITED NATIONS

Withdrawal, for budgetary reasons, of an offer of employment made to the applicant and accepted by him

Following the rescission, for budgetary reasons, of an offer of employment made to the applicant and accepted by him, the respondent had granted the latter an indemnity equal to that which he would have received if he had entered upon his duties and if his appointment had then been terminated immediately, or the approximate equivalent of three and one half months' salary. The applicant requested the Tribunal to rescind that decision and to fix the compensation at the total salary and allowances which he would have received during the full duration of his contract.

The respondent having raised the question of the receivability of the application, asserting that the applicant had never become a member of the Organization, the Tribunal stated that a real contract by which the respondent undertook to employ the applicant had been concluded between the parties and that, since the contract was related to the appointment procedure laid down by the Staff Regulations and Staff Rules, it was not open to dispute that the issue was one which the Tribunal must resolve on the basis of rules of law. As to the substance, the Tribunal, in order to determine the bases on which the compensation should be fixed, considered the scope of the commitments made, the conditions in which they had not been executed, and the damages actually suffered by the applicant, and awarded the latter the sum of $1,000 in addition to the indemnity offered by the respondent.

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[3] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Ventakaraman, Vice-President; L. Ignacio-Pinto, Alternate Member.

[4] Mme P. Bastid, President; the Lord Crook, Vice-President; F. T. P. Plimpton, Member; L. Ignacio-Pinto, Alternate Member.

4. JUDGEMENT NO. 107 (21 APRIL 1967):[5] MISS B. v. SECRETARY-GENERAL OF THE UNITED NATIONS

Non-renewal of a fixed-term appointment on medical grounds

The applicant requested the Tribunal principally to rescind the decision of the Secretary-General under which her fixed-term appointment had not been extended on medical grounds and to order the adoption of a proper medical procedure under which the staff member concerned and the Administration would each appoint a doctor and those two doctors would in turn nominate a third doctor to constitute a panel to consider cases of termination for reasons of health.

The Tribunal rejected the request. It pointed out that the Medical Director responsible for the application of the medical standards which staff members were required to meet before appointment had found the applicant suitable, medically, for a short-term appointment only, and considered that it was not competent to enter into the merits of the conclusion reached by the Medical Director. As for the medical procedure requested by the applicant, the Tribunal recalled that in earlier judgements it had emphasized the need for a proper medical procedure in cases where the staff member concerned contested the medical opinion of the Administration, but it endorsed the distinction made by the Joint Appeals Board between a medical determination affecting a staff member's acquired rights, such as in the matter of termination of a permanent appointment for health reasons, and a medical finding for the purpose of determining the eligibility of a candidate for an appointment or an extension of appointment. In the former case, due process might require the securing of an independent medical opinion, whereas in the latter case, a candidate had no inherent right to employment.

As the Tribunal ordered, the name of the applicant is omitted from the published versions of the Judgement.

5. JUDGEMENT NO. 108 (18 OCTOBER 1967):[6] KHAMIS v. UNITED NATIONS JOINT STAFF PENSION BOARD

Request by a staff member of FAO that his prior period of employment be restored as pensionable service

The applicant, a staff member of the United Nations—and a participant in the Joint Staff Pension Fund—from 1949 to 1953, had joined FAO in 1958 and thereby re-entered into participation in the Pension Fund. In 1959, he submitted to the FAO Pension Fund Committee a request that his previous contributory service credit should be restored to him. His request was denied under article XII of the Pension Fund regulations in force at the time for the reason that his participation in the Pension Fund had been interrupted by a period of more than three years. An amendment to article XII having deleted the condition relating to the length of interruption of service in 1963, the applicant made another request which the Pension Board rejected on the ground that the new text of article XII could not be applied retroactively.

The Tribunal, to which the case was referred, found that by virtue of the new text of article XII the applicant was entitled to restoration of his prior service. It considered that the construction to be placed on that new text was that the rule applied to participants in

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[5] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; L. Ignacio-Pinto, Alternate Member.

[6] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; Z. Rossides, Alternate Member.

the Fund generally, whether they joined the Pension Fund before or after the effective date of the amendment. It pointed out the absurdity and the inequities to which restricted application of article XII only to staff members who rejoined after the effective date of the amendment would lead. The Tribunal also examined the scope of article XXXVII of the Pension Fund Regulations concerning amendments and found that neither the text of that article nor the principles governing non-retroactivity contradicted the application of the new article XII to the applicant.

6. JUDGEMENT NO. 109 (18 OCTOBER 1967):[7] ASHTON V. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (VALIDATION OF NON-PENSIONABLE SERVICE)

Request by a technical assistance official of ICAO for validation by the Joint Staff Pension Fund of a period of employment prior to his participation in the Fund

The applicant, a technical assistance official of ICAO, requested the Tribunal principally to declare that by refusing his request for validation by the United Nations Joint Staff Pension Fund of his period of employment from 5 October 1951, the date of his entry on duty, to 1 January 1958, the date of his participation in the Fund, the respondent and the ICAO Staff Pension Committee had infringed his contract of employment.

The Tribunal rejected the application as irreceivable. It found that the application, directed against a decision of the respondent, had no substance since it had been the ICAO Staff Pension Committee, competent to decide the question of the applicant's right to validation of his prior service, which had denied the request for validation. The Tribunal noted that it was open to the applicant to appeal to the Joint Staff Pension Board and, since the applicant alleged that he had sustained injury, further noted that no compensation for the alleged injury had been requested from the respondent and that the point had not been considered by the Joint Appeals Board.

7. JUDGEMENT NO. 110 (20 OCTOBER 1967):[8] MANKIEWICZ V. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Request by a former staff member of ICAO for recognition of his right to the salary and allowances to which he would have been entitled if the ICAO Council's decision amending the definition of dependents had not been applied to him or, alternatively, to a personal allowance

The applicant, a former staff member of ICAO, requested the Tribunal to rule that he was entitled to the salary and allowances to which he would have been entitled if a decision of the ICAO Council amending the definition of dependency had not been applied to him, or alternatively that he was entitled to the personal allowance to make up for loss in take-home pay caused by that amendment.

The Tribunal rejected the principal request on the ground that, since no appeal had been filed with the Advisory Joint Appeals Board of ICAO within fifteen days after receipt of the administrative decisions implementing the amendment as to his case, any appeal by the applicant was barred. On the merits, the Tribunal found that the applicant's arguments challenging the legality of the Council's decision were irrelevant. The Tribunal also rejected the alternative request on the ground that the applicant's take-home pay had not been lessened.

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[7] Mme P. Bastid, President; the Lord Crook, Vice-President; R. Venkataraman, Vice-President; L. Ignacio-Pinto, Alternate Member.

[8] R. Venkataraman, Vice-President, presiding; L. Ignacio-Pinto, Member; F. T. P. Plimpton, Member; Z. Rossides, Alternate Member.

8. JUDGEMENT NO. 111 (20 OCTOBER 1967): [9] ASHTON v. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (REIMBURSEMENT OF INCOME TAX)

Request for rescission of a decision not to reimburse to a technical assistance official of ICAO the sums to be paid by him to the United Kingdom authorities as income tax on an annuity paid to a dependant under a Court Order

The applicant, a technical assistance official of ICAO, requested the Tribunal to rescind a decision of the Secretary-General refusing to refund to the applicant payments to be made by him to the United Kingdom authorities as income tax on an annuity paid to a dependant under a Court Order.

The Tribunal rejected the request on the ground that the tax claimed by the United Kingdom authorities was not on the emoluments received by the applicant from ICAO but on the annuity payments received by the beneficiary under the order of Court. Since under section 170 of the United Kingdom Income Tax Act, 1952, a person making annuity payments has to deduct from them a sum representing the amount of the tax on the recipient at the standard rate in force at the time of the payment, the obligation that the United Kingdom tax authorities were enforcing arose out of the annuity payments and not out of the receipt of emoluments from ICAO.

9. JUDGEMENT NO. 112 (25 OCTOBER 1967): [10] YÁÑEZ v. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Non-renewal of a fixed-term appointment of a technical assistance expert of ICAO

The applicant had entered the service of ICAO in 1962 under a short-term appointment as an air traffic controller for the ICAO Technical Assistance Mission in the Democratic Republic of the Congo and his appointment had subsequently been extended four successive times. When the Secretary-General decided not to grant him a further extension, the applicant requested the Tribunal to rescind that decision which he attributed to prejudice and the personal animosity of the Chief of Mission.

The Tribunal rejected the request. It observed that the decision taken by the respondent not to renew the applicant's contract had been within the former's discretion. Furthermore, that decision could not impair or prejudice any legitimate right or expectation since, under rule 2.3 (*c*) of the Field Service Staff Rules, the appointment did not carry any expectation of or imply any right to renewal. There were therefore no grounds for examining the presumed or possible motives for non-renewal of the contract, for in order to give rise to the possibility of considering rescission of a discretionary administrative decision for misuse of power, on the basis of an inquiry into its motivation, that decision must impair a right or a legitimate expectation.

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[9] R. Ventakataraman, Vice-President, presiding; L. Ignacio-Pinto, Member; F. T. P. Plimpton, Member; Z. Rossides, Alternate Member.

[10] Mme P. Bastid, President; H. Gros Espiell, Member; L. Ignacio-Pinto, Member; Z. Rossides, Alternate Member.

10. JUDGEMENT NO. 113 (25 OCTOBER 1967):[11] COLL v. SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Termination, at the request of the assisted Government, of the fixed-term appointment of a technical assistance expert of ICAO

The applicant, holder of a short-term appointment as an Air Traffic Controller with the ICAO Technical Assistance Mission in the Congo, had been held responsible by the Congolese Government for an air incident that occurred at N'Djili airport. The Government had requested his departure and, although the ICAO Committee of Inquiry had exonerated him, the Secretary-General of ICAO had terminated his appointment "in the interest of the Organization" on the basis of rule 9.4 (*d*) of the Field Service Staff Rules.

The Tribunal found that the decision to terminate his appointment was invalid. It recalled that the right to end a contract "in the interest of the Organization" conferred on the Secretary-General a discretionary power, but that the exercise of this power should conform to certain general principles. It noted that the request of the Congolese authorities cast doubt on the applicant's professional competence and that the respondent had not followed the procedure which he had undertaken to follow in order that the facts might be clarified and the applicant enabled to explain his actions. The applicant had therefore been deprived of fundamental guarantees, and his right to be heard in a case involving his professional competence had been disregarded. Inasmuch as the reinstatement of the applicant was impossible in practice, the Tribunal awarded to him, for the prejudice suffered, an indemnity equivalent to his base salary for the period of the contract remaining as from the date of termination, less the sums already paid following the termination.

B. Decisions of the Administrative Tribunal of the International Labour Organisation [12, 13]

1. JUDGEMENT NO. 97 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 4—WAIVER OF IMMUNITY OF THE CHILD JURADO) *

Lack of competence of the Tribunal to review decisions of the Director-General concerning the immunity from jurisdiction of ILO officials and members of their families

The complainant was asking the Tribunal to quash a decision of the Director-General of ILO refusing to waive the immunity of the complainant's son in respect of civil action against the Organisation. The Tribunal dismissed the complaint on the ground that it was not competent to review decisions of the Director-General concerning the immunity from jurisdiction of officials of ILO and members of their families.

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* The complainant challenged the competence of the judges of the Tribunal, which rejected the challenge as having no valid ground.

[11] Mme P. Bastid, President; H. Gros Espiell, Member; L. Ignacio-Pinto, Member; Z. Rossides, Alternate Member.

[12] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment, and of such provisions of the Staff Regulations as are applicable to the case, of officials of the International Labour Office and of officials of the international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1967, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the Interim Commission for the International Trade Organization/General Agreement on Tariffs and Trade, the International

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2. JUDGEMENT NO. 98 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 5—EDUCATION GRANT) *

Conditions governing the payment of the education grant

The complainant had applied for an education grant in respect of his son, stating that the child, having been removed from the custody of his father by the Swiss Authorities, had not been able to receive his education in Spain. After the Administration had rejected his application, the complainant brought his case to the Tribunal. The Tribunal pointed out that under article 3.14 (i) of the Staff Regulations:

> "The [education] grant shall be payable upon the presentation of evidence satisfactory to the Director-General that the conditions required by this Article are fulfilled."

It was clear, in fact, from the terms of the complainant's application that none of the conditions required by the above-mentioned provision were fulfilled. The Tribunal therefore dismissed the complaint.

3. JUDGEMENT NO. 99 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 6—ALLEGATIONS OF COLLUSION AND DIVULGING CONFIDENTIAL INFORMATION) *

The complaint sought to have ILO ordered to pay various amounts of compensation for divulging confidential information and refusing to waive immunity from jurisdiction. It was dismissed on the ground that the submissions it contained were clearly wholly unfounded or were based on arguments already dismissed by the Tribunal in Judgements Nos. 70 [14] and 83. [15]

4. JUDGEMENT NO. 100 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 7—TRANSFER) *

Interpretation of article 1.9 of the Staff Regulations

Because of friction with his Chief, the complainant had been transferred from one section of the Editorial and Translation Service to another. He requested that the decision to transfer him should be rescinded on the ground that it was a punitive measure and was illegal. This request having been refused, he asked the Tribunal to declare that the reports of the chiefs of the sections concerned and the decision to transfer him were erroneous in law and to order that the decision should be rescinded. The Tribunal dismissed the complaint. It pointed out that under the terms of article 1.9 of the Staff Regulations:

(Continued.)

Atomic Energy Agency, the United International Bureaux for the Protection of Intellectual Property, the European Organization for the Safety of Air Navigation and the Universal Postal Union. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the applications of the Regulations of the former Staff Pensions Fund of the International Labour Organisation.

The Tribunal is open to any official of the International Labour Office and of the above-mentioned organizations, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death, and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

[13] Mr. M. Letourneur, President; Mr. A. Grisel, Vice-President; Lord Devlin, Judge.

[14] See *Juridical Yearbook, 1964*, p. 209.

[15] *Ibid., 1965*, p. 212.

"The Director-General shall assign an official to his duties and his duty station subject to the terms of his appointment, account being taken of his qualifications."

The Tribunal, having noted that the complainant had been recruited for a post in the Editorial and Translation Service, held that by transferring him from one section to another within the said Service, the Director-General was merely exercising his right under the aforementioned article 1.9 and was conforming to the terms of the complainant's appointment. It appeared from the documents in the dossier that the decision complained of had been taken in the interests of the service, had not been accompanied by any reduction in salary and had in no way affected the statutory rights of the complainant. It was therefore neither illegal nor punitive.

5. JUDGEMENT NO. 101 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 8—ATTEMPTED INTIMIDATION AND NEW APPEAL TO THE INTERNATIONAL COURT OF JUSTICE) *

Exercise of the right of appeal to the International Court of Justice—Right of the Organisation to authorize the publication of a commentary of a scientific nature on a public judgement of the Tribunal—The Parties are not obliged to refer the Tribunal to previous judicial decisions on the subject of a dispute

The complainant, who had requested that the question of the validity of Judgement No. 83 [16] of the Tribunal should be submitted to the International Court of Justice, had asked the Director-General to place that request before the Governing Body, had stated that, in the event of refusal, he proposed to submit it to the members of the Governing Body individually and had asked to what penalties this procedure would render him liable. When his request was refused, with a warning of the possible consequences of the steps he was contemplating, the complainant requested the Tribunal to find that the Administration, by refusing to apply any legal remedy to correct Judgement No. 83, the purpose of which was to impose Judgement No. 70 [17] on the complainant, had directly or indirectly violated articles 13.2, 1.7, 7.5 and 7.6 of the Staff Regulations.

Furthermore, in connexion with the publication in a legal periodical of an article by an ILO official which dealt, *inter alia*, with Judgement No. 70, the complainant submitted an incidental plea in which he accused ILO and its agent of having "published the case of Jurado *v.* International Labour Organisation while it is still *sub judice*" and of having, during the examination of earlier actions concerning the complainant, deliberately withheld important previous judicial decisions from the Administrative Tribunal.

The Tribunal dismissed the submissions in the complaint as being unconnected with the professional interests of the complainant. It also dismissed those in the incidental plea, stating that the fact that the Organisation had authorized the publication of a commentary of a purely scientific nature was not open to criticism and that ILO had in no way misled the Tribunal by not referring to certain previous judicial decisions, since it was the function of the judge to search for these as a matter of routine.

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

[16] See *Juridical Yearbook, 1965*, p. 212.

[17] *Ibid.*, 1964, p. 209.

6. JUDGEMENT NO. 102 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 9—EFFECTS OF ANNULMENT OF MARRIAGE) *

The Administration is obliged to intervene in questions giving rise to a conflict of law only to the extent required for the purpose of applying the Staff Regulations

The complainant had been in receipt of an allowance for a dependent spouse. He submitted an application for a family allowance in respect of his mother, giving his marital status as "single". As proof of his single status, he produced an Order declaring that his marriage had been canonically annulled. The Administration accordingly ceased to pay him the allowance for a dependent spouse and granted him an allowance in respect of his mother. The complainant then asked the Director-General to continue to apply his national law to him in respect of his marital status, to continue to regard him as single and to take the necessary measures to arrest divorce proceedings involving him, and to take the necessary action to restore his child to him, since he was his sole legal guardian under his national law. Having received no reply to this letter, the complainant requested the Tribunal to declare the Administration's tacit refusal illegal and to find in his favour on the above-mentioned points.

The Organisation submitted, *inter alia*, that a distinction had to be made between applications for allowances involving questions of civil law, which must necessarily be settled by the ILO in the event of a conflict of law in order to determine whether a right or obligation under the Staff Regulations existed, and questions relating to the waiver of immunity and the exercise of "diplomatic protection", in which case only the interests of the Organisation and the official duties of its staff members were material. The effect of the distinction was that unless those interests and duties were involved, a waiver of immunity should not be refused or "diplomatic protection" exercised, since such measures could not affect the issue of a conflict of law submitted to the courts, which was not a matter for ILO but for the parties themselves.

The Tribunal dismissed the complaint, considering that the complainant had objected to the silence of the Administration in a matter in which it was not obliged to intervene, even in so far as it would have had power to do so.

7. JUDGEMENT NO. 103 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 10—AMENDMENTS TO THE STAFF REGULATIONS)

Lack of competence of the Tribunal in the absence of a decision giving ground for complaint

The complainant sought the rescinding, as illegal and prejudicial to his acquired rights, of an instruction notifying staff members of various amendments to the Staff Regulations. The Tribunal found that the complainant had adduced no decision applying any of those amendments to his particular case. He did not, for example, allege non-compliance with the terms of his appointment or any violation of his status and the Tribunal therefore was not competent to hear his complaint.

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* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

8. JUDGEMENT NO. 104 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NOS. 11 AND 16—COMPENSATION FOR OVERTIME)

Article 7.2 (b) *of the Staff Regulations—Discretion of the Director-General concerning compensation for overtime*

The complainant had been required to work twenty-nine hours' overtime, including six hours on a Saturday. Having been granted two days of compensatory leave, he submitted that Saturday should be considered a holiday and that he should therefore be granted leave for a period equal to the period of overtime worked on that day, and that overtime should in any event be compensated for by leave for an equal or longer period. He made a similar claim on another occasion and, both claims having been rejected, he submitted two complaints to the Tribunal, which it disposed of in a single judgement.

The Tribunal found that a clear and specific distinction is made in article 7.2 (*b*) of the Staff Regulations: overtime worked on a Sunday (or the equivalent day of rest) or on an established holiday gives entitlement to a period of compensatory leave equal to the amount of overtime worked. In other cases the amount of compensatory leave is not laid down by the Staff Regulations and is left to the discretion of the Director-General. Since, in the case at issue, the overtime was not worked on a Sunday or established holiday, the Director-General was free to decide the amount of compensatory leave. The complaint was therefore dismissed.

9. JUDGEMENT NO. 105 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 15—WAIVER OF IMMUNITY) *

Authority competent to sign a waiver of immunity

At the request of the Department of Justice and Police of the Canton of Geneva, the Director-General had decided to waive the immunity from jurisdiction of the complainant in connexion with proceedings for non-payment of maintenance allowance and desertion of his family. The complainant objected to that decision on the ground that it had been signed by the Legal Adviser of ILO who, he contended, lacked the necessary powers of signature and representation. The Tribunal dismissed the complaint, pointing out that the Director-General had delegated to the Legal Adviser power to sign all waivers of immunity.

10. JUDGEMENT NO. 106 (9 MAY 1967): WALTHER v. UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Reclassification of an official in a new grading system—Matters amenable to the Tribunal's power of review—Discretion of the Director

Under the new grading system established by the Staff Regulations of BIRPI of 1 July 1963, the complainant, like all other staff members, was reclassified and was the subject of a preliminary recommendation of the Integration Committee set up under article 2.1 (T) of the Staff Regulations. This recommendation was thereafter confirmed by the Committee, accepted by the Director of BIRPI and subsequently upheld by the Appeals Board. The complainant then requested the Tribunal to quash the decision and order that he should be reclassified in a higher grade.

The Tribunal dismissed the complaint. It found that the procedure for integrating the staff in the new system laid down by article 2.1 (T) of the Staff Regulations had been

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

correctly applied. It also pointed out that the Director, having fulfilled his twofold obligation to hear the opinion of the *ad hoc* Integration Committee and to be guided by the standards adopted by other international organizations, was free to exercise his discretion, and that the Tribunal had to confine itself to determining whether the decisions made were erroneous in law or based on materially incorrect facts, or whether essential facts had not been taken into consideration or whether conclusions which were manifestly incorrect had been drawn from the complainant's dossier. The complainant had not shown that the decision impugned was open to criticism in any of those respects, in which the Tribunal's limited power of review could be exercised.

11. Judgement No. 107 (9 May 1967): Passacantando v. Food and Agriculture Organization of the United Nations

Rights of persons already employed by the Organization in the event of vacancies—Scope of articles 301.043 and 301.044 of the Staff Regulations

The complainant, who had held a series of fixed-term appointments, became a candidate for a post of indeterminate duration for which a competitive examination was held by the respondent Organization. He was not selected and was informed that he would be separated from the Organization. He then requested the Tribunal to quash this decision as violating articles 301.043 and 301.044 of the Staff Regulations. The Tribunal dismissed the complaint. It found that under article 301.043, candidates for vacancies had to be selected on the basis of competitive examination and that, under the terms of article 301.044, full regard had to be paid to the qualifications and experience of persons already in the service of the Organization. It followed that, when vacancies occurred, staff members of the Organization were entitled to sit for any competitive examination open to them. That right necessarily included the right to demand that the arrangements for the competitive examination should ensure the appointment of candidates who were really the best qualified. In other words, at all stages of the examination—the arrangements made for it, the conduct of the tests and the evaluation of the results—every candidate had to be treated on an equal footing and with full impartiality. Moreover, the Organization was not bound to appoint serving staff members in preference to candidates from outside. If that privilege were automatically granted to its staff, it might find itself having to take decisions contrary to its own interests, which was certainly not the intention of those who drew up the Staff Regulations. In point of fact, serving staff members had priority only if their performance revealed qualifications at least equal to those of the other candidates. In the case at issue the Tribunal held that the arrangements for the examination, the conduct of the tests and the evaluation of the results were not open to criticism and that the complaint was therefore ill-founded.

12. Judgement No. 108 (9 May 1967): Kundra v. United Nations Educational Scientific and Cultural Organization

Time-limit for appeals to the UNESCO Appeals Board and the Administrative Tribunal—Paragraphs 7 and 8 of the Statutes of the Appeals Board and article VII, paragraphs 2 and 3, of the Statute of the Tribunal

On 4 April 1964 the complainant, who held an indeterminate appointment, received a cable from the Director of Personnel of UNESCO terminating his appointment under the terms of article 9.1 of the Staff Regulations, the termination to take effect on the date of receipt of the cable. A letter received by the complainant not later than 25 April stated that the decision had been taken as a consequence of (unspecified) actions of the complainant

which were not in conformity with the standards of conduct of UNESCO staff and accordingly constituted unsatisfactory service within the meaning of article 9.1 of the Staff Regulations. On 6 and 7 April the complainant expressed his intention of appealing against the decision to terminate his appointment. At that time and on many subsequent occasions he asked why the decision was taken. He invariably received the reply that there was nothing to add to the content of the above-mentioned letter. On 19 April 1965 the complainant appealed to the UNESCO Appeals Board, which stated that the appeal was not receivable, having been submitted after expiry of the prescribed time-limit. The Director-General decided on 3 August 1965 to accept that opinion and the complainant submitted his complaint to the Tribunal on 12 October 1965. He alleged violation of the right to be heard on the ground that he had not been informed of the charges against him and requested the quashing of the decision to reject his internal appeal and of the decision to terminate his appointment.

The Tribunal dismissed the complaint. It found that the complainant's letter of 6 April 1964 had to be regarded as a protest against the decision to terminate his appointment and that the Director-General had allowed the period of fifteen working days laid down by paragraph 7 of the Statutes of the Appeals Board to expire without giving a ruling on that protest. The administration's silence could be regarded not only as giving the complainant, under article 8 of the Statutes of the UNESCO Appeals Board, a further time-limit of fifteen days to submit a claim to the Secretary of the Appeals Board, but as giving him direct access to the Administrative Tribunal under article VII, paragraphs 2 and 3, of the Statute of the Tribunal, which provides that where the administration fails to take a decision upon any claim of an official within sixty days, the official has ninety days to submit his complaint to the Tribunal. If the first interpretation was accepted, it was sufficient to note that the complainant had allowed the time-limit of fifteen days to expire and that his appeal to the Appeals Board was therefore not receivable and his complaint against the Director-General not founded. If the second interpretation was accepted, the complainant should have submitted his complaint to the Tribunal within the ninety days following the sixty days during which the administration had failed to rule on his claim, i.e., not later than 3 September 1964. The complaint submitted on 2 October 1965 was therefore not receivable.

The Tribunal added that the fact that no reasons had been given for the decision to terminate his appointment, far from impeding the operation of the appeals procedure, was in itself sufficient reason for challenging that decision.

13. Judgement No. 109 (9 May 1967): Terrain v. World Health Organization

Limits of the Tribunal's power to review decisions taken by the Director-General under article 960 of the Staff Regulations

Because of the friction with her supervisor the complainant had been transferred to another section, in which her work and conduct gave rise to criticism. The Administration decided to terminate her contract under article 960 of the Staff Regulations. Having exhausted all internal remedies, the complainant appealed to the Tribunal, charging that the decision impugned had been partial and based on personal prejudice. The Tribunal dismissed the complaint. It found that, although the complainant disputed the accuracy of the facts on which the decision was based, she had not adduced a shred of evidence in that respect and that, since the decision did not appear to have been based on incorrect facts, the Tribunal could not substitute its power to review for the discretion conferred on the Director-General under article 960 of the Staff Regulations concerning holders of probationary appointments.

14. JUDGEMENT NO. 110 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NO. 14—SICK LEAVE) *

Grant of sick leave on half salary—Scope of the notion of illness due to and arising out of employment

The complainant challenged the legality of two decisions by which the Administration, having regard to the fact that he had exhausted his entitlement to sick leave on full salary, had granted him sick leave on half-salary. He contended that his ill health was due to the decisions of the Administration contained in Judgement No. 70 and should therefore be regarded as an illness due to and arising out of his employment, and that the provisions invoked by the Administration therefore were not applicable to his case.

The Tribunal dismissed the complaint; it pointed out that the legality of the decisions to which the complainant attributed his ill health had been confirmed by Judgement No. 70 and that the disorders from which the complainant suffered could therefore not be regarded as due to and arising out of his employment.

15. JUDGEMENT NO. 111 (9 MAY 1967): JURADO v. INTERNATIONAL LABOUR ORGANISATION (NOS. 12 AND 13—SANCTIONS)

A complaint relating to two decisions having no connexion with each other is receivable only in so far as it resists the first decision specified therein—Actions constituting serious misconduct

In a single complaint the complainant impugned two decisions of the Administration which were unconnected with each other. The Tribunal, following a rule generally recognized by the courts, decided that the complaint was receivable only in so far as it resisted the first decision specified therein.

The effect of that decision was to apply a reprimand to the complainant for having invited a number of ILO officials who were not personally acquainted with him to become parties to proceedings which concerned him alone. The Tribunal held that that decision was formally correct and legally justified, since the complainant had in fact sought to discredit ILO and the Tribunal; such actions constituted serious misconduct and therefore justified the application of a disciplinary sanction. The Tribunal therefore dismissed the complaint.

16. JUDGEMENT NO. 112 (18 OCTOBER 1967): CRAPON DE CAPRONA v. WORLD HEALTH ORGANIZATION

Inadmissibility of a plea to quash a periodic report—Limits to the Tribunal's power to review a decision terminating a probationary appointment

The complainant, who had been appointed on 1 February 1965 for two years, the first being regarded as a probationary period, had received an unfavourable first periodic report. He informed the Organization that he intended to leave his employment on 31 July 1966 at the latest, but was subsequently granted an extension of his probationary period for six months. On 20 April 1966, three weeks after his return from a long period of sick leave, a second unfavourable periodic report was made on him and he was notified on 25 May 1966 that his appointment would be terminated on 31 July 1966 for unsatisfactory service, in accordance with Staff Rule 960. He subsequently submitted a complaint to the Tribunal

* The complainant challenged the competence of the judges of the Tribunal, which dismissed the challenge as having no valid ground.

in which he requested the quashing of the second periodic report and the payment of damages equal to the salary which he would have received for the final six months of his contract.

The Tribunal dismissed the complaint. On the plea to quash the periodic report, it pointed out that the report, which merely assessed the capabilities of the complainant, did not constitute a decision which could be rescinded. On the claim for damages for termination of appointment, the Tribunal found that the probationary period would normally have ended after one year and had been extended for six months at the request of the complainant and in his interests. As the purpose of the extension was not to allow of a further review of the complainant's capabilities, the provisions of Staff Rule 440, second paragraph, were not applicable and the date of preparation of the second periodic report was, in fact, of no significance. With regard to the decision to terminate his appointment, the Tribunal pointed out that it could review such a decision, in the case of a probationary appointment, only if it was irregular in form or based on incorrect facts, or if conclusions which were clearly incorrect had been drawn from the dossier. No such considerations applied in the case at issue.

17. Judgement No. 113 (18 October 1967): Benedek v. International Atomic Energy Agency

Rules governing the attribution of local and non-local status to staff members—Rule 3.033 of the Staff Rules of IAEA

The complainant went to Vienna in August 1960, at which time she was stateless, and applied for employment to IAEA, which granted her a contract for five days, which was thereafter renewed from week to week and later for longer periods. In October 1961 she was granted a contract for one year, which she accepted subject to her right to appeal against her recruitment as a "local" staff member. She did, in fact, ask to be given non-local status, but her request was refused by a decision of 11 June 1965, which was later confirmed by the Director-General on the recommendation of the Joint Appeals Committee of the Agency. She then complained to the Tribunal, requesting that she should be granted non-local status as from 1 November 1961.

The Tribunal dismissed the complaint. It noted that under Rule 3.033 of the Staff Rules of IAEA the attribution of local or non-local status to employees was, with certain specified exceptions, definitively settled on the date of appointment and in accordance with the rules in force on that date. The dispute accordingly had to be settled on the basis of the text of Rule 3.033 which was in force on the date of recruitment, i.e. without reference to the amendments made to that rule on 2 August 1965. The Tribunal also found that although Rule 3.033, paragraph (A)(ii), of the Staff Rules stated, *in fine*, that persons who were not nationals of the country of the duty station and who went to that country for service with the Agency might be given non-local status, the documents in the dossier showed that the complainant had not gone to Vienna for the purpose of service with the Agency and could therefore not invoke that provision. Consequently the general principle that recruitment in the country of the duty station normally resulted in local status was applicable in her case.

18. Judgement No. 114 (18 October 1967): Ghatwary v. Food and Agriculture Organization of the United Nations

Article VII, paragraph 1, of the Statute of the Tribunal—Complaint not receivable by the Tribunal until all remedies provided by the Staff Regulations have been exhausted

The complainant had been informed, as a result of an investigation carried out in the office in which he worked, that he would be dismissed for misconduct with effect from

14 January 1966. It was eventually agreed, however, that he should resign with effect from that date. On 8 February 1966 the complainant requested the Director-General of FAO to reconsider the case as a whole. He received a reply to the effect that the Organization could not reconsider its acceptance of his resignation. He then asked that a further investigation should be made, but the Administration refused, stating in a letter of 17 March that an investigation had already been made and that the matter was closed. The complainant subsequently indicated that he accepted the contents of the letter of 17 March.

On 16 June 1966 the complainant requested the Tribunal to cancel the decision terminating his employment. The Tribunal held that the complaint was not receivable under article VII, paragraph 1, of its Statute, pointing out that the complainant had not appealed to the Appeals Committee of FAO in accordance with the procedure established by Staff Rule 303.131 against the decision of 17 March and had therefore not exhausted all means of recourse available to him under the Staff Regulations.

19. JUDGEMENT NO. 115 (18 OCTOBER 1967): NOWAKOWSKA v. WORLD METEOROLOGICAL ORGANIZATION

Date on which annual reports on staff members are drawn up—Withholding of annual salary increment—A permanent official may be transferred to a temporary post provided he retains all rights acquired through his permanent appointment

A basic report on the complainant had been made on 1 April 1965, in connexion with her promotion, and an annual report was due on 1 October 1965. As the Chief of Division had indicated that he wished to await the complainant's return from sick leave to discuss her work with her, the latter report was not drawn up until 6 December. The Chief of Division recommended that the decision with regard to her annual increment should be deferred. That decision was, in fact, deferred several times and the complainant was eventually informed that the Secretary-General had decided not to award her an annual increment and to transfer her to a temporary post. The complainant asked the Tribunal to quash the above-mentioned decisions. She contended (1) that the decision to withhold the annual increment had been taken on the basis of a delayed report; (2) that, in the absence of an annual report drawn up prior to 1 October 1965, she was automatically entitled to a salary increment because a basic report had been drawn up on 30 March 1965; and (3) that the decision to transfer her was irregular, inasmuch as the post was a temporary one which could not be filled by a permanent staff member.

The Tribunal dismissed the complaint. On the first contention, it held that an appeal based on the late date at which the report of 6 December had been drawn up was ill-founded: although paragraph 8 of Administrative Service Note No. 312 provided that the end of the period covered by the report should "normally" coincide with the date of the award of the within-grade salary increment, that provision was in no way mandatory and in the circumstances of the case it had been waived quite legitimately. On the second contention, the Tribunal pointed out that under paragraph 7 of Note No. 312, the drawing up of an annual report when a within-grade increment was due was clearly unnecessary when certain conditions were fulfilled, but that those conditions were not fulfilled in the case at issue; moreover, the absence of an annual report could not automatically establish an entitlement to a salary increment. On the third contention, the Tribunal stated that, while it was competent to review the formal correctness and legality of decisions of the Secretary-General to transfer staff members, it could not usurp the Secretary-General's function of assessing the work and qualifications of staff members conferred on him by Staff Regulation 1.2. It pointed out that, in spite of her assignment to a temporary post, the complainant retained all the rights resulting from her permanent appointment with the Organization.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIAT OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Legal opinions of the Secretariat of the United Nations
(Issued or prepared by the Office of Legal Affairs)

1. QUESTION WHETHER THE POWERS ENTRUSTED TO THE UNITED NATIONS COUNCIL FOR SOUTH WEST AFRICA BY GENERAL ASSEMBLY RESOLUTION 2248 (S-V) OF 19 MAY 1967 INCLUDE THE ISSUANCE OF TRAVEL DOCUMENTS TO THE INHABITANTS OR CITIZENS OF SOUTH WEST AFRICA [1]

Note submitted to the United Nations Council for South West Africa *

1. At its third meeting, [2] on 16 October 1967, the Council for South West Africa took note of a number of letters adressed to its President, to the Secretary-General and to other United Nations officials in which a number of persons claiming to be citizens of South West Africa applied for a United Nations Passport for travel purposes. The Council directed the Acting Commissioner for South West Africa to study the matter and report to the Council.

2. In accordance with General Assembly resolution 2248 (S-V) of 19 May 1967, the Council has been entrusted with certain powers and functions, "to be discharged in the Territory", including "to promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage" (paragraph II, 1 (b)).

3. In connexion with the possible issuance of travel documents, the Council may first wish to address itself to the question of whether the phrase "to be discharged in the Territory" limits the exercise of the powers and functions entrusted to it. It must be assumed that in including this clause the General Assembly expected that the former Mandatory Power would readily co-operate in the implementation of part IV of the resolution. As has become clear, however, from the letter from the Foreign Minister of the Republic of South Africa dated 26 September addressed to the Secretary-General (A/AC.131/3), no such co-operation can be expected to be forthcoming. The Council, therefore, has to address itself to the question whether by adopting a literal interpretation of this clause, namely an interpretation to the effect that the powers conferred upon it in operative part II of resolution 2248 (S-V) only become operative when the Council enters the Territory, it will not in practice nullify that part of the resolution.

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* Subsequent to the submission of this note, the General Assembly, by resolution 2372 (XXII) of 12 June 1968, proclaimed that, in accordance with the desire of its people, South West Africa should henceforth be known as Namibia.

[1] Document A/AC.131/4.

[2] See A/AC.131/SR.3, p. 7.

4. While this is a decision of principle for the Council to take, the Commissioner submits the information given below on the assumption that the Council would decide that the implementation of resolution 2248 (S-V) must proceed to the extent possible, and that the powers entrusted to the Council include the issuance of travel documents to the inhabitants or citizens of South West Africa even prior to the entry of the Council into the Territory.

5. The issuing of travel documents is one of the functions under international law entrusted to national Governments (sometimes delegated to subordinate organs). Whether these Governments are in *de facto* authority over the country or territory they claim to represent is not always considered to be relevant. During the Second World War, Governments of continental European countries, occupied by enemy forces, established themselves outside the continent (London, Cairo, etc.), and notwithstanding the fact that in some cases their constitutions debarred them from any authority outside their own territory, continued to exercise executive authority to the extent possible, such authority being recognized by the host State and other Allied Powers. Among the function exercised was that of issuing passports to those of their nationals who applied for them. These passports were considered as valid travel documents by the members of the United Nations group as established on 1 January 1942. The decisive feature of a travel document is therefore not that it is issued by, or on behalf of, the authority that is in *de facto* control of the country or territory, but rather that it will be accepted as valid by other countries.

United Nations practice

6. The United Nations exercised executive functions in the territory of West New Guinea (West Irian) between 21 September 1962 and 31 March 1963 through a United Nations administrator appointed by the Secretary-General.

7. Among the functions entrusted by Indonesia and the Netherlands to the United Nations Temporary Executive Authority (UNTEA) was "the authority at its discretion to issue travel documents to Papuans (West Irianese) applying therefor without prejudice to their right to apply for Indonesian passports instead".[3] In addition, the Governments of Indonesia and the Netherlands agreed that they would, at the request of the Secretary-General "furnish consular assistance and protection abroad to Papuans (West Irianese) carrying these travel documents... it being for the person concerned to determine to which consular authority he should apply".[4]

8. On 21 September 1962, the Secretary-General sent a circular letter to all Member Governments in which, referring to the above agreement, he requested them to confirm that they would recognize and accept as valid the aforesaid travel documents, subject to compliance with national visa regulations, and would issue the necessary instructions to the competent immigration and consular authorities to this effect.

9. In the reply to this letter, a number of Governments, including those of Burma, Japan, Thailand, Tunisia, India, Norway and the Union of Soviet Socialist Republics signified that they would accept these documents as valid documents. It should be noted that authority to deliver these travel documents was also given to United Nations Headquarters in New York, under the authority of the Administrator.

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[3] See *Official Records of the General Assembly, Seventeenth Session, Annexes*, Agenda item 89, document A/5170, annex B, III.

[4] *Ibid.*

Conclusion

10. Assuming that the Council wishes to interpret General Assembly resolution 2248 (S-V) as indicated in paragraph 4 above, it would appear that there is sufficient precedent for the Council to consider making arrangements for the issue of travel documents to nationals of South West Africa. In this respect it may be of relevance to note that one of the South West African political groupings is already issuing its own form of travel document for South West Africans applying for it.

11. If the Council decides to proceed further with this matter, it may also wish to consider authorizing the Commissioner for South West Africa to issue travel documents to nationals of the Territory, as one of the "executive and administrative tasks" which the Council may entrust to the Commissioner under part II, paragraph 3, of resolution 2248 (S-V).

12. Should the Council authorize the Commissioner to proceed as just outlined, it is his view that, in the light of the UNTEA precedent, it might be preferable to call the documents issued "travel documents", rather than "passports". Their practical validity will depend on the acceptance by Member Governments and it would therefore be necessary for the Secretary-General, once the Council has taken a positive decision, to circularize the membership on this matter as he did in September 1962. Important procedural questions such as the determination of the *bona fide* of the applicant and the place where the travel document is to be delivered to him should, it is suggested, be left to the judgement of the Commissioner, who will have to issue appropriate rules and regulations, and who will also report to the Council on the various measures he undertakes in these respects.

27 October 1967

2. Question of privileges and immunities of the United Nations, of representatives of Member States and of officials of the Organization [5]

Statement made by the Legal Counsel at the 1016th meeting of the Sixth Committee of the General Assembly on 6 December 1967

1. I believe it is necessary and desirable that I make a statement for the record concerning some of the principles involved in the question of privileges and immunities of the United Nations, of representatives of the Members and of officials of the Organization. I do this, first in order to put the record straight so far as the Secretary-General is concerned and secondly to explain the role which the Secretary-General has played, and would intend to continue, with respect to these privileges and immunities.

2. May I first comment briefly on the 1961 Vienna Convention on Diplomatic Relations. [6] It may be noted that the Convention does not directly apply to representatives to international organizations and conferences but only to the exchange of permanent diplomatic missions between States. Material provisions of the Convention, however, are recognized as evidentiary of general or customary international law binding on all Members of the international community. In this perspective it would seem immaterial whether one or both parties to a dispute were also parties to the Convention. The Secretary-General, in interpreting diplomatic privileges and immunities, would look to provisions of the Vienna Convention so far as they would appear relevant *mutatis mutandis*

[5] Extract from document A/C.6/385, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98.

[6] See *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

to representatives to United Nations organs and conferences. It should of course be noted that some provisions such as those relating to *agrément*, nationality or reciprocity have no relevancy in the situation of representatives to the United Nations.

3. I should now like to turn to the Convention on the Privileges and Immunities of the United Nations, which was adopted by the General Assembly on 13 February 1946 and proposed for accession by each Member of the United Nations. [7] It must first be noted that this Convention is of a very special character—in fact, it is a Convention *sui generis*. Nearly all multilateral conventions refer to the ratifying and acceding States as parties and the rights and obligations created are between the parties.

4. The Convention on the Privileges and Immunities of the United Nations is different. Throughout, in referring to rights and obligations, it refers to Members of the United Nations. It does not refer to parties to the Convention at any point. The word "parties", in fact, is used only three times in the Convention and appears in lower case—twice in section 30 where it means parties to differences or disputes, and once in section 35 where the reference is to a party to a revised convention. The word "Member", on the other hand, appears with a capital "M" and is used in the three paragraphs of the preamble and in seventeen sections of the Convention, including section 11, which refers to "representatives of Members".

5. Section 35 makes clear the character of the Members' obligations, which run from each Member to the Organization. This section reads:

> "This convention shall continue in force as between the United Nations and every Member (I repeat, 'between the United Nations and every Member') which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention."

6. Moreover, the fact that the obligations run from the Members to the United Nations is not a mere formality. It should be obvious that the Organization itself has a real interest in assuring the privileges and immunities necessary to enable the representatives of Members to attend and participate freely in all meetings and conferences. If the representatives of Members are prevented from performing their functions or from travelling to and from meetings, the Organizations cannot function properly. It therefore seems elementary that the rights of representatives should properly be protected by the Organization and not left entirely to bilateral action of the States immediately involved. The Secretary-General would therefore continue to feel obligated in the future, as he has done in the past, to assert the rights and interests of the Organization on behalf of representatives of Members as the occasion may arise. I would not understand from the discussion in this Committee that the Members of the Organization would wish him to act in any way different from that which I have just indicated. Likewise, since the Organization itself has an interest in protecting the rights of representatives, a difference with respect to such rights may arise between the United Nations and a Member and consequently be the subject of a request for an advisory opinion under section 30 of the Convention. It is thus clear that the United Nations may be one of the "parties", as that term is used in section 30.

7. There is another aspect relating to the nature of the Convention which I should like to develop on behalf of the Secretary-General. It may be observed that the preamble of the Convention refers to Articles 104 and 105 of the Charter of the United Nations. The preamble notes that Article 105 provides:

> "that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the

[7] United Nations, *Treaty Series*, vol. 1, p. 15.

Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization."

8. It will be recalled that the Covenant of the League of Nations itself provided that representatives of the Members and Officials of the League when engaged on the business of the League should enjoy diplomate privileges and immunities, a term which has a well-understood meaning in international law. Article 105 of the United Nations Charter on the other hand refers to "necessary" privileges and immunities rather than to "diplomatic" privileges and immunities. Some privileges and immunities are obviously necessary for the fulfilment of the purposes of the Organization and the exercise of the functions of representatives and officials and may therefore be derived without difficulty directly from the first two paragraphs of Article 105. The third paragraph of that Article envisaged that further content could be given to the term "necessary" by the General Assembly. This paragraph provided that the Assembly might make recommendations with a view to determining the details of the application of the first two paragraphs or might propose conventions to the Members of the United Nations for this purpose. The purpose of the Convention was therefore to determine the details of the application of the first two paragraphs of Article 105. In this connexion, article 34 of the Convention significantly states that it is understood that, when an instrument of accession is deposited, the Member will be in a position under its own law to give effect to the terms of the Convention.

9. There are three points which I believe should be made. In the first place, Article 105 itself accords such privileges and immunities as are necessary. This is an obligation on all Members of the United Nations, whether or not they have acceded to the Convention, whose purpose was to determine the details of application. If a privilege or immunity is necessary for the fulfilment of the purposes of the Organization or for the independent exercise of the functions of representatives and officials, then it must be accorded by all Members as a Charter obligation whether or not they have acceded to the Convention. It would, therefore, seem to the Secretary-General that Article 105 itself establishes an obligation for all Member States to accord these rights to the representatives of all other Members.

10. In the second place, the Convention defines certain privileges and immunities which the General Assembly considered to be necessary in all Member States. In effect, it provided the minimum privileges and immunities which the Organization required, wherever it might be or wherever representatives of Members or officials of the Organization might find themselves. I have said "minimum" since it has been recognized that in States where the United Nations has major offices or operations, such as its Headquarters in New York, and its peace-keeping and development Missions in various areas of the world, additional privileges and immunities have been necessary for the fulfilment of its purposes and the exercise of the functions of representatives and officials. Thus, the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[8] provides that the provisions of that Agreement and of the Convention "shall be complementary" and so far as possible that the provisions of both "shall be applicable and neither shall narrow the effect of the other". Likewise, additional privileges and immunities have been determined to be essential for various missions. In general, therefore, it may be said that the privileges and immunities as defined in the Convention are the minimum privileges and immunities deemed necessary by the Assembly to be accorded by all Member States in implementation of Article 105 of the Charter.

[8] *Ibid.*, vol. 11 (1947), No. 147.

The Assembly in the past has not only called on all Member States to accede to the Convention, but also, in resolution 93 (I) of 11 December 1946, recommended that Members, pending their accession, should follow, so far as possible, the provisions of the Convention in their relations with the United Nations, its officials, the representatives of its Members and experts on missions for the Organization.

11. In the third place, it should be noted that there are now ninety-six States which have acceded to the Convention. Moreover, in most of the remaining Member States as well as in many non-member States, the provisions of the Convention have been applied by special agreement. While it may be true that in 1946 many of the provisions of the Convention had the character of *lege ferenda*, in the nearly twenty-two years since the adoption of the Convention by the Assembly its provisions have become the standard and norm for governing relations between States and the United Nations throughout the world. I doubt that I am being over-bold in suggesting that the standards and principles of the Convention have been so widely accepted that they have now become a part of the general international law governing the relations of States and the United Nations.

12. Under a narrower view than that which I have just outlined, every representative in this room, other than those who are at the same time members of a Permanent Mission, might be subject to arrest and detention, since the host country has not yet acceded to the Convention, and the Headquarters Agreement provides protection only for members of Permanent Missions. Yet I doubt whether many of the members of this Committee, or an international tribunal to which the issue might be submitted, would agree that representatives to the General Assembly lacked this fundamental protection under the Charter and under general international law.

13. I, therefore, in summary submit: first, that the obligations of Member States under the Convention, including those affecting representatives of other Members, are obligations to the Organization, and the Secretary-General has an interest and a role in their protection and observance; secondly, that the privileges and immunities which we have been discussing are obligatory for all Member States whether or not they have acceded to the Convention. Article 105 creates a direct obligation on all Members to accord the privileges and immunities necessary for the fulfilment of the purposes of the Organization and the exercise of the functions of representatives and officials. Certain of the privileges and immunities which the General Assembly has deemed to be necessary in all Member States are defined in the Convention, whose standards and principles have been so widely accepted as to become a part of the general international law governing the relations between States and the United Nations.

14. I hasten to add that this should not be a reason for any State's delaying further its accession to the Convention, since the Convention, with such implementing legislation as may be necessary, provides the best method for the fulfilment and implementation on the domestic level of the international obligations of Members under the Charter and ander general international law.

6 December 1967

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3. EXEMPTION OF THE UNITED NATIONS FROM CERTAIN CATEGORIES OF TAXES—QUESTION WHETHER A TAX IS A DIRECT OR AN INDIRECT TAX FOR THE PURPOSE OF SECTION 7 (*a*) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS [9]—REMISSION OR RETURN, UNDER SECTION 8 (*a*) OF THE SAID CONVENTION, OF THE AMOUNT CHARGED OR CHARGEABLE TO THE UNITED NATIONS WITH REGARD TO IMPORTANT PURCHASES

Memorandum to the Chief of the Field Operations Service, Office of General Services

1. You have referred to us the question whether the United Nations may claim exemption of certain categories of taxes on the territory of a Member State. So far as the United Nations, including, of course, the Information Centres, UNICEF, UNDP, etc., is concerned, questions of exemption from or refund of taxes are governed by sections 7 and 8 of the Convention on the Privileges and Immunities of the United Nations. These sections are as follows:

"Section 7. The United Nations, its assets, income and other property shall be:

(*a*) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(*c*) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

"Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax."

2. The test of whether a tax is a "direct tax" within the meaning of section 7 (*a*) of the Convention as uniformly applied in United Nations practice is whether or not the burden of payment falls directly upon the Organization. For example, the Office of Legal Affairs, in advising the Special Fund concerning taxes on gasoline, stated as follows:

"If the amount of the tax figures on the invoice separately from the price, it is a 'direct tax' on the Special Fund within the meaning of section 7 (*a*) of the Convention. If, on the other hand, the tax forms a part of the price to be paid, the Special Fund would be entitled to claim remission or return (or exemption) in virtue of section 8 of the Convention."

3. In view of the fact that the Convention on the Privileges and Immunities of the United Nations was drawn up for uniform application in all Member States, the meaning to be given to the term "direct taxes" cannot depend on the particular meaning given to that expression by the fiscal laws of a particular State. In a previous legal opinion, [10] this position is explained as follows:

"5. The difference of opinion in this matter appears to hinge on the meaning of the expression 'direct taxes' as used in section 7 (*a*) of the Convention on the Privileges and Immunities of the United Nations. It is true that the terms 'direct' and 'indirect' taxes, etc.,

[9] United Nations, *Treaty Series*, vol. 1, p. 15.

[10] See *Juridical Yearbook, 1964*, pp. 221-222.

are interpreted differently in the various national legal systems of Member States, varying according to tradition, usage or tax system or administration. It should be pointed out to the tax authorities, however, that the above-mentioned Convention was drawn up for application in all Member States of the United Nations and its terms were conceived and have to be applied uniformly in all countries in accordance with their generally-understood meaning. Whether a tax is direct or indirect has to be determined by reference to its nature and to its incidence, that is to say, according to upon whom the burden of payment directly falls. You will understand that in respect to a Convention intended for application in all Member States, its interpretation cannot be made to depend upon the technical meaning of a term in varying tax systems of each Member. Since the tax on circulation is levied directly upon the United Nations, it is, within the meaning of the Convention, a 'direct tax' and the United Nations should be accorded exemption from it. This is the consistent position and practice of the United Nations in asserting its immunity in all States to which the provisions of the Convention apply.

"6. Moreover, in interpreting the Convention, the United Nations and its Members must be guided by the overlying principle of the United Nations Charter, and in particular Article 105, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. The report of the Committee of the San Francisco Conference responsible for the drafting of Article 105 pointed out that 'if there is one principle certain it is that no Member State may hinder in any way the working of the Organization or *take any measure the effect of which might be to increase its burdens, financial or otherwise*' [11] (italics added). With this principle in view, the economy of the Convention, which was adopted by the General Assembly in implementation of Article 105 of the Charter, is quite clear. The Organization was to be relieved of the burden of all taxes—article 7 providing an exemption for those taxes to be paid directly by the United Nations and article 8 providing for remission or return of indirect taxes where the amount involved is important enough to make it administratively possible."

4. Since an exemption has been granted in the past by the Member State concerned, it would appear *prima facie* that the taxes must have been directly payable by the United Nations and consequently are direct taxes within the meaning of section 7 of the Convention. The United Nations would, therefore, be intitled to a full exemption from all such taxes and the requirement of a minimum amount would not be in accordance with the Convention.

5. With respect to taxes included within the price of goods covered by section 8 of the Convention, the criteria of "important purchases" is relevant. The requirement that the taxes amount to the equivalent of $50 is unreasonably high even with respect to taxes under section 8 of the Convention.

6. In a legal opinion given by the Office of Legal Affairs in 1953, the following criteria were laid down:

"... Purchases may be said to be important when they are made on a recurring basis or involve considerable quantities of goods, commodities or materials. Moreover, any item in question may well constitue an 'important' purchase where the expenditure to be made is considerable. Further, in all such cases weight is to be attached to the intent of the General Assembly in unanimously adopting the section, together with the rest of the Convention. Thus it was felt on the one hand, that the Organization should not seek exemption with regard to purchases which were both irregular and of minor importance. On the other hand, it was intended that section 8 should protect the assets of the Organization from such taxes whose incidence would be specially heavy and constitute an undue burden upon it."

7. In Switzerland, a purchase is regarded as important if the total purchase price is over 100 Swiss francs. Comparable minimums have been applied in other countries.

27 March 1967

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[11] *Documents of the United Nations Conference on International Organization*, San Francisco, 1945, vol. XIII, p. 780.

4. Question of dual or multiple representation in United Nations organs [12]

Memorandum to the Secretary-General, United Nations Conference on Trade and Development

1. It is the purpose of the present memorandum to review the question of dual and multiple representation, both in its aspect of representation of a State and of an intergovernmental organization by one person and of representation of two or more States by a single individual. These two aspects, while superficially similar, also involve important differing considerations, in that the latter, unlike the former, may raise the question of multiple voting.

2. After summarizing some past instances in which the question of dual or multiple representation has arisen, this memorandum analyses the various issues involved and concludes with some suggested future courses of action.

Some past instances involving the question of dual or multiple representation

3. The following are some previous cases in which the question of dual or multiple representation has been raised:

(*a*) In August 1945, at the third session of the UNRRA Council, Haiti was represented by the United States delegate. The Committee on Credentials, according to its report:

> "gave careful attention to the credentials of Haiti. . . [In response to the request received from the Republic of Haiti that the United States delegate should be their representative] the Committee resolved that this request be accepted, but hoped that such procedure would not be accepted as a precedent for future meetings. . . The Committee understood that this form of representation would not give the United States a dual vote." [13]

(*b*) In 1954, advice was given by the Office of Legal Affairs that there was no objection to Luxembourg being represented by the Belgian Government provided that the representation of Belgium and Luxembourg was exercised by two different individuals.

(*c*) In 1960, the French delegation was advised by the Legal Counsel to avoid a situation in which the French delegate would be appointed to represent the Cameroons in addition to France.

(*d*) In 1961, the Executive Secretary of the Economic Commission for Africa in Addis Ababa was advised by the Office of Legal Affairs, with reference to an inquiry made by the Government of Malagasy, that in United Nations practice representation of two or more governments by a single delegate was not permitted but that there was no objection to a State being represented by a national of another State or by a member of another delegation, provided he did not simultaneously serve as representative of another State.

(*e*) In 1962, at the United Nations Coffee Conference, one individual was accredited as a member of three different delegations—Madagascar, United Kingdom Exporting Territories, and Tanganyika. On being informed by the Legal Adviser to the Conference that it was contrary to long-standing United Nations practice for one person to serve on more than one delegation to a conference, Madagascar and

[12] See also *Juridical Yearbook, 1955*, p. 223.

[13] United Nations Relief and Rehabilitation Administration, Third session of the Council, Document 29 *Ad Hoc*/CI, 7 August 1945.

Tanganyika withdrew their accreditation of the individual concerned. The accreditation of the chief delegate of Guatemala as alternate delegate of Peru to Committee II of the Conference was also withdrawn.

(*f*) At the Olive Oil Conference in 1963, the Office of Legal Affairs advised against the representation of Belgium and Luxembourg by a single person.

(*g*) In April 1965, in regard to a meeting of the Economic Commission for Africa, the Legal Counsel informed the officer in charge of Economic and Social Affairs that "We also do not consider it proper to have a single delegate represent two governments at a meeting", but observed that "it would have been possible to have one of the members of the delegation of the Central African Republic designated as the representative of Gabon."

Analysis of the issues involved in dual or multiple representation

4. The examples listed in the preceding section of this memorandum indicate a consistent policy of advice and practice against permitting dual or multiple representation in United Nations bodies. The reasons for such advice may be summarized as follows:

(*a*) The practice of one delegate representing two or more countries, if allowed to develop generally, would be inconsistent with one of the basic concepts underlying deliberations in United Nations organs, namely that the various members of those organs should be represented by different delegates who reach conclusions on the issues discussed only after considering the arguments advanced in debate as they affect the interests of their own respective countries. One person representing two States would be unlikely to weigh differently the arguments advanced in his capacity as representative of State A and representative of State B. Furthermore, confusion might arise as to whether a particular statement or argument was made by a single representative on behalf of State A or State B.

(*b*) Dual or multiple representation of States has serious implications with regard to voting rights, particularly in an organization based on the concept of "one member, one vote". If one representative were permitted to cast votes on behalf of more than one State, various abuses might develop. Thus, for instance, the practice might be utilized to swell voting strengths or to obtain one or more crucial extra votes on which the fate of a decision may depend.

(*c*) The rules of procedure of most United Nations organs specifically provide that "each member shall have one vote", and that voting shall normally be by show of hands. Dual or multiple representation, insofar as it might affect voting rights, would not be consistent with, or practicable under such rules and would result in confusion and abuse.

5. The first of the foregoing arguments against dual or multiple representation, which relates to the concept of the parliamentary process, has its main application in the political sphere. While it is still applicable in a technical or expert organ, it is perhaps not of the same importance. The other two arguments relate to voting, and thus apply primarily to the case of one individual representing two or more States which are members of a particular organ. They do not necessarily apply to dual representation of a State and of an inter-governmental organization, as such organizations normally have only observer status at United Nations meetings, which does not entitle them to a vote. Nor do they necessarily apply when one individual is accredited by a State which is a member of an organ and by another State which has only observer status on that organ. However, dual representation of a State and of an organization or of a member and an observer State has

been resisted in the past, because it can give rise to confusion regarding the capacity in which a representative speaks and because it might be taken as a precedent for arguing that one individual can represent two member States and can thus cast more than one vote. It also appeared to run contrary to the purpose of the provisions permitting participation by observers from non-members of the organ and from international organizations. The intention of allowing such wider representation was presumably to afford an opportunity for the presentation of views and interests not already represented on the organ and dual representation would tend to defeat this purpose.

Future courses of action

6. Ideally, the best solution, from the point of view of the United Nations, is to preserve unchanged the principle that dual or multiple representation is not allowed. However, as the arguments against such representation do not apply with the same force to the situation of dual representation of a State and of an organization or of a member and an observer State, as they do to representation of two or more member States, some flexibility may be permitted in the former situations where strong reasons are advanced to justify it in technical rather than purely political organs. Such exceptions should preferably be based either upon a rule of procedure or an express decision of the organ concerned. Such a rule or decision will both justify the departure from the normal principle and will also provide a basis for maintaining the principle in the case of other organs which have not adopted a similar rule or decision.

7. In view of the fact that cases of dual representation appear to have been accepted in the past on the Trade and Development Board, at least with respect to representation of a State and of an inter-governmental organization, and in view of the particular case of the European Economic Community insofar as representation of its Council of Ministers is concerned, we agreed that in the UNCTAD situation one representative may be accredited both by a State and by an inter-governmental organization. In view of this, it will also be necessary to allow one representative to be accredited by two States, provided that only one of these States is a member of the UNCTAD organ involved.

8. It was also agreed that a representative accredited by two entities should be required to speak from separate places when speaking in his separate capacities so as to avoid confusion over the role in which he is acting. Alternatively, if this is not considered desirable by reason of the eminence and rank of the representative concerned (e.g. a Foreign Minister), he may speak from one place, but the conference officer will be required to change the name plate when he speaks in different capacities.

9. As indicated in paragraph 6 above, we think it would be desirable, if the opportunity presents itself, for the Trade and Development Board to take formal note in a rule or decision of the exceptions suggested in paragraph 7 of this memorandum. Furthermore, these exceptions should be limited to representation by a single individual of one State and one organization, or one member and one observer State, or two observer States. It should not be extended to representation of more than two entities by one person. Representation of more than two entities by a single individual would undoubtedly give such an individual the opportunity to wield disproportionate influence and power.

10. To summarize the foregoing points:

(*a*) In no event may one individual be permitted to represent two States *members* of a United Nations organ, as multiple voting is contrary to the concepts underlying United Nations proceedings and to the rules of procedure of United Nations organs;

(*b*) Exceptionally, one individual may be accredited to a technical United Nations organ by (i) one State and one observer organization, or (ii) one member State and

one observer State, or (iii) by two observer States. These exceptions will not, however, be extended to representation of more than two entities by a single person. Furthermore, they should be embodied in a rule of procedure or express decision of any United Nations organ permitting such exceptions;

(*c*) In cases of the nature outlined in (*b*) above, in order to distinguish the capacity in which a representative of two entities is speaking, he should either speak from separate places or the name plate in front of him should be changed in order to identify the particular entity he is representing at a given moment.

16 May 1967

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5. Eligibility of the West Indies Associated States for associate membership in the Economic Commission for Latin America (ECLA)

Memorandum to the Chief of the Regional Commissions Section of the Department of Economic and Social Affairs

1. A question has been raised as to the procedure for admission of the West Indies Associated States as associate members of ECLA, including the question of a single associate membership for the Associated States as a group.

2. The islands of Antigua, Dominica, Granada, St. Kitts-Nevis-Anguilla and St. Lucia are Associated States which have received *Dispatches* containing certain specified delegations of authority from the United Kingdom in the field of external relations. The delegates authority includes the following:

> "Authority to apply for full or associate membership, as may be provided for in the Constitution of the organization concerned, of those United Nations specialized agencies or similar international organization of which the United Kingdom is itself a member and for membership of which the Territory is eligible".

The United Kingdom Mission, in reply to our inquiry, has informed us that the *Dispatches* have come into force. Accordingly, the five Associated States can themselves apply for associate membership in ECLA under paragraph 3 (*a*), third sentence, of ECLA's terms of reference, which reads as follows:

> "If it has become responsible for its own international relations, such territory, part or group of territories may be admitted as an associate member of the Commission on itself presenting its application to the Commission."

Although the territories cannot be said to be empowered to conduct their international relations *in toto*, the fact that they have been specifically authorized by the United Kingdom to apply for membership in the organizations within the United Nations family is sufficient in our opinion to meet the requirements in this provision of the terms of reference. It will be noted that the five territories are eligible only for associate membership insofar as only Members of the United Nations are qualified for full membership under the first sentence of paragraph 3 (*a*). On the other hand, contrary to previous plans, St. Vincent has not become an Associated State, and the United Kingdom retains fully the power to submit an application on behalf of St. Vincent.

3. As a matter of procedure, in order to avoid any ambiguity in the situation, we think it appropriate for the Associated States to refer to the entry into force of the *Dispatches* in their application. Alternatively, it would also be appropriate for the United Kingdom to inform ECLA of the delegation of authority granted under the respective *Dispatches* to each of the five territories to apply for membership in certain international

organizations. In the latter case, the five Associated States may at the same time proceed to present the application by themselves.

4. A single associate membership of the five Associated States is possible under the above-mentioned provision in the terms of reference (paragraph 3 (*a*), third sentence) which provides for the admission of a "group of territories" as "an associate member". If it is the wish of the Associated States to apply for a single associate membership, the application should be presented by their Governments jointly. We assume that there is no question of a joint application by both independent sovereign States and Associated States or other territories in the area, which in any event would not be permissible under the terms of reference of ECLA.

5. It would be equally objectionable if one of the fully sovereign States in the West Indies were to assume the representation of one or more of the Associated States. Rule 12 of ECLA's rules of procedure provides that "each member shall be represented on the Commission by an accredited representative", thus clearly excluding double representation. This provision in rule 12 is, moreover, fully consonant with the practice in other United Nations bodies which have consistently discouraged representation of one country by another. [14]

18 October 1967

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6. Question whether, in the event a regular session of the General Assembly is convened before the end of a special or emergency special session, the two sessions should be held simultaneously or the items before the special or emergency special session be transferred onto the provisional agenda of the regular session

Internal memorandum

I. Introduction

1. On 21 July 1967, the fifth emergency special session of the General Assembly adopted resolution 2256 (ES-V), whereby the Assembly decided, pursuant to rule 6 of its rules of procedure:

> ". . . to adjourn the fifth emergency special session temporarily and to authorize the President of the General Assembly to reconvene the session as and when necessary."

With the approach of the opening date of the twenty-second session of the General Assembly, the question now arises whether a further meeting of the fifth emergency special session should be convened to close that session and to transfer the item on its agenda onto the provisional agenda of the twenty-second regular session of the Assembly, or whether the fifth emergency special session should be considered as continuing simultaneously with the twenty-second regular session. The present note describes the circumstances surrounding the termination of previous special and emergency special sessions and concludes with some suggestions on procedures which might be followed in the instant case.

II. Termination of special sessions and emergency special sessions of the General Assembly

(A) *Sessions which have terminated upon completion of their business*

2. The practice with respect to the closing of special and emergency special sessions of the General Assembly has not been uniform, although most have been ended with the

[14] See also p. 317 of this *Yearbook*.

completion of their business, followed by a declaration by the President that the session was closed. This was the case with respect to the following sessions:

(*a*) First special session, 1947 (Item Palestine) [15]
(*b*) Second special session, 1948 (Item: Palestine) [16]
(*c*) Third emergency special session, 1958 (Item: Lebanon) [17]
(*d*) Fourth emergency special session, 1960 (Item: Congo) [18]
(*e*) Third special session, 1961 (Item: Tunisia) [19]
(*f*) Fourth special session, 1963 (Item: Financial situation) [20]
(*g*) Fifth special session, 1967 (Item: South-West Africa) [21]

3. It is perhaps worthy of note that the fourth emergency special session held its closing the night before the opening of the fifteenth regular session. It adopted on 20 September 1960, at its closing meeting, a substantive resolution [Resolution 1474 (ES-IV)] giving certain directives to the Secretary-General and making appeals to Member States not to intervene in the situation in the Republic of the Congo. The resolution, however, did not refer the matter before the fourth emergency special session to the General Assembly's fifteenth regular session.

(B) *Sessions which have transferred the items before them to the agenda of regular sessions*

4. At the first and second emergency special sessions in 1956, dealing respectively with the Middle East and Hungary, draft resolutions seeking to transfer these items to the eleventh regular session of the Assembly provoked lengthy procedural debates on the authority of an emergency special session to transfer the item for which it was summoned to a regular session and on the appropriateness of closing an emergency special session in advance of the completion of its task. A summary of some of the arguments advanced is given separately below.

(*a*) *First emergency special session*

5. At the final meeting of the first emergency special session, on 10 November 1956, the representative of the United States submitted a draft resolution (A/3329) [22] which provided for the transfer of the item on the Middle East to the provisional agenda of the eleventh regular session, with a request for early consideration of two draft proposals submitted earlier in the session by the United States (A/3272 and A/3273). [23]

6. The representative of the Philippines questioned on constitutional grounds whether an emergency special session could validly transfer to a regular session the item for which

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[15] See *Official Records of the First Special Session of the General Assembly, vol. I, Plenary Meeting*, 79th plenary meeting, p. 181.

[16] See *Official Records of the Second Special Session of the General Assembly, vol. I, Plenary Meetings*, 135th plenary meeting, p. 46.

[17] See *Official Records of the General Assembly, Third Emergency Special Session, Plenary Meetings and Annexes*, 746th plenary meeting, para. 275.

[18] *Ibid., Fourth Emergency Special Session, Plenary Meetings and Annexes*, 863rd plenary meeting, para. 333.

[19] *Ibid., Third Special Session, Plenary Meetings and Annexes*, 1006th plenary meeting, para. 161.

[20] *Ibid., Fourth Special Session, Plenary Meetings*, 1205th plenary meeting, para. 147.

[21] *Ibid., Fifth Special Session, Plenary Meetings*, 1524th plenary meeting.

[22] *Ibid., First Emergency Special Session, Plenary Meetings and Annexes*, agenda item 5, p. 32.

[23] *Ibid.*, p. 60.

it was summoned. The emergency special session had as its sole purpose the consideration of the item, not its transfer, he stated. The two sessions were distinct entities which could co-exist legally. Further, under rule 15 of the General Assembly's rules of procedure, additional items placed on the provisional agenda of the regular session might not be considered before the expiration of seven days and, in the absence of a two-thirds majority vote to the contrary, had to be referred first to a committee. This would, in his view, preclude the immediate consideration of the item which the emergency special session could give. Next, he saw a psychological value in letting the world see that the emergency special session stood available to handle the item. Finally, he felt that since, by its resolution 997 (ES-I) of 2 November 1956, the Assembly had decided to remain in session pending completion of the terms of the cease-fire in the Middle East which had not yet been achieved, the transfer would nullify the earlier decision. [24]

7. An objection to the transfer of the draft resolutions, as proposed by the United States, was made by the representative of Egypt on substantive grounds. [25] The representative of the United States thereupon withdrew the paragraph in his resolution referring to the two drafts (see para. 5 above). [26]

8. The President then summed up the situation as he saw it:

(i) The transfer of the item was valid under rule 13 of the rules of procedure, which provides that the provisional agenda of a regular session shall include, *inter alia*, all items the inclusion of which has been ordered by the Assembly at a previous session;

(ii) Holding simultaneous sessions would be contrary to the provisions for the convening of emergency special sessions, which are held solely because the General Assembly is not in regular session at the time. The drafters of the rules relating to emergency meetings had not intended such meetings to be held when the Assembly was in regular session and thus fully capable of dealing with items before it. [27]

9. The representative of India argued that the emergency special session could only recommend inclusion of the item in the provisional agenda of the regular session. Draft resolutions could not be transferred, though they could be reintroduced by their sponsors. The emergency special session could also recommend that the regular session consider the records of the emergency session. He also suggested, in view of rule 15, that the proposal of the United States be amended to provide that if the regular session could not consider the item at all, or at a sufficiently early date, the emergency session might continue. [28]

10. The representative of El Salvador disagreed with the President's interpretation of rule 13, in that he felt it did not apply to referrals by special or emergency special sessions. [29]

11. The draft resolution, as amended, was adopted by 66 votes to none, with 2 abstentions, [30] becoming General Assembly resolution 1003 (ES-I). By that resolution, the Assembly decided to place the item before it on the provisional agenda of the eleventh regular session as a matter of priority, and to refer to the regular session the records and

[24] *Ibid.*, *Plenary Meetings and Annexes* 572nd plenary meeting, paras. 5-12.
[25] *Ibid.*, paras. 13-16.
[26] *Ibid.*, para. 26.
[27] *Ibid.*, paras. 27-28.
[28] *Ibid.*, paras. 31-32.
[29] *Ibid.*, paras. 62-66.
[30] *Ibid.*, para. 74.

documents of the emergency special session. It also decided that "the first emergency special session may continue to consider the question, if necessary, prior to the eleventh regular session of the General Assembly." This latter proviso was not invoked, as the eleventh regular session convened two days later on 12 November 1956.

12. The representative of Guatemala, speaking in explanation of vote, based his abstention on procedural difficulties under rule 15 which would make it difficult to get early consideration of the item at the regular session. [31] The representative of Greece stated that his delegation had abstained because it was not clear that a simple majority of the regular session would be sufficient for the consideration of the item at any time. [32]

13. There was no declaration that the session was closed although the record of the meeting bears the indication "closing meeting".

(b) Second emergency special session

14. At the final meeting of the second emergency special session, also held on 10 November 1956, the representative of the United States introduced a draft resolution (A/3330) [33] almost identical to General Assembly resolution 1003 (ES-I), which would transfer the item on Hungary to the eleventh regular session. It was supported by Italy, Australia, and India. [34] It was opposed by Hungary, the USSR, Romania, Bulgaria and Czechoslovakia [35] on the ground that the United Nations consideration of the item was precluded by Article 2, paragraph 7, of the Charter.

15. The representative of Guatemala explained that he would abstain on procedural grounds linked with rule 15 of the rules of procedure.

16. The draft resolution of the United States was adopted by 53 votes to 9, with 8 abstentions, becoming General Assembly resolution 1008 (ES-II). [36] It is virtually identical with resolution 1003 (ES-I) described in paragraph 11 above.

17. There was no declaration that the session was closed, although there was a statement by the President assessing the work of the session. [37]

III. Concluding observations

18. In the light of the foregoing, it will be seen that there have been no instances where special sessions or emergency special sessions have overlapped with regular sessions. Furthermore, there are two precedents for emergency special sessions winding up immediately before a regular session and transferring the items before them to the regular session. Finally, there would seem to be considerable merit in the argument advanced by the President of the first emergency special session, as summarized in paragraph 8 above, that holding simultaneous sessions would be contrary to the basic purpose of emergency special sessions, as a device for speedily convening the Assembly when it is not already in session.

19. The procedural arguments raised against the transfer of items from the first and second emergency special sessions to the eleventh regular session, which are referred to

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[31] *Ibid.*, paras. 75-77.

[32] *Ibid.*, para. 82.

[33] *Ibid., Second Emergency Special Session, Plenary Meetings and Annex*, agenda item 5, p. 5.

[34] *Ibid.*, 573rd meeting, paras. 3-6, 16-17, 37-48.

[35] *Ibid.*, paras. 7-15, 18-21, 22-28, 32-36.

[36] *Ibid.*, para. 60.

[37] *Ibid.*, paras. 73-83.

above, did not, in fact, materialize. There was no delay in the consideration of these items. As already mentioned, the eleventh regular session convened on 12 November 1956. The morning of the following day, 13 November, the General Committee unanimously recommended the inclusion of the item considered by the first emergency session on the agenda of the regular session, to be considered as a matter of priority in plenary meeting. [38] On the same occasion, by 11 votes to 2 with 1 abstention, it made an identical recommendation concerning the item considered at the second emergency special session. [39] Such opposition as was advanced to this recommendation resulted from the position of the Eastern European States, described in paragraph 14 above, that discussion of the Hungarian situation violated Article 2, paragraph 7, of the Charter. On the afternoon of the same day the Assembly, at its 576th plenary meeting, approved the General Committee's recommendations regarding the inclusion of the items in the agenda, the first unanimously, [40] and the second by a roll-call vote of 62 to 9, with 8 abstentions. [41] The Assembly also approved the General Committee's recommendation that the items be considered directly in plenary, as a matter of priority, by 51 votes to none, with 19 abstentions. [42] The substantive discussion of the Hungarian question started at the 582nd plenary meeting of the General Assembly, on 19 November 1956, and that of the Middle East item at the 591st plenary meeting, on 23 November 1956.

20. Taking into account the existing precedents, the points of principle involved, and the fact that practical difficulties which were foreseen in transferring items from emergency special sessions to regular sessions did not materialize, it would seem desirable for the current fifth emergency special session to hold a meeting a day or two before the twenty-second regular session convenes on 19 September in order to wind up its proceedings and to transfer the item before it to the regular session. For this purpose a resolution could be adopted along the lines of General Assembly resolutions 1003 (ES-I) and 1008 (ES-II). It would even be possible, if no difficulties are anticipated, for the fifth emergency special session to wind up immediately before the twenty-second regular session is called to order, particularly since the presiding officer of the one would be temporary president of the other.

25 August 1967

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7. Financing of the activities of the United Nations Industrial Development Organization (UNIDO)—Explanation of rule 31, paragraph 2, of the draft rules of procedure [43] in the light of General Assembly resolution 2152 (XXI) of 17 November 1966 establishing UNIDO

Statement made by the Director of the General Legal Division of the Office of Legal Affairs at the 5th meeting of the Sessional Committee of the Industrial Development Board on 20 April 1967

1. It is understood that the Committee has asked the Office of Legal Affairs for an explanation of paragraph 2 of rule 31 of the draft rules of procedure of the Industrial

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[38] *Official Records of the General Assembly, Eleventh Session, General Committee*, 106th meeting, paras. 3 and 32.

[39] *Ibid.*, paras. 23 and 32.

[40] *Ibid., Plenary Meetings*, vol. I, 576th plenary meeting, para. 131.

[41] *Ibid.*, paras. 204-205

[42] *Ibid.*, para. 206.

[43] Document ID/B/2, reproduced in *Official Records of the General Assembly, Twenty-second Session, Supplement No. 15* (A/6715/Rev.1), p. 56.

Development Board and particularly whether this paragraph may be considered consistent with the pertinent General Assembly resolutions.

2. Paragraph 2 of draft rule 31 provides:

"Whenever the Board wishes to recommend, in cases of exceptional urgency, that work for which no financial provision exists be started before the next regular session of the General Assembly, it shall include a specific indication to that effect to the Executive Director in the resolution including the proposal."

3. This paragraph is taken verbatim from paragraph 4 of rule 34 of the rules of procedure of the Economic and Social Council, with the exception that reference is made to the Executive Director rather than to the Secretary-General. This provision was originally adopted by the Economic and Social Council in 1948 and incorporated in its rules of procedure in 1952.

Scope of application

4. With respect to the scope of application of this paragraph it would appear that it relates exclusively to work to be financed under the regular United Nations budget. The reference in paragraph 2 of draft rule 31 to the possibility of starting work "before the next regular session of the General Assembly" implies that the expenses involved in such work are to be met from the regular budget of the United Nations. It should be noted that this is the scope of the application of rule 34 of the rules of procedure of the Economic and Social Council where expenses are financed exclusively from the regular budget.

5. As you know, the United Nations Industrial Development Organization (UNIDO) has alternate sources for meeting expenses. Under General Assembly resolution 2152 (XXI) establishing UNIDO, there are two categories of expenditure, namely, expenses for administrative and research activities and expenses for operational activities (paragraph 20). Expenses for administrative and research activities are to be borne by the regular budget of the United Nations (paragraph 21), while expenses for operational activities are to be met from voluntary contributions or through participation in the United Nations Development Programme, or the utilization of the resources of the United Nations regular programme of technical assistance (paragraph 22). Paragraph 24 of the same resolution states that "the voluntary contributions shall be governed by the Financial Regulations of the United Nations, except for such modifications as may be approved by the General Assembly on the recommendation of the Board". The method for handling projects financed from voluntary contributions must therefore be dealt with in accordance with paragraph 24 of General Assembly resolution 2152 (XXI), and it remains for the Board to make recommendations to the General Assembly if the Board wishes to introduce any modifications to the United Nations Financial Regulations for that purpose. It would not therefore be appropriate to deal with this aspect through the rules of procedure of the Board.

6. Where the expenses for operational activities are met through participation in the United Nations Development Programme (UNDP), the relevant decision required is to be taken by the Governing Council of UNDP rather than by the General Assembly. In so far as expenses are met by utilization of resources of the regular programme of technical assistance, it should be recalled that the review of the provisional estimates relating to technical assistance is now undertaken by the Governing Council of UNDP although final approval rests with the General Assembly.

7. From the foregoing it may be concluded that paragraph 2 of rule 31 of the draft rules of procedure of the Industrial Development Board in referring specifically to "the

next regular session of the General Assembly" is intended to provide for an emergency situation involving expenses to be borne by the regular budget of the United Nations, and the work referred to therefore relates only to the administrative and research activities of UNIDO. This may be made more immediately apparent by adding after the word "work" in the second line of the paragraph, the following: "involving expenditures under paragraph 21 of General Assembly resolution 2152 (XXI)".

Effect of paragraph 2 of rule 31

8. It will be noted that the proposed paragraph 2 refers to *recommendations* by the Board. Financing of such urgent work would have to be in accordance with applicable resolutions of the General Assembly and the Financial Regulations of the United Nations. In this connexion, it will be recalled that the resolution on unforeseen and extraordinary expenses for the financial year 1967 (2243 (XXI)) "authorizes the Secretary-General, with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions and subject to the Financial Regulations of the United Nations . . . to enter into commitments to meet unforeseen and extraordinary expenses in the financial year 1967". Similar authority has been given in resolutions of preceding sessions of the General Assembly. As the resolution on unforeseen and extraordinary expenses authorizes action by the Secretary-General, reference in paragraph 2 of rule 31 to the Executive Director must be understood to be to the Secretary-General through the Executive Director.

9. Recommendations of the *Ad Hoc* Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies should also be noted. In this connexion I would refer particularly to paragraphs 39 to 46 of the report [44] of the Committee:

"39. The heads of the organizations should calculate the budget estimates and control obligations in such a way as to ensure that appropriations are not exceeded.

"40. Unavoidable increases in expenditure in certain sectors should, as far as possible, be financed in the first instance by savings in other sectors. This applies in particular to increases due to rises in prices (including in this term salaries and wages) which should so far as possible be absorbed by reassessment of priorities, redeployment of resources, and, where necessary, by adjustments within the budget.

"41. In order to provide the heads of the organizations with a small amount of funds to meet contingencies which may arise and which cannot be met by savings or postponed until the adoption of the next budget, a special appropriation line might, where necessary, be included in the budget for these minor contingent expenses.

"42. Drawings on the working capital fund to finance supplementary expenses without prior appropriation should, as a general rule, be discontinued as from the time when the organizations adopt the procedures suggested above.

"43. Drawings on the working capital fund without prior appropriation should be made only in clearly exceptional cases involving emergencies within the limits laid down by legislative bodies, and to the extent that they cannot be financed out of the measures mentioned in paragraphs 40 and 41 above.

"44. When drawings on the working capital fund without appropriation have been made, the heads of the organizations should report at the first opportunity to the competent organs vested with financial responsibility and submit the appropriate requests for supplementary appropriations to their organizations' legislative body.

"45. Adherence to the above procedure should ensure that recourse to supplementary appropriations would be kept to a minimum.

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[44] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 80 document, A/6343.

"46. In every case the heads of the organizations should include as part of their annual financial reports the requisite explanation of the supplementary expenses incurred and the financing procedure used to meet them."

In approving those recommendations in its resolution 2150 (XXI), the General Assembly further urged that they be given the most attentive consideration by Member States and by United Nations organs and related bodies with a view to their earliest implementation. The Secretary-General was requested to take the appropriate measures to give effect to those recommendations requiring his action including the submission of proposals to the competent United Nations organs and related bodies. The implementation of paragraph 2 of rule 31 of the draft rules of procedure of the Industrial Development Board should therefore be considered in the light of those recommendations of the *Ad Hoc* Committee, especially the above-quoted recommendation concerning clearly exceptional cases involving emergencies.

10. As to the meaning of the phrase "cases of exceptional urgency", it will be recalled as previously pointed out that this is taken from rule 34, paragraph 4, of the rules of procedure of the Economic and Social Council. It would necessarily be for the Board to determine whether a particular case was of such exceptional urgency as to justify a recommendation under this paragraph.

Proposed addition to paragraph 2 of rule 31

11. It has been proposed adding to paragraph 2 of rule 31 the following:

". . . with explicit reference to the already approved project at the expense of which such work is to be financed".

12. This would, of course, be an addition to the text in the rules of procedure of the Economic and Social Council from which this paragraph has been taken, although paragraph 3 of rule 34 of these rules of procedure did provide that the Council should indicate whenever appropriate the priority or degree of urgency which it attaches to projects and, as the case may be, which current projects may be deferred, modified or eliminated.

13. Having in mind the recommendations of the *Ad Hoc* Committee of Experts which I have quoted, the Office of the Controller would see an advantage in adding to the present text of paragraph 2 a provision which might read as follows:

". . . and shall also indicate the possibility of financing the work within the level of the approved budget by eliminating or deferring other work of lesser urgency and priority".

Conclusion

14. In conclusion, it will be noted that this paragraph is not an innovation but is taken from existing rules of procedure of the Economic and Social Council. Its application would necessarily be subject to all applicable decisions of the General Assembly. It would therefore appear that it would not purport to give to the Board powers which would be inconsistent with pertinent General Assembly resolutions.

8. Question of the contributions of San Marino for international control of narcotic drugs

Memorandum to the Controller

1. By your memorandum of 8 November 1967 you have informed us that the Directing External Auditor has suggested that a legal opinion be obtained as a preliminary step to informing the General Assembly, in order to enable it to take a decision in the matter, of the fact that San Marino has never paid the assessments made in accordance with General Assembly resolution 455 (V) of 16 November 1950, in respect of expenses resulting from obligations placed on the United Nations by instruments relating to the control of narcotic drugs.

2. We maintain that San Marino is correct in its contention that the International Opium Convention of 19 February 1925 [45] and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs of 13 July 1931, [46] to which it is a party, do not provide for an obligation to contribute. The 1925 Conference adopted a resolution, incoporated in its Final Act, which envisages contributions by non-members of the League of Nations, but the resolution did not have binding force and San Marino, which did not sign the Final Act, has not accepted it. In resolution 455 (V), the General Assembly recorded its view that non-members of the United Nations should contribute their fair share of the expenses in question, but that resolution does not constitute a legal obligation for San Marino.

3. The Single Convention on Narcotic Drugs, 1961, [47] in article 6, expressly provides for contributions from non-members of the United Nations. San Marino, however, has not yet become a party to the Single Convention, has not even signed it, and did not participate in the 1961 Conference. That country is therefore not bound by the obligation provided in the Single Convention.

4. The assessments have been made, and the Secretary-General has pursued the matter, in accordance with General Assembly resolution 455 (V), operative paragraph 3 of which reads:

> "*Directs* the Secretary-General to seek payment of such amounts as are determined by the method established above in respect of the 1950 expenses and those of future years."

If the General Assembly changes this directive, it will no longer be necessary to make the assessment or to seek payment. Until it does so, it would be necessary to continue in accordance with present procedures.

13 November 1967

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9. Question whether the Office of Technical Co-operation has an obligation to disclose to Governments the cost of fellowships awarded to their nationals

Memorandum to the Deputy Director for Programming, Office of Technical Co-operation, Department of Economic and Social Affairs

1. You have requested our advice on whether the Office of Technical Co-operation has an obligation to disclose the actual cost of fellowships to a government whose nationals

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[45] League of Nations, *Treaty Series*, vol. LXXXI, p. 317.

[46] *Ibid.*, vol. CXXXIX, p. 301.

[47] United Nations, *Treaty Series*, vol. 520, p. 151.

have been awarded fellowships. The request for such information from the Government of a Member State refers to laws of that Member State which provide that a fellowship holder is liable for the entire cost of a fellowship, regardless of the source of funds, if he does not fulfil his obligation to serve with the government for double the duration of the fellowship. The Government concerned appears to imply that it will be entitled to retrieve and retain the amounts spent by both the United Nations and the Government.

2. The primary purpose of the Fellowship Programme is to assist governments in the training abroad of their nationals for specific functions connected with the country's social and economic development. Whether or not the fellowship holder is a civil servant, it falls upon him to return home to assume the functions which his government has reserved or has arranged to reserve for him. This purpose is reflected in the fellowship application form in which the applicant is required to undertake to "return to my home country at the end of the fellowship" (Undertaking No. 5 at the bottom of the application form). Similarly, in the fellowship nomination forms, the governments must certify the title, duties and responsibilities of the post in which it is proposed to employ the fellow upon his return from the fellowship.

3. Return of the fellow to his home country to assume the functions arranged in advance for him by the Government constitutes, therefore, a requirement of the Fellowship Programme in the fulfilment of which the recipient governments and the United Nations have an equal interest. Accordingly, in our view, where a government has passed legislation requiring a fellow to reimburse the fellowship expenditures to the government in the event of his failing to meet this requirement, the United Nations cannot refuse to provide the Government with information concerning the United Nations cost towards the fellowship. However, while the enforcement of such legislation would be entirely consistent with the purposes of the Fellowship Programme, no right to retain the United Nations portion of the funds would devolve upon the Government, since once a fellowship is awarded the Government concerned has an entitlement to a service by the United Nations but not to the cash value of the fellowship. For this reason we agree that if the amount spent by the United Nations is retrieved by the government from the fellow, it should be reimbursed to the United Nations Technical Assistance Programme.

7 November 1967

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10. Requirement of parity between administering and non-administering Powers within the Trusteeship Council under sub-paragraph 1 c. of Article 86 of the Charter—Question raised by Nauru's accession to independence

Note submitted to the Trusteeship Council [48]

1. In the light of a letter dated 7 November 1967 from the Permanent Representative of Australia to the United Nations (A/6903) advising the Secretary-General of the Administering Authorities' intention to seek the temination of the Trusteeship Agreement on Nauru on 31 January 1968, the Secretary-General wishes to draw attention to the future composition of the Trusteeship Council.

2. The Trust Territory of Nauru is at present administered by Australia on behalf of itself, New Zealand and the United Kingdom of Great Britain and Northern Ireland.

[48] Document T/1674.

Under the provisions of Article 86 of the Charter, with Nauru's gaining independence, New Zealand will no longer be a member of the Trusteeship Council since it will not have any other Trust Territories under administration. The United Kingdom will change its status from that of an administering member (under sub-paragraph 1 a. of Article 86) to that of a non-administering member (under sub-paragraph 1 b. of Article 86). Australia will remain in the Council (under sub-paragraph 1 a. of Article 86) as a member administering the Trust Territory of New Guinea, and Liberia elected for a three-year term (under sub-paragraph 1 c. of Article 86) will, in accordance with past practice, continue as a member until 31 December 1968.

3. The composition of the Council on 1 February 1968 will be as follows:

Administering Powers	
Australia	Automatically under sub-paragraph 1 a. of Article 86
United States of America	
Non-administering Powers	
Republic of China	Automatically under sub-paragraph 1 b. of Article 86
France	
Union of Soviet Socialist Republics	Elected under sub-paragraph 1 c. of Article 86
United Kingdom	
Liberia	

4. It will be noted that the number of Administering Authorities will be reduced from four to two, while the number of non-administering Member States which will remain permanently as members of the Trusteeship Council will be increased from three to four.

5. Members of the Council may wish to take into account the following considerations.

(*a*) Article 7 of the Charter of the United Nations establishes the Trusteeship Council as a principal organ of the United Nations. By virtue of Article 85, paragraph 2, it functions under the authority of the General Assembly in assisting the latter in the discharge of its responsibilities for Trust Territories. Pursuant to Articles 87 and 88 of the Charter, the Trusteeship Council, under the authority of the General Assembly, is vested with certain specific functions, including consideration of reports submitted by the Administering Authority, acceptance and examination of petitions, and provision for periodic visits to Trust Territories. In terms of the Trusteeship Agreements, the Administering Authority undertakes to co-operate with the Trusteeship Council in the discharge of these functions, this undertaking not expressly extending to any other organ to which the General Assembly might entrust similar functions.

(*b*) Continuance of a permanent majority of non-administering members on the Council will render inoperative sub-paragraph 1 c. of Article 86, as the conditions it was designed to meet, namely an excess of administering Powers over non-administering Powers in the Council, is unlikely to recur. The practical result will be that supervision of the administration of Trust Territories based on a equal balance on the Council between administering and non-administering members will disappear and will be replaced by supervision effected under a permanent majority of non-administering members.

(*c*) It is to be noted that the Charter provided for parity between administering and non-administering Powers only at the Trusteeship Council stage and did not seek to apply the concept either in the Fourth Committee or in the General Assembly under whose authority the Council operates. The purpose of Article 86, 1 c. was to provide a composition of the Council which would permit adequate outside supervision by non-administering members of the conduct of the administering Powers in order to ensure the paramountcy of the interests and wel-being of the inhabitants of Trust Territories. These vital objectives

may be equally well achieved with administering members forming a permanent minority in the Council, as it would not seem that a lack of parity in the form of a permanent majority of non-administering members on the Council could prejudice the interests of the Territories as reflected in the provisions of the Charter. Should the administering Powers consider that their loss of parity would be prejudicial to their interests, it would be open to them to raise the matter for consideration through appropriate procedures.

(*d*) In any event, it will be recalled that the Trusteeship Council has functioned with a majority of non-administering members over administering members on several occasions. For example, during the twenty-sixth session of the Trusteeship Council from 28 April 1960 to 30 June 1960, the Council functioned with a majority of eight non-administering members to six administering members. During the eleventh special session of the Trusteeship Council, which met on 10 April 1961 and the twenty-seventh regular session which met from 1 June to 19 July 1961, the Council functioned with a majority of eight non-administering members to five administering members. During the second part of the twenty-ninth session of the Trusteeship Council, which met from 2 July to 20 July 1962, the Council functioned with a majority of five non-administering members to four administering members.

(*e*) No amendment of the Charter could restore parity between administering and non-administering Powers while retaining all the permanent members of the Security Council in the Trusteeship Council.

6. In view of the foregoing, it may be concluded that, on Nauru's obtaining independence on 31 January 1968, the membership of the Trusteeship Council (see para. 3 above) may continue until the normal expiration of the three-year term of the member previously elected under sub-paragraph 1 c. of Article 86 on 31 December 1968, and that thereafter the Council be composed of members automatically appointed under sub-paragraphs 1 a. and 1 b. of Article 86 until all Trusteeship Agreements have been terminated or, in the case of an amendment to the Charter, until the amendment comes into force.

22 November 1967

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11. Obligation under Article 102 of the Charter to register with the Secretariat treaties and international agreements entered into after the coming into force of the Charter—Question whether Article 102 also covers extensions of treaties inherited from a former colonial Power

Letter to the Permanent Representative of a Member State

1. You raise the question whether there are certain general classes of international understandings that are usually not registered. Under Article 102 of the Charter, every treaty and every international agreement entered into by a Member of the United Nations after the coming into force of the Charter must be registered with the Secretariat and published by it. However, the exact meaning of the terms "treaty" and "international agreement" have not been set forth in the Charter.

2. An attempt to define more specifically the categories of treaties and international agreements requiring registration was made at the second part of the first session of the General Assembly by Sub-Committee 1 of the Sixth Committee, when drawing up the Regulations to give effect to Article 102 of the Charter, hereinafter referred to as the Regulations. However, the discussion on the subject proved inconclusive and, as a result,

it was decided to retain in article 1 of the Regulations the general terms of Article 102 of the Charter, with the addition, after the words "Every treaty and international agreement" of the phrase "whatever its form and descriptive name". In its report to the General Assembly recommending the adoption of the Regulations, the Sixth Committee noted that, in drawing up the terms of the Regulations, Sub-Committee 1 had had regard to the "undesirability of attempting at this time to define in detail the kind of treaty or agreement requiring registration under the Charter, it being recognized that experience and practice will in themselves aid in giving definition to the terms of the Charter".

3. The question of the scope of application of Article 102 of the Charter was again considered in the Sixth Committee at the second, third and fifth sessions of the General Assembly. Various views were expressed on the subject and a suggestion was made that a sub-committee be established to provide a definition of the exact meaning of the term "treaty and international agreement", but a general consensus appeared to prevail that the matter should be left to gradual development through practice.

4. In the circumstances, the Secretariat, which under Article 102 of the Charter and the Regulations is generally responsible for the operation of the system of registration and publication of treaties, has been faced on numerous occasions with inquiries from various Governments as to whether a given agreement or type of agreements was subject to registration. Moreover, in some instances in which there was doubt as to whether an agreement transmitted for registration could be registered, the Secretariat has felt obliged to initiate consultations with the registering party with a view to clarifying the matter. As a result, a considerable body of practice has developed in this regard. You may refer in that respect to the *Repertory of Practice of United Nations Organs*, Volume V, [49] describing in more detail the discussion in the Sixth Committee referred to above and the position taken by the Secretariat in particular instances. Also of interest are two supplements to this publication, namely, Supplement No. 1, volume II [50] and Supplement No. 2, volume III [51].

5. As to the question whether Article 102 of the Charter also covers extensions of treaties inherited by a developing country from a former colonial power, we assume that the term "extensions" is used in this context to mean the acts by which such a country has consented under the succession practice to continue to be bound by treaties which had been applied to it, prior to the independence, by a State then responsible for its foreign relations. Such "extensions" are subject to registration but, as a matter of procedure, it is relevant whether a bilateral or a multilateral treaty is involved in succession. A succession to a bilateral treaty is usually confirmed in the form of an agreement between the successor State and the State with which the treaty concerned was originally concluded by the predecessor State. In such a case, it is the new agreement confirming the continuance in force of an old treaty which is subject to registration under Article 102 of the Charter and article 1 of the Regulations.

6. Where a multilateral treaty is involved, the consent of a successor State to be bound by a treaty is established on the international plane by a formal notification to this effect communicated by that State to the depositary of the treaty concerned. Such notifications fall within the category of subsequent actions which are subject to registration under article 2 of the Regulations. The said article provides that "when a treaty or international agreement has been registered with the Secretariat, a certified statement

[49] United Nations publication, Sales No.: 1955.V.2.

[50] United Nations publication, Sales No.: 1957.V.4.

[51] United Nations publication, Sales No.: 63.V.7.

regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat".

7. We also wish to inform you that under article 1 (3) of the Regulations, the registration may be effected by any party to the agreement or in accordance with article 4 of the Regulations. Once the registration of an agreement has been effected by one of the parties or in accordance with article 4, all other parties, pursuant to article 3 of the Regulations, are relieved from the obligation to register it.

8. No evidence is required by the Secretariat of an understanding between the parties that the treaty or international agreement should be registered. Indeed, no such understanding appears to be necessary at all for a party to proceed with the registration of a treaty or international agreement.

9. For the convenience of reference, you may wish to note that the text of the Regulations to give effect to Article 102 of the Charter of the United Nations, established by the General Assembly in resolution 97 (I) of 14 December 1946, as modified by resolution 364B (IV) of 1 December 1949 and 482 (V) of 12 December 1950, may be found in Volume 76 of the United Nations *Treaty Series* and also, with appropriate annotations, in Volume V, p. 283, of the *Repertory of Practice of United Nations Organs* referred to earlier in this letter.

14 November 1967

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12. Question whether the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 [52] has been designed to supersede the International Convention on the Execution of Foreign Arbitral Awards of 26 September 1927 [53]

Letter to the Permanent Representative of a Member State

1. As regards your question whether the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, hereafter referred to as the 1958 Convention, has been designed to supersede the International Convention on the Execution of Foreign Arbitral Awards, done at Geneva on 26 September 1927, hereafter referred to as the 1927 Convention, we wish to invite your attention to article VII of the 1958 Convention which reads as follows:

> "1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
>
> "2. The Geneva Protocol on Arbitration Clauses of 1923 [54] and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention."

2. You will note that, although the effect of paragraph 2 of article VII is to supersede the 1927 Convention by the 1958 Convention, this paragraph operates only in relations

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[52] United Nations, *Treaty Series*, vol. 330, p. 3.

[53] League of Nations, *Treaty Series*, vol. XCII, p. 301.

[54] *Ibid.*, vol. XVII, p. 157.

between the parties to the latter Convention. Furthermore, paragraph 1 of the same article expressly provides that the 1958 Convention shall not affect the validity of multilateral and bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States.

3. Accordingly, while the 1927 Convention has ceased to have effect between States parties thereto which have become parties to the 1958 Convention, it still remains in force in relations between the latter States and any of the States parties to the 1927 Convention which is not a party to the 1958 Convention.

4. In this regard, it may be of interest to note that 12 out of 23 States parties to the 1927 Convention are not parties to the 1958 Convention, two of them, Malta and Yugoslavia, having become parties after the conclusion of the 1958 Convention. In addition, the 1927 Convention was signed on behalf of Uganda on 5 May 1965 and acceded to by the United Kingdom on behalf of Hong-Kong on 10 February 1965.

13 April 1967

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13. Question whether the Single Convention on Narcotic Drugs, 1961 [55] replaced as between parties to it the earlier narcotics treaties enumerated in paragraph 1 of article 44 of the said Convention—Question whether the obligations of these earlier treaties continue as between parties to them who are not parties to the Single Convention and parties who are also parties to the Single Convention

Letter to the Director of the Division of Narcotic Drugs

1. In accordance with a recommendation of the United Nations Consultative Group on Opium Problems, you have addressed a formal request to the Secretary-General for a legal opinion on two questions concerning the effect of article 44 of the Single Convention on Narcotic Drugs, 1961, on prior narcotics treaties referred to in that article.

2. *Question 1.* Question 1, as formulated by the Consultative Group, reads as follows:

> "Does article 44 of the Single Convention by itself replace as between parties to it the provisions of the instruments which it replaces?"

Article 44 of the Single Convention contains two paragraphs, the first containing provisions relating to most of the previous narcotics treaties, and the second containing a special provision regarding article 9 of the Geneva Convention of 26 June 1936. [56] It is understood that the question relates to the interpretation of paragraph 1, particularly as regards the Protocol of 23 June 1953, [57] and not to the special provision in paragraph 2.

3. Paragraph 1 of article 44 provides:

> "1. The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties: [There follows a list of treaties, including the 1953 Protocol.]"

This provision means that, as soon as the Single Convention came into force between its parties, the earlier narcotics treaties were immediately terminated and replaced as

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[55] United Nations, *Treaty Series*, vol. 520, p. 151.

[56] League of Nations, *Treaty Series*, vol. CXCVIII, p. 299.

[57] United Nations, *Treaty Series*, vol. 456, p. 56.

between parties to the Single Convention which were also parties to the earlier treaties. The wording of article 44 is of a broad character, and makes no exception for obligations of earlier treaties which would be compatible with the obligations of the Single Convention; all obligations of the earlier treaties are terminated as between the parties, without regard to the question of compatibility.

4. This interpretation finds support in the preparatory work of the Single Convention. The 1961 Conference was called pursuant to Economic and Social Council resolution 689J (XXVI) of 28 July 1958, which stated that one of the objects of the Conference was "to replace by a single instrument the existing multilateral treaties relating to the control of narcotic drugs". This resolution was borne in mind by the Conference, which cited it and referred to the above-quoted passage in paragraph 1 of the Final Act of the Conference. Moreover, in the discussion at the thirty-sixth plenary meeting of the Conference on 21 March 1961 of article 51 of the draft convention, which later became article 44, it was generally assumed by the speakers that the new convention would completely replace the old ones, regardless of any question of compatibility. That was the reason why certain delegations that wished to preserve the option of keeping in force article 9 of the 1936 Convention—a provision more stringent than paragraph 2 of article 36 of the Single Convention but not inconsistent therewith—successfully opposed the inclusion of a reference to the 1936 Convention in the general list. The Drafting Committee was thereupon requested to prepare the special provision regarding the 1936 Convention which became paragraph 2 of article 44 of the Single Convention.

5. It therefore results from the text of paragraph 1 of article 44 and from the preparatory work that as soon as the Single Convention becomes binding upon its parties, those parties cease to be bound in their mutual relations by the earlier narcotics treaties. This effect is automatic, and there is no need for the parties concerned to take any additional action to bring it about. No such action is provided for in the text of the Single Convention, and none is required under the customary law of treaties. The draft articles on the law of treaties adopted by the International Law Commission in 1966 [58] do not require any action by the parties in such circumstances.

6. *Question 2.* Question 2 was worded as follows by the United Nations Consultative Group on Opium Problems:

> "Do the obligations of those instruments [the old narcotics treaties] respectively continue as between parties to them who are not parties to the Single Convention and parties who are also parties to the Single Convention?"

The answer to this question is in the affirmative. Article 26 of the draft articles on the law of treaties adopted by the International Law Commission provides:

> "1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs.
>
> ...
>
> "4. When the parties to the later treaty do not include all the parties of the earlier one:
>
> ...
>
> "(*b*) as between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty governs their mutual rights and obligations;
>
> "(*c*) as between a State party to both treaties and a State party only to the later treaty the later treaty governs their mutual rights and obligations.

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[58] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev. 1), p. 14.

"5. Paragraph 4 is without prejudice . . . to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty."

The rule thus stated by the International Law Commission seems to have been generally accepted by Governments, and can be taken as representing existing law.

7. It follows that the old treaties apply as between States which are parties to them but not parties to the Single Convention, and that they also apply in the relations between States parties only to them and States parties both to them and to the Single Convention.

4 December 1967

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14. Date of entry into force of the Convention on Facilitation of International Maritime Traffic of 9 April 1965[59] with respect to States having deposited their instrument of acceptance or accession between the date of deposit of the last instrument of accession required for the entry into force of the said Convention and the date of entry into force—Interpretation of article XI of the Convention

1. You have asked for our views regarding the application of article XI of the Convention on Facilitation of International Maritime Traffic, done at London on 9 April 1965. The said article reads as follows:

"The present Convention shall enter into force sixty days after the date upon which the Governments of at least ten States have either signed it without reservation as to acceptance or have deposited instruments of acceptance or accession. It shall enter into force for a Government which subsequently accepts it or acceeds to it sixty days after the deposit of the instrument of accession."

2. Referring to the fact that the tenth instrument of acceptance or accession was received on 4 January 1967, thus bringing into force the Convention on 5 March 1967, you ask whether the word "subsequently" may be read in apposition to the date of entry into force, rather than the date of deposit of the tenth instrument of acceptance or accession, so that the three States, namely Nigeria, Iceland and Ivory Coast, whose instruments were deposited between those two dates could also be included among the States in respect of which the Convention entered into force on 5 March 1967.

3. The entry into force provision similar to the one contained in the Convention in question may be found in a number of Conventions and, although its wording is not entirely free from ambiguity, there seems to be a generally recognized practice to relate the word "subsequently" or a similar expression to the date on which the number of instruments required to bring into force the Convention has been reached, in other words, to count a full delay provided in the Convention in calculating the effective date of each instrument deposited "subsequently". We draw your attention, for instance, to the pertinent provisions and the respective footnotes relating to the entry into force of the four Geneva Conventions of 12 August 1949 for the protection of war victims[60] or the same for the Universal Copyright Convention.[61]

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[59] United Nations, *Treaty Series*, vol. 591.

[60] *Ibid.*, vol. 75, p. 3.

[61] *Ibid.*, vol. 216, p. 132.

4. On the other hand, article XV, paragraph 2 of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, [62] which is deposited with IMCO, provides that for each Government which signs the Convention without reservation as to acceptance or accepts the Convention before the date of its entry into force, it shall come into force on that date; and for each Government which accepts the Convention on or after that date, it shall come into force three months after the date of the deposit of that Government's acceptance.

5. In our view, therefore, the instruments deposited by Nigeria, Iceland and the Ivory Coast should be considered as having become effective sixty days after their deposit, that is to say on 25 March 1967, in respect of the first two States and on 17 April 1967 in respect of the Ivory Coast.

17 April 1967

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15. Procedures for amending the Convention of the World Meteorological Organization [63]—Article 27 of the Convention

Opinion addressed to the Secretary-General of the World Meteorological Organization

Section I. Introduction

1. By resolution 3 (Cg-IV), adopted on 27 April 1963, the Fourth Congress of the World Meteorological Organization (WMO) established a Working Group to study certain problems which had arisen regarding the Convention of the Organization. The Working Group, having met between 14 and 18 December 1964, prepared a draft report [64] which was examined by the WMO Executive Committee during its seventeenth session, held between 27 May and 11 June 1965. Having considered the summary of the discussions in the Working Group regarding Article 27 of the Convention, relating to amendments, the Executive Committee adopted the following decision:

> "The Executive Committee considered that in view of the complicated nature of the problems connected with Article 27, it would be useful to ask for a legal opinion regarding it, and directed the Secretary-General to do so. Such a legal opinion should be forwarded to all Members well before the Fifth Congress for their consideration." [65]

2. In pursuance of this decision the Secretary-General of WMO wrote to the Legal Counsel of the United Nations on 15 April 1966, requesting him to undertak an examination of the English and French texts of Article 27 of the WMO Convention and to provide a legal opinion regarding the procedures for amending the Convention contained in that article in the light of the difficulties experienced by the Working Group. The present opinion has been prepared in response to that request.

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[62] *Ibid.*, vol. 327, p. 3.

[63] *Ibid.*, vol. 77, p. 143.

[64] WG/CONV/Conference room paper 3.

[65] Paragraph 2.2.7(f), General Summary, *Seventeenth Session of the Executive Committee*, WMO—No. 173.RC.26.

Section II. Provisions of the WMO Convention [66]

3. Article 27 reads as follows:

English version

"(*a*) The text of any proposed amendment to the present Convention shall be communicated by the Secretary-General to Members of the Organization at least six months in advance of its consideration by the Congress.

"(*b*) Amendments to the present Convention involving new obligations for Members shall require approval by the Congress, in accordance with the provisions of Article 10 of the present Convention, by a two-thirds majority vote, and shall come into force on acceptance by two-thirds of the Members which are States for each such Member accepting the amendment and thereafter for each remaining such Member on acceptance by it. Such amendments shall come into force for any Member not responsible for its own international relations upon the acceptance on behalf of such a Member by the Member responsible for the conduct of its international relations.

"(*c*) Other amendments shall come into force upon approval by two-thirds of the Members which are States."

French version

"(*a*) Tout projet d'amendement à la présente Convention sera communiqué par le Secrétaire général aux Membres de l'Organisation, six mois au moins avant d'être soumis à l'examen du Congrès.

"(*b*) Tout amendement à la présente Convention comportant dè nouvelles obligations pour les Membres de l'Organisation sera approuvé par le Congrès, conformément aux dispositions de l'article 10 de la présente Convention, à la majorité des deux tiers, et entrera en vigueur, sur acceptation par les deux tiers des Membres qui sont des Etats, pour chacun de ces Membres qui accepte ledit amendement et, par la suite, pour chaque Membre restant, sur acceptation par celui-ci. De tels amendements entreront en vigueur, pour tout Membre qui n'est pas responsable de ses propres relations internationales, après acceptation en son nom par le Membre responsable de la conduite de ses relations internationales.

"(*c*) Les autres amendements entreront en vigueur après avoir été approuvés par les deux tiers des Membres qui sont des Etats."

4. Article 10, which is referred to in Article 27, provides that:

"(*a*) In a vote in Congress each Member shall have one vote. However, only Members of the Organization which are States (hereinafter referred to as 'Members which are States'), shall be entitled to vote or to take a decision on the following subjects:

(i) Amendment or interpretation of the Convention or proposals for a new Convention;

(ii) Requests for Membership of the Organization;

(iii) Relations with the United Nations and other inter-governmental organizations;

(iv) Election of the President and Vice Presidents of the Organization and of the members of the Executive Committee other than the Presidents of the Regional Associations.

(*b*) Decisions shall be by a two-thirds majority of the votes cast for and against, except that elections of individuals to serve in any capacity in the Organization shall be by simple majority of the votes cast. The provisions of this paragraph, however, shall not apply to decisions taken in accordance with Articles 3, 24, 25 and 27 of the Convention."

Article 28 of the Convention, relating to interpretation and disputes, provides as follows:

"Any question or dispute concerning the interpretation or application of the present Convention which is not settled by negotiation or by the Congress shall be referred to an independent

[66] The text cited takes into account the amendments to the Convention adopted by the Fourth Congress of WMO.

arbitrator appointed by the President of the International Court of Justice. unless the parties concerned agree on another mode of settlement."

Section III. Discussion in the Working Group

5. At its session in December 1964, the Working Group on the Convention distinguished four issues in relation to the interpretation of Article 27. One of these, concerning paragraph (*a*) of Article 27, the Group effectively disposed of. Of the remainder, which concerned the interpretation of paragraphs (*b*) and (*c*) of Article 27, the Group agreed that two required interpretation by the WMO Congress; in the fourth case the Group was unable to reach any final conclusions. The four questions are summarized below.

(i) *Whether a proposed amendment submitted in accordance with paragraph (a) of Article 27 can be modified by Congress*

6. The Working Group concluded:

"that Congress itself had interpreted this paragraph of Article 27 in the past as enabling it to discuss and modify proposals of amendments submitted to it by Members. Indeed all amendments adopted by Third and Fourth Congress had been in a form and wording different from that in which the original draft amendment had been submitted." [67]

It is considered that this issue requires no further comment.

(ii) *Definition of the two-thirds majority required in Congress for amendments under paragraph (b) of Article 27*

7. It was pointed out with reference to this question:

"that Article 10(*b*), which defined the majority required for decisions in Congress, explicitly excluded decisions taken in accordance with Article 27. At the same time, Article 10(*a*) (1) stated that only Members of the Organization which are States shall be entitled to vote or to take a decision regarding amendment or interpretation of the Convention."

The Working Group agreed that "on this point the provisions of the Convention were not clear and should be interpreted by Congress."

(iii) *Whether the approval of amendments under paragraph (c) of Article 27 can be obtained outside Congress*

8. On this issue the draft report of the Working Group stated as follows:

"It was pointed out that similar provisions concerning approval by two thirds of the Members which are States and contained in Articles 3 and 25(*a*) had been implemented through postal ballot. The members holding this view also emphasized that if postal ballots were excluded as regards the implementation of Article 27(*c*) it would become more and more difficult, with the increasing number of Members of the Organization, to reach within Congress the necessary approval of two thirds of the Members which are States. This would mean that amendments involving new obligations would in fact be easier to adopt than amendments which did not involve new obligations, since the acceptance procedure under Article 27(*b*) permitted a decision by correspondence. Therefore these members felt that a decision by correspondence should be possible for amendments involving no new obligations for Members.

"Other members were of the view that matters relating to the amendments of a convention should not be decided upon by correspondence. These were matters of importance and should be discussed in detail and decided upon during the session of Congress. The fact that a number of such amendments had been adopted by Congress under Article 27(*c*) showed that

[67] Para. 17.2 WG/CONV/Conference room paper 3. The quotations in paras. 7, 8 and 10 below are from the same source.

this was by no means impossible. Further, the Working Group itself, by deciding that the proposed Articles 4 *, 10 * and 18 * could not be submitted to a vote by correspondence, had also adopted that view.

"The other group of members, however, considered that the decision regarding the procedure taken by the Working Group to be applied in the particular case of proposed Articles 4 *, 10 * and 18 *, should under no circumstances be considered as a decision regarding the application of postal ballots under Article 27(*c*) in general. This decision had been taken as a compromise solution in the light of particular circumstances under which the proposed Articles 4 *, 10 * and 18 * had been voted upon during Fourth Congress.

"It was agreed that this point required interpretation by Congress."

(iv) *Who determines whether or not a proposed amendment involves a new obligation for Members and according to what criteria this determination is made*

9. Although there was agreement on the two preceeding issues in so far as it was decided that the problems involved required interpretation by Congress, even this measure of consensus was not reached with regard to the remaining question.

10. Two points of view were expressed in the Working Group:

"Some members considered that Congress itself, in accordance with Article 28, was empowered to interpret Article 27 and therefore to decide whether an amendment fell under the provisions of paragraph (*b*) or (*c*) of that article. The Convention contained no guidance regarding the criteria to be followed.

"Other members held the view that since no State could be bound without its consent, each Member was entirely free to decide whether an amendment involved new obligations for it or not, and therefore whether it wished to adopt the amendment under the provisions of paragraphs (*b*) or (*c*).

"It was pointed out that this latter interpretation would result in a multiplicity of conventions and would make the normal functioning of the Organization impossible. This method could be applied to a convention concerning subjects other than the constitution of an international organization. In the case of an organization it was an unworkable procedure. An example was given to illustrate this point. If Congress amended, according to the procedure of Article 27(*b*), the provisions regarding majorities given in Article 10(*b*) and some Members did not accept this amendment, whilst the majority accepted it, different majorities would be recognized by different Members. This would paralyse the Organization to a very large extent.

"It was further emphasized that when the various governments acceded to the Convention or ratified it, they accepted Articles 27 and 28 as they stood, thus enabling Congress to decide which amendments involved new obligations. Article 28—Interpretation and Disputes—safeguarded the right of any State to ask for the interpretation of Congress to be referred to an independent arbitrator.

"The Working Group reached no final conclusions in this connexion."

Section IV. Question to be examined

11. Although the main problem raised concerns that referred to in sub-section (iv) above, this issue is related to those distinguished under sub-sections (ii) and (iii). Having regard to this fact the question, or questions, with which this opinion deals have been reformulated as follows:

(i) Who determines whether or not a proposed amendment involves a new obligation for Members?

(ii) According to what procedure is this determination made?

(iii) According to what criteria is this determination made?

Section V. Analysis of the terms of Article 27

12. In its draft articles on the law of treaties, [68] the International Law Commission has set out the broad principles to be applied in the interpretation of treaties and other international agreements. Article 27 of these draft articles, entitled "General rule of interpretation", provides as follows in its opening paragraph:

> "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." [69]

Before considering the interpretation to be given to Article 27 of the WMO Convention in the light of subsequent practice, the legislative history of the article, and the interpretation by other specialized agencies of similar provisions, it is proposed to examine the terms of Article 27 on the basis of the general rule formulated by the International Law Commission.

(i) *Who determines whether or not a proposed amendment involves a new obligation for Members*

13. The text of Article 27 of the WMO Convention distinguishes between two classes of amendments, namely those which involve new obligations and those which do not, and provides a different procedure of adoption in each case. This fact of itself requires that a determination must be made as to which procedure is to be, or is being, followed, even

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[68] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1).

Although the draft articles concerned have not yet been approved by the community of States, the work of the Commission in this field represents the consensus of opinion among international law specialists elected by the General Assembly and representing the various legal systems of the world.

[69] The full text of draft articles 27 and 28 prepared by the International Law Commission is as follows:

"Article 27

"*General rule of interpretation*

"1. 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.

"2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

"(*a*) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

"(*b*) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

"3. There shall be taken into account, together with the context:

"(*a*) Any subsequent agreement between the parties regarding the interpretation of the treaty;

"(*b*) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;

"(*c*) Any relevant rules of international law applicable in the relations between the parties.

"4. A special meaning shall be given to a term if it is established that the parties so intended.

"Article 28

"*Supplementary means of interpretation*

"Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 27, or to determine the meaning when the interpretation according to article 27:

"(*a*) Leaves the meaning ambiguous or obscure; or

"(*b*) Leads to a result which is manifestly absurd or unreasonable."

though the question of how this determination is to be made is not explicitly regulated in the article. There are two alternative means by which such a determination could be made in the context of the Convention: either by Members which are States acting collectively, that is to say normally through Congress, or by such Members acting individually.

14. Since Article 27 provides that Congress, the plenary body on which all Members are represented, is to consider all amendments, [70] and its approval is expressly stated to be necessary for amendments adopted under one of the two procedures, [71] the conclusion is reached on at least *prima facie* grounds that, when an amendment is proposed, Members which are States are intended to take a decision through Congress as to which of the two procedures is to be followed. This conclusion is supported by the fact that, if this determination were not to be made collectively, the "object and purpose" of the article would be defeated, for there would then be no certain means of adopting any amendments effectively. If individual Members were allowed to decide for themselves whether an amendment fell under paragraph (*b*) or (*c*), and these individual assessments were to be binding, the result would be that, unless unanimity was achieved on every occasion, two Conventions, or two sets of provisions, would come into operation whenever an amendment was approved. Thus to give an illustration: if there were a membership of one hundred States, of which eighty wished to treat an amendment under paragraph (*c*) and twenty considered that it fell under paragraph (*b*), if the view of the latter were to be given equal effect, those States would not be bound by the decision taken under (*c*); if, in the reverse case, eighty were prepared to accept the amendment under (*b*) and twenty considered it fell under (*c*), the consequences might not be so serious in practice in so far as those prepared to regard the proposal as coming under (*c*) might presumably be more prepared to change their position and to accept the amendment as coming under (*b*), but this presumption might not necessarily be borne out in a given case. It would be a manifestly unsatisfactory solution, however, if those advocating that the amendment fell under (*c*) maintained their attitude to the extent of declaring that, since two thirds of the total number of Members which were States had approved the proposal [although eighty of them on the ground that it fell under (*b*)], it therefore became effective under paragraph (*c*) and was binding on all Members, even before the other eighty had accepted the proposal as required under paragraph (*b*) of Article 27.

15. This example shows the impractical results which might follow if the right of individual assessment were to be granted. The assertion of this right, moreover, should be distinguished from the situation permitted under Article 27 (*b*), whereby a situation may come into existence in which although some Members accept a new obligation, others do not. This issue, however, is distinct from that of whether a given amendment is to be considered as involving a new obligation or not [and therefore falling either under paragraph (*b*) or (*c*)]. For the reasons indicated, this logically prior question must be collectively determined in order to achieve a uniform result.

16. It has so far been assumed that this collective decision will be taken through Congress. Having regard to the wording of the article and its interpretation in practice,

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[70] The opening paragraph of Article 27 of the WMO Convention reads "(*a*) The text of *any proposed amendment* to the present Convention shall be communicated by the Secretary-General to Members of the Organization at least six months in advance of *its consideration by the Congress*." (Emphasis added).

In the absence of any express provision in the remainder of the article declaring that, in specified circumstances, amendments do not have to be discussed by Congress, it is submitted that the effect of paragraph (*a*) is to require all draft amendments to be placed before Congress for its consideration.

[71] Those adopted in accordance with paragraph (*b*) of Article 27.

whereby all amendments implemented have followed a decision in Congress, [72] it may be assumed that this will normally be the case. There are two qualifications which should be noted however. The first concerns the nature of the decision taken in Congress. It is conceivable that Congress may decide to ask the Members which are States to express an opinion outside Congress as to whether a particular amendment voted on within Congress is to be considered as constituting a new obligation and therefore falling under paragraph (*b*), or, on the contrary, as not constituting a new obligation and therefore falling under (*c*). Even in this instance, however, the effect of the decision would not be to confer a right of individual assessment, binding *erga omnes*; the views of Members would still need to be collated so as to produce a single collective result, in favour of either (*b*) or (*c*). Secondly it would be possible, on a literal interpretation of the wording of Article 27, for this logically prior determination, namely whether a given amendment is to fall under paragraph (*b*) or (*c*), itself to be conducted outside Congress before the latter has begun its consideration. This process, whilst not in conflict with the terms of the article, would be of relatively little utility, however, since if, on the one hand, it were decided that a given amendment came under paragraph (*b*), it would still be necessary to obtain the approval of Congress and, on the other, if the proposal were deemed to fall under paragraph (*c*), the amendment could not come into force even if it were to be approved by two-thirds of the Members which are States before it had been considered by Congress. This last fact supports the general conclusion reached above, that the determination as to whether an amendment is to be adopted under paragraph (*b*) or (*c*) is intended to be made by Members which are States during their meetings in Congress.

(ii) *The procedure to be followed in determining whether or not a proposed amendment involves a new obligation for Members*

17. That two different methods are envisaged in Article 27 for the adoption of amendments results from the wording of its paragraphs (*b*) and (*c*).

> (*b*) "Amendments . . . involving new obligations for Members shall require approval by Congress, . . . by a two thirds majority vote . . ."
>
> (*c*) "Other amendments shall come into force upon approval by two thirds of the Members which are States".

The French version is equally clear:

> (*b*) "Tout amendement . . . comportant de nouvelles obligations pour les Membres de l'Organisation sera approuvé par le Congrès, . . . à la majorité des deux-tiers . . . "
>
> (*c*) "Les autres amendements entreront en vigueur après avoir été approuvés par les deux-tiers des Membres qui sont des Etats".

When an amendment is presented, Members which are States are required, in accordance with the reasoning advanced above, to make a collective decision through Congress as to whether the proposal involves a new obligation or not. Members may advance different opinions on this question, according to their assessment of the proposed change. However, either as a result of a vote in Congress specifically on this issue or, more commonly, on the basis of the vote taken on the amendment itself, one or other procedure will eventually be followed. The fact that the vote taken as to whether or not the draft amendment should be adopted may in practice coincide with the assessment by Congress as to whether it is proceeding under paragraph (*b*) or (*c*) of Article 27, may make it hard to distinguish the decision as to characterisation from that as to whether the amendment is to be accepted or rejected, although a logical and functional difference exists between them.

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[72] See paras. 28-59 below.

18. To recapitulate the conclusions so far reached, it is submitted that: (i) Congress is the appropriate organ to determine whether an amendment involves a new obligation or not; (ii) this determination may be made by a separate vote on the specific issue of whether a given amendment falls under paragraph (*b*) or (*c*) of Article 27; and (iii), alternatively, the process of making this determination may be fused with that of the actual adoption of a given amendment, carried out in accordance with the provisions of either paragraph (*b*) or paragraph (*c*) of Article 27. Since all amendments which have so far come into force have been adopted in accordance with (iii), it is proposed to consider the procedure prescribed in the text of paragraphs (*b*) and (*c*) before dealing with the question of the procedure which should be observed in the event that a separate vote were to be taken in accordance with (ii) above.

Procedure under Article 27 (b)

19. In the case of amendments falling under Article 27(*b*), Congress is required to approve the draft amendment by a two-thirds majority vote, in accordance with the provisions of Article 10. After this approval has been obtained, two-thirds of the Members which are States must indicate their acceptance of the amendment in order that it may come into force, for each such Member so doing.

20. Taking first the requirement of approval by Congress, as the Working Group noted, [73] a problem arises here in so far as paragraph (*b*) declares that this approval is to be given "in accordance with the provisions of Article 10". However, whereas Article 10(*a*) declares that only Members which are States may vote or take a decision on amendments to the Convention, Article 10(*b*) (which provides that "decisions shall be by a two-thirds majority of the votes cast for and against, except that elections of individuals to serve in any capacity in the Organization shall be by simple majority of the votes cast"), declares that this paragraph shall not apply to decisions taken in accordance with Article 27. There is thus an inconsistency between the texts of Articles 10 and 27 that cannot be removed solely on a basis of textual examination. However, it is submitted that Article 10 is intended to deal with voting generally: it expressly provides for a number of exceptions (including Article 27), which are, to this extent, to be regarded as self-sufficient. Thus as regards Article 27(*b*), it is suggested that although only Members which are States are allowed to vote, the express inclusion of the words "in accordance with the provisions of Article 10 of the present Convention, by a two-thirds majority vote" overrides the exclusion contained in Article 10(*b*), so that the majority required is only two-thirds of the Members which are States present and voting, and not two-thirds of the total number of such Members. It is to be noted that this interpretation has been that followed in practice.

21. After amendments falling under paragraph (*b*) have been approved by Congress they must be accepted by two-thirds of the Members which are States in order to come into force, in this case acceptance is required from two-thirds of the total number of Members which are States. Amendments come into force moreover, only "for each such Member accepting the amendment and thereafter for each remaining such Member on acceptance by it", [74] and not for all Members automatically. The actual process of acceptance is left to the discretion of Members which are States, in accordance with the relevant provisions of their respective constitutions.

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[73] See para. 7 above.

[74] In addition, "Such amendments shall come into force for any Member not responsible for its own international relations upon the acceptance on behalf of such a Member by the Member responsible for the conduct of its international relations" (Article 27(*b*), *in fine*).

Procedure under Article 27 (c) [75]

22. When amendments considered not to involve new obligations are adopted under paragraph (*c*), the sole requirement, following consideration by Congress, is that they must be approved "by two-thirds of the Members which are States." Thus an affirmative opinion must be obtained from two-thirds of the total number of Members which are States. Such amendments do not require any further steps to be taken in order that they may come into force and may accordingly do so either immediately, on the date of their adoption, or on the date indicated by Congress in the relevant resolution. Article 27(*c*) is clear in this respect. The difference between the English and French texts is that the English text uses the word "upon", whereas the French text states: "après". This difference does not change the basic intent of the article, namely that an amendment falling under (*c*) enters into force when, following consideration in Congress, it has been approved by two-thirds of Members which are States, at which stage it becomes binding upon all Members of the Organization.

23. To summarize the differences between the two procedures listed in Article 27:

(i) In the case of amendments deemed to fall under paragraph (*c*) it is necessary that, after consideration by Congress, the amendment must be approved by two-thirds of the total number of Members which are States; any amendments so approved may come into force immediately and apply even as regards Members which do not approve of them.

(ii) In the case of amendments falling under paragraph (*b*), it is necessary, firstly, that after consideration by Congress, the amendment must be approved by Congress by receiving the affirmative vote of two-thirds of the Members which are States and which are present and voting; and secondly, that to enter into force the amendment be accepted by two-thirds of the total number of Members which are States. Moreover, amendments involving new obligations are only binding on those Member States which accept them, and do not necessarily apply therefore with respect to all Members even after they have come into force.

Procedure to be followed in the event that a separate vote were to be taken on the question of whether or not a given amendment involves a new obligation

24. As already noted, all amendments which have actually been implemented by WMO have been adopted without recourse to a separate vote as to whether the amendmen involves a new obligation for Members, and so fell to be considered under paragraph (*b*)t or did not involve such an obligation and might therefore be dealt with under paragraph (*c*); accordingly, the vote as to the adoption of the amendment was fused with that as to the

[75] The answer to the question examined by the Working Group (see para. 8 above), namely whether the approval required under article 27(*c*) can be obtained outside Congress, has already been indicated in para. 16. The wording of para. (*a*) of article 27 requires that any proposed amendment, after being circulated to Members, will be considered by Congress. This fact in itself suggests that it was intended that the approval referred to in para. (*c*) would be obtained in Congress. On the basis of the words used, however, this requirement is not itself obligatory; the only express prerequisite, so far as Congress is concerned, is that Congress must be given an opportunity to consider the proposal; "consideration", however, is not necessarily the same as "approval". In summary therefore, the collective decision that a particular amendment is to fall under Article 27(*c*) and requires the approval of two-thirds of the Members which are States, might be obtained outside Congress. Despite the wording of para. (*c*) of Article 27 viewed in isolation, such action would nevertheless not suffice to bring the amendment into operation until it had also been considered by Congress. This conclusion therefore supports that already reached, that it was intended that the approval referred to in Article 27(*c*) would be obtained in Congress following that body's consideration of the draft amendment.

procedure being followed. It would be possible, however, to have recourse to a prior vote on the specific issue of whether or not a given amendment involved a new obligation [so as to require to be dealt with under paragraph (*b*)] or did not [so that it might be approved under paragraph (*c*)]. The problem would then arise as to the procedure to be observed in taking this prior vote.

25. In the absence of any provisions expressly on this point, two main questions would need to be settled: firstly, whether all Members would be entitled to vote or only those which are States; and, secondly, what majority would be required to reach a decision, and how that majority would be calculated.

26. As regards the first question, Article 10(*a*) provides that "In a vote in Congress each Member shall have one vote". This general statement is qualified by the provision that only Members which are States "shall be entitled to vote or to take a decision on", *inter alia*, "amendment or interpretation of the Convention". On the ground that a determination in Congress as to whether or not a proposed amendment involves a new obligation is "a decision on . . . amendment . . . of the Convention", it is submitted that only Members which are States would be entitled to take part in the vote whereby such a decision was taken.

27. On the question of the majority required, it is submitted that, in the absence of any express provision in Article 27, the matter is governed by paragraph (*b*) of Article 10, which provides that "Decisions shall be by a two-thirds majority of the votes cast for and against". Accordingly, the decision as to whether a proposed amendment involves a new obligation and is therefore to be considered under Article 27(*b*), or does not involve such an obligation and is therefore to be treated under Article 27(*c*), may be made by a two-thirds majority of the votes cast for and against by Members which are States. It would, of course, be open to Congress to consider the adoption of a special procedure to regulate this issue, such as that contained in rule 106 of the rules of Procedure of UNESCO. [76]

(iii) *The criteria to be followed in determining whether or not a proposed amendment involves a new obligation for Members*

28. Article 27 contains no words which may be used as criteria to determine whether or not a given amendment involves a new obligation for Members. Nor does any simple test suggest itself (such as, that the only "new obligations" envisaged were financial or material in character, and not those, for example, affecting the powers of the Organization itself). Although it would have been possible to specify certain categories and to declare that any amendments affecting these were to be regarded as involving new obligations, or were subject to special safeguards, this was not done. Accordingly, the criteria to be followed in making the determination as to whether a given amendment involves a new obligation for Members is left, in the first instance, to the discretion of individual Members. When the amendment in question is considered by Congress, each Member may therefore submit arguments in support of its assessment of the matter. For the reasons given in (i) above (paragraphs 13-16), the discussion on this question must eventually terminate in a collective decisions as to whether the amendment (if it is to be accepted at all) is to be regarded as involving a new obligation, and therefore requiring approval and acceptance in accordance with Article 27(*b*), or does not involve such an obligation and may accordingly be approved under Article 27(*c*). It may be added that, in keeping with the principle that restrictions upon sovereignty are not to be presumed, the determination through Congress that a given amendment does or does not contain a new obligation is

[76] Quoted in para. 74 below.

not itself a new obligation, but one which States accepted, under the terms of the Convention, by becoming Members of the Organization.

Section VI. Practice of WMO with respect to amendments

29. Article 27 of the International Law Commission's draft articles on the law of treaties provides that

> "3. There shall be taken into account, together with the context:
>
> . . .
>
> (*b*) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation."

It is therefore proposed to examine the practice followed by WMO in applying Article 27 of the Convention.

30. Amendments to the Convention were adopted at the Third and Fourth Congress of WMO, held in 1959 and 1963 respectively; amendments, and the question of the amendment procedure, were also considered by the WMO Executive Committee between the two Congresses. The following account, which does not attempt to deal exhaustively with every argument or proposal put forward by individual Members, is sub-divided accordingly.

(i) *WMO Third Congress, 1959*

31. The proceedings at the WMO Third Congress relating to amendments fall into three parts: firstly, consideration of the relevant discussion in the General and Legal Committee; secondly, the adoption of a resolution amending Article 13(*c*) of the Convention; and thirdly, the adoption of a resolution relating to the amendment of Article 10(*a*)(2) of the Convention.

32. *Consideration of the Report of the Chairman of the Committee on General and Legal Questions.* [77] The Committee on General and Legal Questions had had before it document Cg-III/11 (dated 4.IX.1958) submitted by the WMO Secretary-General and dealing with a number of questions relating to the amendment of the Convention. The first of these questions was whether the WMO Executive Committee has the right to submit proposals for amendments to the Convention on its own initiative. After consideration of the report of the discussions on this issue, in the Committee on General and Legal Questions, Congress adopted a resolution (Resolution 4[Cg-III]), by a vote of 36 Members in favour, 13 against and 10 abstentions, instructing the Executive Committee to keep the Convention under review and to submit to Congress any proposed amendments which might appear necessary. [78]

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[77] *Third Congress of the World Meteorological Organization, Proceedings*, WMO—No. 89. RC. 18, pp. 66-74.

[78] The full text of resolution 4(Cg-III) reads:

"*The Congress*

"*Noting*

"(1) The desirability of keeping the Convention under continuing review in order that its efficiency as the principal working instrument of the Organization may not be impaired;

"(2) That the Executive Committee, as the body responsible for guiding the activities of the Organization during the interval between meetings of Congress, is able to bring to the notice of Members any deficiencies or ambiguities in the Convention;

"(3) That Article 14(*d*) of the Convention does not contain a precise definition of the functions of the Executive Committee with regard to proposed amendments of the Convention;

"*Recognizing* that only Members which are States, as the contracting parties to the Convention, have a prescriptive right to propose amendments to the Convention;

33. Of more direct importance, the Committee on General and Legal Questions had also considered the question of the procedure for amending the Convention. The issue before the Committee, and before Congress, was whether the description of that procedure given in paragraphs 8 to 13 of document Cg-III/11 was acceptable to Members. [79] The

"*Instructs* the Executive Committee under Article 14(*h*) to keep the Convention under continuing review between meetings of Congress, and, bearing in mind the provisions of Article 28(*a*) of the Convention, to submit to Congress the text of any proposed amendment to the Convention which may appear to the Executive Committee to be necessary."

[79] After quoting the provisions of Article 28 (renumbered Article 27 after the Fourth Congress) of the Convention, document Cg-III/11 continues:

"8. In the former case (i.e., when new obligations are involved) it will be seen that the first step in obtaining approval to a proposed amendment to the Convention is that it shall receive at Congress a two-thirds majority vote by Members which are States. The amendment, however, only comes into force on acceptance by two thirds of the Members which are States. Acceptance would be effected by the deposit with the depository Government (the United States of America) of a formal instrument. The Governmental constitutional procedures prior to the deposit of such an instrument vary from one State to another and the time involved in obtaining acceptance will similarly vary from one State to another. The experience of other specialized agencies suggests that a period of between one and two years will need to elapse before acceptance, by two-thirds of the Members which are States, is received.

"9. It should be noted also that amendments involving new obligations come into force on acceptance by two-thirds of the Members which are States *for each such Member accepting the amendment and thereafter for each remaining such Member on acceptance by it.*

"10. With regard to amendments involving no new obligations, the Convention simply prescribes that they shall come into force "upon approval by two-thirds of the Members which are States". It seems clear that this requirement is effectively the same as the first step in the adoption of the other type of amendments (i.e., "approval by Congress") with the additional proviso that the approval of two-thirds of the Member States must be obtained.

"11. If, therefore, the approval given by Congress comprises two-thirds of the Member States, these amendments enter into force at once. If, however, the number of Member States represented at Congress is such that a two-thirds majority vote is obtained, but not a two-thirds majority of all Member States, then the votes of Member States not represented at Congress will have to be obtained by correspondence.

"12. In case of doubt as to whether a particular amendment falls within one category or the other, the decision should evidently be left to Congress to decide.

"13. A more detailed justification of the views expressed above in respect of this second category of amendments is given in the appendix to this document." (Emphasis in original.)

The Appendix mentioned in paragraph 13 distinguished between the two categories of amendments established in article 27 (then numbered 28) and refers to the similar distinction drawn in the constituent instrument of other specialized agencies, in particular UNESCO and FAO. The appendix continues:

"The constitutive acts of these agencies, like the WMO Convention, make a distinction between two categories of amendment. It is the general conference of these two Organizations which is authorized, under certain conditions, to make minor changes in the Convention. These become effective either on the date on which they were approved by the conference (by a two-thirds majority), or on a date fixed by it. The only difference between the conditions laid down in the WMO Convention and those indicated in the constitutive acts of the other two organizations is that an absolute majority of two thirds of the Member States is necessary in WMO for the amendment to come into force, whilst in UNESCO and FAO the amendments come into force once they are approved by two thirds of the Members represented at the Conference, provided—in the case of FAO—that the number of approvals is greater than half the Members of the Organization.

"5. The constitutive acts of the United Nations and certain specialized agencies such as WHO, ILO and ICAO do not provide for two categories of amendment. All amendments, after adoption by a two-thirds majority at the general assemblies (under certain conditions), are submitted for either ratification or acceptance by Member States.

"6. In support of the foregoing explanations, it might be added that the original text of article 28(*c*) of the Convention, which reads as follows; 'Other amendments shall take effect on adoption by the Congress by vote concurred in by two-thirds majority of all the Members which are States of the Congress', and the form of which closely resembled that of the

(*Continued on next page.*)

Committee on General and Legal Questions reached the conclusion that paragraphs 8 to 11 could be regarded as approved by Members, but there were differences of opinion with regard to amendments entailing new obligations.[80] The Committee was unable to agree whether Congress had power to decide if an amendment entailled new obligations or not. In a draft resolution, the Committee had therefore proposed that the Executive Committee should be asked to study the text of Article 28(*c*) [renumbered Article 27(*c*), following the Fourth Congress] and report to the next Congress.[81] In this draft resolution, which was approved without objection, becoming resolution 3 (Cg-III),[82] Congress decided that an amendment not falling under the provisions of Article 28(*b*) "may be given a date on which it shall come into force after the approval of the amendment during a session of the Congress by two thirds of the Members which are States".

(Continued.)

corresponding articles of the constitutive acts of UNESCO and FAO, shows that the original intention of this article was to empower Congress to make certain amendments to the Convention. The record of the debate does not show that there was any discussion on the substance of this article. The text appears to have been modified in order to render it clearer and also to stipulate that amendments do not become effective until two thirds of Member States have approved them and not simply after approval by two thirds of the Member States voting in Congress. The new, more general, wording also renders procedure more elastic. It offers a possibility either of obtaining the approval of two thirds of the Members during the Congress itself or, once the amendment has been approved by Congress but has not yet received the approval of two thirds of the Member States, to seek the approval of all Member States by correspondence and thus obtain perhaps the two thirds necessary for implementation of the amendments. The difference in the wording of the two sub-paragraphs (*b*) and (*c*) of article 28 should also be noted: regarding the entry into force of amendments, sub-paragraph (*b*) indicates that *after approval* of an amendment, it comes into force on *acceptance* by two thirds of the Members which are States, whereas in sub-paragraph (*c*) it is indicated that amendments shall come into force upon *approval* by two thirds of the Members which are States.

"7. The question as to whether or not an amendment shall be considered as involving new obligations for Members of the Organization appears to be one for decision by Congress if there are no indications on the subject in the Convention, bearing in mind the procedures followed by organizations with similar provisions in their constitutive acts. It therefore seems that when Congress has to give a ruling on proposed amendments, it should not only decide on the substance of the amendment, but also on the procedure to be followed subsequently in dealing with it. If, in the opinion of Congress, the amendment results in new obligations, it appears advisable to include in the resolution by which Congress approved the amendment a clause instructing the Secretary-General to submit it for acceptance by the Members which are States. In the opposite case, it might be sufficient to indicate in the resolution that the amendment is approved under the terms of sub-paragraph (*c*) of article 28 of the Convention and that it comes into force immediately, or on a date mentioned in the resolution by which the amendment is approved". (Emphasis in original).

[80] Statement of the Chairman of the Committee on General and Legal Questions, *Third Congress of the World Meteorological Organization, Proceedings*, WMO—No. 89, RC. 18, p. 72.

[81] Draft resolution G.4, document Cg-III/117, Appendix B.

[82] The full text of the resolution reads:

"*The Congress*

"*Noting*

"(1) That doubts have arisen concerning the interpretation of Article 28(*c*) of the Convention;

"(2) That other specialized agencies of the United Nations which have provisions in their constitutions similar to those of Article 28 often bring into force amendments which have been approved during sessions of their general assemblies immediately or on a fixed date;

"*Decides* that an amendment which is in good form and does not fall under the provisions of Article 28(*b*) may be given a date on which it shall come into force after the approval of the amendment during a session of Congress by two thirds of the Members which are States;

"*Instructs* the Executive Committee to study the text of Article 28(*c*) and its application and to report to Fourth Congress."

34. Before the adoption of resolution 3 (Cg-III), the representative of the United States made a statement expressing the view of his Government.[83] In the opinion of the United States Government, a sovereign State had the exclusive right to decide for itself whether an amendment involved a new obligation. The United States Government also considered that Article 28(*c*) could only apply if two-thirds of the Members which are States voted in favour of an amendment, at a meeting of Congress, and specified that their vote was cast under Article 28(*c*); it did not agree with the opinion expressed[84] that those Member States which were not present in Congress when an amendment was sought to be adopted under Article 28(*c*) could subsequently be polled by correspondence. He also declared that his Government interpreted Article 28(*c*)

> "to require that if an amendment is approved by a two thirds majority vote of the Member States present at a meeting of Congress but less than two thirds of all the Member States of the Organization . . . indicate support for the amendment at a meeting of Congress under Article 28(*c*), the amendment comes into force for each Member State only when the provisions of Article 28(*b*) are met."

35. The general summary which was adopted by Congress regarding resolution 3 (Cg-III), on the basis of the report made by the Chairman of the Committee on General and Legal Questions, followed closely the wording of paragraphs 8 to 10 of document Cg-III/11; in accordance with the proposal made by the United States delegate, however, the reference to the possibility that Members might be polled outside Congress, after an amendment had failed to receive in Congress the approval of two-thirds of the total number of Members which were States, was deleted. The statement in paragraph 12 of document Cg-III/11 that

> "In case of doubt as to whether a particular amendment falls within one category or the other, the decision should evidently be left to Congress to decide,"

was also omitted. The general summary which was approved without opposition by Congress reads as follows:

> "3.1.1.3
>
> In the case of amendments falling under Article 28(*b*), the first step in obtaining approval to a proposed amendment to the Convention is that it shall receive at Congress a two-thirds majority vote by Members which are States. The amendment, however, only comes into force on acceptance by two thirds of the Members which are States. Acceptance is effected by the deposit with the depository Government (the United States of America) of a formal instrument. The governmental constitutional procedures prior to the deposit of such an instrument vary from one State to another and the time involved in obtaining acceptance may similarly vary from one State to another. The experience of other specialized agencies suggests that a period of between one and two years will need to elapse before acceptance, by two-thirds of the Members which are States, is received.
>
> It should be noted also that amendments involving new obligations come into force on acceptance by two-thirds of the Members which are States for each such Member accepting the amendment and thereafter for each remaining such Member on acceptance by it.
>
> With regard to amendments involving no new obligations, the Convention simply prescribes that they shall come into force "upon approval by two thirds of the Members which are States". This requirement is effectively the same as the first step in the adoption of the other type of amendments (i.e., 'approval by Congress') with the additional proviso that the approval of two thirds of the Member States must be obtained.

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[83] *Third Congress of the World Meteorological Organization, Proceedings*, WMO—No. 89, RC. 18, p. 73.

[84] On page 5 of the Report of the Chairman of the Committee on General and Legal Questions (Cg-III/117), repeating the substance of para. 11 of Cg-III/11, quoted in footnote 79 above.

When approval given by Congress under Article 28(*c*) comprises two thirds of the Member States, these amendments enter into force at once.

The Congress considered that an amendment to the Convention, which is in good form and does not fall under the provisions of Article 28(*b*), can be adopted during the session of Congress on approval by two thirds of the Members which are States, and that Congress may fix a date on which such amendments shall come into force. In this connexion Congress adopted resolution 3(Cg-III)." [85]

36. Before briefly considering this general summary, it may be noted that Congress agreed, on the basis of the report of the Chairman of the Committee on General nda Legal Questions,

"that the formal adoption of a draft amendment to the Convention solely by a postal vote is neither permissible nor desirable." [86]

37. As regards the general summary quoted above, it is considered that the account given of the procedure to be followed in adopting amendments under either paragraph (*b*) or (*c*) of the present Article 27 is in accord with that reached in paragraphs 19 to 22 of section V of the present opinion. The general summary does not, however, deal with the question of whether Congress may decide if an amendment entails new obligations or not, on which unanimous agreement could not be reached. It will be recalled that this question is considered and, for the reasons given, answered affirmatively, in section V above. In the absence of a similar finding on the part of Congress, the question may be raised, with reference to the last paragraph of the general summary quoted in paragraph 35 above, how it can in fact be known whether an amendment which is in good form does or does not "fall under the provisions of Article 28(*b*)", so as to enable Congress to approve it under paragraph (*c*) of that article in the event that it does not. It is submitted that this question can only be answered by reference to a collective decision taken by Member States through Congress, in conformity with the reasoning and procedure specified in section V of the present opinion.

38. *Amendment of Article 13(c) of the Convention.* The Committee on General and Legal Questions had also considered the question of amending Article 13(*c*) of the Convention, so as to increase the number of Directors of Meteorological Services elected by Congress to the WMO Executive Committee from six to nine. The Committee reached agreement on this proposal (including the application of the principle of regional representation), and submitted a draft resolution to Congress accordingly. [87] This draft resolution, which was approved by more than two-thirds of all Member States in a vote taken in Congress, [88] was specified in the text to come force on 15 April 1959, the date of its adoption. By virtue of the procedure followed and the fact that the amendment came into force immediately, the amendment must be considered as having been regarded by Congress as not constituting a new obligation, and therefore eligible to be approved under paragraph (*c*) of the then numbered Article 28.

39. The representative of Ireland, who was the only speaker on this item, apart from the Chairman of the Committee on General and Legal Questions, declared [89] that

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[85] *Third Congress of the World Meteorological Organization, Abriged Report with resolutions,* WMO—No. 88. RC. 17, para. 3.1.1.3, pp. 20-21.

[86] *Ibid.*, para. 3.1.1.4, p. 21.

[87] Report of the Chairman of the Committee on General and Legal Questions, document Cg-III/119 (14.IV.1959).

[88] Resolution 2 (Cg-III).

[89] *Third Congress of the World Meteorological Organization, Proceedings,* WMO—No. 89, RC. 18, p. 75.

his delegation, although opposed to the increase of members of the Executive Committee, was prepared to accept the wishes of the majority. He took the opportunity to point out, however, that the draft resolution proposed [and which was approved as resolution 2 (Cg-III)] illustrated what was in the view of his delegation, the unacceptable interpretation of Article 28 which might follow from resolution 3 (Cg-III), [90] which had just been approved. The amendment to Article 13(*c*), so as to increase the number of elected members of the Executive Committee, constituted a new obligation, however small, for Member States. Nevertheless, an implementation date had been specified in the draft resolution amending Article 13(*c*), thus indicating that the proposal was not being treated under article 28(*b*). He stated that

> "A principle followed when interpreting articles of a convention or a treaty is that the interpretation cannot make inoperative another article or articles of the same convention or treaty. If Congress by a majority of two thirds may decide on whether an amendment comes under Article 28(*b*) or 28(*c*), as the same two-thirds majority is required for the adoption of the amendment, Article 28(*b*) becomes inoperative. Therefore, the Irish delegation opposes the granting in general to Congress of the faculty of deciding whether an amendment comes under Article 28(*b*) or 28(*c*) and reserves the right of decision on this matter."

In the particular case, however, the Irish delegation was prepared to accept the inclusion of an implementation date in the draft resolution.

40. As noted in paragraph 38 above, the amendment was approved by receiving the affirmative vote of two thirds of the total number of Member States. Thus, in its practice, the Organization treated the amendment as one falling under Article 28(*c*). As regards the objections raised by the representation of Ireland, it is submitted that the objection raised in the openeing sentence of his statement quoted above would apply with even more force if Member States gathered in Congress were not to have the power to determine whether an amendment fell under paragraph (*b*) or (*c*) of Article 28, since then, for the reasons given in paragraphs 13 to 16 above, no amendment could effectively be adopted or approved. Indeed it may have been from the realisation that the question whether a proposed amendment is to be approved under paragraph (*b*) or (*c*) must be uniformly determined, that caused the Irish delegation to decide that it would not oppose the wishes of the majority in the instant case; if it had not followed this course, the Member State concerned would have been led to regard the particular amendment as not in force until two thirds of Member States had accepted it, in accordance with paragraph (*b*) (and then not binding on Ireland, unless Ireland was one of the accepting States), with the result that two Executive Committees would have been in existence, namely one with six and another with nine elected members. From the nature of the case, this situation might arise if it had been decided that the amendment fell under paragraph (*b*), but for the reasons already given, this possibility is distinct from the issue of whether an amendment is to be deemed to fall under either (*b*) or (*c*), on which only a single answer is permitted. As regards the argument presented by the delegate of Ireland on the substance of the amendment, whereby he contended that an increase in the number of elected members constituted a new obligation, this is an issue on which each delegation was entitled to express its opinion during the proceedings in Congress. In the absence of specific criteria, however, against which to measure particular amendments, it cannot be said that the views of individual Members, as to whether a particular amendment does or does not constitute a new obligation, can be given a value over and above that reached by Member States collectively. The argument presented by the Irish delegation that, since Congress

[90] Cited in footnote 82 above.

may decide by a two-thirds majority [91] "whether an amendment comes under Article 28(*b*) or 28(*c*)", and since "the same two-thirds majority is required for the adoption of the amendment", therefore "Article 28(*b*) becomes inoperative", is, it is submitted, an incomplete statement of the position and one which, to the extent to which it is correct, directed to the use, or possible use, which Congress might make of its powers, and not to the legal interpretation to be given to those powers. Thus the fact that Congress can decide to consider an amendment under paragraph (*c*) and in fact so approve the amendment, despite the fact that individual Member States regard the proposal as constituting a new obligation and therefore falling under paragraph (*b*), does not mean that Congress will always follow the course of adopting all amendments under paragraph (*c*), so as to render paragraph (*b*) inoperative; it does mean however that the liberty given to Member States under paragraph (*b*) to accept (or not to accept) amendments constituting new obligations does not extend to the prior question of whether a proposed amendment constitutes a new obligation or not. That question rests with Member States in Congress, to ensure that a uniform answer is achieved, binding on all Members.

41. *Proposed amendment to Article 10(a)(2) of the Convention.* The Committee on General and Legal Questions examined the text of Article 10(*a*)(2) of the Convention, which reserves for the decision of Members which are States any question dealing with membership of the Organization, and put forward a draft resolution whereby that text would have been amended to read: "Requests for Membership in the Organization". [92] When the vote was taken on the draft resolution during the seventh plenary meeting of the Third Congress, the proposal received the approval of two thirds of the Members which are States, present and voting, but did not receive the approval of two-thirds of the total number of such Members. [93] Although the resolution was therefore adopted, becoming resolution 1 (Cg-III), it was stated in the proceedings of the meeting that the amendment "would not however come into force until at least two-thirds of the Member States of the Organization had formally accepted or approved the amendment". [94]

42. Besides comments on the substance of the proposal, made by the delegates of South Africa and Spain, the United States representative declared that the United States, which had voted in favour of the amendment, intended to process it under Article 28(*b*); the vote of the United States was therefore subject to the appropriate action being taken by the Senate of the United States in accordance with the Constitution of that country.

43. At the fifteenth plenary meeting, the Third Congress again returned to the question of the proposed amendment of Article 10(*a*)(2), in connexion with the text proposed by the Committee on General and Legal Question [95] for insertion in the General Summary. Under that text it was proposed that the Secretary-General should transmit the text of the resolution to Members which are States and ask them whether they accepted

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[91] For the reasons given in paras 24 to 27 above, the conclusion is reached in this opinion that the determination as to whether an amendment involves a new obligation or not could be made by Congress, in a separate vote, by a two-thirds majority of Members which are States, present and voting.

[92] The text which it was sought to amend read simply "Membership of the Organization"; there was, in addition, a discrepancy between the English and the French versions, the latter reading "*Questions relatives aux Membres de l'Organisation*".

[93] The result of the vote was 49 votes in favour, none against and 9 abstentions; 52 votes were required at the time for a two-thirds approval by the total number of Member States.

[94] *Third Congress of the World Meteorological Organization, Proceedings*, WMO—No. 89, RC. 18, p. 78.

[95] See the report by the Chairman of the Commission on General and Legal Questions, Cg-III/172 (2.IV.1959).

the amendment under paragraph (*b*) or approved it under paragraph (*c*) of the then numbered Article 28. In commenting on this procedure, the representative of Spain enquired what would happen if certain Members wished to accept the amendment under paragraph (*b*) while others approved it under paragraph (*c*). In response to this question, the United States delegate

> "recalled that during the discussions within the Committee on General and Legal Questions his delegation had stressed the difference between the action of approving and that of accepting the text of an amendment. By 49 votes, that was to say, a two-thirds majority of the votes cast, Congress had approved the proposed amendment to Article 10(*a*) (2) of the Convention. As the Members assembled in a plenary meeting had not specifically stated whether the approval was given by virtue of Article 28(*b*) or Article 28(*c*), that was to say, in fact, whether their governments approved the amendment as involving obligations or not, the question was to know under what conditions the approved amendment could come into force.
>
> The Committee on General and Legal Questions had thought that the best solution would be to agree that the amendment, the text of which had been approved by Congress, should come into force once the conditions set out in Article 28(*b*) had been complied with. Under those conditions, governments which considered that the amendment did not involve any obligations for them, would send a memorandum to that effect to the Government of the United States, depository of the Convention. The other governments, which considered that the amendment involved obligations, would have to submit the text to the competent body of their country—in the case of the United States, the Congress—for ratification, and then inform the Government of the United States, depository of the Convention.
>
> Once 52 affirmative replies had been received in Washington, the conditions necessary for the entry into force of the Convention would be fulfilled and the Secretary-General would be informed immediately. When the question came up for study in the Executive Committee, the latter would no doubt wish, bearing in mind the difficulties encountered by Third Congress, to propose to Fourth Congress an amendment covering the whole of Article 28, designed to render it clearer than it was at that time." [96]

Thanking the delegate of the United States for his reply, the representative of Spain stated that the situation was still somewhat confused for him. In particular, he "wondered what the situation would be if certain Members stated that they accepted the amendment by virtue of Article 28(*b*) and others by virtue of Article 28(*c*)". [97]

44. At the next plenary meeting the Chairman of the Committee on General and Legal Questions outlined the procedure which it was proposed to adopt, having regard to the form in which Article 28 was drafted:

> ". . . if the 52 Members were to state that they accepted an amendment under Article 28(*c*), the amendment would come into force. It would be reasonable to assume that Members accepting an amendment under Article 28(*c*) would *a fortiori* accept it under Article 28(*b*). If that majority could not be obtained, acceptance would be restricted to Members having deposited an instrument of acceptance with the United States Government. At that moment, therefore, there would be, so to speak, two Conventions, the former instrument and the new amended one which would have been accepted by certain Members only. Such a solution was obviously not very satisfactory but, given the present drafting of the article, it was inevitable; a similar situation was to be found in other specialized agencies." [98]

45. The proposed text of the General Summary which was then adopted without opposition reads as follows:

> "Having approved the text of the amendment to Article 10(*a*) (2) given in resolution 1(Cg-III), Congress directed the Secretary-General to transmit to Members which are

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[96] *Third Congress of the World Meteorological Organization, Proceedings*, WMO—No. 89. RC. 18, pp. 149-150.

[97] *Ibid.*, p. 150.

[98] *Ibid.*, p. 151.

States the text of the said amendment asking them whether they accept this amendment under Article 28(*b*) or approve this amendment under Article 28(*c*) of the Convention. Resolution 1(Cg-III) shall no longer remain in force.

Congress instructed the Secretary-General to transfer to the depository government the original of any communication from a Member on the amendment.

Congress further considered that there was no conflict between this procedure and that undertaken in relation to the amendment of Article 13(*c*) of the Convention. Pending clarification as requested in resolution 3(Cg-III) neither action should be considered as creating a precedent." [99]

46. In accordance with this instruction, the WMO Secretary-General transmitted the text of the proposed amendment contained in resolution 1 (Cg-III) to Members which are States and asked them whether they accepted it under Article 28(*b*) or approved it under Article 28(*c*). Of the 78 Member States at the time of consultation, ten accepted the proposed amendment under paragraph (*b*), and 43 approved it under paragraph (*c*). [100] Since neither procedure was approved by two-thirds of the total number of Members which are States, the proposed amendment did not enter into force under the provisions of either paragraph (*b*) or paragraph (*c*).

(ii) *WMO Executive Committee Proceedings under resolution 3 (Cg-III)*

47. In pursuance of resolution 3 (Cg-III), [101] instructing the Executive Committee "to study the text of Article 28(*c*) and its application and to report to Fourth Congress", the Executive Committee established a Working Group, [102] which submitted a report to the thirteenth session of the Executive Committee in 1961. A wide measure of agreement was obtained at that session on the substance of the amendments proposed, and a provisional text was approved. [103] It was decided that a legal expert should be asked to examine the texts concerned. At the following session of the Executive Committee, held in 1962, the Committee re-examined the proposed amendments in the light of the comments made by the legal expert (a senior official of the International Labour Organisation). The Committee accepted the majority of the suggestions, which were then incorporated in the proposed text. The Committee noted that the Working Group recommended that, in the event of Congress deciding to amend the Convention, it might be necessary to adopt an "instrument for the amendment of the Convention." A minority of members of the Executive Committee held the view that the proposed instrument was not necessary; they also objected to the inclusion in the instrument of a provision according to which no reservation to the text of the amended Convention might be accepted. Having considered the amendments proposed and the opinions expressed, the Executive Committee directed the Secretary-General to submit to Fourth Congress the proposed drafts of the instrument of amendment, the amendment to the Convention and the procedure for admission of new members to the amended Convention, as formal proposals of the Executive Committee submitted in accordance with resolution 4 (Cg-III), together with relevant information, including in particular the minority views expressed. [104]

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[99] *Third Congress of the World Meteorological Organization, Abridged Report with resolutions*, WMO—No. 88. RC. 17, p. 22.

[100] Information supplied by the WMO Secretary-General.

[101] Cited in footnote 82 above.

[102] Resolution 1 (EC-XII), *Twelfth Session of the Executive Committee, 1960, Abridged Report with resolutions*, WMO—No. 99. RC. 19, p. 50.

[103] *Thirteenth Session of the Executive Committee, 1961, Abridged Report with resolutions*, WMO—No. 107. RC. 20, pp. 11-12.

[104] *Fourteenth Session of the Executive Committee, 1962, Abridged Report with resolutions*, WMO—No. 121. RC. 21, p. 15. The proposals concerned were submitted to Fourth Congress by the Secretary-General in document Cg-IV/3 (28.VI.1962).

(iii) *WMO Fourth Congress, 1963*

48. *General Discussion.* The WMO Fourth Congress accordingly had before it the text of an extensive series of amendments to the articles of the Convention, together with the amendments proposed by individual Member States. Following an introductory statement by the Chairman of the Working Group which had been set up by the Executive Committee, there was a general discussion on the question of whether or not the Convention needed to be amended and, if so, whether any amendments should extend beyond editorial changes so as to affect the structure and procedures of the Organization. [105] Different opinions were expressed on this issue and also on that of whether the Committee on General and Legal Questions should be asked to consider all the amendments proposed or only those put forward by Member States. It was eventually decided that the Committee on General and Legal Questions should examine all the proposed amendments to the Convention.

49. *Amendment of Article 13(c) of the Convention.* The Committee on General and Legal Questions first examined the proposals made to increase the number of Directors of Meteorological Services to be elected to the Executive Committee from nine (as had been agreed in resolution 2 (Cg-III) by Third Congress, when the number was increased from six) [106] to twelve, and regarding regional representation. The Committee submitted a draft resolution to Congress incorporating the changes proposed and designed to replace resolution 2 (Cg-III). This draft resolution, which became resolution 1 (Cg-IV), was adopted by the affirmative vote of 81 Members which are States, with 2 abstentions, and the amendment in question came into force on the date of its adoption. [107] The procedure observed was thus identical with that followed when an amendment was made to the same article by the Third Congress through the adoption of resolution 2 (Cg-III). [108] The delegate of Ireland made a statement in which he repeated the views which he had expressed at the Third Congress. [109] He also requested that the proposed text of the General Summary should be changed to include a new sub-paragraph which would have read as follows:

> "Congress considered whether these amendments to Article 13(*c*) could be adopted under the provisions of Article 28(*c*) of the Convention. The majority of the delegations present stated that they were prepared to adopt those amendments under Article 28(*c*). One delegation reaffirmed that its Government considered that every Member had the right to decide whether it wished to support an amendment under the conditions of sub-paragraphs (*b*) and (*c*) of Article 28 of the Convention." [110]

The representative of Ireland eventually agreed to withdraw the proposed addition to the General Summary, in the light of the suggestion that, since Congress would eventually have to discuss article 28, the position taken by various delegations could be indicated in the General Summary at that time.

50. *Other amendments.* After the consideration of the amendments proposed to Article 13(*c*), the Committee on General and Legal Questions discussed the remaining

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[105] *Fourth World Meteorological Congress, 1963, Proceedings,* WMO—No. 145. RC. 24, pp. 43-53.

[106] See para. 38 above.

[107] *Forth World Meteorological Congress, 1963, Proceedings,* WMO—No. 145. RC. 24, pp. 59-60.

[108] See para. 38 above.

[109] See para. 39 above.

[110] *Fourth World Meteorological Organization, 1963, Proceedings,* WMO—No. 145. RC. 24, p. 60.

amendments proposed, relating to the majority of articles of the Convention. [111] Separate amendments were recommended by the Committee to the following articles:

Article 2 (Purposes)
Proposed new Article 4 (Control) [112]
Article 5 (Officers of the Organization and Members of the Executive Committee)
Article 6 (Composition)
Article 7 (Functions)
Article 9 (Meetings)
Article 10 (Voting)
Article 11 (Quorum)
Article 12 (First meeting of the Congress) (to be deleted)
Article 14 (Functions)
Article 15 (Meetings)
Article 17 (Quorum)
Proposed new Article 18 (Voting by Correspondence)
Article 18 (Regional Associations) (to be renumbered Article 19, if the proposed new articles adopted.)
Article 23 (Finances)
Article 25 (Relations with the United Nations)
Article 26 (Relations with other Organizations)
Article 27 (Legal Status. Privileges and Immunities)
Article 29 (Interpretation and Disputes)

51. It is not necessary to consider the details of the discussion regarding each of these amendments. In the case of Article 28, relating to amendments, however, it should be noted that the Committee on General and Legal Questions was unable to agree either on the text of the amendments proposed to that article by the Executive Committee or on that of the amendments proposed individually by Madagascar, the USSR, the United Kingdom, and the United States. Each of these proposed amendments was eventually withdrawn, as was the instrument of amendment which had been prepared by the Executive Committee. The relevant portion of the report of the Chairman of the Committee on General and Legal Questions, which is of interest in the present connexion, is reproduced below:

> "The United States delegation stated that in view of the tremendous difficulties involved in amending this article and the widely diverging views regarding the solution to be found for the problem of avoiding the multiplicity of conventions, it did not insist on the discussion of the proposal contained in Cg-IV/Doc. 120.
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> "However, it considered that the provisions of Article 28(*b*) are impracticable and will have to be revised. In the view of the United States delegation, any amendment to the Convention must enter into force for all Members at the same time. Amendments should not, however, bind Members which are unwilling to agree to them. For this reason, the

[111] See the report submitted by the Chairman of the Committee, Cg-IV/174 (23.IV.1963), setting out the detailed changes proposed and the views expressed by members of the Committee regarding them.

[112] As regards the numbering of the articles of the Convention, it should be noted that it was proposed during the Fourth Congress to introduce two new articles, numbered 4 and 18, and to delete the then existing Article 12. Congress eventually agreed to delete Article 12 but did not approve the amendments designed to introduce two new articles. Accordingly, the numbering used here is that of the Convention as it existed up to the Fourth Congress. (Following the decision to delete Article 12, however, subsequent articles were re-numbered, Article 28 (Amendments) becoming Article 27, for example.)

Convention ought either to omit the requirement that Members give one year's notice of withdrawal or provide additional withdrawal provisions in the amending article.

"The USSR delegation preferred for this article the text which it had presented as Cg-IV/GEN/WP 19 but said that if Article 28 as in the 1947 Convention was to be left as it stood, it would not insist on the adoption of the text proposed.

"The delegation of Madagascar also stated that in view of the difficulties which would result from the amendment of this article it was prepared to withdraw its proposal contained in Cg-IV/Doc. 15.

"The delegation of the United Kingdom also withdraw the proposed amendment contained in Cg-IV/Doc. 13 but drew attention to the fact that, sooner or later, this article would have to amended. As it stood the article had good features in as much as it provided a time-limit for the presentation of proposals of amendment so that Governments are assured of disposing of enough time for the study of such proposals. The possibility to introduce minor changes, provided for in paragraph (*c*), was also a good feature. The main difficulty consisted in the provisions of paragraph (*b*) which results in the simultaneous existence of several conventions.

"Several delegations stated that two extreme solutions had been presented—one which makes the multiplicy of conventions unavoidable and one which makes all adopted amendments binding for the whole membership and which requires detailed withdrawal provisions. There should be further study of this article so as to find out whether some of the solutions found by the authors of the constitutions of other international organizations might not be adapted to the case of the WMO.

"On behalf of the Executive Committee, Sir Graham Sutton also withdrew not only the proposed amendment to Article 28 but also the proposed instrument of amendment, since it had become evident that it would not be possible to reach a conclusion in this connexion at Fourth Congress. However, it would not be possible for the Executive Committee alone to make a study of this problem which was a complex legal question and should be handed over to a working group composed of specialists in international law.

"The Irish delegation pointed out that Third and Fourth Congress had both been able to amend the Convention under Article 28.

'This article was drafted with a view to protecting the interest of the minority. The minority however should not use and has not used Article 28 (*b*) to block the wishes of the majority—even when opposing the amendments to Article 13 introduced in Congresses III and IV the minority waived their rights under Article 28 (*b*) in deference to the wishes of the majority.'

"The Committee therefore had no amendments to propose to Congress for this article." [113]

52. Introducing the report of the Committee on General and Legal Questions to Congress, the Chairman declared, *inter alia*, that "A large majority in the Committee had felt that the amendments proposed would not involve new obligations for Members of the Organization and would therefore be adopted by the procedure provided for under Article 28(*c*). [114]

53. Following a statement by the representative of Ireland, in which he repeated the opinion which he had earlier expressed, namely that it was not advisable to amend the articles in question, and also declared that the authorities of his country would ratify the proposed changes, in accordance with Article 28(*b*), if they were approved by Congress, Congress proceeded to approve the draft amendments by roll call vote. At the tenth plenary meeting an affirmative vote of over two thirds of the total number of Member States was received with respect to the amendments proposed to the following articles: 2,

[113] Cg-IV/174, pp. 20-21.

[114] *Fourth World Meteorological Organization, 1963, Proceedings*, WMO—No. 145. RC. 24, p. 84.

5, 6, 7, 10, [115] 11, 12, (i.e. deletion of Article 12), 14, 15, 17, 23, 25, 26 and 27. Two amendments which were voted on during that meeting, regarding Articles 9 and 29, failed to receive the requisite two-thirds majority; the results were, in the former case, 68 votes in favour, 7 against and 12 abstentions, and, in the latter case, 39 votes in favour, 13 against and 37 abstentions. At the fourteenth plenary meeting, Congress voted on the proposals to introduce two new articles, numbered 4 and 18, and to amend the existing Article 18. The results of the vote were as follow:

Proposed new article 4 (Control): 62 in favour, none against and 11 abstentions

Proposed new article 18 (Voting by Correspondence): 56 in favour none against and 17 abstentions.

Article 18 (Regional Associations): 24 in favour, 21 against and 28 abstentions.

Since in none of these three cases was the necessary two-thirds majority of the total number of Members which are States obtained, the amendments proposed did not come into effect.

54. At the sixteenth plenary meeting, Congress adopted resolution 3 (Cg-IV), on the recommendation of the Committee on General and Legal Questions, establishing a Working Group on the Convention. At the same meeting the United Kingdom delegate proposed that, in the case of the three amendments which had received the affirmative vote of more than two-thirds of the State Members present and voting but less than two-thirds of the total number of such Members (namely, the amendments to introduce two new articles, numbered 4 and 18, and to amend the existing Article 9), the same procedure should be followed as had been adopted by Third Congress with respect to the amendment then proposed to Article 10(*a*)(2). [116] This idea was strongly opposed by the delegate of Ireland who suggested, *inter alia*, that it would have been more in accordance with the Convention if all the amendments actually adopted had been dealt with under Article 28(*b*), unless unanimity had been secured to treat them under Article 28(*c*) that would, in addition, have respected the views of the minority. During the ensuing discussion, a number of comments were made. The representative of Romania pointed out that, if the United Kingdom proposal were to be followed, it would have to be decided in advance whether the amendments concerned were those which involved new obligations or not, since, unless it were decided that the amendments involved new obligations, they would come under Article 28(*c*). It was finally decided that the Working Group which had been established should be asked to study the procedure for acceptance of these three amendments, without however, re-examining the text of the amendments themselves. [117]

55. Congress adopted without discussion resolution 2 (Cg-IV), approving the amendments to the Convention which had been separately voted on and which had received the

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[115] In the case of the amendment to Article 10, the change proposed at the previous Congress and which formed the subject of resolution 1 (Cg-III), whereby part (*a*)(2) of that Article would have read "Requests for Membership in the Organization" (see paragraphs 41-46 above), was repeated with a slight editorial change ("Requests for Membership of the Organization"). Whereas, however, at the Third Congress the proposal received the approval of less than two-thirds of the total number of Member States, and 10 States subsequently declared that they accepted it under paragraph (*b*) and 43 approved it under paragraph (*c*), at the Fourth Congress it was approved by 88 Members, with no contrary votes and no abstentions.

[116] See paras. 41-46 above.

[117] The Working Group on the Convention unanimously concluded that, in the particular case of these amendments, "the texts must be considered as not having obtained the necessary majority at the Fourth Congress and consequently as not having been adopted by it. If a State, Member of the Organization, considered that these texts should be studied by Congress again with a view to their adoption, it could submit them as proposed amendments in accordance with Article 27(*a*) of the Convention". WG/CONV/Conference room paper 3 (21.XII.1964), p. 2. See also the quotation from the report of the Working Group contained in para. 8 above.

approval of more than two-thirds of the total number of Members which are States. In view of the deletion of Article 12, all subsequent articles were renumbered, the former Article 28 (Amendments) becoming Article 27. In resolution 2 (Cg-IV) it was specified that the amendments in question came into force on 27 April 1963, the date of adoption of the resolution. All these amendments were therefore characterized by Congress, on the basis of the collective determination made by Members which are States, as not involving new obligations and therefore eligible to be approved in accordance with Article 27(*c*). The process of characterisation was not made the subject of a separate vote, however, but was fused with the substantive decision taken in Congress, following the discussions in the Committee on General and Legal Questions where a "large majority. . . had felt that the amendments proposed would not involve new obligations. . . and could therefore be adopted by the procedure provided for under Article 28(*c*)". [118]

56. The representatives of three Members, Ireland, Mexico and Portugal, expressed reservations on behalf of their respective Governments as regards the procedure followed. The delegates of Ireland and Portugal reserved in particular the right of their Governments to decide whether an amendment came under paragraph (*b*) or (*c*) of the article relating to amendments. The representative of Mexico declared that the amendments would have to be approved by the Senate and be ratified by the Executive Authority of his country.

(iv) *Summary of WMO practice with respect to amendments*

57. All amendments approved by WMO have been approved by Congress in accordance with the procedure specified in paragraph (*c*) of Article 27. On one occasion at the Third Congress the decision was taken to ask Members outside Congress whether a proposed amendment which had received a two-thirds majority vote, but not the approval of two-thirds of the total number of Members which are States, was accepted by them under paragraph (*b*) or approved under paragraph (*c*). It was expressly stated in the General Summary that this action was not intended to constitute a precedent; in the particular case, since two-thirds of the total number of Member States did not accept or approve the proposal under either paragraph, it did not come into force.

58. In all instances in which an amendment was actually adopted, this followed a collective determination, in practice identified with the vote taken on the substance of the proposal, that the amendment did not involve a new obligation for Members. Even the amendment to Article 10(*a*)(2) which, both at the Third Congress and in subsequent correspondence, failed to receive a two-thirds majority of the total number of Member States, was unanimously approved at the Fourth Congress under Article 27(*c*).

59. Besides objections raised as to the merits of particular amendments, certain Members have questioned the procedure followed in adopting amendments, in especial the determination by Congress that a given amendment did or did not contain a new obligation for Members, so as to require to be adopted either under paragraph (*b*) or paragraph (*c*). In essence the argument presented was, first, that the right given to individual Members under paragraph (*b*) to decide whether or not to accept new obligations, carried with it, *a fortiori*, the right to determine whether or not a given amendment constituted a new obligation. The arguments against this reasoning and in favour of a collective determination of the prior issue of whether or not a given amendment constitutes a new obligation, have been given in section V above. It may be added here that, in the actual practice of WMO, the characterisation of an amendment as involving a new obligation or otherwise has in fact been made collectively, through Congress, as, it is submitted, was

[118] Statement of the Chairman of the Committee, quoted in para. 52 above.

inevitably to be the case if any amendments were to be effectively adopted. Secondly, those Members objecting to the determination of this question by Congress have pointed out that the difference in the results achieved, according to whether an amendment was treated under paragraph (*b*) (so as to be binding only on those Members which accepted it) or under (*c*) (so as to be binding on all), was intended to protect the interests of the minority; accordingly, the majority should not use the possibility available to them, to adopt proposals under paragraph (*c*), which were properly to be treated under paragraph (*b*). These arguments, directed to the possible use to which the powers of the requisite majority might be put, do not necessarily lead, however, to the conclusion that the powers of Congress in this respect are limited by the right of individual determination by each Member State, as to whether a given amendment does or does not impose a new obligation. Furthermore, there remains the possibility that, in the event of a serious dispute arising regarding the interpretation or application of the Convention, the question at issue may be submitted to arbitration under Article 28 and, under Article 29, for a Member to withdraw from the Organization. Thus, in the last resort, recourse may be had by individual States to several means if they consider that the use made by the majority of States Members of their powers is improper or unacceptable.

Section VII. Legislative history of Article 27 of the WMO Convention

60. The draft articles on the law of treaties prepared by the International Law Commission provide that, in addition to the general rule of interpretation contained in its draft article 27 [119] (the application of which was considered in section V of the present opinion), and the practice followed in applying the treaty (which was considered in section VI above), regard may be had to supplementary means of interpretation. Draft article 28, entitled "Supplementary means of interpretation", provides as follows:

> "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 27, or to determine the meaning when the interpretation according to article 27:
>
> "(*a*) Leaves the meaning ambiguous or obscure; or
>
> "(*b*) Leads to a result which is manifestly absurd or unreasonable".

In order to confirm the meaning previously arrived at on the basis of article 27 of the International Law Commission's draft, it is therefore proposed to examine the history of the preparation and adoption of the present Article 27 of the WMO Convention.

61. The WMO Convention was drawn up by a Conference of Directors of the International Meteorological Organization which met at Washington between 22 September and 11 October 1947. [120] Proposals for a new convention had been considered by the International Meteorological Organization on previous occasions, in particular following a meeting held in Paris in 1946. The principal drafts before the Washington Conference, however, were those submitted by four Members individually: Canada, France, the United Kingdom and the United States.

62. Under the relevant provision of the French proposal, amendments were to be adopted, by a two-thirds majority, at a conference of plenipotentiaries of Member States

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[119] See footnote 69 above.

[120] See Conference of Directors, Washington, 22 September-11 October 1947, Final Report, Organisation Météorologique Internationale, Publication No. 71 (subsequently referred to as "Final Report").

and enter into force upon ratification by two-thirds of the Members. [121] The Canadian draft [122] eliminated the necessity of convening a conference of plenipotentiaries by giving Congress competence in respect of amendments; amendments were to enter into force for all Members provided they were adopted by a two-thirds vote and accepted by the same majority of Members "in accordance with their respective processes". While retaining the notion of the adoption of amendments through Congress, the United Kingdom proposal introduced a distinction [123] between amendments involving "new obligations" for Members and other amendments; only the latter were to be binding on all Members following acceptance by thirty Members. The distinction between amendments involving new obligations and others was also contained in the United States draft [124], together with the principle that only amendments in the second category were to take effect for all Members when adopted by a two-thirds majority. In a commentary the United States declared that this proposal afforded greater ease in amending the Constitution than the corresponding provision in the draft prepared at the Paris meeting in 1946 and was substantially the same as the amendment provision in the Constitution of the Food and Agriculture Organization. [125]

63. The first draft of the WMO Convention prepared during the 1947 Conference contained an article on amendments closely similar to the article proposed by the United States, with the addition, at the end of the second paragraph, of the latter part of the second sentence of the United Kingdom proposal, relating to the position in respect of Members other than States. Article 28 of the third draft read as follows:

> "(*a*) The text of the proposed amendments to the present Convention shall be communicated by the Secretary-General to Members of the Organization at least six months in advance of their consideration by the Congress.

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[121] Article 34: "Les amendements à la présente Convention entreront en vigueur pour tous les membres de l'OMM quand ils auront été adoptés à la majorité des deux tiers des membres de l'OMM, par la Conférence des plénipotentiaires et ratifiés, conformément à leurs règles constitutionnelles respectives par les deux tiers des membres de l'OMM. Final Report, p. 680.

[122] Article 57: "Texts of proposed amendments to this Convention shall be communicated by the President to Members at least six months in advance of their consideration by Congress. Amendments shall come into force for all members when adopted by two-thirds vote of the Congress and accepted by two-thirds of the Members in accordance with their respective constitutional processes." Final Report, p. 647.

[123] Article 41: "Congress may by resolution adopted by two-thirds of the votes cast approve amendments of the present Convention. Any amendment which involves new obligations for Members or Associate Members shall come into force in respect of the Members or Associate Members accepting it upon acceptance by thirty Members, and thereafter in respect of each Member or Associate Member upon acceptance by it, and in respect of each Associate Member not responsible for its own international relations upon the making of a declaration by the Member responsible for its international relations that the acceptance of the amendments includes that Associate Member. Any other amendment shall come into force for all Members and Associate Members upon acceptance by thirty Members. Acceptance for the purpose of this article shall be made by instrument in writing deposited with the Director-General of the Organization". Final Report, pp. 656-57.

[124] Article 11: "1. The text of proposed amendments to this Constitution shall be communicated by the Executive Director to Member States at least six months in advance of their consideration by the Congress. 2. Amendments to this Constitution involving new obligations for Member States shall require approval of the Congress by a two-thirds majority vote of the Members present and voting and shall take effect on acceptance by two-thirds of the Member States for each Member State accepting the amendment and thereafter for each remaining Member State on acceptance by it. 3. Other amendments shall take effect on adoption by the Congress by a vote concurred in by a two-thirds majority of all the Members of the Congress". Final Report, p. 669.

[125] Final Report, p. 664.

(*b*) Amendments to the present Convention involving new obligations for Members of the Organization shall require approval of the Congress by a two-thirds majority vote of the Members which are States present and voting and shall take effect on acceptance by two-thirds of the Members which are States for each such Member accepting the amendment and thereafter for each remaining such Member on acceptance by it. Such amendments shall come into effect for any Member not responsible for its own international relations upon the acceptance on behalf of such a Member by the Member responsible for the conduct of its international relations.

(*c*) Other amendments shall take effect on adoption by the Congress by a vote concurred in by a two-thirds majority of all the Members which are States of the Congress." [126]

64. This proposal was considered at the twenty-sixth meeting of the Conference. The relevant portion of the minutes of the meeting read:

"*The President* next read Article 28.

"*Mr. Rivet* proposed the deletion of the words: 'Members which are States', and the addition to paragraphs (*b*) and (*c*) of the words: 'Members specified in Article 3, paragraphs (*a*), (*b*) and (*c*)'. He thought that if these changes were made, there would be no need to define 'sovereign State'.

"These changes were *approved* by the *Conference*.

"*Mr. Ferreira* thought that the provision in paragraph (*b*) of Article 28 would cause two sets of provisions to be in force, if some members accepted certain amendments and others did not.

"*Mr. Foley* advised that the provision was a common feature of international Conventions, because a Member State cannot be bound to an amendment of a Convention until it indicated that it was satisfied with the amendment.

"*Mr. Ferreira* thought, then, that it would be preferable not to have an amendment come into force until all Member States had accepted it.

"However, the *President* thought it better to accept the risk of two parts of a Convention in force, rather than to insist on unanimous acceptance each time.

"The *Conference* agreed with the President's view." [127]

65. Following editorial changes approved by the Conference without discussion at the twenty-ninth meeting, [128] the article was adopted in its present form, becoming Article 28 of the Convention (and subsequently Article 27, following the amendments approved by Fourth Congress).

66. It is submitted that the conclusions reached in the sections V and VI of this opinion are confirmed by the legislative history of the provision. In particular that history substantiates the view that it was intended that all amendments should be adopted through Congress, the reference to adoption by Congress in paragraph (*c*) having been dropped for purely editorial reasons. As regards the voting provisions, the third draft (see paragraph 63 above) shows that, in the case of amendments falling under paragraph (*b*), a two-thirds majority vote of Members which are States present and voting was envisaged and, in the case of amendments falling under paragraph (*c*), a two-thirds majority of all Members which are States. The changes made in the third draft were treated as editorial in nature, and not as amendments of substance.

67. The written records show no discussion of the question whether Congress was intended to decide whether or not an amendment involves a new obligation for Members.

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[126] Final Report, pp. 728-729. For the first draft see *ibid.*, p. 704.

[127] Final Report, p. 575. Mr. Foley, whose remarks are quoted above, was the treaty adviser to be Conference.

[128] Final Report, p. 605.

The opinion expressed by Mr. Foley, the treaty adviser of the Conference, at the twenty-sixth meeting (see paragraph 64 above) was in reply to a remark made concerning the application of paragraph (*b*) of the future Article 28; his answer cannot, having regard to the wording of paragraph (*c*), have been intended to be of general application. In the absence of any specific debate during the legislative history, the fundamental question of the power of Congress with respect to this issue thus remains to be determined primarily by the application of the principles of interpretation considered in sections V and VI of the present opinion. The conclusions reached in those sections regarding that question are not contradicted, moreover, by the legislative history of the provision.

Section VIII. Practice of FAO and UNESCO with respect to amendments

68. Since the history of the drafting of Article 27 shows that, when that provision was adopted by the Washington Conference in 1947, a draft was adopted (with some minor changes) based on Article XX of the FAO Constitution, it is proposed to examine the practice FAO has followed when adopting amendments to its Constitution, and, similarly, the practice observed by UNESCO in applying the corresponding provision of its Constitution. It may be recalled that reference was also made to the practice of these two organizations in the document regarding amendments submitted by the Secretary-General of WMO to the Third Congress (Cg-III/11, appendix) (see footnote 16 above). The following account of the relevant practice of FAO and UNESCO is based on information supplied by the Secretariats of those organizations.

(i) *Practice of FAO*

69. Article XX of the FAO Constitution [129] provides that the Constitution may be amended by a two-thirds majority of the votes cast at the FAO Conference, provided this majority is more than one half of the Member Nations of the Organization. An amendment not involving a new obligation for Members enters into force forthwith, unless the resolution by which it is adopted provides otherwise. Amendments involving new obligations on the other hand, take effect only when accepted by two-thirds of the Member Nations, and then only in respect of each Member Nation or Associate Member so accepting.

70. A number of amendments were adopted by the FAO Conference at its tenth, eleventh and twelfth sessions, held in 1959, 1961 and 1963. All these amendments were

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[129] Article XX of FAO Constitution (Amendment of Constitution):

"1. The Conference may amend this Constitution by a two-thirds majority of the votes cast provided that such majority is more than one half of the Member Nations of the Organization.

2. An amendment not involving new obligations for Member Nations or Associate Members shall take effect forthwith, unless the resolution by which it is adopted provides otherwise. Amendments involving new obligations shall take effect for each Member Nation and Associate Member accepting the amendment on acceptance by two-thirds of the Member Nations of the Organization and thereafter for each remaining Member Nation or Associate Member on acceptance by it. As regards an Associate Member, the acceptance of amendments involving new obligations shall be given on its behalf by the Member Nation or authority having responsibility for the international relations of the Associate Member.

3. Proposals for the amendment of the Constitution may be made either by the Council or by a Member Nation in a communication addressed to the Director-General. The Director-General shall immediately inform all Member Nations and Associate Members of all proposals for amendments.

4. No proposal for the amendment of the Constitution shall be included in the agenda of any session of the Conference unless notice thereof has been dispatched by the Director-General to Member Nations and Associate Members at least 120 days before the opening of the session."

adopted in accordance with the procedure laid down in Article XX, paragraph 1, of the FAO Constitution and since none of these amendments were considered as involving "new obligations" they took effect immediately upon adoption, in accordance with the first sentence of Article XX, paragraph 2, of the FAO Constitution. Although no formal determination was made by the Conference regarding the "classification" of these amendments, from the fact that the question whether any of these amendments were to be classified as involving new obligations was not raised during the deliberations of the Conference—nor after their adoption—the FAO Conference apparently considered that these amendments did not entail any new obligations for Members. Furthermore it was the Conference which in each case decided that these amendments were to be adopted under the procedure laid down in Article XX, paragraph 1, of the FAO Constitution.

(ii) *Practice of UNESCO*

71. Article XIII of the UNESCO Constitution reads as follows:

> "1. Proposals for amendments to this Constitution shall become effective upon receiving the approval of the General Conference by a two-thirds majority; provided, however, that those amendments which involve fundamental alteration in the aims of the Organization, or new obligations for the Member States, shall require subsequent acceptance on the part of two-thirds of the Member States before they come into force. The draft texts of proposed amendments shall be communicated by the Director-General to the Member States at least six months in advance of their consideration by the General Conference.
>
> 2. The General Conference shall have power to adopt by a two-thirds majority rules of procedure for carrying out the provisions of this Article".

72. Both of the two draft proposals for a constitution which were considered by the Conference for the establishment of the United Nations Educational, Scientific and Cultural Organization, held in London in November 1945, provided for the adoption of amendments by the UNESCO General Conference by a two-thirds majority followed by ratification by two-thirds of the Member States. The Second Commission of the Conference, which examined the particular proposals in question, recognized

> "that, while it was necessary, in creating this new structure, to provide for ratification by States, the method of having all amendments to the Constitution submitted for ratification by individual members was a difficult and dilatory one and it was hoped that some progress might be made in future toward modifying it. Meanwhile it would be desirable to make a distinction between amendments of substance which would require ratification and adjustments of form which could be adopted by a two-thirds majority of the Conference... It was proposed that the text should specify which were the articles for which amendments would require ratification and which were those which would not, but it was agreed that this point could only be decided by the General Conference". [130]

At the following meeting, the Second Commission again

> "agreed that the Conference should decide whether an amendment involved a fundamental alteration or new obligations". [131]

At the ninth plenary meeting, on 15 November 1945, the Chairman of the Second Commission further stated that

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[130] Ninth Meeting, Second Commission, 13 November 1945. *Conference for the Establishment of the United Nations Educational, Scientific and Cultural Organization, Preparatory Commission UNESCO*, London 1945, p. 113.

[131] *Ibid.*, Tenth Meeting, Second Commission, 13 November 1945.

"The question as to where alterations are fundamental and when no obligations are being incurred is one on which the General Conference must take decisions under the rules of Procedure." [132]

73. Amendments to the UNESCO Constitution have been adopted by the General Conference at all its sessions except the first, eleventh and thirteenth sessions. In no case was it considered that the amendment under consideration required subsequent acceptance.

74. In accordance with Article XIII, paragraph 2, of the Constitution, the General Conference adopted, at its sixth session, a new section XIX of its rules of procedure entitled "Procedure for the amendment of the Constitution." This section, as subsequently amended, reads as follows:

"*Rule 103—Draft Amendments*

The General Conference shall not adopt a draft amendment to the Constitution unless the draft has been communicated to Member States and Associate Members at least six months in advance.

Rule 104—Proposals for substantive changes in draft amendments

The General Conference shall not introduce substantive changes in draft amendments under the terms of the preceding rule unless the proposed changes have been communicated to Member States and Associate Members at least three months before the opening of the session.

Rule 105—Amendments of form

The General Conference may, however, without prior communication to Member States and Associate Members, adopt any changes in the drafts and proposals referred to in Rules 103 and 104 which are purely matters of drafting, and any changes designed to embody, in a single text, substantive proposals communicated to Member States and Associate Members in accordance with the provision of Rules 103 and 104.

Rule 106—Interpretation of amendments

In case of doubt, a proposed amendment shall be deemed to be an amendment of substance unless on a vote being taken there is a two-thirds majority of the members present and voting in favour of interpreting the amendment as an amendment of form falling under the provision of Rule 105."

75. It may be noted that the amendment to the Constitution adopted by the General Conference at its fourth session contains the following *considerandum:*

"Considering that this amendment does not involve any fundamental alterations in the aims of the Organization or new obligations for the Member States".

Similar wording is to be found in the amendments adopted at the fifth and sixth sessions

76. The report of the Procedure Committee of the fourth session [133] states that the Committee noted that the amendment under consideration "did not involve any fundamental alterations in the aims of the Organization or any new obligations for the Member States and that there was no necessity for this amendment to be accepted on the part of two-thirds of the Member States before coming into force". The reports of the Procedure Committee to the fifth session [134] and to the sixth session [135] contain similar statements. The first report of the Legal Committee to the tenth session of the General Conference also states that the Committee considered that the amendment under consideration "did not involve fundamental alterations in the aims of the Organization or new obligations for the Member States and would therefore become effective upon receiving the approval of the General

[132] *Ibid.*, p. 77.

[133] 4C/Resolutions, p. 83.

[134] 5C/Resolutions, p. 129.

[135] 6C/Resolutions, p. 84.

Conference by a two-thirds majority". [136] This statement was noted by the Administrative Commission which recommended the adoption of the amendment by the General Conference. [137]

77. In summary therefore, the General Conference of UNESCO was recognized at the London Conference, as it has been in subsequent practice, as competent to decide whether a proposed amendment involves new obligations for its Members. A two-thirds majority is required for the adoption of amendments to the Constitution and for the adoption of rules of procedure governing such amendments. All amendments adopted have been treated as not involving fundamental alterations in the aims of the Organization or new obligations for Members, and approval through Congress. If any doubt should arise as to whether or not a proposed amendment is one of substance, rule 106 of the rules of procedure requires that the amendment shall be deemed to be one of substance unless a two-thirds majority of the Members present and voting are in favour of interpreting the amendment as an amendment of form. It may be noted that under Article IV, paragraph 8(*a*) of the Constitution, decisions in the General Conference are made by simple majority, except in cases in which a two-thirds majority is required by the provisions of the Constitution or by the rules of procedure of the General Conference.

(iii) *Summary of FAO and UNESCO practice*

78. The description given above of the practice of FAO and UNESCO with respect to amendments shows no major divergence from the practice observed by WMO. The constitution of each of these organizations divides amendments between those involving new obligations and those which do not; in each of these organizations amendments are adopted by the main plenary body (subject to subsequent ratification in the case of amendments involving new obligations). In each instance so far, as in the case of WMO, the amendments proposed have been deemed not to involve new obligations for Members; the decision on this point has been taken by the plenary body when voting on the amendment itself. Neither FAO nor UNESCO have had recourse in practice to a separate vote on the question whether a particular amendment involved a new obligation. UNESCO has, however, in rule 106 of the rules of procedure of its General Conference, a special means of determining this issue, if any doubt should arise. In no instance, either in FAO or UNESCO, has any objection been raised to the determination by the plenary body of the question whether a given amendment involves a new obligation (and is therefore to be adopted in accordance with one procedure), or does not, (and therefore falls to be adopted in accordance with the alternative procedure).

Section IX. Application to the constituent instruments of international organizations of the principles of the draft articles on the Law of Treaties prepared by the International Law Commission

79. In sections V, VI and VII of the present opinion, Article 27 of the WMO Convention is examined in the light of the principles of interpretation formulated by the International Law Commission in its draft articles on the law of treaties. It should be noted, however, that in its draft article 4 the International Law Commission recognized the special status of international organizations within the law of treaties by formulating a general reservation, subjecting the constituent instruments of such organizations to

[136] 10C/ADM/2.

[137] 10C/Resolutions, pp. 127-128.

"any relevant rules of the organization". [138] The commentary given by the Commission to this provision makes it clear, however, that this reservation is directed to the preservation of the particular rules and practices of the organizations in question, and not to the exclusion of the principles generally applicable, such as those relating to interpretation. In the opening paragraph of its commentary on draft article 4, the International Law Commission stated:

> "The draft articles, as provisionally adopted at the fourteenth, fifteenth and sixteenth sessions, contained a number of specific reservations with regard to the application of the established rules of an international organization. In addition, in what was then Part II of the draft articles and which dealt with the invalidity and termination of treaties, the Commission had inserted an article (article 48 of that draft) making a broad reservation in the same sense with regard to all the articles on termination of treaties. On beginning its re-examination of the draft articles at its seventeenth session, the Commission concluded that the article in question should be transferred to its present place in the introduction and should be reformulated as a general reservation covering the draft articles as a whole. It considered that this would enable it to simplify the drafting of the articles containings specific reservations. It also considered that such a general reservation was desirable in case the possible impact of rules of international organizations in any particular context of the law of treaties should have been inadvertently overlooked". [139]

80. In addition, in its commentary on the article dealing with the rule regarding the amendment of treaties (draft article 35), the International Law Commission again stressed the special character of international organizations:

> "The development of international organizations and the tremendous increase in multilateral treaty-making has made a considerable impact on the process of amending treaties. In the first place, the amendment of many multilateral treaties is now a matter which concerns an international organization. This is clearly the case where the treaty is the constituent instrument of an organization. . . In all these cases the drawing up of an amending instrument is caught up in the machinery of the organization. . . As a result, the right of each party to be consulted with regard to the amendment or revision of the treaty is largely safeguarded." [140]

81. Under the terms of Article 27 of the WMO Convention the right of Members to be consulted is adequately safeguarded; in accordance with paragraph (*a*) of that provision, all proposed amendments must be communicated to Members at least six months in advance of their consideration by Congress. At the sessions of Congress itself, each Member is at liberty to express its views regarding the change proposed. The entitlement of Members in this respect does not, however, deprive Congress (in which all Members are represented) of its competence to adopt amendments or to take other decisions in connexion with the implementation of article 27 of the WMO Convention.

Section X. Conclusions

82. The conclusions reached in this opinion are summarized in paragraph 83 below. These conclusions are based on an analysis of the text of the WMO Convention, the actual practice followed by WMO, and the legislative history of Article 27 of the WMO Convention. The practice followed by FAO and UNESCO, which have a similar provision in their respective constitutions, also substantiates these conclusions. In both FAO and UNESCO

[138] The article reads in full as follows: "The application of the present articles to treaties which are constituent instruments of an international organization or which are adopted within an international organization shall be subject to any relevant rules of the organization".

[139] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1), p. 24.

[140] *Ibid.*, p. 62.

the decision as to whether or not a particular amendment involves a new obligation for Members is made by the plenary body, following consideration of the proposal. In FAO and UNESCO, as in WMO, the procedure followed with regard to the substance, and the method by which the amendment was accordingly to be adopted, has been identified with the determination of the category into which the amendment was to be deemed to fall. In the case of UNESCO, however, a special rule has been laid down, regulating the procedure to be followed in the event that there is any doubt as to whether a particular amendment involves an amendment of substance; this procedure has not, in practice, been used.

83. The conclusions reached on the issues examined in this opinion are as follows:

(i) *Who determines whether or not a proposed amendment involves a new obligation for Members?*

Congress, the plenary body in which all Members are represented, is the appropriate organ to determine, in accordance with the procedures of the Organization, whether or not a proposed amendment involves a new obligation for Members. Determination of this question is not left to the discretion of individual Member States, except as regards their participation in proceedings in Congress, including their participation, in accordance with the rules of the Organization, in any votes or decisions taken.

(ii) *According to what procedure is this determination made?*

The existing provisions of the Convention and of the General Regulations of WMO do not provide a special procedure for the determination of the specific question of whether or not a proposed amendment involves a new obligation for Members. Accordingly, the procedure for determining this question is either the same as that followed in order to adopt the amendment itself [under either paragraph (*b*) or paragraph (*c*) of Article 27], or recourse must be had to the relevant general provisions.

Procedure under Article 27(b)

In the absence of a specific vote on the issue, the determination by Congress that an amendment involves a new obligation for Members will coincide with its observance of the procedure laid down in Article 27(*b*). Under that provision an amendment must first be approved by Congress, by a two-thirds majority of those Members which are States, present and voting, and subsequently accepted by two-thirds of the total number of such Members. The amendment then comes into effect for each such Member so accepting.

Procedure under Article 27(c)

In the absence of a specific vote on the issue, the determination by Congress that an amendment does not involve a new obligation for Members will coincide with its observance of the procedure laid down in Article 27(*c*). Under that provision an amendment must be approved by two-thirds of the total number of Members which are States, before coming into effect, either immediately or on the date specified, for all Members of the Organization.

Procedure if a separate vote is taken on the question whether or nota proposed amendment involves a new obligation for Members

If the question whether or not a given amendment involves a new obligation for Members were itself to be put to the vote, under the existing provisions the decision might be taken by a two thirds majority of the Members which are States, present and voting.

(iii) *According to what criteria is this determination made?*

In the absence of specific criteria in the text of the Convention or elsewhere, the criteria to be observed in making the determination whether or not a proposed amendment involves a new obligation for Members are those chosen by Members in their individual capacities and advanced by them in the proceedings of the Organization.

10 April 1967

B. Legal opinions of the secretariat of inter-governmental organizations related to the United Nations

International Labour Office

The following memoranda concerning the interpretation of certain international Labour Conventions and one international Labour Recommendation were prepared by the International Labour Office at the request of the Governments concerned: [141]

(a) *Memorandum on the Minimum Age (Underground Work) Convention, 1965 (No. 123)*, prepared at the request of the Government of Czechoslovakia, 25 May 1967. Document G.B.172/14/7, 172nd session of the Governing Body, Geneva, May-June 1968.

(b) *Memorandum on the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)*, prepared at the request of the Government of Czechoslovakia, 25 May 1967. Document G.B.172/14/7, 172nd session of the Governing Body, Geneva, May-June, 1968.

(c) *Memorandum on the Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125*[5]*)*, prepared at the request of the Government of Czechoslovakia, 25 May 1967. Document G.B.172/14/7, 172nd session of the Governing Body, Geneva, May-June 1968.

(d) *Memorandum on the Minimum Age (Underground Work) Convention, 1965 (No. 123)*, prepared for the Government of the United Kingdom at the request of the Commissioner of Labour of Hong Kong, 7 July 1967. Document G.B.172/14/7, 172nd session of the Governing Body, Geneva, May-June 1968.

(e) *Memorandum on the Hygiene (Commerce and Offices) Convention 1964 (No. 120)*, prepared at the request of the Government of Guatemala, 14 December 1967. Document G.B.172/14/7, 172nd session of the Governing Body, Geneva, May-June 1968.

[141] These memoranda are published in the *Official Bulletin*, vol. LI, No. 4, October 1968.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS OF INTERNATIONAL TRIBUNALS

[No decisions on questions relating to the United Nations and related inter-governmental organizations were rendered by international tribunals in 1967.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

[No decisions of national tribunals on questions relating to the United Nations and related inter-governmental organizations were communicated for 1967.]

Part Four

LEGAL DOCUMENTS INDEX AND BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

Chapter IX

LEGAL DOCUMENTS INDEX OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

A. Legal Documents Index of the United Nations [1, 2]

MAIN HEADINGS

I. General Assembly and Subsidiary Organs
   1. Plenary General Assembly and Main Committees
   2. Committee on the Peaceful Uses of Outer Space
   3. 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States
   4. United Nations Council for South West Africa
   5. International Law Commission
   6. International Conference on Human Rights

II. Economic and Social Council and Subsidiary Organs
   1. Economic and Social Council and Sessional Committees
   2. Commission on Human Rights
   3. Commission on the Status of Women
   4. Commission on Narcotic Drugs
   5. Economic Commission for Asia and the Far East
   6. United Nations Conference on Road Traffic

III. United Nations Industrial Development Organization

IV. United Nations Conference on Trade and Development

V. Secretariat
   1. Bureau of Technical Assistance Operations
   2. Office of Public Information
   3. Economic Commission for Asia and the Far East

VI. International Court of Justice

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[1] The documentary material relating to each United Nations organ is divided, where appropriate, into two sections: "[(A)]. Documents relating to agenda items of legal interest", and "[(B) Other] documents of legal interest". Section (A) contains references to the summary and verbatim records where the item was discussed, as well as to all the documents related to the agenda item. Section (B) lists the remaining documents of legal interest. A document relating to a given United Nations organ is not listed in the section (B) relating to that organ if it already appears in the section (A) of any other organ.

[2] The following abbreviations have been used in the document references: a.i. = agenda item; E.S.C. = Economic and Social Council; G.A. = General Assembly; mtg. = meeting; Plen. = Plenary meeting.

I. GENERAL ASSEMBLY AND SUBSIDIARY ORGANS

1. Plenary General Assembly and Main Committees

(A) *(i) Documents relating to an agenda item of legal interest* (fifth special session) *Question of South West Africa* (agenda item 7)[3]

(*a*) Basic document: Report of the *Ad Hoc* Committee for South West Africa (A/6640).

(*b*) Consideration in plenary:

(*i*) *draft resolutions* (A/L.516 and Add. 1-3, L.516/Rev.1, L. 517): see G.A. (S-V), Annexes, a.i. 7.

(*ii*) *debates:* G.A. (S-V), Plen., 1503rd to 1518th and 1522nd to 1524th mtgs.

(*iii*) *resolution adopted:* General Assembly resolution 2248 (S-V)[4] of 19 May 1967.

(A) *(ii) Documents relating to agenda items of legal interest* (twenty-second session [19 September-19 December 1967])

(1) *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (agenda item 23)

(*a*) Basic document: Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/6700/Rev.1): see G.A. (XXII), Annexes, addendum to a.i. 23.

(*b*) Consideration by the Fourth Committee:

(*i*) *draft resolutions* (A/C.4/L.870 and Rev.1, Rev.1/Add.1 and Rev.2 [on Southern Rhodesia], L.876 and Add.1-7, L.876/Rev.1, L.877, L.884, L.887 and Add.1, L.888, L. 889, L.890 [on Gibraltar], L.893 and Add.1 [on Ifni and Spanish Sahara], L.894 and Add.1 [on Equatorial Guinea], L.898 and Add.1 [on French Somaliland], L.899 [on American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands]) and *reports* of the Fourth Committee (A/6884 [on Southern Rhodesia], A/6920 [on Aden] and A/7013 [on Territories not considered separately]: see G.A. (XXII), Annexes, a.i. 23.

(*ii*) *debates:* G.A. (XXII), 4th Committee, 1683rd to 1686th, 1688th to 1697th, 1700th to 1704th, 1707th, 1719th, 1729th to 1731st, 1737th, 1741st, 1743rd and 1745th to 1756th mtgs.

(*c*) Consideration in plenary:

(*i*) *draft resolution* (A/L.541 and Rev.1 and Rev.1/Add.1): see G.A. (XXII), Annexes, a.i. 23.

(*ii*) *debates:* G.A. (XXII), Plen., 1594th, 1613th, 1627th, 1628th, 1630th, 1631st, 1633rd, 1634th, 1636th, 1641st and 1642nd mtgs.

(*iii*) *resolutions adopted:* General Assembly resolutions 2262 (XXII) of 3 November 1967 (on Southern Rhodesia), 2353 (XXII) of 19 December 1967 (on Gibraltar), 2354 (XXII) of 19 December 1967 (on Ifni and Spanish Sahara), 2355 (XXII) of 19 December 1967 (on Equatorial Guinea), 2356 (XXII) of 19 December 1967 (on French Somaliland), 2357 (XXII) of 19 December 1967 (on American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos

[3] See also section (A) (*ii*) (16) below.

[4] Text reproduced in this *Yearbook*, p. 132.

[Keeling] Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands) and 2326 (XXII) of 16 December 1967 (on the item as a whole).

See also the decisions taken by the General Assembly at its 1594th, 1613th and 1641st plenary meetings, held respectively on 3 November 1967, 30 November 1967 and 19 December 1967.

(2) *Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other territories under colonial domination and efforts to eliminate colonialism,* apartheid *and racial discrimination in southern Africa* (agenda item 24)

(*a*) Basic document: Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/6868 and Add.1): see G.A. (XXII), Annexes, a.i. 24.

(*b*) Consideration by the Fourth Committee:

(*i*) *draft resolution* (A/C.4/L.875 and Rev.1 and Rev.1/Add.1 and 2) and *report* of the Fourth Committee (A/6939): see G.A. (XXII), Annexes, a.i. 24.

(*ii*) *debates:* G.A. (XXII), 4th Committee, 1718th to 1725th, 1730th, 1732nd, 1735th, 1736th and 1738th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1622nd mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2288 (XXII) of 7 December 1967.

(3) *Installation of mechanical means of voting: report of the Secretary-General* (agenda item 25)

(*a*) Basic document: letter from the Permanent Mission of Mexico to the United Nations addressed to the Secretary-General (A/6862): see G.A. (XXII), Annexes, a.i. 25.

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolution* (A/C.6/L.632 and Rev.1) and *report* of the Sixth Committee (A/6990):[5] see G.A. (XXII), Annexes, a.i. 25.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 1009th and 1010th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1635th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2323 (XXII)[6] of 16 December 1967.

(4) *Non-proliferation of nuclear weapons (a) Report of the Conference of the Eighteen-Nation Committee on Disarmament (b) Report of the Preparatory Committee for the Conference of Non-Nuclear Weapon States* (agenda item 28)

(*a*) Basic documents: Interim report of the Conference of the Eighteen-Nation Committee on Disarmament (A/6951-DC/229): see G.A. (XXII), Annexes, a.i. 28—Report of the Preparatory Committee for the Conference of Non-Nuclear-Weapon States (A/6817).

(*b*) Consideration by the First Committee:

(*i*) *draft resolution* (A/C.1/L.416 and Rev.1, L.420 and Rev.1) and *report* of the First Committee (A/7016): see G.A. (XXII), Annexes, a.i. 28.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1552nd to 1582nd mtgs.

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[5] *Ibid.*, p. 135.

[6] *Ibid.*, p. 137.

(*c*) Consideration in plenary:

(*i*) *debates:* G.A. (XXII), Plen., 1640th and 1672nd mtgs.

(*ii*) *resolution adopted:* General Assembly resolution 2346 (XXII) of 19 December 1967.

(5) *Question of general and complete disarmament (a) Report of the Conference of the Eighteen-Nation Committee on Disarmament (b) Report of the Secretary-General on the effects of the possible use of nuclear weapons and on the security and economic implications for States of the acquisition and further development of these weapons* (agenda item 29)

(*a*) Basic document: Interim report of the Conference of the Eighteen-Nation Committee on Disarmament (A/6951-DC/229): see G.A. (XXII), Annexes, a.i. 29, 30 and 31—Report of the Secretary-General on sub-item (*b*) (A/6858).

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.411 and Rev.1, L.412 and Add.1 and 2, L.413 and Add.1-4, L.415, L.417, L.419 and Add.1 and 2) and *report* of the First Committee (A/7017): see G.A. (XXII), Annexes, a.i. 29, 30 and 31.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1545th to 1555th mtgs.

(*c*) Consideration in plenary:

(*i*) *debates:* G.A. (XXII), Plen., 1640th mtg.

(*ii*) *resolutions adopted:* General Assembly resolutions 2342 A (XXII) and 2342 B (XXII) of 19 December 1967.

(6) *Urgent need for suspension of nuclear and thermonuclear tests: report of the Conference of the Eighteen-Nation Committee on Disarmament* (agenda item 30)

(*a*) Basic documents: Interim report of the Conference of the Eighteen-Nation Committee on Disarmament (A/6951-DC/229): see G.A. (XXII), Annexes, a.i. 29, 30 and 31.

(*b*) Consideration by the First Committee:

(*i*) *draft resolution* (A/C.1/L.414 and Add.1 and 2) and *report* of the First Committee (A/7021): see G.A. (XXII), Annexes, a.i. 29, 30 and 31.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1545th to 1555th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1640th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2343 (XXII)[7] of 19 December 1967.

(7) *International co-operation in the peaceful uses of outer space: report of the Committee on the Peaceful Uses of Outer Space*[8] (agenda item 32)

(*a*) Basic document: Report of the Committee on the Peaceful Uses of Outer Space (A/6804 and Add.1): see G.A. (XXII), Annexes, a.i. 32.

(*b*) Consideration by the First Committee:

(*i*) *draft resolutions* (A/C.1/L.402 and Add.1 and 2, L.403) and *report* of the First Committee (A/6833): see G.A. (XXII), Annexes, a.i. 32.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1497th to 1502nd and 1507th mtgs.

(*c*) Consideration in plenary:

(*i*) *draft resolution* (A/L.544 and Add.1): see G.A. (XXII), Annexes, a.i. 32.

(*ii*) *debates:* G.A. (XXII), Plen., 1594th and 1640th mtgs.

(*iii*) *resolutions adopted:* General Assembly resolutions 2260 (XXII) and 2261 (XXII) of 3 November 1967 and 2345 (XXII)[9] of 19 December 1967.

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[7] *Ibid.*, p. 138.

[8] See also section 2 below.

[9] Text reproduced in this *Yearbook*, p. 139.

(8) *The policies of* apartheid *of the Government of the Republic of South Africa (a) Report of the Special Committee on the Policies of* Apartheid *of the Government of the Republic of South Africa (b) Report of the Secretary-General* (agenda item 35)[10]

(*a*) Basic documents: Report of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa (A/6864 and Add.1)—Report of the Secretary-General on the United Nations Trust Fund for South Africa (A/6873 and Corr.1): see G.A. (XXII), Annexes, a.i. 35.

(*b*) Consideration by the Special Political Committee:

(*i*) *draft resolution* (A/SPC/L.147 and Add.1, L.147/Rev.1 and Add.1 and 2) and *report* of the Special Political Committee (A/6914): see G.A. (XXII), Annexes, a.i. 35.

(*ii*) *debates:* G.A. (XXII), Special Political Committee, 552nd to 569th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1629th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2307 (XXII) of 13 December 1967

(9) *Office of the United Nations High Commissioner for Refugees (a) Report of the High Commissioner (b) Question of the continuation of the Office of the High Commissioner* (agenda item 50)

(*a*) Basic document: Report of the United Nations High Commissioner for Refugees: G.A. (XXII), Supp. No. 11 (A/6711/Rev.1) (Chapter II: International Protection) and 11A (A/6711/Add.1) (Chapter III: International Protection).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1493 and Rev.1 and L.1494 and Rev.1) and *report* of the Third Committee (A/6936): see G.A. (XXII), Annexes, a.i. 50.

(*ii*) *debates:* G.A. (XXII), 3rd Committee, 1519th to 1523rd mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1625th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2294 (XXII) of 11 December 1967.

(10) *Draft Declaration on the Elimination of Discrimination against Women* (agenda item 53)[11]

(*a*) Basic document: Note by the Secretary-General (A/6678): see G.A. (XXII), Annexes, a.i. 53.

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1438, L.1439 and Rev.1, L.1440 and Rev.1, L.1441 and Rev.1, L.1442, L.1443 and Rev.1, L.1444 and Rev.1, L.1445 and Rev.1, L.1446, L.1447 and Rev.1, L.1448, L.1449 and Rev.1 and 2, L. 1450 and Rev.1, L.1451 and Corr.1, L.1452, L.1453, L.1454, L.1455) and *report* of the Third Committee (A/6880): see G.A. (XXII), Annexes, a.i. 53.

(*ii*) *debates:* G.A. (XXII), 3rd Committee, 1468th to 1485th mtgs.

(*c*) Consideration in plenary:

(*i*) *debates:* G.A. (XXII), Plen., 1596th and 1597th mtgs.

(*ii*) *resolution adopted:* General Assembly resolution 2263 (XXII)[12] of 7 November 1967 (contains text of Declaration on the Elimination of Discrimination against Women).

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[10] See also section II 2 (A) (7) below.

[11] See also section II 3 (A) (1) below.

[12] Text reproduced in this *Yearbook*, p. 140.

(11) *Elimination of all forms of religious intolerance (a) Draft Declaration on the Elimination of All Forms of Religious Intolerance (b) Draft International Convention on the Elimination of All Forms of Religious Intolerance* (agenda item 54)[13]

(*a*) Basic document: Note by the Secretary-General (A/6660 and Corr.1)

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1456, L.1457, L.1458, L.1460 and Rev.1, L.1462, L.1463, L.1464, L.1465, L.1466 and Rev.1, L.1467, L.1468 and Rev.1 and Rev.1/Corr.1 and 2, L.1469, L.1470, L.1471, L.1472 and Rev.1, L.1473, L.1474, L.1475 and Rev.1, L.1476, L.1477, L.1480, L.1481, L.1482, L.1483, L.1484 and Corr.1, L.1485, L.1487 and Rev.1 and 2, L.1488, L.1489, L.1490, L.1491, L.1492 and Rev.1) and *report* of the Third Committee (A/6934): see G.A. (XXII), Annexes, a.i. 54.

(*ii*) *debates:* G.A. (XXII), 3rd Committee, 1486th to 1514th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1625th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2295 (XXII) of 11 December 1967.

(12) *Elimination of all forms of racial discrimination: (a) Implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination: report of the Secretary-General (b) Status of the International Convention on the Elimination of All Forms of Racial Discrimination: report of the Secretary-General (c) Measures to be taken against nazism and racial intolerance (d) Measures for the speedy implementation of international instruments against racial discrimination* (agenda item 55)[14]

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, *in all countries, with particular reference to colonial and other dependent countries and territories: report of the Secretary-General* (agenda item 56)[15]

(*a*) Basic documents: Reports of the Secretary-General (A/6691 and Add.1-4, and A/6692 and Add.1) and draft resolutions recommended by the Economic and Social Council (A/6693, annex, and A/6694, annex)—Notes by the Secretary-General (A/6829 and Add.1 and A/6830 and Add.1-4).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/6693, annex, and A/6694, annex) and *report* of the Third Committee (A/6992): see G.A. (XXII), Annexes, a.i. 55 and 56.

(*ii*) *debate:* G.A. (XXII), 3rd Committee, 1551st mtg.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1638th mtg.

(*ii*) *resolutions adopted:* General Assembly resolutions 2331 (XXII) and 2332 (XXII)[16] of 18 December 1967.

(13) *Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights: report of the Secretary-General* (agenda item 57)

(*a*) Basic document: Report of the Secretary-General (A/6820 and Add.1).

(*b*) Consideration by the Third Committee:

(*i*) *draft resolution* (A/C.3/L.1524) and *report* of the Third Committee (A/7005): see G.A. (XXII), Annexes, a.i. 57.

(*ii*) *debate:* G.A. (XXII), 3rd Committee, 1553rd mtg.

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[13] See also section II 2 (A) (1) below.

[14] See also sections II 1 (A) (4) and 2 A (4) below.

[15] See also section II 2 (A) (5) below.

[16] Text reproduced in this *Yearbook*, p. 143.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1638th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2337 (XXII)[17] of 18 December 1967.

(14) *International Year for Human Rights (a) Programme of measures and activities to be undertaken in connexion with the International Year for Human Rights: report of the Secretary-General (b) Report of the Preparatory Committee for the International Conference on Human Rights* (agenda item 58)[18]

(*a*) Basic documents: Report of the Secretary-General (A/6866 and Add.1 and 2)—Report of the Preparatory Committee for the International Conference on Human Rights (A/6670): see G.A. (XXII), Annexes, a.i. 58.

(*b*) Consideration by the Third Committee:

(*i*) *draft resolutions* (A/C.3/L.1501 and Rev.1, L.1502, L.1505 and Rev.1 and 2, L.1506 and Rev.1, 2 and 3, L.1507 and Rev.1, L.1508, L.1509 and Rev.1, L.1511, L.1512 and Rev.1, L.1513) and *report* of the Third Committee (A/7008): see G.A. (XXII), Annexes, a.i. 58.

(*ii*) *debates:* G.A. (XXII), 3rd Committee, 1533rd to 1546th mtgs.

(*c*) Consideration in plenary:

(*i*) *draft resolution* (A/L.542): see G.A. (XXII), Annexes, a.i. 58.

(*ii*) *debate:* G.A. (XXII), Plen., 1638th mtg.

(*iii*) *resolution adopted:* General Assembly resolution 2339 (XXII) of 18 December 1967.

(15) *Question of the punishment of war criminals and of persons who have committed crimes against humanity* (agenda item 60)[19]

(*a*) Basic document: Note by the Secretary-General (A/6813): see G.A. (XXII), Annexes, a.i. 60.

(*b*) Consideration by the Third and Sixth Committees:

(*i*) *draft resolutions* (A/C.3/L.1516, L.1520), *report* of the Joint Working Group of the Third and Sixth Committees on the non-applicability of statutory limitation to war crimes and crimes against humanity (A/C.3/L.1503) and *report* of the Third Committee (A/6989): see G.A. (XXII), Annexes, a.i. 60.

(*ii*) *debates:* G.A. (XXII), 3rd Committee, 1514th to 1518th, 1523rd and 1546th to 1550th mtgs. and 6th Committee, 1001st mtg.

(*c*) Consideration in plenary:

(*i*) *draft resolution* (A/L.543 and Rev.1): see G.A. (XXII), Annexes, a.i. 60.

(*ii*) *debate:* G.A. (XXII), Plen., 1638th mtg.

(*iii*) *resolution adopted:* General Assembly resolution 2338 (XXII) of 18 December 1967.

(16) *Question of South West Africa (a) Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (b) Report of the United Nations Council for South West Africa (c) Appointment of the United Nations Commissioner for South West Africa* (agenda item 64)[20]

(*a*) Basic documents: report of the Special Committee on the situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/6700/Add.2): see G.A. (XXII), Annexes, addendum to

[17] *Ibid.*, p. 144.

[18] See also sections 6 and II 3 (A) (6) below.

[19] See also section II 2 (A) (2) below.

[20] See also sections A (*i*) and 4 below.

a.i. 23, document A/6700/Rev.1, Chapter IV—Reports of the United Nations Council for South West Africa (A/6897 and A/7088): see G.A. (XXII), Annexes, a.i. 64.

(*b*) Consideration in plenary:

(*i*) *draft resolutions* (A/L.536 and Add.1-4, L.540 and Add.1 and 2, L.546 and Add.1, L.546/Rev.1).

(*ii*) *debates:* G.A. (XXII), Plen., 1620th, 1624th, 1625th, 1627th, 1628th, 1632nd, 1633rd, 1635th,1636th, 1644th and 1671st mtgs.

(*iii*) *resolutions adopted:* General Assembly resolutions 2324 (XXII)[21] and 2325 (XXII)[22] of 16 December 1967.

See also the decision taken by the General Assembly at its 1635th plenary meeting on 16 December 1967.

(17) *Report of the International Law Commission on the work of its nineteenth session* (agenda item 85)[23]

(*a*) Basic document: Report of the International Law Commission on the work of its nineteenth session: G.A. (XXII), Supp. No. 9 (A/6709/Rev.1 and Corr.1).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.617 and Rev.1 and 2, A/C.6/L.618, L.620 and Add.1, L.622) and *report* of the Sixth Committee (A/6898)[24]: see G.A. (XXII), Annexes, a.i. 85.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 958th to 968th and 970th to 974th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1615th mtg.

(*ii*) *resolutions adopted:* General Assembly resolutions 2272 (XXII)[25] (on the report of the International Law Commission) and 2273 (XXII)[26] (on special missions), of 1 December 1967.

(18) *Law of treaties* (agenda item 86)[27]

(*a*) Basic document: Report of the International Law Commission on the work of its eighteenth session: G.A. (XXI), Suppl. No. 9 (A/6309/Rev.1, part II).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolution* (A/C.6/L.623 and Add.1, L.623/Rev.1 and 2) and *report* of the Sixth Committee (A/6913):[28] see G.A. (XXII), Annexes, a.i. 86.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 964th, 967th, 969th, 971st and 974th to 983rd mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1261st mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2287 (XXII)[29] of 6 December 1967.

(19) *Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special*

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[21] Text reproduced in this *Yearbook*, p. 145.

[22] *Ibid.*, p. 146.

[23] See also section 5 below.

[24] Text reproduced in this *Yearbook*, p. 147.

[25] *Ibid.*, p. 164.

[26] *Ibid.*, p. 165.

[27] See also section (B) (6) below.

[28] Text reproduced in this *Yearbook*, p. 167.

[29] *Ibid.*, p. 181.

Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (agenda item 87)[30]

(*a*) Basic document: Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/6799): see G.A. (XXII), Annexes, a.i. 87.

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.627, L.628 and Add.1-3) and *report* of the Sixth Committee (A/6955):[31] see G.A. (XXII), Annexes, a.i. 87.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 992nd to 1006th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1637th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2327 (XXII)[32] of 18 December 1967.

(20) *Question of methods of fact-finding* (agenda item 88)

(*a*) Basic document: Observations and additional comments received from Governments (A/6686 and Corr.1 [English only] and Add.1-3).

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.624 and Rev.1, L.626, L.642), *report* of the Working Group on the Question of Methods of Fact-Finding (A/C.6/L.639)[33] and *report* of the Sixth Committee (A/6995):[34] see G.A. (XXII), Annexes, a.i. 88.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 989th to 992nd, 998th, 1001st, 1023rd and 1024th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1637th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2329 (XXII)[35] of 18 December 1967.

(21) *Draft Declaration on Territorial Asylum* (agenda item 89)

(*a*) Basic document: Report of the Sixth Committee to the twenty-first session of the General Assembly (A/6570) (containing, in annex, the text of a draft declaration on territorial asylum): see G.A. (XXI), Annexes, a.i. 85.

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolution* (A/C.6/L.625) and *report* of the Sixth Committee (A/6912):[36] see G.A. (XXII), Annexes, a.i. 89.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 983rd to 989th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1631st mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2312 (XXII)[37] of 14 December 1967.

(22) *United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law: report of the Secretary-General* (agenda item 90)

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[30] See also section 3 below.

[31] Text reproduced in this *Yearbook*, p. 132.

[32] *Ibid.*, p. 214.

[33] *Ibid.*, p. 222.

[34] *Ibid.*, p. 216.

[35] *Ibid.*, p. 233.

[36] *Ibid.*, p. 234.

[37] *Ibid.*, p. 249.

(*a*) Basic document: Report of the Secretary-General (A/6816): see G.A. (XXII), Annexes, a.i. 90.

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolution* (A/C.6/L.631 and Add.1 and 2) and *report* of the Sixth Committee (A/6950): see G.A. (XXII), Annexes, a.i. 90.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 1007th to 1010th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1631st mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2313 (XXII)[38] of 14 December 1967.

(23) *Treaty for the Prohibition of Nuclear Weapons in Latin America* (agenda item 91)

(*a*) Basic document: Letter addressed to the Secretary-General from the permanent representatives of Argentina, Bolivia, Brazil, Colombia, Costa-Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela to the United Nations (A/6676 and Add.1-4) (requests the inclusion of an item in the provisional agenda of the twenty-second session of the General Assembly).

(*b*) Consideration by the First Committee:

(*i*) *draft resolution* (A/C.1/L.406 and Rev.1 and 2) and *report* of the First Committee (A/6921): see G.A. (XXII), Annexes, a.i. 91.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1504th to 1511th, 1531st, 1533rd, 1535th and 1538th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1620th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2286 (XXII)[39] of 5 December 1967.

(24) *Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind* (agenda item 92)

(*a*) Basic document: Note verbale from the Permanent Mission of Malta to the United Nations addressed to the Secretary-General (A/6695) (requests the inclusion of a supplementary item in the agenda of the 22nd session of the General Assembly and submits explanatory memorandum): see G.A. (XXII), Annexes, a.i. 92.

(*b*) Consideration by the First Committee:

(*i*) *note* by the Secretary-General (A/C.1/952), *draft resolution* (A/C.1/L.410 and Add.1) and *report* of the First Committee (A/6964): see G.A. (XXII), Annexes, a.i. 92.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1515th, 1516th, 1524th to 1530th and 1542nd to 1544th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1639th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2340 (XXII) of 18 December 1967.

(25) *Need to expedite the drafting of a definition of aggression in the light of the present international situation* (agenda item 95)

(*a*) Basic document: Letter from the Minister for Foreign Affairs of the USSR to the President of the General Assembly (A/6833 and Corr.1 [English and Spanish only])

[38] *Ibid.*, p. 250.

[39] *Ibid.*, p. 252.

(requests the inclusion of an additional item in the agenda of the 22nd session of the General Assembly): see G.A. (XXII), Annexes, a.i. 95.

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.636, L.637 and Corr.1 and Add.1 and 2, L.638 and Rev.1, L.640, L.644) and *report* of the Sixth Committee (A/6988): see G.A. (XXII), Annexes, a.i. 95.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 1017th to 1023rd and 1025th mtgs.

(*c*) Consideration in plenary:

(*i*) *debates:* G.A. (XXII), Plen., 1611th to 1618th mtgs.

(*ii*) *resolution adopted:* General Assembly resolution 2330 (XXII)[40] of 18 December 1967.

(26) *Conclusion of a convention on the prohibition of the use of nuclear weapons* (agenda item 96)

(*a*) Basic document: Letter from the Minister for Foreign Affairs of the Union of Soviet Socialist Republics to the President of the General Assembly (A/6834) (requests the inclusion of an additional item in the agenda of the 22nd session of the General Assembly and submits text of a draft convention on the prohibition of the use of nuclear weapons).

(*b*) Consideration by the First Committee:

(*i*) *draft resolution* (A/C.1/L.409) and *report* of the First Committee (A/6945): see G.A. (XXII), Annexes, a.i. 96.

(*ii*) *debates:* G.A. (XXII), 1st Committee, 1532nd, 1534th to 1537th and 1539th to 1541st mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1623rd mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2289 (XXII) of 8 December 1967.

(27) *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations* (agenda item 97)

(*a*) Basic document: Letter from the Deputy Minister for Foreign Affairs and Permanent representative of Bulgaria to the United Nations addressed to the President of the General Assembly (A/6835) (requests the inclusion of an additional item in the agenda of the 22nd session of the General Assembly): see G.A. (XXII), Annexes, a.i. 97

(*b*) Consideration by the Fourth Committee:

(*i*) *draft resolution* (A/C.4/L.882 and Add.1) and *report* of the Fourth Committee (A/6954): see G.A. (XXII), Annexes, a.i. 97.

(*ii*) *debates:* G.A. (XXII), 4th Committee, 1721st, 1722nd, 1726th, 1728th, 1729th, 1732nd to 1734th, 1736th, 1737th, 1739th, 1742nd, 1744th and 1746th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1631st mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2311 (XXII) of 14 December 1967.

(28) *Question of diplomatic privileges and immunities (a) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property (b) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations* (agenda item 98)

[40] *Ibid.*, p. 253.

(*a*) Basic document: Note by the Secretary-General (A/6832 and Rev.1)

(*b*) Consideration by the Sixth Committee:

(*i*) *draft resolutions* (A/C.6/L.633, L.634 and Add.1 and 2, L.635 and Rev.1 and Rev.1/Add.1) and *report* of the Sixth Committee (A/6965):[41] see G.A. (XXII), Annexes, a.i. 98.

(*ii*) *debates:* G.A. (XXII), 6th Committee, 1010th to 1017th mtgs.

(*c*) Consideration in plenary:

(*i*) *debate:* G.A. (XXII), Plen., 1637th mtg.

(*ii*) *resolution adopted:* General Assembly resolution 2328 (XXII)[42] of 18 December 1967.

(B) *Other documents of legal interest*

(1) *Rules of procedure of the General Assembly*

Correction to rule 15 of the rules of procedure of the General Assembly. Note by the Secretary-General (A/BUR/169).

(2) *United Nations Emergency Force*

Report of the Secretary-General on the withdrawal of the United Nations Emergency Force (document A/6730/Add.3, also circulated under the symbol A/6669).[43]

(3) *Political rights of women*

Constitutions, electoral laws and other legal instruments relating to the political rights of women. Memorandum by the Secretary-General (A/6807 and Add.1).

(4) *Apartheid*[44]

Note by the Secretary-General transmitting the report of the International Seminar on Apartheid, Racial Discrimination and Colonialism in Southern Africa (A/6818 and Corr.1).

(5) *Territories under Portuguese administration*

Consultation with the International Bank for Reconstruction and Development—Report of the Secretary-General (A/6825).[45]

(6) *Law of treaties*[46]

Guide to the draft articles on the law of treaties adopted by the International Law Commission at its eighteenth session (1966) (A/C.6/376).

(7) *Administrative Tribunal*

Note by the Secretary-General (A/INF/123) (transmits annual note by the Administative Tribunal to the President of the General Assembly as to the functioning of the Tribunal).

Appointments to fill vacancies in the membership of subsidiary bodies of the General Assembly. United Nations Administrative Tribunal. Note by the Secretary-General (A/6684): see G.A. (XXII), Annexes, a.i. 76.

Report of the Fifth Committee (A/6895): *ibid.*

See also General Assembly resolution 2268 (XXII) of 16 November 1967.

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[41] *Ibid.*, p. 254.

[42] *Ibid.*, p. 262.

[43] *Ibid.*, p. 87.

[44] See also section II 2 (B) (3) below.

[45] Text reproduced in this *Yearbook*, p. 108.

[46] See also section (A) (*ii*) (18) above.

2. Committee on the Peaceful Uses of Outer Space[47]
Legal Sub-Committee

(i) *Documents relating to agenda items of legal interest* (sixth session)

(1) *Draft agreement on liability for damages caused by the launching of objects into space* (agenda item 2)

(*a*) Basic documents: Draft convention submitted by Belgium (A/AC.105/C.2/L.7/Rev.3)—Draft convention submitted by the United States (A/AC.105/C.2/L.19)—Draft convention submitted by Hungary (A/AC.105/C.2/L.24 and Add.1).

(*b*) Consideration by the Sub-Committee:

(*i*) *proposals* submitted to the Sub-Committee (A/AC.105/C.2/L.22, L.25, L.26, L.27), *proposals* submitted to the Working Group established by the Sub-Committee (W.G. II/37, 38, 39, 43, 44), *texts* agreed upon by the Working Group (W.G. II/31 and Corr.1, 32, 33/Rev.1, 34 and Add.1, 35, 36, 40, 41 and Add.1, 42) and *report* of the Sub-Committee (A/AC.105/37).

(*ii*) *debates:* A/AC.105/C.2/SR.77 to 79.

(2) *Draft agreement on assistance to and return of astronauts and space vehicles* (agenda item 3l

(*a*) Basic documents: Proposal submitted by the USSR (A/AC.105/C.2/L.18)—Proposal submitted by the United States (A/AC.105/C.2/L.9 and Corr.1)—Revised proposa) submitted jointly by Australia and Canada (A/AC.105/C.2/L.20).

(*b*) Consideration by the Sub-Committee:

(*i*) *proposals* submitted to the Sub-Committee (A/AC.105/C.2/L.21, L.23), *proposals* submitted to the Working Group established by the Sub-Committee (W.G. I/40, 41, 42, 44, 45), *texts* agreed upon by the Working Group (W.G. I/38, 39) and *report* of the Sub-Committee (A/AC.105/37).

(*ii*) *debate:* A/AC.105/C.2/SR.76.

(ii) *Documents relating to an agenda item of legal interest* (1967 special session)
Draft agreement on assistance to and return of astronauts and space vehicles (agenda item 2)

(*a*) Basic document: Draft agreement on the rescue of astronauts, the return of astronauts and the return of objects launched into outer space (A/AC.105/C.2/L.28 and Corr.1 [Russian only], L.28/Rev.1).

(*b*) Consideration by the Sub-Committee:

(*i*) *report* of the Sub-Committee (A/AC.105/43) (containing the text of a draft agreement on the rescue of astronauts, the return of astronauts and the return of objects launched into outer space, subsequently submitted to the General Assembly at its 22nd session).

(*ii*) *debates:* A/AC.105/C.2/SR.86 to 89.

3. 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States[48]

Documents relating to an agenda item of legal interest

Consideration, pursuant to General Assembly resolution 2181 (XXI) of 12 December 1966, of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

(A) *Consideration, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committees, of the four principles listed below with a view to completing their formulation:*

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[47] See also section 1 (A) (*ii*) (7) above.

[48] See also section 1 (A) (*ii*) (19) above.

a. *The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purpose of the United Nations;*

b. *The duty of States to co-operate with one another in accordance with the Charter;*

c. *The principle of equal rights and self-determination of peoples;*

d. *The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter* [*paragraph 5 of General Assembly resolution 2181 (XXI)*].

(B) *Consideration of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX)* [*paragraph 6 of General Assembly resolution 2181 (XXI)*].

(C) *Consideration of any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States, having considered as a matter of priority, the principles referred to in A and B above* [*paragraph 7 of of General Assembly resolution 2181 (XXI)*].

(D) *Submission to the General Assembly at its twenty-second session of a comprehensive report on the principles entrusted to the 1967 Special Committee for study and a draft declaration on the seven principles set forth in Assembly resolution 1815 (XVII)* [*paragraph 8 of General Assembly resolution 2181 (XXI)*] (agenda item 6).

(*a*) Basic document: General Assembly resolution 2181 (XXI) of 12 December 1966—Report of the 1966 Special Committee (A/6230): see G.A. (XXI), Annexes, a.i. 87.

(*b*) Consideration by the Special Committee:

(*i*) *proposals* and *amendments*[49] (A/AC.125/L.44, L.48, L.49 and Rev.1, L.51 [on principle (a)], L.44, Part V, L.45 and Corr.1, L.46, L.48, L.52 [on principle (b)], L.44, Part VI, L.48, L.50 [on principle (c)]; L.44, Part VII, L.47, L.48 [on principle (d)], L.44, Part III, L.48, L.54 [concerning sub-item (B)], L.44, Parts II and IV, L.48 [concerning sub-item (C)], *reports* of the Drafting Committee and *report* of the 1967 Special Committee (A/6799): see G.A. (XXII), Annexes, a.i. 87.

(*ii*) *debates:* A/AC.125/SR.53-80.

4. United Nations Council for South West Africa[50]

Documents of legal interest

Question of travel documents. Note by the Acting Commissioner (A/AC.131/4).[51]

The question of the participation of representatives of South West Africa in the work of the Economic Commission for Africa. Note by the Acting Commissioner (A/AC.131/5).

5. International Law Commission[52]

(A) *Documents relating to an agenda item of legal interest* (nineteenth session)

Special missions (agenda item 1)

(*a*) Basic document: Fourth report on special missions by Mr. M. Bartos, Special Rapporteur (A/CN.4/194 and Add.1-5).

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[49] For the proposals and amendments sumitted to previous sessions of the Special Committee, see G.A. (XX), Annexes, a.i. 90 and 94, document A/5746 and G.A. (XXI), Annexes, a.i. 87, document A/6230.

[50] See also section 1 (A) (*ii*) (16) above.

[51] Text reproduced in this *Yearbook*, p. 309.

[52] See also section 1 (A) (*ii*) (17) above. For detailed information see *Yearbook of the International Law Commission, 1967* (United Nations publication, Sales Nos.: E.68.V.1 and E.68.V.2).

(*b*) Consideration by the Commission:

(*i*) *comments* by Governments on the draft articles on special missions (A/CN.4/193 and Add.1-5) and *report* of the Commission: G.A. (XXII), Supp. No. 9 (A/6709/Rev.1 and Corr.1) (contains the draft articles on special missions adopted by the Commission).

(*ii*) *debates:* International Law Commission, 897th to 910th and 912th to 927th mtgs.

(B) *Other documents of legal interest*

General

Yearbook of the International Law Commission, 1966, vol. I, Parts I and II: Summary records of the second part of the seventeenth session and of the eighteenth session (A/CN.4/SER.A/1966—Sales No.: 67.V.1) and vol. II: Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly (A/CN.4/SER.A/1966/Add.1—Sales No.: 67.V.2).

Privileges and immunities

The practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their status, privileges and immunities—Part I: The representatives of Member States (A/CN.4/L.118) and Part II: The Organizations (A/CN.4/L.118/Add.1 and 2).

Relations between States and intergovernmental organizations

Second report by Mr. Abdullah El-Erian, Special Rapporteur (A/CN.4/195).

6. International Conference on Human Rights[53]

Documents of legal interest

Measures taken within the United Nations in the field of human rights. Study prepared by the Secretary-General (A/CONF.32/5).

Methods used by the United Nations in the field of human rights. Study prepared by the Secretary-General (A/CONF.32/6).

II. ECONOMIC AND SOCIAL COUNCIL AND SUBSIDIARY ORGANS

1. Economic and Social Council and Sessional Committees

(A) *Documents relating to agenda items of legal interest* (forty-second session)

(1) *Report of the Commission on Human Rights* (agenda item 11)[54]

(*a*) Basic document: Report of the Commission on Human Rights (twenty-third session): E.S.C. (XLII), Supp. No. 6 (E/4322).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolutions* (E/AC.7/L.514 and Rev.1, L.515, L.516 and Rev.1 and Rev.1/Add.1, L.517, L.518, L.519, L.520 and Rev.1, L.521, L.522, L.523, L.524 and Corr.1, L.526 and Corr.1) and *report* of the Social Committee (E/4387): see E.S.C. (XLII), Annexes, a.i. 11.

(*ii*) *debates:* E/AC.7/SR.562 to 578.

(*c*) Consideration by the Council:

(*i*) *draft resolution* (E/L.1164).

(*ii*) *debate:* E.S.C. (XLII), 1749th mtg.

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[53] See also section 1 (A) (*ii*) (14) above.

[54] See also section 2 below.

(*iii*) *resolutions adopted:* Economic and Social Council resolutions 1231 (XLII) (amending rules 15, 17 and 18 of the rules of procedure of the functional commissions of the Economic and Social Council), 1232 (XLII) (on the question of slavery), 1233 (XLII) (on the draft international convention on the elimination of all forms of religious intolerance), 1234 (XLII), 1235 (XLII) and 1236 (XLII) (on the question of the violation of human rights and fundamental freedoms), 1237 (XLII) (on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery), 1241 (XLII) (on the item as a whole) and 1243 (XLII) (on capital punishment), of 6 June 1967.

(2) *Report of the Commission on the Status of Women* (agenda item 12)[55]

(*a*) Basic document: Report of the Commission on the Status of Women (twentieth session): E.S.C. (XLII), Supp. No. 7 (E/4136).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolution* (E/AC.7/L.512), *recommendations* of the Working Group established by the Commission (E/AC.7/L.513) and *report* of the Social Committee (E/4365): see E.S.C. (XLII), Annexes, a.i. 12.

(*ii*) *debates:* E/AC.7/SR.558 to 560.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (XLII), 1470th mtg.

(*ii*) *resolutions adopted:* Economic and Social Council resolutions 1206 (XLII) (on the draft declaration on the elimination of discrimination against women), 1207 (XLII) (on parental rights and duties, including guardianship) and 1210 (XLII) (on the item as a whole), of 29 May 1967.

(3) *Allegations regarding infringements on trade union rights* (agenda item 14)

(*a*) Basic document: Note by the Secretary-General (E/4305).

(*b*) Consideration by the Council:

(*i*) *draft resolutions* (E/L.1156 and Rev.1, E/L.1157): see E.S.C. (XLII), Annexes, a.i. 14.

(*ii*) *debates:* E.S.C. (XLII), 1463rd, 1465th, 1473rd and 1479th mtgs.

(*iii*) *resolution adopted:* Economic and Social Council resolution 1216 (XLII) of 1 June 1967.

(4) *Measures taken in implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination* (agenda item 15)[56]

(*a*) Basic document: Report of the Commission on Human Rights (twenty-third session): E.S.C. (XLII), Supp. No. 6 (E/4322)—Report of the Secretary-General (A/4306 and Add.1-3).

(*b*) Consideration by the Social Committee:

(*i*) *report* of the Social Committee (E/4373): see E.S.C. (XLII), Annexes, a.i. 15.

(*ii*) *debates:* E/AC.7/SR.560 and 561.

(*c*) Consideration by the Council:

(*i*) *draft resolution* (E/L.1165): see E.S.C. (XLII), Annexes, a.i. 15.

(*ii*) *debate:* E.S.C. (XLII), 1466th, 1470th and 1479th mtgs.

(*iii*) *resolution adopted:* Economic and Social Council resolution 1244 (XLII) of 6 June 1967.

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[55] See also section 3 below.

[56] See also sections I 1 (A) (*ii*) (12) above and II 2 (A) (4) below.

(5) *Arrangements for the convening of an international conference to replace the Convention on Road Traffic and the Protocol on Road Signs and Signals, done at Geneva, 19 September 1949* (agenda item 28)[57]

(*a*) Basic document: Note by the Secretary-General (E/4308 and Corr.1): see E.S.C. (XLII), Annexes, a.i. 28.

(*b*) Consideration by the Economic Committee:

(*i*) *draft resolution* (E/AC.6/L.356) and *report* of the Economic Committee (E/4369): see E.S.C. (XLII), Annexes, a.i. 28.

(*ii*) *debate:* E/AC.6/SR.407.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (XLII), 1469th mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1203 (XLII) of 26 May 1967.

B) *Other documents of legal interest*

(1) *Amendments to rules 2, 4, 19, 23, 26 and 27 of the rules of procedure of the Economic and Social Council*

Note by the Secretary-General (E/4313).

See decision taken by the Council at its 1471st meeting held on 29 May 1967.

(2) *Transfer of technology*

Application of science and technology to development. Arrangements for the transfer of operative technology to developing countries. Progress report by the Secretary-General (E/4319).

(3) *Narcotic Drugs*[58]

Report of the Commission on Narcotic Drugs on the work of its twenty-first session (E.S.C. (XLII), Supp. No. 2 [E/4294] and E/4294/Add.1).

(4) *Slavery*

Report on slavery by the Special Rapporteur, Mr. Mohamed Awad (E/4168/Rev.1—Sales No.: 67.XIV.2).

2. Commission on Human Rights[59]

A) *Documents relating to agenda items of legal interest* (twenty-third session)

(1) *Draft declaration and draft international convention on the elimination of all forms of religious intolerance* (agenda item 3)[60]

(*a*) Basic document: Note by the Secretary-General (E/CN.4/920) (containing in an annex the draft convention prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.867 and Rev.1, L.869, L.872, L.873 and Rev.1 and 2, L.874/Rev.1, L.875, L.876, L.877, L.878, L.879, L.880, L.881, L.882, L.883, L.887, L.890 and Rev.1, L.893, L.898, L.904, L.905, L.906, L.909, L.910 and Corr.1) and *resolution adopted* (3(XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debates:* E/CN.4/SR.897, 899, 901, 903, 905, 907, 909, 911, 913, 915, 917 and 919.

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[57] See also section 6 below.

[58] See also section 4 below.

[59] See also section 1 (A) (*i*) above.

[60] See also section I 1 (A) (*ii*) (11) above.

(2) *Question of the punishment of war criminals and of persons who have committed crimes against humanity* (agenda item 4)[61]

(*a*) Basic document: Report of the Secretary-General (E/CN.4/927 and Add.1-8—Preliminary draft convention prepared by the Secretary-General on the non-applicability of statutory limitation to war crimes and crimes against humanity (E/CN.4/928).

(*b*) Consideration by the Commission:

(*i*) *report* of the Working Group established to consider the text of the preliminary draft convention prepared by the Secretary-General (E/CN.4/L.943), *draft resolutions* (E/CN.4/L.917, L.946, L.947, L.948, L.957, L.958, L.959, L.962, L.963, L.967) and *resolution adopted* (4(XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debates:* E/CN.4/SR.919, 921, 931, 933, 934 and 935.

(3) *Question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery* (agenda item 6)

(*a*) Basic document: Report of the Working Group established by the Commission at its twenty-second session to study all relevant questions concerning the proposed institution (E/CN.4/934).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.974, L.979, L.980, L.981) and *resolution adopted* (14(XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debates:* E/CN.4/SR.938, 939 and 940.

(4) *Measures for the speedy implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination* (agenda item 8)[62]

(*a*) Basic document: Note by the Secretary-General (E/CN.4/929).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.894 and Rev.1 and 2, L.920, L.929 and Rev.1) and *resolutions adopted* (10 (XXIII) and 11 (XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debates:* E/CN.4/SR.921, 922, 298, 931 and 935.

(5) *Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation, and of* apartheid, *in all countries, with particular reference to colonial and other dependent countries and territories* (agenda item 9)

(*a*) Basic document: General Assembly resolution 2144 (XXI) of 26 October 1966.

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.889, L.907 and Rev.1, L.911 and Rev.1, L.912, L.914, L.915, L.916, L.918 and Corr.1, 3 and 4 and L.918/Rev.1, L.922, L.923 and Rev.1, L.925, L.927, L.931, L.933, L.935, L.938, L.939, L.940, L.941, L.942, L.945) and *resolutions adopted* (5(XXIII), 6(XXIII), 7(XXIII), 8(XXIII) and 9(XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debates:* E/CN.4/SR.898, 916, 918, 920, 922, 923 and 925 to 930.

(6) *Periodic reports on human rights* (agenda item 12)[63]

(*a*) Basic documents: Reports from Governments (E/CN.4/892 and Add.18-26 and E/CN.4/917 and Add.1-15 and 17-19), reports from specialized agencies (E/CN.4/918 and Add.1 and 2) and report of the *ad hoc* Committee on Periodic Reports (E/CN.4/939 and Corr.1).

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[61] See also section I 1 (A) (*ii*) (15) above.

[62] See also sections I 1 (A) (*ii*) (12) and II 1 (A) (4) above.

[63] See also section 3 (A) (2) below.

(*b*) Consideration by the Commission:

(*i*) *draft resolution* submitted by the *ad hoc* Committee on Periodic Reports (E/CN.4/939, para. 72) and *resolution adopted* (16(XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debate:* E/CN.4/SR.940.

(7) *Communication dated 3 February 1967 from the Acting Chairman of the General Assembly's Special Committee on the Policies of* Apartheid *of the Government of the Republic of South Africa* (agenda item 24)[64]

(*a*) Basic document: Note by the Secretary-General (E/CN.4/935).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.884, L.885, L.888, L.891 and Rev.1 and 2, L.892 and Rev.1, L.896, L.897) and *resolution adopted* (2(XXIII)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 6 (E/4322).

(*ii*) *debates:* E/CN.4/SR.900, 902, 904, 906, 908, 910, 912, 914 and 916.

(B) *Other documents of legal interest*

(1) *Status of multilateral treaties in the field of human rights concluded under the auspices of the United Nations*

Memorandum by the Secretary-General (E/CN.4/907/Rev.1).

(2) *Study of* apartheid *and racial discrimination in Southern Africa*[65]

Report of the Special Rapporteur (E/CN.4/949 and Add.1-3).

(3) *Protection of minorities*

Special protective measures of an international character for ethnic, religious or linguistic groups (E/CN.4/Sub.2/214/Rev.1 [E/CN.4/Sub.2/221/Rev.1]—Sales No.: 67. XIV.3).

(4) *Slavery*

Note by the Secretary-General on the implementation of the Supplementary Convention of 1956 on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (E/CN.4/Sub.2/279 and Add.1 and 2).

3. Commission on the Status of Women[66]

(A) *Documents relating to agenda items of legal interest* (twentieth session)

(1) *Draft declaration on the elimination of discrimination against women* (agenda item 3)[67]

(*a*) Basic document: Note by the Secretary-General (E/CN.6/484 and Corr.1 [English only]) (containing in an annex the text of the draft declaration adopted by the Commission at its nineteenth session and the amendments submitted to that text during the forty-first session of the Economic and Social Council and the twenty-first session of the General Assembly).

(*b*) Consideration by the Commission:

(*i*) *first report* of the Drafting Committee established by the Commission (E/CN.6/L.506), *draft resolutions* (E/CN.6/L.508, L.509, L.510, L.511, L.512, L.513, L.515, L.516, L.517), *second report* (E/CN.6/L.523) and *draft resolution* (E/CN.6/L.525) submitted by the Drafting Committee, and *resolution adopted* (1(XX)) (containing

[64] See also section I 1 (A) (*ii*) (8) above.

[65] See also section I 1 (B) (4) above.

[66] See also section 1 (A) (2) above.

[67] See also section I 1 (A) (*ii*) (12) above.

text of the draft declaration adopted by the Commission): see *report* of the Commission: E.S.C. (XLII), Supp. No. 7 (E/4316).

(*ii*) *debates:* E/CN.6/SR.466, 467, 482, 488 and 489.

(2) *Periodic reports on human rights* (agenda item 4) [68]

(*a*) Basic documents: Note by the Secretary-General (E/CN.6/479), reports from Governments (E/CN.4/892 and Add.1-15 and 17-19 and E/CN.4/917 and Add.1-12), report from ILO (E/CN.4/893) and reports from specialized agencies (E/CN.4/918 and Add.1 and 2)

(*b*) Consideration by the Commission:

(*i*) *draft resolution* (E/CN.6/L.494 and Rev.1) and *resolution adopted* (2(XX)): see report of the Commission: E.S.C. (XLII), Supp. No. 7 (E/4316).

(*ii*) *debates:* E/CN.6/SR.466, 469 and 474.

(3) *Political rights of women*

a. *Progress achieved in the field of political rights of women*

b. *Implementation of the Convention on the Political Rights of Women*

c. *Status of women in Non-Self Governing Territories* (agenda item 5)

(*a*) Basic documents: Report of the Secretary-General on the implementation of the Convention on the Political Rights of Women (E/CN.6/470 and Add.1-3)—Report of the Secretary-General on information concerning the status of women in Non-Self Governing Territories (E/CN.6/464).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.6/L.489, L.490) and *resolutions adopted* (3(XX) and 4(XX)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 7 (E/4316).

(*ii*) *debates:* E/CN.6/SR.466 to 468, 471 and 472.

(4) *Status of women in private law; parental rights and duties, including guardianship of children* (agenda item 6)

(*a*) Basic documents: Report of the Secretary-General on parental rights and duties, including guardianship of children (E/CN.6/474)—Note by the Secretary General on the study of discrimination against persons born out of wedlock (E/CN.6/485).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.6/L.498 and Rev.1 and 2, L.499, L.500, L.502, L.505) and *resolutions adopted* (5(XX) and 6(XX)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 7 (E/4316).

(*ii*) *debates:* E/CN.6/SR.474 to 476 and 479 to 481.

(5) *Economic rights and opportunities for women*

a. *ILO activities which have a bearing on the employment of women*

b. *ILO standards for the protection of women workers*

c. *Equal pay for equal work* (agenda item 8)

(*a*) Basic documents: Reports of the International Labour Office on ILO activities which have a bearing on the employment of women (E/CN.6/472), on ILO standards for the protection of women workers (E/CN.6/465) and on equal pay for equal work (E/CN.6/468).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.6/L.507 and Rev.1, L.514) and *resolution adopted* (9(XX)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 7 (E/4316).

(*ii*) *debates:* E/CN.6/SR.477 to 479, 482 and 483.

[68] See also section II 2 (A) (6) above.

(6) *International Year for Human Rights* (agenda item 11) [69]

(*a*) Basic document: Note by the Secretary-General (E/CN.6/480).

(*b*) Consideration by the Commission:

(*i*) *draft resolution* (E/CN.6/L.527) and *resolution adopted* (15(XX)): see *report* of the Commission: E.S.C. (XLII), Supp. No. 7 (E/4316).

(*ii*) *debates:* E/CN.6/SR.489 and 490.

(B) *Other document of legal interest*

Nationality of married women

Supplementary report by the Secretary-General (E/CN.6/471).

4. Commission on Narcotic Drugs [70]

Documents of legal interest

Report of the Division of Narcotic Drugs for the period 1 October 1966-31 October 1967 (E/CN.7/503).

Implementation of the narcotics treaties and international control. Note by the Secretary-General (E/CN.7/504).

5. Economic Commission for Asia and the Far East [71]

Document of legal interest

ECAFE Rules for International Commercial Arbitration and ECAFE Standards for Conciliation (E/CN.11/744).

6. United Nations Conference on Road Traffic [72]

Document of legal interest

Draft convention on road signs and signals. Note by the Secretary-General (E/CONF.56/3)

III. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Document of legal interest

Industrial Development Board

Statement by the Legal Counsel of the United Nations on the draft headquarters agreement [73] between the United Nations and Austria (ID/B/15).

IV. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Document of legal interest

United Nations Conference on Olive Oil (Geneva, 1967)

Summary of proceedings (TD/OLIVE OIL.3/1—Sales No.: 67.II.D.21) (contains text of the final resolution and of the Protocol for the extension of the International Olive Oil Agreement, 1963, as adopted by the Conference).

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[69] See also section I 1 (A) (*ii*) (14) above.

[70] See also section 1 (B) (3) above.

[71] See also section IV 3 below.

[72] See also section 1 (A) (5) above.

[73] See p. 44 of this *Yearbook*.

V. SECRETARIAT[74]

1. Bureau of Technical Assistance Operations

Human rights series

Seminar on the realization of economic and social rights contained in the Universal Declaration of Human Rights. Warsaw, Poland, 15-28 August 1967. Organized by the United Nations in co-operation with the Government of Poland (ST/TAO/HR/31).

Seminar on the effective realization of civil and political rights at the national level. Kingston, Jamaica, 25 April-8 May 1967. Organized by the United Nations in co-operation with the Government of Jamaica (ST/TAO/HR/29).

2. Office of Public Information

The International Court of Justice (Sales No.: 67.I.11)

The Work of the International Law Commission (Sales No.: 67.V.4)

3. Economic Commission for Asia and the Far East[75]

Water legislation in Asia and the Far East. - Part I (ST/ECAFESER.F/31—Sales No.: 67.II.F.11)

VI. INTERNATIONAL COURT OF JUSTICE[76]

1. General

Annuaire, 1966-1967. 1967. xii, 150 pp. Printed. Sales No. 313.

Yearbook, 1966-1967. 1967. xii, 149 pp. Printed. Sales No. 314.

Bibliography of the International Court of Justice. Prepared by the Library of the Court: No. 20, 1966. 1967. [38], xii pp. Printed. Sales No. 306.

2. Reports of Judgements, Advisory Opinions and Orders

Reports of Judgements, Advisory Opinions and Orders, 1967. North Sea Continental Shelf Case (Denmark/Federal Republic of Germany). Order of 8 March 1967 [1967], [3-4], 2, 2 pp. Printed. Sales No. 309.

—. North Sea Continental Shelf Case (Federal Republic of Germany/Netherlands). Order of 8 March 1967 [1967], [6-7], 2, 2 pp. Printed. Sales No. 310.

—. Case concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium *v.* Spain). Order of 12 April 1967. [1967]. [9-10]. 2, 2 pp. Printed. Sales No. 311.

—. Case concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium *v.* Spain). Order of 15 September 1967. [1967]. [12-13], 2, 2 pp. Printed. Sales No. 316.

Reports of Judgements, Advisory Opinions and Orders, 1967. [1968]. 13, 13 pp. Printed. Sales Nos. 309, 310, 311 and 316. Bound volume containing the Reports published in 1967.

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[74] The recurrent publications of the Office of legal Affairs are not listed in this section; see the *United Nations Documents Index*, published by the Dag Hammarskjöld Library, United Nations.

[75] See also section II 5 above.

[76] For detailed information see *Yearbook* of the International Court of Justice, 1966-1967 and 1967-1968.

Pleadings, Oral Arguments, Documents, [1960] 1967.

South West Africa Cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa), Vol. III [1967]. xx, 540 pp. Printed. Sales No. 305.

South West Africa Cases (Ethiopia *v.* South Africa, Liberia *v.* South Africa), Vol. IV [1967]. xviii, 616 pp. Printed. Sales No. 308.

South West Africa Cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa), Vol. V [1967]. xiii, 483 pp. Printed. Sales No. 312.

B. Legal Documents Index of Inter-Governmental Organizations Related to the United Nations

I. INTERNATIONAL LABOUR ORGANISATION

(A) REPRESENTATIVE ORGANS

(1) CONVENTIONS AND RECOMMENDATIONS ADOPTED IN 1967 [77]

(a) *Convention concerning the Maximum Permissible Weight to be Carried by One Worker. Recommendation concerning the Maximum Permissible Weight to be Carried by One Worker*

(*i*) Proposals concerning the convening of a Preparatory Technical Conference on the Maximum Permissible Weight to be Carried by One Worker. Minutes of the 162nd session of the Governing Body, Geneva, May-June 1965, pp. 23-26, 35-36, 56-57. English, French, Spanish.

(*ii*) Preparatory Technical Conference on Maximum Weight, Geneva, 1966. Report I—Maximum permissible weight to be carried by one worker and Report II—Replies from Governments and proposed conclusions. Reports (mimeographed) prepared by the International Labour Office, Geneva, 1965, 42 and 153 pages respectively. English, French, Spanish.

(*iii*) Agenda of the fifty-first session (1967) of the International Labour Conference. Question of maximum permissible weight to be carried by one worker. Minutes of the 163rd session of the Governing Body, Geneva, November 1965, pp. 5-8, 8-11, 12-13, 52-53. English, French, Spanish.

(*iv*) Maximum permissible weight to be carried by one worker. International Labour Conference, fifty-first session (1967), Report VI(1) [78] and Report VI(2), 49 and 73 pages respectively. English, French, Spanish, German, Russian.

(*v*) Maximum permissible weight to be carried by one worker. International Labour Conference, fifty-first session (1967), Geneva 1967, Record of Proceedings, pp. 385-386, 393, 448, 733, 743-744, 746, 802, 840. English, French, Spanish.

(*vi*) Convention concerning the Maximum Permissible Weight to be Carried by One Worker. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement I, pp. 1-4. English, French, Spanish.

(*vii*) Recommendation concerning the Maximum Permissible Weight to be Carried by One Worker. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement I, pp. 25-29. English, French, Spanish.

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[77] For convenience of reference, all the preparatory work of such instruments, which normally covers a period of two years, will be given in the year in which the instrument was adopted.

[78] This document contains the report of the Preparatory Technical Conference which met at Geneva from 25 January to 4 February 1966 (see (*ii*) above).

(b) *Convention concerning Invalidity, Old-Age and Survivors' Benefits. Recommendation concerning Invalidity, Old-Age and Survivors' Benefits*

(*i*) Committee on Standing Orders and the Application of Conventions and Recommendations. Need to re-examine the pre-war social security Conventions. Minutes of the 134th session of the Governing Body, March 1957, pp. 31, 97-99. English, French, Spanish.

(*ii*) Committee on Standing Orders and the Application of Conventions and Recommendations. Revision of Conventions Nos. 35, 36, 37, 38 and 39. Proposals concerning the submission of these Conventions to the Committee of Social Security Experts to seek the views of the Committee as to their possible revision. Minutes of the 137th session of the Governing Body, Geneva, October-November 1957, pp. 83, 176-178. English, French, Spanish.

(*iii*) Committee on Standing Orders and the Application of Conventions and Recommendations. Revision of Convention No. 40. Proposal concerning the submission of this Convention to the Committee of Social Security Experts with a view to its possible revision. Minutes of the 140th session of the Governing Body, Geneva, November 1958, pp. 40-41, 91-92. English, French, Spanish.

(*iv*) Committee of Experts on Social Security. Proposals concerning the convening of a limited meeting of members of the Committee of Experts on Social Security, composition and agenda. Minutes of the 140th session of the Governing Body, Geneva, November 1958, pp. 62-63, 106-107, 118. English, French, Spanish.

(*v*) Committee of Experts on Social Security, Geneva, 26 January to 7 February 1959, mimeographed report, document CSSE D.21-1958-9, 31 pages. English, French, Spanish.

(*vi*) Committee of Experts on Social Security—Report to the Governing Body. Minutes of the 141st session of the Governing Body, Geneva, March 1959, pp. 21, 78-84. English, French, Spanish.

(*vii*) Committee of Experts on Social Security—Convening of a limited meeting of members of the Committee of Experts on Social Security, composition, agenda. Minutes of 151st session of the Governing Body, Geneva, March 1962 pp. 43-44, 86-87, 107. English, French, Spanish.

(*viii*) Committee of Experts on Social Security, Geneva, 26 November to 8 December 1962. Mimeographed report, document CSSE—D.14.1962 (Rev.), 44 pages. English, French, Spanish.

(*ix*) Committee of Experts on Social Security—Report to the Governing Body. Minutes of the 154th session of the Governing Body, Geneva, 5-8 March 1963, pp. 42-43, 64, 95-96, 134. English, French, Spanish.

(*x*) Agenda of the fiftieth session (1966) of the International Labour Conference. Placing of the question of revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Invalidity, Old-Age and Survivors' Pensions. Minutes of the 160th session of the Governing Body, Geneva, November 1964, pp. 4-8, 9-11, 12-13, 56-63. English, French, Spanish.

(*xi*) Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions. International Labour Conference, fiftieth session 1966. Report V(1) and V(2), 107 and 209 pages respectively. English, French, Spanish, German, Russian.

(*xii*) Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions. International Labour Conference, fiftieth session 1966, Record of Proceedings pp. 16, 17, 437, 439, 450, 480, 485, 487, 488, 631, 652. English, French, Spanish.

(*xiii*) Agenda of the fifty-first session (1967) of the International Labour Conference. Fiftieth session (1966) of the International Labour Conference, Record of Proceedings, pp. 451, 658, 762. English, French, Spanish.

(*xiv*) Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions. International Labour Conference, fifty-first session, Geneva 1967. Report IV(1) and Report IV(2), 99 and 141 pages respectively. English, French, Spanish, German, Russian.

(*xv*) Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions. International Labour Conference, fifty-first session 1967, Record of Proceedings, pp. 433, 435, 444, 445, 480, 688, 700, 709-710, 808. English, French, Spanish.

(*xvi*) Convention concerning Invalidity, Old-Age and Survivors' Benefits. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement I, pp. 4-15. English, French, Spanish.

(*xvii*) Recommendation concerning Invalidity, Old-Age and Survivors' Benefits. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement I, pp. 36-40. English, French, Spanish.

(c) *Recommendation concerning Communications between Management and Workers within the Undertaking.*

Recommendation concerning the Examination of Grievances within the Undertaking with a view to their Settlement.

(*i*) Agenda of the fiftieth session of the International Labour Conference. Placing of the question: "Examination of grievances and communications within the undertaking" on the agenda. Minutes of the 160th session of the Governing Body, Geneva, November 1964, pp. 59, 62, 96, 97. English, French, Spanish.

(*ii*) Examination of grievances and communications within the undertaking. International Labour Conference, fiftieth session, 1966, Report VII(1) and Report VII(2), 123 and 126 pages respectively. English, French, Spanish, German, Russian.

(*iii*) Examination of grievances and communications within the undertaking. International Labour Conference, fiftieth session, 1966, Record of Proceedings, pp. 16, 17, 429, 430, 437, 483, 485, 487, 488, 683, 695, 697. English, French, Spanish.

(*iv*) Agenda of the fifty-first session (1967) of the International Labour Conference. Fiftieth session of the International Labour Conference, 1966, Record of Proceedings, pp. 437, 698, 763. English, French, Spanish.

(*v*) Examination of grievances and communications within the undertaking. International Labour Conference, fifty-first session, 1967, Report V(1) and Report V(2), 50 and 69 pages respectively. English, French, Spanish, German, Russian.

(*vi*) Examination of grievances and communications within the undertaking. International Labour Conference, fifty-first session, 1967. Record of Proceedings, pp. 393-395, 412, 413, 427, 432, 433, 449, 480, 716, 725, 727, 730, 732, 846, 852. English, French, Spanish.

(*vii*) Recommendation concerning Communications between Management and Workers within the Undertaking. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement I, pp. 29-32. English, French, Spanish.

(*viii*) Recommendation concerning the Examination of Grievances within the Undertaking with a view to their Settlement. Official Bulletin, Vol. L, No. 3, July 1967, Supplement I, pp. 33-36. English, French, Spanish.

(2) AMENDMENT TO THE STANDING ORDERS OF THE INTERNATIONAL LABOUR CONFERENCE

Proposed amendment designed to delete from the Standing Orders, on the ground that it has become obsolete and that its application must now be regarded as impracticable, the provision of Article 10, paragraph 2, of the Standing Orders to the effect that as a general rule the sittings of the committees shall not take place at the same time as the plenary sitting of the Conference

(*i*) Working Party on the Programme and Structure of the ILO. Minutes of the 168th session of the Governing Body, Geneva, February-March 1967, document G.B.168/6/24. English, French, Spanish.

(*ii*) International Labour Conference, fifty-first session, 1967, Record of Proceedings, pp. 112, 548. English, French, Spanish.

(*iii*) Amendment to the Standing Orders of the Conference. Deletion from the Standing Orders, on the ground that it has become obsolete and that its application must now be regarded as impracticable, of the provision of Article 10, paragraph 2, of the Standing Orders to the effect that as a general rule the sittings of the committees shall not take place at the same time as the plenary sitting of the Conference. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement I, p. 60. English, French, Spanish.

(B) QUASI-JUDICIAL BODIES AND COMMITTEES OF EXPERTS

(1) Reports of the Governing Body Committee on Freedom of Association:

(*a*) 93rd Report, 10 November 1966; *Official Bulletin*, Vol. L, No. 1, January 1967, Supplement, 61 pages. English, French, Spanish.

(*b*) 94th and 95th Reports, 10 November 1966, 15 January 1967. *Official Bulletin*, Vol. L, No. 2, April 1967, Supplement, 74 pages. English, French, Spanish.

(*c*) 96th, 97th, 98th, 99th and 100th Reports, 15 February 1967, 31 May 1967, 31 May 1967, 31 May 1967, 31 May 1967. *Official Bulletin*, Vol. L, No. 3, July 1967, Supplement II, 92 pages. English, French, Spanish.

(*d*) 101st Report, 9 November 1967, *Official Bulletin*, Vol. LI, No. 1, January 1968, Supplement, 89 pages. English, French, Spanish.

(2) Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, fifty-first session, 1967, Report III, Part 4, 294 pages. English, French, Spanish.

II. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(A) CONSTITUTIONAL QUESTIONS

Question	*Documents*
(1) Amendment to Article V.1 relative to the increase in the number of Council seats [79]	C 67/36; CONF/REP.,[80] paragraphs 539-541; CONF/Res.12/67 [81]
(2) Amendment of Article VI.1 of the Constitution with regard to the establishment of sea-area fishery commissions [82]	Report of the second session of the Committee on Fisheries (CL 48/7); CL 48/REP.,[83] paragraphs 43-53; CL/Res.3/48; CL 48/LIM/2, LIM/3, LIM/4; report of the eighteenth session of the Committee on Constitutional Legal Matters (CL 49/7), paragraphs 1-13; C/67/29; C 67/LIM/28, LIM/42, LIM/61; CONF/REP., paragraphs 546-553
(3) Authority and terms of reference of regional conferences	C 67/43; C 67/43, Add.1; CONF/REP., paragraphs 629-637
(4) Review of FAO statutory bodies	CL 49/6; CL 49/6, Sup.1; CL 49/REP., paragraphs 52-62; CONF/REP., paragraphs 604-628

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[79] See p. 288 of this *Yearbook*.

[80] The symbol CONF/REP. refers to the provisional report of the fourteenth session of the FAO Conference, November 1967.

[81] The symbols CONF/Res, and CL/Res. refer to the resolutions of the Conference and Council respectively.

[82] Not adopted.

[83] The symbols CL 48/REP., CL 49/REP. and CL 50/REP. refer to the provisional reports of the forty-eighth, forty-ninth and fiftieth sessions of the Council.

Question	*Documents*
(5) Sessions of FAO bodies—Their number and length	Report of the eighteenth session of the Committee on Constitutional and Legal Matters (CL 49/7), paragraphs 14-26; CONF/REP., paragraphs 618-624; CONF/Res.21/67
(6) Membership in Committee on Commodity Problems and Committee on Fisheries	CL 48/19; CL 48/REP., paragraphs 135-140; CL 49/12; CL 49/REP., paragraphs 53-91; CONF/REP., paragraphs 562-567; CONF/Res.15/67
(7) Membership of Program and Finance Committees	Report of the seventeenth session of the Committee on Constitutional and Legal Matters (CL 48/20), paragraphs 60-64; CL 48/REP., paragraphs 162-164; C 67/39; CONF/REP, paragraphs 557-561; CONF/Res.14/67
(8) Membership of non-member nations of FAO in subsidiary bodies of CCP	Report of the forty-first session of the Committee on Commodity Problems (CL 48/3), paragraph 150; CL 48/REP., paragraphs 141-143; CONF/REP., paragraphs 568-572; C/Res.16/67
(9) Invitations to non-governmental organizations which do not have status with FAO	CL 48/REP., paragraphs 189-190; report of the eighteenth session of the Committee on Constitutional and Legal Matters (CL 49/7), paragraphs 27-34; CL 49/REP., paragraphs 44-45

(B) BODIES ESTABLISHED UNDER ARTICLES V AND VI OF THE FAO CONSTITUTION

Body	*Documents*
(1) Statutes and rules of procedure of Article VI bodies	CL 48/25; CL 48/25, Add.1; CL 48/REP., paragraphs 179-188; CL/Res.9/48
(2) Bodies composed of non-governmental organizations and private institutions	Report of the seventeenth session of the Committee on Constitutional and Legal Matters (CL 48/20), paragraphs 1-30; CL 48/REP., paragraphs 144-153; CL/Res.6/48, CL/Res.7/48
(3) Establishment of a Caribbean Plant Protection Commission	Report of the seventeenth session of the Committee on Constitutional and Legal Matters (CL 48/20), paragraphs 31-59; CL 48/REP., paragraphs 165-168; CL/Res.8/48
(4) Establishment of the Animal Production and Health Commission in the Near East	CL 49/11; CL 49/REP., paragraphs 80-82; CL/Res.3/49
(5) Establishment of an Indian Ocean Fishery Commission	Report of the second session of the Committee on Fisheries (CL 48/7), paragraphs 61-69; CL 48/REP., paragraphs 40-42; CL/Res.2/28
(6) Establishment of an FAO Fishery Committee for the Eastern Central Atlantic	Report of the second session of the Committee on Fisheries (CL 48/7), paragraphs 42-47; CL 48/REP., paragraphs 38-39; CL/Res.1/48; CL 49/13; CL 49/REP., paragraph 92

(C) AGREEMENTS WITH INTER-GOVERNMENTAL ORGANIZATIONS

Agreement	*Documents*
(1) Relationship Agreements with Area Banks (the African Development Bank and the Asian Development Bank)	CL 49/17; CL 49/18; CL 49/REP., paragraphs 41-43; CL/Res.1/49; C 67/LIM/25; CONF/REP., paragraphs 589-591, App. E, App. F; CONF/Res.19/67
(2) Agreement between FAO and the Organization of African Unity	Report of the eighteenth session of the Committee on Constitutional and Legal Matters (CL 49/7), paragraphs 35-38, App. II; CL 49/REP., paragraphs 39-40; C 67/LIM/8; CONF/REP., paragraph 588
(3) FAO/UNESCO Committee on Agricultural Education	CL 48/12; CL 48/LIM/6; CL 48/REP., paragraphs 72-76; CL 49/9; CL 49/REP., paragraphs 67-76; CL 50/3; CL 50/3, Add.1; CL 50/REP., paragraphs 21-26, CL/Res.1/50; C 67/LIM/11; CONF/REP., paragraphs 507-513

(D) CONVENTIONS AND AGREEMENTS UNDER ARTICLES XIV AND XV OF THE FAO CONSTITUTION

Agreement	*Documents*
(1) Statutory report on the status of conventions and agreements and amendments thereto	C 67/65
(2) Amendment to Article IV of the Convention Placing the International Poplar Commission within the framework of FAO	C 67/45; C 67/45, Sup. 1 and Sup. 2; CONF/REP., paragraphs 585-587; CONF/Res.18/67
(3) Amendment of the Plant Protection Agreement for the South-East Asia and Pacific Region	CL 49/15; CL 49/REP., paragraphs 63-66; CL/Res.2/49

(E) SUBSTANTIVE LEGAL QUESTIONS [84]

(1) AGRICULTURE

Question	*Documents*
(*a*) Mifsud, Frank M.: Customary land law in Africa with reference to legislation aimed at adjusting customary tenures to the needs of development	FAO Legislative Series No. 7, Printed—vi + 96 p.
(*b*) Retirement schemes and inheritance laws as applied to farmers in European member countries	ECA/15/67(9), 38 p., March 1967; Addendum, 7 p., April 1967. Multilithed
(*c*) Legislation on land use planning in Europe	ECA/WPL/2/66 (2) Rev.1, iv + 87 p., May 1967. Multilithed

(2) FISHERIES

(*a*) Zenny, F. B.: Establishment, structure, functions and activities of international fisheries bodies. IV. Permanent Commission of the Conference on the Use and Conservation of the Marine Resources of the South Pacific	COFI/67/Inf. 15, 22 p., April 1967. Multilithed

[84] Unless indicated otherwise, the documents listed have been prepared by, or in co-operation with, the Legislation Branch of FAO.

Question	*Documents*
(*b*) Proposed measures for effective inter-governmental co-operation and co-ordination for the development of West African Fisheries	FI:FWA/67/8, 9 p. + 1 appendix, May 1967. Multilithed
(*c*) Establishment, structure, functions and activities of the General Fisheries Council for the Mediterranean	GFCM/9/67/11E, iv + 29 p., October 1967. Multilithed
(*d*) Establishment, structure, functions and activities of the Mixed Commission for Black Sea Fisheries	GFCM/9/67/15E, ii + 21 p., November 1967. Multilithed
(*e*) Development of natural resources—Resources of the sea	CL 48/7, paragraphs 70-76; CL 49/5; CL 49/REP., paragraphs 20-26; C 67/LIM/4
(*f*) The management of fishery resources	The State of Food and Agriculture 1967 (C 67/4); Chapter IV, pp. 119-144, Annex Table 16

(3) WILDLIFE

(*a*) Draft African Convention for the Conservation and Management of Wildlife [85]	FO:AFC/WL—67/16 Annex 5, 11 p., March 1967. Multilithed
(*b*) Carroz, J. E., Mence, A. J., Child, G. S.: Wildlife legislation—Report to the Government of Kenya	UNDP/TA Report No. 2371, ii + 11 p. Multilithed

(4) INVESTMENT

(*a*) The promotion and protection of foreign private investment in agriculture in the developing countries (Preliminary report)	FAO/GCIP-I/67-68, ii + 41 p., February 1968. Multilithed
(*b*) Legislative and administrative measures taken to attract and regulate foreign private investment in agriculture, forestry, fisheries and related industries in Chile	FAO/Ind. Co-op. Prog. ii + 22 p., July 1967. Multilithed
(*c*) Legislative and administrative measures taken in Guatemala to attract and regulate foreign private investment in agriculture, forestry, fisheries and related industries	FAO/Ind. Co-op. Prog. ii + 19 p., November 1967. Multilithed

(5) FOOD STANDARDS

(*a*) Legal requirements concerning international additives to meat and meat products	SP-10/90-SCIV, Codex PM 67/10, 66 p., June 1967. Mimeographed
(*b*) General principles of food legislation	SP 10/JO-GPFL (Rev. ed.), 56 p., July 1967. Multilithed
(*c*) Food legislation: Basic principles	PG/67/5; SP 10/30 GPFL (Provisional document), 7 p., August 1967. Multilithed

(F) PERIODICALS

— Quarterly "Food and Agricultural Legislation"—Printed

— "Legislative Report"—Multilithed—6 issues per year. (English + titles in French and Spanish)

— "Current Food Additives Legislation"—Multilithed—10 issues per year

[85] Text adopted by the *ad hoc* Working Party on Wildlife Management at its second session (Fort Lamy, Chad. 6-11 February 1967).

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(A) CONSTITUTIONAL AND PROCEDURAL QUESTIONS

(1) "Special Committee to study the Methods of Work of the Organization (Ad Hoc Committee). First report." *Document 76 EX/2*, 23 March 1967, 15 p. and *Add.*, 25 April 1967, 3 p., English, French, Russian, Spanish.

(2) "Special Committee to study the Methods of Work of the Organization (Ad Hoc Committee). First report." 76 EX/Decision 3.1, April-May 1967, English, French, Russian, Spanish.

(3) "Second report of the Special Committee to study the Methods of Work of the Organization (Ad Hoc Committee)." *Document 77 EX/2*, 13 October 1967, 70 p., English, French, Russian, Spanish.

(4) "Second report of the Special Committee to study the Methods of Work of the Organization (Ad Hoc Committee)." *77 EX/Decision 3.1*, October-November 1967, English, French, Russian, Spanish.

(5) "Procedure for handling communications on individual cases involving human rights in education, science and culture." *Document 77 EX/29*, 7 September 1967, 8 p., English, French, Russian, Spanish.

(6) "Procedure for handling communications on individual cases involving human rights in education, science and culture." *77 EX/Decision 8.3*, October-November 1967, English, French, Russian, Spanish.

(7) "Definitions and criteria concerning the regional bodies appearing in UNESCO's Programme and Budget." *Document 77 EX/5 Add.*, 14 September 1967, 15 p., English, French, Russian, Spanish.

(B) MEMBER STATES

(1) "Communication from the French Government dated 15 March 1967, concerning the payment of turnover taxes." *Document 76 EX/27*, 17 April 1967, 10 p. and *Add.*, 20 April 1967, 4 p., English, French, Russian, Spanish.

(2) "Application of the Headquarters Agreement. Communication from the French Government dated 15 March 1967 concerning the payment of turnover taxes." *76 EX/Decision 7.1*, English, French, Russian, Spanish.

(C) RELATIONS WITH OTHER ORGANIZATIONS

(1) "Draft Agreement with the Latin American Physics Centre." *Document 76 EX/19*, 23 March 1967, 3 p., English, French, Russian, Spanish.

(2) "Draft Agreement with the Latin American Physics Centre." *76 EX/Decision 5.4*, April-May 1967, English, French, Russian, Spanish.

(3) "Transfer to UNESCO of certain responsibilities and assets of the International Relief Union." *Document 77 EX/31*, 31 August 1967, 12 p., English, French, Russian, Spanish.

(4) "Transfer to UNESCO of certain responsibilities and assets of the International Relief Union." *77 EX/Decision 6.6*, October-November 1967, English, French, Russian, Spanish.

(5) "Relations with the Organization of Central American States (ODECA)." *Document 77 EX/33*, 26 September 1967, 6 p., English, French, Russian, Spanish.

(6) "Relations with the Organization of Central American States (ODECA)." *77 EX/Decision 6.7*, October-November 1967, English, French, Russian, Spanish.

(D) CONVENTIONS AND RECOMMENDATIONS

(1) "Special Committee on the Implementation of the Convention and Recommendation against Discrimination in Education. Memorandum on the organization of the Work of the Special Committee." *Document 76 EX/COM.DIS/2*, 15 March 1967, 6 p., English, French, Russian, Spanish.

(2) "Special Committee on the Implementation of the Convention and Recommendation against Discrimination in Education. Questionnaire concerning the implementation of the Convention (Recommendation) against Discrimination in Education. Explanatory note prepared by the Special Committee." *Document 76 EX/COM.DIS/3*, 14 March 1967, 5 p. and Rev.1, English, French, Russian, Spanish.

(3) "Special Committee on the Implementation of the Convention and Recommendation against Discrimination in Education. Report of the Special Committee." *Document 76 EX/COM. DIS/5 rev.*, 27 April 1967, 3 p., English, French, Russian, Spanish.

(4) "Implementation of the Recommendation concerning the Status of Teachers." *Document 77 EX/9*, 18 August 1967, 4 p., English, French, Russian, Spanish.

(5) "Implementation of the Recommendation concerning the Status of Teachers." *77 EX/Decision 4.2.5*, October-November 1967, English, French, Russian, Spanish.

(6) "Implementation of the Convention on the Protection of Cultural Property in the Event of Armed Conflict. Report by the Director-General." *77 EX/Decision 4.4.4*, October-November 1967, English, French, Russian, Spanish.

(7) "Implementation of the Convention on the Protection of Cultural Property in the Event of Armed Conflict. Report by the Director-General." *Document 77 EX/32*, 29 September 1967, 13 p., English, French, Russian, Spanish.

(E) COMMITTEES AND OTHER BODIES

(1) "Statutes of the Advisory Committee on UNESCO's Educational Programme in Asia." *Document 76 EX/5*, 7 April 1967, 4 p., English, French, Russian, Spanish.

(2) "Statutes of the Advisory Committee on UNESCO's Educational Programme in Asia." *76 EX/ Decision 4.2.2*, April-May 1967, English, French, Russian, Spanish.

(3) "Statutes of the International Advisory Committee for out-of-school education." *Document 76 EX/6*, 15 March 1967, 4 p., English, French, Russian, Spanish.

(4) "Statutes of the International Advisory Committee for out-of-school education." *76 EX/ Decision 4.2.3*, April-May 1967, English, French, Russian, Spanish.

(5) "Statutes of the International Advisory Committee on agricultural education and science." *Document 76 EX/9*, 31 March 1967, 4 p., English, French, Russian, Spanish.

(6) "Statutes of the International Advisory Committee on agricultural education and science." *76 EX/Decision 4.3.2*, April-May 1967, English, French, Russian, Spanish.

IV. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(1) PREPARATION OF THE AUTHENTIC TRILINGUAL TEXT OF THE CHICAGO CONVENTION

[During the year the Council approved for circulation to States (i) a draft protocol for the adoption of French and Spanish texts of the Convention on International Civil Aviation which would be equally authentic with the English text signed at Chicago in 1944 and (ii) draft French and Spanish texts of the Convention.]

Doc 8693-C/973—Action of the Council, sixty-first session, Montreal, 25 April-28 June 1967, English, French, Spanish, p. 37.

Doc 8473-C/978—Action of the Council, sixty-second session, Montreal, 19 September-15 December 1967, English, French, Spanish, p. 39.

(2) REQUEST SUBMITTED BY THE UNITED KINGDOM UNDER ARTICLE 54(n) CONCERNING THE ESTABLISHMENT BY SPAIN OF A PROHIBITED AREA IN THE VICINITY OF GIBRALTAR

[In May, the Council considered the above-mentioned request, but reached no decision on it.]

Doc 8693-C/973—Action of the Council, sixty-first session, Montreal, 25 April-28 June 1967, English, French, Spanish, pp. 8-10.

(3) DISAGREEMENT BETWEEN THE UNITED KINGDOM AND SPAIN CONCERNING THE INTERPRETATION AND APPLICATION OF ARTICLE 9 OF THE CHICAGO CONVENTION IN RELATION TO THE SPANISH PROHIBITED AREA IN THE VICINITY OF GIBRALTAR

[On 6 September, the Government of the United Kingdom invoked Article 84 of the Chicago Convention and filed with the Organization a request for the settlement of the above-mentioned disagreement.]

Doc 8724, A16-P/3, Annual report of the Council to the Assembly for 1967, English, French, Spanish, p. 116.

(4) REQUEST OF SYRIAN ARAB REPUBLIC CONCERNING ISSUE OF A NOTAM BY ISRAEL EXTENDING THE LOD FLIGHT INFORMATION REGION

[In August, the Syrian Arab Republic filed a request under Article 54 (n) referring to a NOTAM issued by Israel extending the LOD Flight Information Region to include the airspace over a considerable portion of the territories of the United Arab Republic and Jordan and over international waters. The request had not been considered by the Council at the year's end because the Syrian Government asked for a postponement. Communications on the same subject were addressed to the Secretary-General by Iraq, Jordan, Lebanon, Saudi Arabia and the United Arab Republic.]

Doc 8724, A16-P/3, Annual report of the Council to the Assembly for 1967, English, French, Spanish, p. 116.

(5) REQUEST FROM NIGERIA UNDER ARTICLES 54(n), 55(e) AND 54(j)

[In December, the Government of Nigeria filed a request with the Organization charging the Government of Portugal with violations of eight articles of the Chicago Convention through the operation of aircraft from Portuguese territory into eastern Nigeria without authorization from the Government of Nigeria, for purposes inimical to that Government. It asked the Council to consider these violations under Article 54(n), to investigate them under Article 55(e) and to report to other Contracting States in accordance with Article 54(j).]

Doc 8724, A16-P/3, Annual report of the Council to the Assembly for 1967, English, French, Spanish, p. 116.

(6) PROPOSAL FOR THE AMENDMENT OF ARTICLE 7 (CABOTAGE) OF THE CHICAGO CONVENTION

[In December, the Government of Sweden presented a proposal for the deletion of the second sentence of Article 7 of the Chicago Convention, the proposal to be included in the provisional agenda for the sixteenth session of the Assembly.]

Doc 8724, A16-P/3, Annual report of the Council to the Assembly for 1967, English, French, Spanish, p. 116.

(7) NATIONALITY AND REGISTRATION OF AIRCRAFT OPERATED BY INTERNATIONAL AGENCIES [86]

[On 14 December, the Council adopted a resolution on nationality and registration of aircraft operated by international agencies.]

Doc 8743-C/978—Action of the Council, sixty-second session, Montreal, 19 September-15 December 1967, English, French, Spanish, pp. 26-27.

Doc 8722-C/976—Nationality and registration of aircraft operated by international operating agencies, English, French, Spanish.

(8) LIMITS OF LIABILITY UNDER THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929 AND THE PROTOCOL TO AMEND THE WARSAW CONVENTION SIGNED AT THE HAGUE ON 28 SEPTEMBER 1955

[A Panel of Experts on Limits for Passengers under the Warsaw Convention and the Hague Protocol met in January and July. The reports of the two sessions of the Panel were circulated to States and interested international organizations for comment. On considering the report of

[86] See p. 264 of this *Yearbook*.

the second session and related comments, the Council decided, *inter alia*, to request the Air Transport Committee, as a matter of urgency, to initiate action for the collection of background material it considered necessary in the revision of the present Warsaw/Hague limits of liability and to advise the Council as soon as possible when enough of this material would be available to progress towards the revision of the limits.]

PE-Warsaw Report-1 31/1/67 English, French, Spanish.

PE-Warsaw Report-2 18/7/67 English, French, Spanish.

Doc 8672-C/971—Action of the Council, sixtieth session, Montreal 18 January-22 March 1967, English, French, Spanish, p. 21.

Doc 8743-C/978—Action of the Council, sixty-second session, Montreal, 19 September-15 December 1967, English, French, Spanish, pp. 24-25.

(9) Legal Committee—Sixteenth session, 5-22 September 1967

[The Legal Committee held its sixteenth session at Paris from 5 to 22 September 1967. Among the items discussed by the Committee were problems of nationality and registration of aircraft operated by international agencies, the revision of the Rome Convention, the liability of air traffic control agencies, working methods of the Committee and amendments to its rules of procedure.]

Doc 8704, LC/155, 22/9/67—Legal Committee, sixteenth session, Paris, 5-22 September 1967. Summary of the work of the Legal Committee during its sixteenth session, English, French, Spanish (25 pp.).

Doc 8743-C/978—Action of the Council, sixty-second session, Montreal, 19 September-15 December 1967, English, French, Spanish, pp. 24-25.

(10) Organization and working methods of the Legal Committee

[At its sixteenth session (Paris, 5-22 September 1967), the Legal Committee amended its rules of procedure so as to provide for the election of its officers at the end of every second session. It also decided that the recommendations of the fifteenth session of the Assembly (June-July 1965) concerning the organization and working methods of the Committee and certain related decisions of the Committee itself should be collected and made available to members in convenient form.]

Doc 8704-LC/155, 22/9/67—Legal Committee, sixteenth session, Paris, 5-22 September 1967. Summary of the work of the Legal Committee during its sixteenth session, English, French, Spanish, pp. 21-22.

Doc 7669-LC/139, Addendum 2, English, French, Spanish.

(11) Classification and consolidation of Assembly resolutions in force (Assembly resolution A15-2)

[During the year the Council approved the principles and criteria for the Secretary-General to use, toegether with its decisions on the reports of subordinate bodies, as a basis for the preparation of the report to the Assembly on Resolution A15-2. The Council also approved, with certain amendments, the reports of certain bodies on the implementation of the resolution.]

Doc 8672-C/971—Action of the Council, sixtieth session, Montreal, 18 January-22 March 1967, English, French, Spanish, pp. 23-27.

Doc 8693-C/973—Action of the Council, sixty-first session, Montreal, 25 April-28 June 1967, English, French, Spanish, pp. 34-37.

(12) Annexes to the Convention on International Civil Aviation, Procedures for Air Navigation (PANS), Regional Supplementary Procedures (SUPPS)

See "ICAO Technical Publications Current Editions as of 1 November 1967", ICAO Bulletin, Vol. 22, No. 11, 1967, pp. 14-19.

V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

International Centre for Settlement of Investment Disputes

ICSID/1	Provisional Regulations and Rules (in force from 2 February to 31 December 1967)
ICSID/2	Text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the Accompanying Report of the Executive Directors of the World Bank (IBRD)
ICSID/3/Rev.2	List of Contracting States and Other Signatories of the Convention (as of 25 September 1967)
ICSID/4	Regulations and Rules (definitive, in force from 1 January 1968)
AC/67/3	Administrative and budgetary arrangements—Report and recommendations of the Chairman
AC/67/4	Invitation to Swiss Confederation to sign the Convention—Report and recommendations of the Chairman
AC/67/6	List of documents for inaugural meeting
AC/67/7	Proceedings: inaugural meeting—February 2, 1967
AC/67/18	Proceedings: first annual meeting—September 25, 1967
AC/67/19	List of documents

First annual report 1966/1967

VI. INTERNATIONAL ATOMIC ENERGY AGENCY

(1) Statute and membership of the Agency

(*a*) Action taken by States in connection with the Statute (INFCIRC/42/Rev.4); in addition to the information contained in that document, the following change has taken place: Uganda has become a member of the International Atomic Energy Agency by depositing an instrument of acceptance of the Agency's Statute with the depositary Government on 30 August 1967. The Agency's membership now stands at 98.

(*b*) Applications for membership
Malaysia GC (XI) 365, GC (XI)/RES/219.

(2) Agreements

(*a*) Contract for the transfer of enriched uranium and plutonium for a research reactor in Iran (INFCIRC/97,I); entered into force on 7 June 1967.

(*b*) Contract for the lease of enriched uranium for a research reactor in Spain (INFCIRC/99,I); entered into force on 23 June 1967.

(*c*) Contract for the lease of natural uranium and for the transfer of plutonium for a sub-critical facility in Mexico (INFCIRC/102,I); entered into force on 23 August 1967.

(*d*) Contract for the transfer of enriched uranium for a research reactor in Viet-Nam (INFCIRC/106); entered into force on 16 October 1967.

(*e*) Agreement between the International Atomic Energy Agency and the Government of Japan supplementary to the Agreement between the International Atomic Energy Agency, the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland for the application of Agency safeguards in respect of the bilateral agreement between those Governments for co-operation in the peaceful uses of atomic energy (INFCIRC/107); entered into force on 26 September 1967.
See also the agreements listed under (i) to (xiii), pp. 83-84 of this *Yearbook*.

(3) Other documents

The Agency's Safeguards System (1965, as provisionally extended in 1966)—INFCIRC/66/Rev.1.

Chapter X

LEGAL BIBLIOGRAPHY OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

MAIN HEADINGS

A. INTERNATIONAL ORGANIZATIONS IN GENERAL
   1. General
   2. Particular questions

B. UNITED NATIONS
   1. General
   2. Particular organs
   3. Particular questions or activities

C. INTER-GOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS
   Particular organizations

A. INTERNATIONAL ORGANIZATIONS IN GENERAL

1. *General*

Kozai, Shigeru *and others*. Introduction to international law. Tokyo, Yuhikaku, 1967. 285 p. In Japanese.

Kyozuka, Sakutaro. International law. Tokyo, Chuyo University Press, 1967. vii, 257 p. In Japanese.

Pék, Arpád. A nemzetközi szervezetek feladata és szerepe a békés egymás mellett élés idoszakában különös tekintettel az Egyesült Nemzetekre és annak Biztonsági Tanácsára. *Acta Facultatis politico-juridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae* (Budapest) 9:253-316, 1967.

[Tasks and role of international organizations with special reference to the United Nations and the Security Council, in the period of peaceful co-existence]
Summaries in Russian and English.

Seidl-Hohenveldern, I. Das Recht der Internationalen Organisationen einschliesslich der supranationalen Gemeinschaften. Cologne, Carl Heymanns Verlag K.G., 1967, 324 p.

Vellas, P. Droit international public; institutions internationales. Paris, Librairie générale de droit et de jurisprudence, 1967. 481 p.

2. *Particular questions*

Akehurst, M. B. The law governing employment in international organizations. Cambridge [Cambridge U.P.] 1967. xxii, 294 p. (Cambridge studies in international and comparative law, 8).

Baade, H. W. The acquired rights of international public servants. *American journal of comparative law* (Ann Arbor, Mich.) 15:251-300, 1967.

Comba Andrea. Cenni introduttivi allo studio delle giurisdizioni amministrative delle organizzazioni internazionali. *Diritto internazionale* (Milano) 21:313-347, 1967, no 3.

Jenks, C. Wilfred. Mutual aid in international law. *Indian yearbook of international affairs* (Madras) 14 (1965):90-108, 1967.

Kawasaki, Ichiro. Chinese representation in international organizations. *Aichi daigaku kokusaimondai kenkyusho kaiyo* (Nagoya) no. 38:1-28, 1966.
In Japanese.

Klepacki, Zbigniew M. Finansowanie organizacji miedzynarodowych. *Sprawy międzynarodowe* (Warszawa) 20:91-100, wrześień 1967.
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