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UNITED NATIONS JURIDICAL YEARBOOK 1964

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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 second 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 1964. Decisions given during 1964 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 1964, regardless of the period to which they refer. Some works and articles which were not included in the bibliography of the *Juridical Yearbook* for 1963 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 judicial decisions in chapters I and VIII which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General.

ABBREVIATIONS

AAA	American Arbitration Association
BANK	International Bank for Reconstruction and Development
FAO	Food and Agriculture Organization of the United Nations
FUND	International Monetary Fund
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICC	International Chamber of Commerce
IDA	International Development Association
IFC	International Finance Corporation
ILO	International Labour Organisation
IMCO	Inter-Governmental Maritime Consultative Organization
ITU	International Telecommunication Union
OECD	Organization for Economic Co-operation and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNTEA	United Nations Temporary Executive Authority
UPU	Universal Postal Union
WMO	World Meteorological Organization
WHO	World Health Organization

Part One

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

Chapter I

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

1. Canada

PROVINCE OF QUEBEC ORDER-IN-COUNCIL NO. 172 OF 26 JANUARY 1965 CONCERNING CERTAIN FISCAL CONCESSIONS TO NON-CANADIAN REPRESENTATIVES TO THE INTERNATIONAL CIVIL AVIATION ORGANIZATION [1]

Whereas representations have been made requesting that representatives of foreign countries to the International Civil Aviation Organization benefit from fiscal concessions;

Whereas it is deemed advisable to give effect to such representations;

Wherefore, it is ordered, upon the recommendation of the Minister of Revenue:

1. *That* the International Civil Aviation Organization (ICAO), the President of the Organization, the Secretary-General, the five Directors of the Organization, as well as the Official Representatives of each nation member of the said Organization, who are career officers and not nationals of Canada and the Province of Quebec, who do not operate a business or fulfil a function or employment in the Province, other than this appointment on behalf of the nation which they represent, benefit from the hereinafter specified fiscal concessions, under condition that the country represented by such officials grants similar privileges to representatives of the Province in such country:

(*a*) Exemption from Income Tax in accordance with the Provisions of sections 12 and 78 of the Provincial Income Tax Act;

(*b*) Exemption from duties prescribed by the Succession Duties Act, on all transmission of assets situated in the Province which were acquired during and on the occasion of their residence in Quebec while discharging the aforesaid functions. The Government of the Province shall not impede the transfer of assets so exonerated if death of said person occurs while discharging the functions mentioned in the first paragraph, or within two years of death;

(*c*) Exemption from the duties prescribed by the Succession Duties Act on any transmission of amounts shown in the bank account of a deceased employee while he was employed outside the Province of Quebec for the International Civil Aviation Organization and was not a national of Canada or the Province of Quebec, when such bank account was opened in Montreal, according to the regulations of this Organization and served to deposit the salaries received by such employee.

The amounts thus exempted should not be more than the salaries received by the deceased employee during the six-month period prior to his death;

[1] Translation kindly furnished by the International Civil Aviation Organization.

(*d*) Exemption from the tax payable under the Gasoline Tax Act, by way of refund and pursuant to the procedure to be set by the Department of Revenue;

(*e*) Exemption from the tax payable under the Retail Sales Tax Act, by way of refund and pursuant to the procedure to be set by the Department of Revenue;

(*f*) Exemption from payment of the registration fees of a pleasure motor vehicle, as exigible under the Highway Code, pursuant to procedure to be set by the Department of Transportation and Communications concerning the issuing of registration plates and payment of the cost thereof.

2. *That* paragraphs *a*) and *b*) of the aforesaid section 1 also apply to international employees of ICAO, on condition that said persons are not nationals of Canada and the Province, are not operating a business and do not fulfil a function or employment other than their employment on behalf of this Organization.

3. *That* the second last paragraph of Order-in-Council number 2012 of September 28th, 1961, be repealed.

4. *That* the present Order-in-Council replaces Orders-in-Council numbers 492 of March 23rd, 1962, and 2330 of December 2nd, 1964.

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2. Germany (Federal Republic of)

SECOND ACT AMENDING THE ACT OF 22 JUNE 1954 CONCERNING THE ACCESSION OF THE FEDERAL REPUBLIC OF GERMANY TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES OF THE UNITED NATIONS[2] DATED 21 NOVEMBER 1947 AND CONCERNING THE GRANTING OF PRIVILEGES AND IMMUNITIES TO OTHER INTERNATIONAL ORGANIZATIONS, OF 28 FEBRUARY 1964[3]

The Federal Parliament *(Bundestag)*, with the approval of the Federal Council *(Bundesrat)*, has enacted the following law:

Article 1

The Act of 22 June 1954 concerning the accession of the Federal Republic of Germany to the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations dated 21 November 1947 and concerning the granting of privileges and immunities to other international organizations (*Bundesgesetzblatt* 1954 II, p. 639),[4] as amended by the Act of 3 June 1957 (*Bundesgesetzblatt* II, p. 469),[5] shall be amended as follows:

1. In article 2, paragraph (2), the second sentence shall be deleted.

2. Article 3 shall read as follows:

"(1) In order to promote international relations, the Federal Government shall be empowered, by statutory order with the approval of the Federal Council, to extend the provisions of the Convention, in whole or in part,

---

[2] United Nations, *Treaty Series*, vol. 33, p. 261.

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

[4] 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. 25.

[5] *Ibid.*, p. 26.

"(*a*) To the United Nations and its specialized agencies,

"(*b*) To official international organizations which are not specialized agencies of the United Nations, and to establishments of foreign States, or to grant to the organizations and establishments referred to in (*a*) and (*b*) above such diplomatic privileges and immunities as it considers necessary. The granting of privileges and immunities to establishments of foreign States may be made subject to the exercise of reciprocity from those States. The Federal Government shall further be empowered to grant to foreign welfare organizations and their foreign representatives in Federal territory, by special agreement, tax and customs exemptions within the framework of the above-mentioned provisions.

"(2) These powers shall extend also to the implementation of international agreements."

3. Article 4 shall read as follows:

"*Article 4*

"This Act shall apply also in the *Land* Berlin, if the *Land* Berlin confirms its application. Statutory orders promulgated under this Act shall apply in the *Land* Berlin in accordance with article 14 of the Third Transitional Act of 4 January 1952 (*Bundesgesetzblatt* I, p. 1)."

Article 2

This Act shall apply also in the *Land* Berlin, if the *Land* Berlin confirms its application.

Article 3

This Act shall enter into force on the day after its promulgation.

The foregoing Act is hereby promulgated.

Bonn, 28 February 1964

LÜBKE
President of the Federal Republic

MENDE
Federal Vice-Chancellor

For the Federal Minister for Foreign Affairs:
SCHEEL
Federal Minister for Economic Co-operation

---

3. Jamaica

(*a*) THE DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT 1964

AN ACT[6] 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 the matters aforesaid.

(6th August, 1962)

[6] No. 29 of 1964. Assented to on 6 July 1964.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, 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, 1964, and shall be deemed to have come into operation on the 6th day of August, 1962.

2. (1) In this Act, unless the context otherwise requires—

...

"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 Jamaica by the Government of Jamaica;

"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 other 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,

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

4. (1) Subject to the provisions of this Act, a member of mission of any head 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 Jamaica 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 or 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, the immunities and privileges specified in Part III 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 subsection (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 Jamaica 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 Jamaica or a member of the staff of such a 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 of its functions.

8. (1) Where—

(*a*) a conference is held in Jamaica 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 Jamaica) 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 Jamaica) 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 Jamaica) 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 subsection (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 as the Collector General may prescribe for the protection of the Revenue.

10. (1) The Minister shall compile a list of the persons appearing to him to be 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, 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 that 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 Jamaica is a party.

12. If any goods which have been imported or taken out of bond without payment of customs 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, are sold or disposed of within three years of importation or of being taken out of bond to a person who is not entitled to customs 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 duty.

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 or privileges in respect of Jamaica,

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

...

14. No person being exclusively a citizen of Jamaica shall in Jamaica be entitled to any personal immunities and the members 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 Laws 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 (Extension) Law which is 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.

First Schedule

(Sections 2, 3 and 4)

VIENNA CONVENTION ON DIPLOMATIC RELATIONS

[Not reproduced][7]

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 Jamaica 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 Collector General 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 Jamaica), 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.

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

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 thereof 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.

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.

Third Schedule

(Section 19)

PART I

(*Laws repealed*)

The Diplomatic Privileges (Extension) Law (Cap. 98).

The Diplomatic Immunities (Commonwealth Countries and the Republic of Ireland) Law, 1958 (Law 48 of 1958).

...

(*b*) THE FOREIGN NATIONALS AND COMMONWEALTH CITIZENS (EMPLOYMENT) EXEMPTIONS REGULATIONS, 1964

In exercise of the powers conferred on the Minister by section 8 of the Foreign Nationals and Commonwealth Citizens (Employment) Act, 1964, and all other powers thereunto enabling, the following Regulations are hereby made:

1. These Regulations may be cited as the Foreign Nationals and Commonwealth Citizens (Employment) Exemptions Regulations, 1964, and shall come into operation on the date of commencement of the Act. [8]

2. In these Regulations "the Act" means the Foreign Nationals and Commonwealth Citizens (Employment) Act, 1964.

3. Notwithstanding anything to the contrary—

...

(*b*) subject to the qualification stated in regulation 5, any foreign national or Commonwealth citizen who is a member of a class described in Part II of the Schedule,

shall be exempt from the provisions of subsection (1) of section 3 [9] of the Act.

---

[8] The Act came into operation on 1 December 1964.

[9] "3—(1) Subject to the provisions of this Act, a foreign national or a Commonwealth citizen shall not—

"(*a*) engage in any occupation in Jamaica for reward or profit; or

"(*b*) be employed in Jamaica,

unless there is in force in relation to him a valid work permit and he so engages or is so employed in accordance with the terms and conditions which may be specified in the permit."

4. Notwithstanding anything to the contrary—

...

(*b*) subject to the qualification stated in regulation 5, any person who has in his employment any foreign national or Commonwealth citizen who is a member of a class described in Part II of the Schedule,

shall be exempt from the provisions of subsection (3) of section 3 [10] of the Act in respect of such employment.

5. The qualification referred to in paragraph (*b*) of regulation 3 and in paragraph (*b*) of regulation 4 is that the exemption granted by those provisions shall apply only in respect of such occupation or employment, as the case may be, as is directly referable to membership of the class of which the foreign national or Commonwealth citizen in respect of whose occupation or employment exemption is alleged to apply is a member.

Schedule

(Regulations 3, 4)

...

PART II

...

6. Persons in the employment in Jamaica of the United Nations Organization or of any other international organization of which Jamaica or the Government of Jamaica is a member.

...

Made this 25th day of November, 1964.

ROY A. MCNEILL,
Minister of Home Affairs.

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4. Malawi

IMMUNITIES AND PRIVILEGES (EXTENSION AND MISCELLANEOUS PROVISIONS) ORDINANCE, 1964

An Ordinance [11] to confer certain Immunities and Privileges on the representatives in Nyasaland of Commonwealth Countries, on members of the Official Staff of such representatives, on the families of such representatives and of members of the Official Staff, on Consular Officers of foreign sovereign powers, and on certain other persons: to make provision as to the Immunities, Privileges and Capacities of certain International Organizations and to confer Immunities and Privileges on the Staffs of such organizations and representatives of the member Governments: to make provision for the withdrawal of Personal Diplomatic Immunities: to amend the Consular Conventions Ordinance: and to provide for matters incidental thereto.

ENACTED by the Legislature of Nyasaland.

PART I—PRELIMINARY

1. This Ordinance may be cited as the Immunities and Privileges (Extension and Miscellaneous Provisions) Ordinance, 1964, and shall be deemed to have come into operation on 1st January, 1964.

---

[10] "(3) Subject to the provisions of this Act, no person shall have in his employment in Jamaica a foreign national or a Commonwealth citizen without there being in force a valid work permit in relation to that employment."

[11] No. 10 of 1964. Assented to on 28 January 1964.

2. In this Ordinance, unless the context otherwise requires—

...

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

...

PART IV—INTERNATIONAL ORGANIZATIONS AND STAFFS

6. (1) The Minister may, by order published in the *Gazette*—

(*a*) provide that any organization specified in the Third Schedule (hereinafter referred to as the organization) shall, to such extent as may be specified in the order, have the immunities and privileges set out in Part I of the Fourth Schedule, and shall also have the legal capacities of a body corporate;

(*b*) confer upon such number of officers of the organization as may be specified in the order, being the holders of such high offices in the organization as may be specified in the order, and upon such persons employed on missions on behalf of the organization as may be so specified, and upon any person who is a representative (whether of a government or not) on, or a member of the organization or any committee of the organization or any organ thereof to such extent as may be so specified, the immunities and privileges set out in Part II of the Fourth Schedule;

(*c*) confer upon such other classes of officers and servants of the organization as may be specified in the order to such extent as may be so specified, the immunities and privileges set out in Part III of the Fourth Schedule, and Part IV of the Fourth Schedule shall have effect for the purpose of extending to the staffs of representatives upon whom any immunities or privileges are conferred under paragraph (*b*) of this subsection and to the families of such officers upon whom any immunities and privileges are conferred under paragraph (*b*) of this subsection the immunities and privileges referred to therein, except in so far as the operation of the said Part IV is excluded by the order conferring the immunities and privileges:

Provided that such order shall not confer any immunity or privilege upon any person as the representative of the Government of Nyasaland or as a member of the staff of such a representative.

(2) The Minister may, by order published in the *Gazette*, add to the Third Schedule the name of any organization of which the Government of Nyasaland and the government or governments of one or more foreign sovereign powers are members, and may delete the name of any organization of which the Government of Nyasaland ceases to be a member.

7. This Part of this Ordinance shall, in its application to the United Nations, have effect subject to the following modifications—

(*a*) any reference to the governing body or any committee of the organization shall be construed as referring to the General Assembly or any council or other organ of the United Nations; and

(*b*) the powers conferred by section 6 of this Ordinance shall include power by the Minister to confer on the judges and registrars of the International Court, and on suitors to that court 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.

PART V—GENERAL

8. (1) The Minister may, by order published in the *Gazette*, or by directions—

(*a*) make such provisions as he thinks fit in order to facilitate any immunity from taxes,

duties, rates or fees to which any person is entitled by reason of his being the envoy of a foreign sovereign power accredited to Nyasaland, or his being a member of the family or a servant of such envoy or a member of the official staff of such envoy or of such member's family, or by reason of the provisions of subsection (1) of section 3 or of an order made under subsection (1) of section 6, and may in such order or direction declare the extent of such immunity 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 (in the case of any person to whom an order made under subsection (1) of section 6 refers), subject to the provisions of the Fourth Schedule, be conclusive;

...

(2) It is hereby declared that no immunity to which paragraph (*a*) of subsection (1) refers... shall be construed as exempting any person from compliance with the formalities in respect of the importation of goods which are prescribed in any law relating to customs; and every such immunity shall be subject to compliance with such conditions as the Commissioner of Customs and Excise may prescribe for the protection of the revenue.

9. (1) The Minister shall compile a list of the persons appearing to him to be entitled to immunities or privileges in accordance with the principles of customary international law and usage or by or under the provisions of this Ordinance 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 section 11; and

(*c*) persons whose immunity is limited by section 16,

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 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 Ordinance, or by reason of being included in a list compiled under the provisions of section 11, a certificate issued by or under the authority of the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.

10. (1) Where a conference is held in Nyasaland and is attended by the representatives of the Government of Nyasaland and the government or governements of one or more foreign sovereign powers or of one or more countries specified in the First Schedule, the Minister may compile such list of the representatives of such powers and countries and shall cause such list and any amendment of that list or amended list to be published in the *Gazette*, and, subject to the provisions of this Ordinance, every representative of a power or country who is for the time being included in the list shall, for the purpose of any enactment of sovereign power or of a chief representative, as the case may be, and of the retinue of such an envoy or representative, be treated as if he were such an envoy or representative, and such of the members of his official staff as are for the time being included in the list shall be treated for the purpose aforesaid as if they were his retinue.

(2) Every list published under subsection (1) in relation to any conference shall include a statement of the date from which the list or amendment takes or took effect; and the fact that any person entitled to diplomatic or other immunities as representatives attending the conference or as members of the official staff of any such representative may, if a list of those persons has been so published, be conclusively proved by producing the *Gazette* containing the list or, as the case may be, the last list taking effect before that time, together with the *Gazette* containing the list or, as the case may be, the last list taking effect before that time, together with the *Gazette* (if any) containing notices of the amendments taking effect

before that time, and by showing that the name of that person is or was at that time included or not included in the said list.

(3) The name of any person referred to in this section whose immunity is limited by section 16 shall be published in a separate part of any list compiled under this section.

...

12. If any goods which have been imported or taken out of bond without payment of customs duty by a person in pursuance of any diplomatic immunity or privilege, or other immunity or privilege conferred or granted by or under this Ordinance, are sold or disposed of within two years of importation or of being taken out of bond to a person who is not entitled to customs 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 duty.

PART VI—WITHDRAWAL AND RESTRICTION OF DIPLOMATIC AND OTHER IMMUNITIES AND PRIVILEGES

13. Nothing in this Ordinance shall be construed as precluding the Minister from withdrawing—

(*a*) any immunities or privileges conferred by or under the provisions of section 9, in respect of any foreign sovereign power or Commonwealth country or any class of persons employed by such power or country on the grounds that such power or country, as the case may be, is failing to accord corresponding immunities or privileges to Nyasaland; or

(*b*) any immunities or privileges referred to in Part IV of the Fourth Schedule from any representatives or nationals of any foreign sovereign power or Commonwealth country on the grounds that such power or country is failing to accord corresponding immunities and privileges to Nyasaland, or from declining to accord any such immunity or privilege as may be conferred by order or direction under the foregoing provisions of this Ordinance on any such grounds as aforesaid.

...

15. No person being a person ordinarily resident or locally recruited in Nyasaland to the service of a government or organization to which the provisions of this Ordinance apply shall be entitled to any personal immunities or privileges and the members of such person's family shall not, as such, be entitled to any personal immunities or privileges.

16. 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 Ordinance, on account of his being a domestic servant of an envoy of a foreign sovereign power or a chief representative, unless his name is included in a list compiled under the provisions of section 9 and published in the *Gazette* and still in force.

...

First Schedule

(Section 3)

COMMONWEALTH COUNTRIES

1. The United Kingdom of Great Britain and Northern Ireland
2. Canada
3. Australia
4. New Zealand
5. India

6. Pakistan
7. Ceylon
8. Ghana
9. The Federation of Malaysia
10. The Federation of Nigeria
11. The Republic of Cyprus
12. Sierra Leone
13. The Republic of Tanganyika
14. Uganda
15. Kenya
16. Zanzibar

...

Third Schedule

(Section 7)

ORGANIZATIONS

1. The United Nations
2. The International Court of Justice
3. The International Labour Organization
4. The Food and Agriculture Organization
5. The International Civil Aviation Organization
6. The United Nations Educational, Scientific and Cultural Organization
7. The World Health Organization
8. The United Nations International Children's Emergency Fund.

Fourth Schedule

(Section 7)

PART I—IMMUNITIES AND PRIVILEGES OF THE ORGANIZATION

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 an envoy of a foreign sovereign power accredited to Nyasaland.

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 foreign sovereign power.

4. Exemptions from duties on the importation of goods directly imported by the organization for its official use in Nyasaland or for exportation, or on the importation of any publications of the organization directly imported by it, such exemption to be subject to compliance with such conditions as the Commissioner of Customs and Excise 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 organization for its official use and in the case of any publications of the organization 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 dispatched from places outside Nyasaland), 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 an envoy of a foreign sovereign power accredited to Nyasaland.

2. The like inviolability of residence as is accorded to such an envoy.

3. The like exemption or relief from taxes, duties, rates and fees as is accorded to such an envoy.

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 personal tax and income tax in respect of emoluments received as an officer or servant of the organization.

PART IV—IMMUNITIES AND PRIVILEGES OF REPRESENTATIVES' STAFF OR 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, his official staff accompanying him as such a representative shall also be entitled to those immunities and privileges to the same extent as the retinue of an envoy of a foreign sovereign power accredited to Nyasaland is entitled to the immunities and privileges accorded to the envoy.

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 organization, 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 an envoy of a foreign sovereign power accredited to Nyasaland are entitled to the immunities and privileges accorded to the envoy.

Passed in Legislative Assembly, this tenth day of January, one thousand nine hundred and sixty-four.

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5. New Zealand

(*a*) THE COPYRIGHT (INTERNATIONAL ORGANISATIONS) ORDER 1964

PURSUANT to the Copyright Act 1962, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

1. (1) This order may be cited as the Copyright (International Organisations) Order 1964.

(2) This order shall come into force on the day four months after the date of its notification in the *Gazette*. [12]

2. It is hereby declared that each of the organisations mentioned in the Schedule hereto is an organisation to which section 50 of the Copyright Act 1962 applies.

Schedule

United Nations.
Specialised Agencies of the United Nations.
Organisation of American States.

[12] Date of notification in *Gazette:* 23 April 1964.

(*b*) THE EXCISE DUTIES SUSPENSION (INTER-GOVERNMENTAL AGREEMENTS) ORDER 1964

PURSUANT to section 141A of the Customs Act 1913, His Excellency the Governor General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

1. (1) This order may be cited as the Excise Duties Suspension (Inter-governmental Agreements) Order 1964.

(2) This order shall come into force on the day after the date of its notification in the *Gazette*. [13]

2. This order applies to all duties of excise (other than beer duty) imposed by the Customs Acts, or by any Order in Council made under any of the Customs Acts.

3. All duties of excise relating to the goods set out in the Schedule hereto are hereby suspended.

4. Every suspension of duty hereby effected shall be subject to the provisions of section 143 of the Customs Act 1913, so far as that section is applicable.

5. All duties of excise that have become due and payable and all penalties and forfeitures that have been incurred before the commencement of this order shall be recovered and enforced as if this order had not been made.

Schedule

GOODS ON WHICH EXCISE DUTIES SUSPENDED

ALL goods, except beer, manufactured in New Zealand, subject to such conditions as the Comptroller of Customs may at any time impose, in respect of which he is satisfied that they are, at the time of entry for home consumption,—

(*a*) Intended solely for the use of such organisations, expeditions, and other bodies as may be approved by the Minister of Customs for the purposes of this order and as may from time to time be established or temporarily based in New Zealand consequent on any agreement or arrangement entered into by or on behalf of the Government of New Zealand with the Government of any other country (whether a part of the Commonwealth of Nations or not) or with the United Nations; or

(*b*) The property of and intended for the use of persons approved by the Comptroller who are temporarily resident in New Zealand for the purpose of serving as members of any such approved organisation, expedition, or other body.

(*c*) THE BEER DUTY REFUNDS (INTER-GOVERNMENTAL AGREEMENTS) ORDER 1964

PURSUANT to section 49A of the Finance Act 1915 (as enacted by section 16 of the Customs Acts Amendment Act 1964), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

1. (1) This order may be cited as the Beer Duty Refunds (Inter-governmental Agreements) Order 1964.

(2) This order shall come into force on the day after the date of its notification in the *Gazette*. [14]

2. This order applies to beer duty for the time being payable under Part III of the Finance Act 1915.

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[13] Date of notification in *Gazette:* 10 December 1964.

[14] Date of notification in *Gazette:* 10 December 1964.

3. Subject to the provisions of this order, refunds are hereby authorised of beer duty paid on all beer manufactured in New Zealand in respect of which the Collector is satisfied that it has been delivered solely for the use of any organisation, expedition, body, or person to whom section 49A of the Finance Act 1915 applies.

4. For the purposes of this order, the following provisions shall apply:

(*a*) Every application for a refund shall be made, in such form as the Collector approves, within twenty-eight days after the delivery of the beer to the approved organisation, expedition, body, or person, or within such further time as the Comptroller may in the special circumstances of any case allow;

(*b*) The applicant shall produce such reasonable evidence as the Collector requires as to the delivery of the beer, the quantity delivered, and the rate of beer duty paid or payable thereon;

(*c*) If satisfactory evidence as to the rate of beer duty paid or payable on any beer so delivered is not produced, the Collector shall refund beer duty at the minimum rate imposed under Part III of the Finance Act 1915, as amended by Part II of the Customs Acts Amendment Act 1947 and Part II of the Customs Acts Amendment Act 1958.

(*d*) The Sales Tax Exemption Order 1961, Amendment No. 5

Pursuant to section 12 of the Sales Tax Act 1932-33, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

1. (1) This order may be cited as the Sales Tax Exemption Order 1961, Amendment No. 5, and shall be read together with and deemed part of the Sales Tax Exemption Order 1961* (hereinafter referred to as the principal order).

(2) This order shall come into force on the day after the date of its notification in the *Gazette*.[15]

2. (1) Goods of the classes or kinds specified in the Schedule hereto are hereby exempted from sales tax.

(2) The Second Schedule to the principal order is hereby consequentially amended by revoking item 339 (as substituted by the Sales Tax Amendment Order 1961, Amendment No. 3), and substituting the new item 339 set out in the Schedule hereto.

(3) The Sales Tax Exemption Order 1961, Amendment No. 3†, is hereby consequentially revoked.

*S.R. 1961/171
Amendment No. 1: S.R. 1962/100
Amendment No. 2: S.R. 1962/205
Amendment No. 3: S.R. 1963/152
Amendment No. 4: S.R. 1963/190
†S.R. 1963/152

[15] Date of notification in *Gazette:* 10 December 1964.

Schedule

EXEMPTIONS FROM SALES TAX

Item No.	*Goods*
339	All goods, whether made in New Zealand or imported, and subject to such conditions as the Comptroller of Customs may at any time impose, in respect of which he is satisfied that they are, at the time of sale by a licensed wholesaler or a licensed manufacturing retailer, or, as the case may be, at the time of importation or entry for home consumption,— (*a*) Intended solely for the use of such organisations, expeditions, and other bodies as may be approved by the Minister of Customs for the purposes of this order and as may from time to time be established or temporarily based in New Zealand consequent on any agreement or arrangement entered into by or on behalf of the Government of New Zealand with the Government of any other country (whether a part of the Commonwealth of Nations or not) or with the United Nations; or (*b*) The property of and intended for the use of persons approved by the Comptroller who are temporarily resident in New Zealand for the purpose of serving as members of any such approved organisation, expedition, or other body.

6. Nigeria

THE CUSTOMS TARIFF (DUTIES AND EXEMPTIONS) (NO. 7) ORDER, 1964 [16]

In exercise of the powers conferred by subsection (1) of section 6 of the Customs Tariff Act, 1958, the President hereby makes the following Order—

1. This Order may be cited as the Customs Tariff (Duties and Exemptions) (No. 7) Order, 1964, and shall apply throughout the Federation.

...

3. The First, Second and Third Schedules to the Customs Tariff Act, 1958, as amended from time to time are revoked and replaced by the following Schedules.

...

Second Schedule

EXEMPTION FROM IMPORT DUTIES OF CUSTOMS

...

16. FILMS, film strips, microfilms, slides, sound recordings, newsreels, and similar visual and auditory material, passed by the Board of Censors appointed under section 6 of the Cinematograph Ordinance, Cap. 32, as being of educational, scientific or cultural character, if (*a*) produced by the United Nations or any of its Specialised Agencies or (*b*) imported by broadcasting, educational or science organisations approved by the Minister.

...

(3) DIPLOMATIC PRIVILEGED IMPORTATIONS, namely, the furniture and effects (which expression shall include a motor vehicle) of any person, not being a native of Nigeria, who is an official of an organisation declared by notice in the *Federal Official Gazette* to be an organisation of which Her Majesty's Government in the United Kingdom and the Governments of one or more sovereign Powers are members, at the time that such person first takes up his post in Nigeria.

[16] Date of commencement: 3 August 1964.

(4) TECHNICAL ASSISTANCE IMPORTATIONS:—

(*a*) All goods imported for the purpose of directly implementing any project arising within any scheme of technical assistance approved by the Government of the Federation by notice in the *Federal Official Gazette;* and

(*b*) The furniture and effects (which expression shall include a motor vehicle and an air conditioner) of any person, at the time such person first takes up his post in Nigeria, who is in Nigeria under any such scheme of technical assistance.

...

7. Romania

DECISION NO. 582 OF THE COUNCIL OF MINISTERS ESTABLISHING A TARIFF OF CONSULAR TAXES [17]

...

Diplomatic visas and official visas for the personnel of diplomatic and consular offices and of commercial organizations, for the officials and representatives of inter-governmental organs and organizations, and for members of their families, affixed on documents for foreign travel, are free of taxes.

Note. The tax exemption mentioned above refers to entry, exit and transit visas. It is equally applicable to persons entrusted with official missions in Romania by the United Nations or by specialized agencies, including the International Atomic Energy Agency, as well as those who, in order to accomplish their mission, enter the territory of the People's Republic of Romania whilst in transit.

[17] Published in the Report of Decisions of the Council of Ministers of the People's Republic of Romania, No. 40, of 13 August 1964. Translation by the Secretariat of the United Nations.

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 1964:[2]

State	*Date of receipt of instrument of accession*
Congo (Democratic Republic of)	8 December 1964
Gabon	13 March 1964
Rwanda	15 April 1964

This brought up to 89 the number of States Parties to the Convention.

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2. AGREEMENTS RELATING TO CONFERENCES, SEMINARS AND SIMILAR BODIES

(*a*) Agreement between the United Nations and the Government of Yugoslavia concerning the arrangements for the 1965 World Population Conference.[3] Signed at New York on 27 February 1964

Article VII

Claims for damage and injury

1. The Government shall be responsible for dealing with any actions, causes of action, claims or other demands which may be brought against the Organization for damage to the Conference facilities mentioned in Article II [on premises, equipment, utilities and supplies],

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

[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 27 February 1964.

for damage or injury to persons or property caused to third persons by the vehicles [to be provided by the Government for use by the officers and staff of the Conference] referred to in Article III or to the chauffeurs of such vehicles, or arising out of the employment of the [local] personnel referred to in Article V, and shall hold the United Nations and its officials harmless in respect of any such actions, causes of action, claims or other demands.

Article VIII

Privileges and immunities

1. The Conventions on the Privileges and Immunities of the United Nations and of the specialized agencies, to which the Government of Yugoslavia is a party, shall be applicable in respect of the Conference. Conference premises for the purpose of such application shall be deemed to constitute premise of the United Nations, and access thereto shall be under the control and authority of the United Nations.

2. Officials of the United Nations performing functions in connexion with the Conference shall enjoy the privileges and immunities provided by Articles V and VII of the Convention. Officials of any specialized agencies performing functions in connexion with the Conference or representing their agencies shall enjoy the privileges and immunities provided in the Convention on the Privileges and Immunities of the Specialized Agencies. It is understood, however, that local personnel provided by the Government under Article 5 of this Agreement shall enjoy only an immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity in connexion with the Conference.

3. Participants invited to attend the Conference shall enjoy the privileges and immunities provided in Article VI of the Convention on the Privileges and Immunities of the United Nations and observers of States Members of the United Nations or of the specialized agencies shall enjoy the privileges and immunities provided in Article IV thereof.

4. Persons referred to in paragraph 5 (*d*), (*e*) and (*f*) of this Article shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connexion with the Conference.

5. The following classes of persons shall be entitled to unimpeded entry to and exit from Yugoslavia for the period necessary for the performance of their functions in connexion with the Conference, access to the Conference premises, facilities for speedy travel and visas free of charge:

(*a*) Individual experts duly nominated and invited in accordance with the terms laid down by the Economic and Social Council, and their immediate families;

(*b*) Observers mentioned in paragraph 3 above and their immediate families;

(*c*) Officials of the United Nations and of the specialized agencies mentioned in paragraph 2 above, and their immediate families;

(*d*) Observers of interested non-governmental organizations in consultative status with the Economic and Social Council;

(*e*) Representatives of information media accredited by the United Nations in accordance with its established procedures and after consultation with the Government; and

(*f*) Other persons formally invited to the Conference by the United Nations on official business.

Article IX

Import duties and tax

1. The Government shall allow the temporary importation duty-free of all equipment and shall waive import duties and taxes with respect to supplies necessary for the Conference. It shall issue without delay to the United Nations any necessary import and export permits.

(*b*) Agreement between the United Nations and the Government of the Philippines regarding the arrangements for the fourth United Nations Regional Cartographic Conference for Asia and the Far East.[1] Signed at New York on 15 September 1964

IV. *Transportation*

. . .

2. 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 [to be provided by the Government for use by the officers, staff and participants of the Conference] referred to in this Article.

VI. *Local personnel*

. . .

3. 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 Conference of the [local] personnel referred to in this Article.

VII. *Privileges and immunities*

1. The Conventions on the Privileges and Immunities of the United Nations and on the Privileges and Immunities of the Specialized Agencies, to which the Government of the Philippines is party, shall be applicable in respect of the Conference.

For the purpose of such application, the premises designated under Article II, section 1, shall be deemed to constitute the United Nations premises, and access thereto shall be under the control and authority of the United Nations.

2. Officials of the United Nations performing functions in connection with the Conference shall enjoy the privileges and immunities provided by Articles V and VII of the Convention on Privileges and Immunities of the United Nations.

Officials of the specialized agencies performing functions in connection with the Conference shall enjoy the privileges and immunities provided in Articles V and VII of the Convention on the Privileges and Immunities of the Specialized Agencies.

3. Representatives of States Members of the United Nations and representatives of States non-Members of the United Nations who are participants in the Conference shall enjoy the privileges and immunities provided under Article IV of the Convention on the Privileges and Immunities of the United Nations and Article V of the Convention on the Privileges and Immunities of the Specialized Agencies respectively.

4. Without prejudice to the provisions of the Conventions referred to above, all participants and all persons performing functions in connection with the Conference shall be

[1] Came into force on 15 September 1964.

accorded such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Conference.

5. All participants and all persons performing functions in connection with the Conference shall have the right to entry into and exit from the Philippines and shall be granted facilities for speedy travel. Visas, if required, shall be granted promptly and free of charge.

(*c*) Agreement between the United Nations and the Government of Austria regarding the arrangements for the United Nations Technical Assistance Committee.[1] Signed at Geneva on 11 June 1964

II. *Transportation*

The Government shall provide at its expense one permanent and up to three non-permanent chauffeur-driven limousines for use by the officers of the Conference. Any damage to persons or property caused or suffered in using transportation referred to in this section 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.

III. *Local personnel for the Conference*

. . .

3. [Similar to article VI (3) in (*b*) above]

V. *Privileges and immunities*

1. The Convention on the Privileges and Immunities of the United Nations, to which the Republic of Austria is a party, shall be applicable with respect to the Conference, and the officials of the United Nations connected with the Conference shall be accorded the privileges and immunities specified therein.

2. Representatives of States Members of the United Nations as well as representatives of States non-Members of the United Nations shall enjoy the privileges and immunities accorded to representatives of States Members of the Organization by the Convention on the Privileges and Immunities of the United Nations.

3. Representatives of the specialized agencies and other inter-governmental organizations invited to the Conference shall enjoy the same privileges and immunities as accorded to officials of comparable rank of the United Nations.

4. For the purpose of this Conference, the area designated under Section I shall be deemed to constitute United Nations premises, within the meaning of the provisions of article II, section 2, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, so that the United Nations shall enjoy the privileges and immunities provided thereby. Access to the Conference area and to the office space therein shall be under control and authority of the United Nations.

5. The Government shall impose no impediment to transit to and from the Conference of any persons whose presence at the Conference is authorized by the United Nations and of any persons in their immediate families and shall grant any visa required for such persons promptly and without charge.

[1] Came into force on 11 June 1964.

(*d*) Agreement between the United Nations and the Government of the Netherlands regarding the privileges and immunities to be applied to the Twelfth Session of the Governing Body of the Special Fund.[1] Signed at Geneva on 27 May 1964

Article 1

The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations and the Convention of 21 November 1947 on the Privileges and the Immunities of the Specialized Agencies shall be applicable in respect of the Session.

Article 2

The rooms, offices and related localities and facilities, put at the disposal of the Session by the Netherlands Government in the Kurhaus Building, shall be the Meeting Area, which shall constitute United Nations premises within the meaning of Article II, Section 3, of the Convention of 13 February 1946.

Article 3

Observers of States Members of the United Nations Organization or of a Specialized Agency attending the Session shall enjoy the privileges and immunities accorded to Representatives of States Members by the Conventions of 13 February 1946 and of 21 November 1947 respectively.

Article 4

The Netherlands Government shall impose no impediment to transit to and from the Session of persons whose presence at the Session is authorised by the United Nations Organization and shall grant any visa required for such persons promptly and without charge.

Article 5

No exemption in the Meeting Area of taxes or duties as to foodstuffs, drinks, tobacco and comparable supplies shall be claimed by the United Nations Organization.

Article 6

Local personnel provided by the Netherlands Government shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them within the Meeting Area in their official capacity in connection with the Meeting.

(*e*) Agreement between the United Nations and the Government of Afghanistan relating to a seminar on human rights in developing countries.[2] Signed at New York on 28 April 1964

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 per-

[1] Came into force on 27 May 1964.

[2] Came into force on 28 April 1964.

forming 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 Afghanistan, shall have the right of entry into and exit from Afghanistan. They shall be granted facilities for speedy travel. Visas, where required, shall be granted free of charge.

(*f*) Agreement between the United Nations and the Government of Togo relating to a seminar on the status of women in family law.[1] Signed at Lomé on 3 July 1964

Article V

Facilities, privileges and immunities

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

(*g*) Agreement between the United Nations and the Government of Italy relating to a seminar on freedom of information.[2] Signed at New York on 18 March 1964

Article VI

Facilities, privileges and immunities

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

(*h*) Agreement between the United Nations and the Government of India concerning the Demographic Training and Research Centre, Chembur, Bombay.[3] Signed at New Delhi on 20 and 25 November 1964

Article IV

Obligations on the part of the Government

. . .

7. The Government shall be responsible for dealing with any claims which may be brought by third parties against the United Nations or its personnel, and shall hold the United Nations and its personnel harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the parties that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

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[1] Came into force on 3 July 1964.

[2] Came into force on 18 March 1964.

[3] Came into force on 25 November 1964 by signature, with retroactive effect as from 1 July 1964.

3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND: REVISED MODEL AGREEMENT CONCERNING THE ACTIVITIES OF UNICEF[1]

Article VI

Claims against UNICEF

[See *Juridical Yearbook*, 1963, p. 26]

Article VII

Privileges and immunities

[See *Juridical Yearbook*, 1963, p. 27]

(*a*) Agreements between UNICEF and the Governments of Burundi, Dahomey, Malaysia, Niger, Rwanda and Senegal concerning the activities of UNICEF in these countries.[2] Signed respectively at Bujumbura on 8 January 1964, at Porto Novo on 18 July 1963 and at New York on 28 August 1963, at Bangkok on 4 June 1964 and at Kuala Lumpur on 1 July 1964, at Niamey on 5 December 1962 and at Abidjan on 21 December 1962, at Kigali on 22 June 1964 and at Kampala on 11 September 1964, and at Dakar on 22 January 1964

These agreements contain articles similar to articles VI and VII of the revised model agreement.

(*b*) Agreement between UNICEF and the Government of Jamaica concerning the activities of UNICEF.[3] Signed at Kingston on 19 May 1964

This agreement contains articles similar to articles VI and VII of the revised model agreement, except that article VI (2) is worded as follows:

2. The Government shall deal with any claims which may be brought by third parties against UNICEF, its experts, agents or employees. It shall hold UNICEF, its experts, agents or employees harmless in case of claims resulting from operations under this Agreement, except where it is agreed by the Government and UNICEF that such claims arise from the gross negligence or wilful misconduct of the above-mentioned experts, agents or employees.

(*c*) Agreement between UNICEF and the Government of the Republic of China concerning the activities of UNICEF.[4] Signed at Bangkok on 8 April 1964 and at Taipei on 12 May 1964

This agreement contains articles similar to articles VI and VII of the revised model agreement, except that article VI (1) is worded as follows:

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[1] UNICEF *Field Manual*, Vol. II, Part IV-2, Appendix A (16 August 1961).

[2] Came into force, respectively, on 8 January 1964, 6 December 1963, 1 July 1964, 22 May 1964, 11 September 1964 and 22 January 1964.

[3] Came into force on 19 May 1964.

[4] Came into force on 12 May 1964.

1. The Government shall deal with any claims which may be brought by third parties against UNICEF, its experts, agents or employees. It shall hold UNICEF, its experts, agents or employees harmless in case of claims resulting from operations under this Agreement, except when it is agreed by the Government and UNICEF that such claims arise from the gross negligence or wilful misconduct of the above-mentioned experts, agents or employees. The term "claims", as it applies to the experts, agents or employees of UNICEF, shall in no case be construed as including any claims not directly connected with the performance by such experts, agents or employees of their official duties in the course of the execution of Plans of Operations concluded pursuant to this Agreement.

4. AGREEMENTS RELATING TO TECHNICAL ASSISTANCE: MODEL REVISED STANDARD AGREEMENT CONCERNING TECHNICAL ASSISTANCE [1]

Article I

Furnishing of technical assistance

[See *Juridical Yearbook*, 1963, p. 27]

Article V

Facilities, privileges and immunities

[See *Juridical Yearbook*, 1963, p. 27]

(*a*) Agreements between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA and UPU, and the Governments of Kenya, Libya, Malawi, Malta and Nigeria concerning technical assistance. [2] Signed respectively at Nairobi on 11 November 1964, at Tripoli on 28 June 1964, at Zomba on 24 October 1964, at New York on 15 December 1964, and at Lagos on 23 June 1964

These agreements contain articles similar to articles I (6) and V of the model revised standard agreement.

(*b*) Agreement between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA and UPU, and the Government of the Dominican Republic concerning technical assistance. [3] Signed at Santo Domingo on 20 February 1964

This agreement contains articles similar to articles I (6) and V of the model revised standard agreement, except that the second sentence of article V (2) is worded as follows:

When carrying out their responsibilities under this Agreement, the Organizations, their experts and other officials shall benefit, in particular, of the following rights and facilities:

[1] Technical Assistance Board/Special Fund, *Field Manual*, Edition II (1 September 1965), section IX-C, p. 10.

[2] Came into force on the respective dates of signature.

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

(*a*) the prompt issuance without cost of necessary visas, licenses or permits;

(*b*) access to the site of work and all necessary rights of way;

(*c*) free movement, whether within or to or from the country, to the extent necessary for proper execution of the project;

(*d*) the most favourable legal rate of exchange;

(*e*) any permits necessary for the importation of equipment, materials and supplies in connection with this Agreement and for their subsequent exportation; and

(*f*) any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of the Organizations.

(*c*) Agreement between the United Nations, the ILO, UNESCO, ICAO, WHO, ITU, WMO, IAEA and UPU, and the Government of Costa Rica concerning technical assistance.[1] Signed at San José on 27 August 1963

The relevant provisions of this agreement are similar to those of the agreement mentioned in (*b*) above.

(*d*) Agreement between the United Nations, the ILO, FAO, UNESCO, WHO, ITU, WMO, IAEA and UPU, and the Government of Guatemala concerning technical assistance.[2] Signed at Guatemala on 28 January 1964

The relevant provisions of this agreement are similar to those of the agreement mentioned in (*b*) above.

(*e*) Exchange of letters constituting an agreement[3] amending the Revised Standard Agreement of 28 January 1961 between the United Nations, the ILO, FAO, UNESCO, WHO, ITU, WMO and IAEA, and the Government of Somalia concerning technical assistance. New York, 25 May 1964 and Mogadiscio, 9 June 1964

By this exchange of letters, UPU has been added to the list of participating organizations and the provisions of article I (6) have been replaced by those of the model revised standard agreement.

(*f*) Exchanges of letters constituting agreements[4] amending, respectively, the Revised Standard Agreements of 24 May 1957, 10 February 1956, 30 June-15 July 1957 and 14 June 1955 between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU and WMO, and the Governments of Ghana, Greece, Israel and Jordan concerning technical assistance. New York, 13 January 1964 and Accra, 18 February 1964; New York, 8 October 1963 and Athens, 2 December 1964;

[1] Came into force on 8 October 1964.

[2] Came into force on 10 July 1964.

[3] Came into force on 9 June 1964.

[4] Came into force, respectively, on 18 February 1964, 2 December 1964, 14 May 1964 and 3 August 1964.

New York, 6 March 1964 and Jerusalem, 14 May 1964; New York, 9 July 1964 and Amman, 3 August 1964

By the exchanges of letters listed above, IAEA and UPU have been added to the list of participating organizations, the provisions of article I (6) have been replaced by those of the model revised standard agreement, and the following clause has been added:

... The Government, insofar as it is not already bound to do so, shall apply to the International Atomic Energy Agency, its property, funds and assets, and to its officials, including technical assistance experts, provisions of the Agreement on Privileges and Immunities of the International Atomic Energy Agency.

5. AGREEMENTS RELATING TO THE SPECIAL FUND: MODEL AGREEMENT CONCERNING ASSISTANCE FROM THE SPECIAL FUND [1]

Article VIII

Facilities, privileges and immunities

[See *Juridical Yearbook*, 1963, p. 31]

Article X

General provisions

[See *Juridical Yearbook*, 1963, p. 32]

(*a*) Agreements between the United Nations Special Fund and the Governments of Iceland, [2] Ireland, [2] Kenya, [2] Malawi, [2] Malta, [2] the Netherlands, [3] Romania [2] and Rwanda [2] concerning assistance from the Special Fund. Signed respectively at New York on 10 July 1964, at New York on 3 June 1964, at New York on 1 October 1964, at Zomba on 24 October 1964, at New York on 15 December 1964, at New York on 24 May 1963, at Bucharest on 24 October 1964, and at New York on 18 March 1964

These agreements contain articles similar to articles VIII and X (4) of the model agreement.

(*b*) Agreement between the United Nations Special Fund and the Government of Australia concerning assistance from the Special Fund for a project of research on the control of the coconut rhinoceros beetle. [4] Signed at New York on 30 September 1964

[1] Technical Assistance Board/Special Fund, *Field Manual*, Edition II (1 September 1965), section IX-C, p. 20.

[2] Came into force on the respective dates of signature.

[3] Came into force on 27 February 1964.

[4] Came into force on 30 September 1964.

Article X (4) of this agreement is similar to that of the model agreement, and its article VIII reads as follows:

Article VIII

Co-operation of the Government

1. The Government shall take any measures which may be necessary to remove any obstacles which may interfere with operations under this Agreement, and it shall in particular grant to the Special Fund and the Executing Agency and their officials and any other persons performing services on their behalf rights to the following:

(*a*) the prompt issuance without cost of necessary visas, licenses or permits;

(*b*) access to the site of work and all necessary rights of way;

(*c*) free movement, whether within or to or from the country, to the extent necessary for proper execution of the project;

(*d*) the most favourable legal rate of exchange;

(*e*) any permits necessary for the importation of equipment, materials and supplies in connexion with this Agreement and for their subsequent exportation; and

(*f*) any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of the Special Fund or of the Executing Agency, or other persons performing services on their behalf, and for the subsequent exportation of such property.

2. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Special Fund or the Executing Agency, against the personnel of either, or against other persons performing services on behalf of either under this Agreement, and shall hold the Special Fund, the Executing Agency and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

This agreement is accompanied by the following exchange of letters:

I

Australian Mission
to the United Nations
30 September 1964

Sir,

I have the honour to refer to the Agreement signed today between the Government of Australia and the United Nations Special Fund concerning assistance from the Special Fund for a project of research on the control of the coconut rhinoceros beetle.

I am instructed by my Government to convey to you the observation that in regard to sub-paragraphs (*e*) and (*f*) of paragraph 1 of Article VIII of the Agreement, the Australian Government understands that these sub-paragraphs will not oblige it to permit the importation of articles whose importation is prohibited or restricted by Australian laws and regulations which concern public health, security or morality, or which are designed to prevent the introduction into Australia of plant or animal diseases.

This understanding does not affect such obligations as may have been assumed by the Australian Government under the Conventions on the Privileges and Immunities of the United Nations and the Specialized Agencies.

If the foregoing observation meets with the assent of the Special Fund, 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 position of the Government of Australia and of the Special Fund on this matter.

Accept, Sir, the assurance of my high consideration.

D. O. HAY
Permanent Representative
of Australia

Mr. Paul G. Hoffman
Managing Director
United Nations Special Fund
United Nations Headquarters
New York

II

SF 332 AUL 30 September 1964

Sir,

I have the honour to acknowledge the receipt of your letter of today, which reads as follows :

[See letter I]

...

It gives me pleasure to confirm that your letter, together with my reply, shall be regarded as placing on record the position of the Government of Australia and the Special Fund on this matter.

Accept, Sir, the assurances of my highest consideration.

Paul G. HOFFMAN
Managing Director

H. E. Mr. D. O. Hay, C.B.E., D.S.O.
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Australia to the United Nations
750 Third Avenue, 22nd floor
New York 10017, New York

6. AGREEMENTS FOR THE PROVISION OF OPERATIONAL, EXECUTIVE AND ADMINISTRATIVE PERSONNEL: MODEL AGREEMENT

Article II

Functions of the Officers

[See *Juridical Yearbook*, 1963, p. 36]

Article IV

Obligations of the Government

[See *Juridical Yearbook*, 1963, p. 37]

Agreements between the United Nations and the Governments of Algeria, Kenya, Morocco, Sierra Leone and Upper Volta for the provision of operational, executive and administrative personnel.[1] Signed respectively at Algiers on 23 September 1964, at New York on 1 October 1964, at New York on 3 March 1964, at Freetown on 19 February 1964, and at New York on 26 February 1964

These agreements contain articles similar to articles II (3) and (4) and IV (5) and (6) of the model agreement.

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7. EXCHANGE OF LETTERS (WITH GENERAL DIRECTIVE) CONSTITUTING AN AGREEMENT[2] BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF PAKISTAN CONCERNING THE UNITED NATIONS SECURITY FORCE IN WEST NEW GUINEA (WEST IRIAN). NEW YORK, 6 DECEMBER 1962 AND 18 APRIL 1963

I[3]

PO 240 (WENGU) 1 — 6 December 1962

Sir,

I have the honour to refer to Article VII of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian)

---

[1] Came into force on the respective dates of signature.

[2] Came into force on 18 April 1963.

[3] Identical letters were addressed by the Secretary-General to the Governments of Canada and the United States. A letter on the same subject, reading as follows, was addressed by the Secretary-General to the Permanent Representative of Indonesia to the United Nations:

Sir,

I have the honour to refer to Article VII of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian) which states, *inter alia*, that Indonesian armed forces in West New Guinea (West Irian) are under the authority and at the disposal of the Secretary-General for the purpose of supplementing other forces specified in that Article which are engaged in maintaining law and order in the territory. I also have the honour to refer to General Assembly resolution 1752 (XVII) of 21 September 1962, which authorizes the Secretary-General to carry out the tasks entrusted to him in the foregoing Agreement.

Pursuant to the authority vested in me by the instruments referred to in the previous paragraph, I have issued a General Directive concerning the various armed forces presently stationed in West New Guinea (West Irian) which is to be distributed to those forces. The forces will serve under this Directive. As Indonesian armed forces are stationed in the territory, I have the honour to transmit herewith a copy of the Directive [see p. 36 of this *Yearbook*].

I should like to draw your attention to section 5 (*b*) of the Directive, which provides, *inter alia*, that responsibility for disciplinary action in specific contingents rests with the commanders of those contingents. I should also like to draw your attention to section 7 (*e*) and (*f*) pursuant to which members, *inter alia*, ot the Indonesian armed forces, are granted immunity for official acts performed in the course of their duties. Section 7 (*e*) continues:

> "In all other respects they shall be subject to the exclusive criminal jurisdiction of their national authorities. They shall be subject to local civil jurisdiction for acts performed outside the course of their duties. They shall also be subject to the rules and regulations of the contingents of which they form a part...".

In view of the considerations set out in the previous paragraph, I should appreciate your assurance that the commander of the Indonesian armed forces, and the officers commanding the contingents making up those forces, will be in a position to exercise the necessary disciplinary authority.

(A/5170) which states, *inter alia*, that the Secretary-General will provide the United Nations Temporary Executive Authority (UNTEA) in West New Guinea (West Irian) with such security forces as the United Nations Administrator in that territory deems necessary, to supplement existing Papuan (West Irianese) police, in the task of maintaining law and order during the period of administration of the territory by the UNTEA. I also have the honour to refer to General Assembly resolution 1752 (XVII) of 21 September 1962, which authorizes the Secretary-General to carry out the tasks entrusted to him in the foregoing Agreement.

As your Government has been kind enough to make available, at my request, a contingent of its armed forces to enable me to constitute the United Nations Security Force in West New Guinea (West Irian) by virtue of the authority vested in me by the foregoing Agreement and resolution, I have the honour to transmit herewith a copy of a General Directive concerning the United Nations Security Force in West New Guinea (West Irian) which I have issued, and which is to be distributed to contingents of the Security Force. These contingents will serve under this Directive.

The Directive affirms, in sections 3 (*a*) and 4 (*b*), that the national contingents provided by Governments comprise part of a United Nations Security Force, under the command authority at all times of the United Nations Commander designated by the Secretary-General. In the exercise of his authority the United Nations Commander is under the immediate direction of the United Nations Administrator, who in turn acts under the general direction of the Secretary-General. Section 5 (*a*) of the Directive provides that the United Nations Commander shall designate the chain of command within national contingents, making use of the officers of those contingents.

I should like to draw your attention to section 5 (*b*) of the Directive, which provides as follows:

> "The United Nations Commander has general responsibility for the good order of the contingents under his overall command. He may make investigations, conduct inquiries and require information, reports and consultations for the purpose of discharging his responsibility. Responsibility for disciplinary action in the contingents concerned rests with the commanders of those contingents. Reports concerning disciplinary action and incidents involving third parties shall be communicated to the United Nations Commander who may consult with the commander of the contingent concerned."

The Directive, in section 7, lays down the rights and duties of the Security Force and provides its individual members with the privileges and immunities necessary for the exercise of their functions within West New Guinea (West Irian). Sub-paragraph (*e*) of section 7, in particular, provides that:

> "All members of the United Nations Security Force shall be granted immunity for official acts performed in the course of their duties. In all other respects they shall be subject to the exclusive criminal jurisdiction of their national authorities. They shall be subject to local civil jurisdiction for acts performed outside the course of their duties. They shall also be subject to the rules and regulations of the contingents of which they form a part without derogating from their responsibilities as part of the United Nations Security Force."

I should also appreciate your assurance that, if it should become necessary, your Government will be prepared to exercise jurisdiction with respect to any crime or offense which might be committed by a member of the Indonesian armed forces. Such assurances will assist me greatly in ensuring the proper discharge of my responsibilities under Article VII of the Agreement referred to at the outset of this letter.

Accept, etc.

In view of the considerations set out in the two immediately preceding paragraphs, I should appreciate your assurance that the commander of the national contingent provided by your Government will be in a position to exercise the necessary disciplinary authority. I should also appreciate your assurance that, if it should become necessary, your Government will be prepared to exercice jurisdiction with respect to any crime or offence which might be committed by a member of such national contingent. Such assurance will assist me greatly in ensuring the proper discharge of my responsibilities in connexion with the Security Force.

Accept, Sir, the assurances of my highest consideration.

U THANT
Secretary-General

His Excellency Muhammad Zafrulla Khan
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Pakistan to the United Nations
Pakistan House
8 East 65th Street
New York 21, New York

General Directive concerning the United Nations Security Force in West New Guinea (West Irian)

1. ESTABLISHMENT OF THE UNITED NATIONS SECURITY FORCE

By virtue of the authority vested in the Secretary-General by Article VII of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian) (hereinafter referred to as "the Agreement") and by virtue of General Assembly resolution 1752 (XVII) of 21 September 1962 authorizing the Secretary-General to carry out the tasks entrusted to him in that Agreement, there is hereby established a United Nations Security Force in West New Guinea (West Irian). The United Nations Security Force will come into existence, and will assume its functions, on 1 October 1962 upon the transfer of authority over West New Guinea (West Irian) by the Kingdom of the Netherlands to the United Nations Temporary Executive Authority (hereinafter referred to as the "UNTEA").

2. TASK OF THE UNITED NATIONS SECURITY FORCE

The United Nations Security Force will primarily supplement the existing police force in maintaining law and order in West New Guinea (West Irian).

3. COMPOSITION OF THE UNITED NATIONS SECURITY FORCE

(*a*) The United Nations Security Force consists of the following contingents made available by the Secretary-General:

(*i*) Force Headquarters
(*ii*) The Pakistan Contingent
(*iii*) Detachment of the USAF
(*iv*) Detachment of the RCAF

(*b*) The United Nations Security Force may be supplemented by the Administrator, in the circumstances specified in section 4 (*d*) and (*e*) below, by the following contingents:

(*i*) The Papuan (West Irianese) Volunteer Corps
(*ii*) The Indonesian Armed Forces present in the territory in accordance with the cease-fire arrangements concluded between the Republic of Indonesia and the Kingdom of the Netherlands.

When the contingents specified in the present sub-section are made available by the Administrator to supplement the United Nations Security Force, they shall be considered an integral part of that Force.

4. Chain of Command

(*a*) The overall responsibility for the maintenance of law and order throughout the territory rests with the Administrator, and, by his delegation, with the Divisional Commissioners within their respective divisions. The machinery available to the Administrator and the Divisional Commissioners for the maintenance of law and order consists of the Papuan (West Irianese) Police Force, and, for the purpose of supplementing the latter when this is found necessary, the United Nations Security Force.

(*b*) The United Nations Commander, designated by the Secretary-General, exercises overall command authority at all times over the contingents specified in section 3 (*a*). In the circumstances specified in sub-sections (*d*) and (*e*) of the present section, he exercises overall command authority over the contingents specified in section 3 (*b*). In the circumstances specified in section 6 (*c*) below, he also exercises overall command authority over the Papuan (West Irianese) Police Force. In the exercise of his authority, the United Nations Commander is under the immediate direction of the Administrator, who in turn acts under the general direction of the Secretary-General.

(*c*) The Chief of Police is operationally responsible to the Administrator, through the Director of the Department of Internal Affairs, for the proper discharge by the Papuan (West Irianese) Police Force of their functions in accordance with such rules, regulations and directives as are consistent with the Agreement and are currently in force, save insofar as they may be amended or abrogated by the Administrator.

(*d*) The Papuan (West Irianese) Volunteer Corps is under the authority and at the disposal of the Administrator at all times. He shall designate the respective spheres of competence over the Corps of the United Nations Commander and of the commanding officer of the Corps. The Administrator may place the Corps, or certain of the elements comprising it, under the overall command authority of the United Nations Commander when, in the opinion of the Administrator, the active deployment of the Corps, or certain elements comprising it, is rendered necessary in the interests of the maintenance of law and order.

(*e*) The Indonesian Forces referred to in section 3 (*b*) (*ii*) above are under the authority and at the disposal of the Administrator at all times. He shall designate the respective spheres of competence over these Forces of the United Nations Commander and of the commanding officer of the Indonesian Forces. The Administrator may place the Indonesian Forces, or certain of the elements comprising them, under the overall command authority of the United Nations Commander when, in the opinion of the Administrator, the active deployment of these Forces, or certain elements comprising them, is rendered necessary in the interests of the maintenance of law and order.

(*f*) Pending their repatriation, Netherlands Armed Forces in West New Guinea (West Irian) are under the authority of the Administrator.

5. Duties of the United Nations Commander and of the Divisional or Local Military Commanders

(*a*) The United Nations Commander is responsible to the Administrator for the proper performance of all functions assigned to the contingents under his overall command. He shall designate the chain of command within those contingents, making use of the officers thereof. The United Nations Commander has full authority, after consultation with the

Administrator, with respect to the deployment and assignment of all contingents placed under his overall command.

(*b*) The United Nations Commander has general responsibility for the good order of the contingents under his overall command. He may make investigations, conduct inquiries and require information, reports and consultations for the purpose of discharging his responsibility. Responsibility for disciplinary action in the contingents concerned rests with the commanders of those contingents. Reports concerning disciplinary action and incidents involving third parties shall be communicated to the United Nations Commander who may consult with the commander of the contingent concerned.

(*c*) The United Nations Commander shall provide for military police for any camps, establishments or other premises occupied by the contingents under his overall command, for such areas where those contingents are deployed in the performance of their functions and such other areas as he deems necessary. The military police shall have the power of arrest over members of the contingents under the overall command of the United Nations Commander.

(*d*) The United Nations Commander is responsible for providing assistance in maintaining law and order in accordance with the procedures specified in section 6 below.

(*e*) In consultation with the Administrator, the United Nations Commander has general responsibility for all matters concerning the operation and maintenance of the contingents under his overall command. In this respect the Administrator with his civilian administrative staff and the United Nations Commander shall, in accordance with procedures prescribed by the Administrator, make arrangements for supplies and food; welfare; equipment; transportation; billeting; communications; maintenance services; medical, dental and sanitary services; accounting and such other matters as the Administrator may prescribe.

(*f*) The Administrator shall designate the extent to which the duties specified in the present section shall be discharged by the United Nations Commander, or by the commanding officers of the contingents referred to in section 3 (*b*) above, in relation to those contingents.

6. Intervention by the United Nations Security Force

(*a*) Whenever the Administrator, a Divisional Commissioner or an authorized representative of the latter in a given locality, determines in his full discretion that the considerations of public order require the active employment of elements of the United Nations Security Force to maintain or restore law and order, he shall request such assistance in writing from the local group commander of the Security Force, giving the reasons therefor and the object to be achieved.

(*b*) Such requests shall be authorized in advance by the Administrator except only when circumstances or the time element involved preclude such prior authorization, in which case a report on the request made and action taken shall be transmitted as rapidly as possible by or through the Divisional Commissioner to the Administrator.

(*c*) Whenever a request for action by elements of the United Nations Security Force has been transmitted in accordance with the procedure set out in the preceding paragraphs of the present section, the local police shall thereupon come under the operational command of the local group commander of the Security Force until such time as the task entrusted to the Security Force shall have been completed.

(*d*) The Divisional Commissioner or his authorized local representative shall keep the local group commander of the Security Force constantly informed of developments pertaining to law and order in the area. Throughout the duration of any intervention by the Security Force under the provisions set out above, the local group commander of the Security Force

shall remain in constant touch with the Divisional Commissioner or his authorized local representative.

(*e*) In the circumstances specified in section 4 (*d*) and (*e*) above, the contingents specified in section 3 (*b*) above shall be considered an integral part of the United Nations Security Force for the purposes of the present section.

7. RIGHTS AND DUTIES OF THE UNITED NATIONS SECURITY FORCE

(*a*) All members of the United Nations Security Force, irrespective of the contingent in which they serve, are under the authority of the Administrator and subject to his instructions through the chain of command as set out in section 4 above. The members of the Force shall discharge their functions and regulate their conduct with the interest of the UNTEA only in view. In the performance of their duties the members of the Force shall receive their instructions only from the chain of command as designated in section 4 above.

(*b*) All contingents making up the Force shall fly the United Nations flag in accordance with the United Nations Flag Code and Regulations, together with such other flag or flags as the Administrator may designate after consultation with the United Nations Commander.

(*c*) All members of the United Nations Security Force shall wear their own uniform and such distinctive UNTEA insignia as the Administrator shall prescribe.

(*d*) All members of the United Nations Security Force shall respect the laws and regulations in force in the territory and shall refrain from any activity of a political character or activity otherwise incompatible with their status. They shall conduct themselves at all times in a manner befitting their status.

(*e*) All members of the United Nations Security Force shall be granted immunity for official acts performed in the course of their duties. In all other respects they shall be subject to the exclusive criminal jurisdiction of their national authorities. They shall be subject to local civil jurisdiction for acts performed outside the course of their duties. They shall also be subject to the rules and regulations of the contingents of which they form a part without derogating from their responsibilities as part of the United Nations Security Force.

(*f*) The provisions of the present section shall also apply at all times to the contingents specified in section 3 (*b*) above.

8. GENERAL PROVISIONS

The Administrator may at any time issue detailed instructions implementing this general directive. He may amend the directive with the consent of the Secretary-General. This directive may be supplemented or replaced by general regulations issued by the Administrator with the consent of the Secretary-General.

U. THANT
Secretary-General

II

Pakistan Mission to the United Nations
Pakistan House
8 East 65th Street
New York 21, N. Y.

No. 267-S/63 April 18, 1963

Sir,

I have the honour to refer to last paragraph of your letter No. PO 240 (WENGU) 1 dated 6 December 1962 and to say that the Government of Pakistan have directed me to

convey to you the assurance that the Commander of the Pakistan Contingent in West Irian will be in a position to exercise the necessary disciplinary authority, and should it become necessary, the Pakistan Government will be prepared to exercise jurisdiction with respect to any crime or offence which might be committed by a member of the Pakistan Contingent.

Accept, Sir, the assurance of my highest consideration.

ZAFRULLA KHAN
Permanent Representative of Pakistan
to the United Nations

His Excellency U Thant
Secretary-General of the United Nations
New York

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8. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF CYPRUS CONCERNING THE STATUS OF THE UNITED NATIONS PEACE-KEEPING FORCE IN CYPRUS.[1] NEW YORK, 31 MARCH 1964

I

31 March 1964

Sir,

I have the honour to refer to the resolution adopted by the Security Council of the United Nations on 4 March 1964 (S/5575). In paragraph 4 of that resolution the Security Council recommended the creation, with the consent of the Government of the Republic of Cyprus, of a United Nations peace-keeping force in Cyprus. By letter of 4 March 1964, the Minister for Foreign Affairs of Cyprus informed the Secretary-General of the consent of the Government of the Republic of Cyprus to the creation of the Force. The Force was established on 27 March 1964. I have also the honour to refer to Article 105 of the Charter of the United Nations which 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 to the Convention on the Privileges and Immunities of the United Nations to which Cyprus is a party. Having in view the provisions of the Convention on the Privileges and Immunities of the United Nations, I wish to propose that the United Nations and Cyprus should make the following *ad hoc* arrangements defining certain of the conditions necessary for the effective discharge of the functions of the United Nations Force while it remains in Cyprus. These arrangements are set out below under the following headings:

[1] Came into force provisionally on 31 March 1964 by the exchange of the said letters, and was deemed to have taken effect as from 14 March 1964, the date of the arrival of the first element of the Force in Cyprus, in accordance with the provisions of paragraph 45.

Definitions

1. The "United Nations Force in Cyprus" (hereinafter referred to as "the Force") consists of the United Nations Commander appointed by the Secretary-General in accordance with the Security Council resolution of 4 March 1964 (S/5575) and all military personnel placed under his command. For the purpose of these arrangements, the term "member of the Force" refers to any person, belonging to the military service of a State, who is serving under the Commander of the United Nations Force and to any civilian placed under the Commander by the State to which such civilian belongs.

2. "Cypriot authorities" means all State and local, civil and military authorities of the Government of the Republic of Cyprus called upon to perform functions relating to the Force under the provisions of these arrangements, without prejudice to the ultimate responsibility of the Government of the Republic of Cyprus (hereinafter referred to as "the Government").

3. "Participating State" means a Member of the United Nations that contributes military personnel to the Force.

4. "Area of operations" includes all areas throughout the territory of the Republic of Cyprus (which territory is hereinafter referred to as "Cyprus") where the Force is deployed in the performance of its functions as defined in operative paragraph 5 of the Security Council resolution of 4 March 1964 (S/5575); military installations or other premises referred to in paragraph 19 of these arrangements; and lines of communication and supply utilized by the Force pursuant to paragraphs 32 and 33 of these arrangements.

International status of the Force and its members

5. Members of the Force shall respect the laws and regulations of Cyprus and shall refrain from any activity of a political character in Cyprus and from any action incompatible with the international nature of their duties or inconsistent with the spirit of the present arrangements. The Commander shall take all appropriate measures to ensure the observance of these obligations.

6. The Government undertakes to respect the exclusively international character of the Force as established by the Secretary-General in accordance with the Security Council resolution of 4 March 1964 (S/5575) and the international nature of its command and function.

ENTRY AND EXIT: IDENTIFICATION

7. Members of the Force shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering or departing from Cyprus. They shall also be exempt from any regulations governing the residence of aliens in Cyprus, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Cyprus. For the purpose of such entry or departure members of the Force will be required to have only (*a*) an individual or collective movement order issued by the Commander or an appropriate authority of the Participating State; and (*b*) a personal identity card issued by the Commander under the authority of the Secretary-General, except in the case of first entry, when the personal military identity card issued by the appropriate authorities of the Participating State will be accepted in lieu of the said Force identity card.

8. Members of the Force may be required to present, but not to surrender, their identity cards upon demand of such Cypriot authorities as may be mutually agreed between the Commander and the Government. Except as provided in paragraph 7 of these arrangements, the identity card will be the only document required for a member of the Force. If, however, it does not show the full name, date of birth, rank and number (if any), service and photograph of a member of the Force, such member may be required to present likewise the personal military identity card or similar document issued by the appropriate authorities of the Participating State to which he belongs.

9. If a member of the Force leaves the service of the Participating State to which he belongs and is not repatriated, the Commander shall immediately inform the Government, giving such particulars as may be required. The Commander shall similarly inform the Government if any member of the Force has absented himself for more than twenty-one days. If an expulsion order against an ex-member of the Force has been made, the Commander shall be responsible for ensuring that the person concerned shall be received within the territory of the Participating State concerned.

JURISDICTION

10. The following arrangements respecting criminal and civil jurisdiction are made having regard to the special functions of the Force and to the interests of the United Nations, and not for the personal benefit of the members of the Force.

CRIMINAL JURISDICTION

11. Members of the Force shall be subject to the exclusive jurisdiction of their respective national States in respect of any criminal offences which may be committed by them in Cyprus.

CIVIL JURISDICTION

12. (*a*) Members of the Force shall not be subject to the civil jurisdiction of the courts of Cyprus or to other legal process in any matter relating to their official duties. In a case arising from a matter relating to the official duties of a member of the Force and which involves a member of the Force and a Cypriot citizen, and in other disputes as agreed, the procedure provided in paragraph 38 (*b*) shall apply to the settlement.

(*b*) In those cases where civil jurisdiction is exercised by the courts of Cyprus with respect to members of the Force, the courts or other Cypriot authorities shall grant members of the Force sufficient opportunity to safeguard their rights. If the Commander certifies that a member of the Force is unable because of official duties or authorized absence to protect his interests in a civil proceeding in which he is a participant, the aforesaid court or authority shall at his request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of the Force which is certified by the Commander to be needed by him for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order, together with other property not subject thereto under the law of Cyprus. The personal liberty of a member of the Force shall not be restricted by a court or other Cypriot authority in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath of disclosure, or for any other reason.

(*c*) In the cases provided for in sub-paragraph (*b*) above, the claimant may elect to have his claim dealt with in accordance with the procedure set out in paragraph 38 (*b*) of these arrangements. Where a claim adjudicated or an award made in favour of the claimant by a court of Cyprus or the Claims Commission under paragraph 38 (*b*) of these arrangements has not been made satisfied, the Government may, without prejudice to the claimant's rights, seek the good offices of the Secretary-General to obtain satisfaction.

NOTIFICATION: CERTIFICATION

13. If any civil proceeding is instituted against a member of the Force before any court of Cyprus having jurisdiction, notification shall be given to the Commander. The Commander shall certify to the court whether or not the proceeding is related to the official duties of such member.

MILITARY POLICE: ARREST: TRANSFER OF CUSTODY AND MUTUAL ASSISTANCE

14. The Commander shall take all appropriate measures to ensure maintenance of discipline and good order among members of the Force. To this end military police designated by the Commander shall police the premises referred to in paragraph 19 of these arrangements, such areas where the Force is deployed in the performance of its functions, and such other areas as the Commander deems necessary to maintain discipline and order among members of the Force. For the purpose of this paragraph the military police of the Force shall have the power of arrest over members of the Force.

15. Military police of the Force may take into custody any Cypriot citizen committing an offence or causing a disturbance on the premises referred to in paragraph 19, without subjecting him to the ordinary routine of arrest, in order immediately to deliver him to the nearest appropriate Cypriot authorities for the purpose of dealing with such offence or disturbance.

16. The Cypriot authorities may take into custody a member of the Force, without subjecting him to the ordinary routine of arrest in order immediately to deliver him, together with any weapons or items seized, to the nearest appropriate authorities of the Force: (*a*) when so requested by the Commander, or (*b*) in cases in which the military police of the Force are unable to act with the necessary promptness when a member of the Force is apprehended in the commission or attempted commission of a criminal offence that results or might result in serious injury to persons or property, or serious impairment of other legally protected rights.

17. When a person is taken into custody under paragraph 15 and paragraph 16 (*b*), the Commander or the Cypriot authorities, as the case may be, may make a preliminary

interrogation but may not delay the transfer of custody. Following the transfer of custody, the person concerned shall be made available upon request for further interrogation.

18. The Commander and the Cypriot authorities shall assist each other in the carrying out of all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over, of things connected with an offence. The handing over of any such things may be made subject to their return within the time specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 15 and 16 of these arrangements. The Government will ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to the Force or its members which, if committed in relation to the Cypriot army or its members, would have rendered them liable to prosecution. The Secretary-General will seek assurances from Governments of Participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed against Cypriot citizens by members of their national contingents serving with the Force.

Premises of the Force

19. The Government shall provide without cost to the Force and in agreement with the Commander such areas for headquarters, camps, or other premises as may be necessary for the accommodation and the fulfilment of the functions of the Force. Without prejudice to the fact that all such premises remain the territory of Cyprus, they shall be inviolable and subject to the exclusive control and authority of the Commander, who alone may consent to the entry of officials to perform duties on such premises.

United Nations flag

20. The Government recognizes the right of the Force to display within Cyprus the United Nations flag on its headquarters, camps, posts or other premises, vehicles, vessels and otherwise as decided by the Commander. Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Commander. Sympathetic consideration will be given to observations or requests of the Government concerning this last-mentioned matter.

Uniform: vehicle, vessel and aircraft markings and registration: operating permits

21. Members of the Force shall normally wear their national uniform with such identifying United Nations insignia as the Commander may prescribe. The conditions on which the wearing of civilian dress is authorized shall be notified by the Commander to the Government and sympathetic consideration will be given to observations or requests of the Government concerning this matter. Service vehicles, vessels and aircraft shall carry a distinctive United Nations identification mark and licence which shall be notified by the Commander to the Government. Such vehicles, vessels and aircraft shall not be subject to registration and licensing under the laws and regulations of Cyprus. Cypriot authorities shall accept as valid, without a test or fee, a permit or licence for the operation of service vehicles, vessels and aircraft issued by the Commander.

Arms

22. Members of the Force may possess and carry arms in accordance with their orders.

Privileges and immunities of the Force

23. The Force, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the Organization in accordance with the Convention on the Privileges and Immunities of the United Nations. The provisions of article II of the Convention on the Privileges and Immunities of the United Nations shall also apply to the property, funds and assets of Participating States used in Cyprus in connexion with the national contingents serving in the Force. The Government recognizes that the right of the Force to import free of duty equipment for the Force and provisions, supplies and other goods for the exclusive use of members of the Force, members of the United Nations Secretariat detailed by the Secretary-General to serve with the Force, excluding locally recruited personnel, includes the right of the Force to establish, maintain and operate at headquarters, camps and posts, service institutes providing amenities for the persons aforesaid. The amenities that may be provided by service institutes shall be goods of a consumable nature (tobacco and tobacco products, beer, etc.), and other customary articles of small value. To the end that duty-free importation for the Force may be effected with the least possible delay, having regard to the interests of the Government, a mutually satisfactory procedure, including documentation, shall be arranged between the appropriate authorities of the Force and the Government. The Commander shall take all necessary measures to prevent any abuse of the exemption and to prevent the sale or resale of such goods to persons other than those aforesaid. Sympathetic consideration shall be given by the Commander to observations or requests of the Government concerning the operation of service institutes.

Privileges and immunities of officials and members of the Force

24. Members of the United Nations Secretariat detailed by the Secretary-General to serve with the Force remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention on the Privileges and Immunities of the United Nations. With respect to the locally recruited personnel of the Force, however, who are not members of the Secretariat, the United Nations will assert its right only to the immunities concerning official acts, and exemption from taxation and national service obligations provided in sections 18 (*a*), (*b*) and (*c*) of the Convention on the Privileges and Immunities of the United Nations.

25. The Commander shall be entitled to the privileges, immunities and facilities of sections 19 and 27 of the Convention on the Privileges and Immunities of the United Nations. Officers serving on the Commander's Headquarters Staff and such other senior field officers as he may designate are entitled to the privileges and immunities of article VI of the Convention on the Privileges and Immunities of the United Nations. Subject to the foregoing, the United Nations will claim with respect to members of the Force only those rights expressly provided in the present or supplemental arrangements.

Members of the Force: taxation, customs and fiscal regulations

26. Members of the Force shall be exempt from taxation on the pay and emoluments received from their national Governments or from the United Nations. They shall also be exempt from all other direct taxes except municipal rates for services enjoyed, and from all registration fees, and charges.

27. Members of the Force shall have the right to import free of duty their personal effects in connexion with their arrival in Cyprus. They shall be subject to the laws and regulations of Cyprus governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Cyprus with the Force. Special facilities for entry or exit shall be granted by the Cypriot immigration, customs and fiscal

authorities to regularly constituted units of the Force provided that the authorities concerned have been duly notified sufficiently in advance. Members of the Force on departure from Cyprus may, notwithstanding the foreign exchange regulations, take with them such funds as the appropriate pay officer of the Force certifies were received in pays and emoluments from their respective national Governments or from the United Nations and are a reasonable residue thereof. Special arrangements between the Commander and the Government shall be made for the implementation of the foregoing provisions in the mutual interests of the Government and members of the Force.

28. The Commander will co-operate with Cypriot customs and fiscal authorities in ensuring the observance of the customs and fiscal laws and regulations of Cyprus by the members of the Force in accordance with these or any relevant supplemental arrangements.

COMMUNICATIONS AND POSTAL SERVICES

29. The Force enjoys the facilities in respect to communications provided in article III of the Convention on the Privileges and Immunities of the United Nations. The Commander shall have 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, subject to the provisions of article 47 of the International Telecommunications Convention relating to harmful interference. The frequencies on which any such station may be operated will be duly communicated by the United Nations to the Government and to the International Frequency Registration Board. The right of the Commander is likewise recognized to enjoy the priorities of government telegrams and telephone calls as provided for the United Nations in article 39 and annex 3 of the latter Convention and in article 62 of the telegraph regulations annexed thereto.

30. The Force shall also enjoy, within its area of operations, the right of unrestricted communication by radio, telephone, telegraph or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the Force, including the laying of cables and land lines and the establishment of fixed and mobile radio sending and receiving stations. It is understood that the telegraph and telephone cables and lines herein referred to will be situated within or directly between the premises of the Force and the area of operations, and that connexion with the Cypriot system of telegraphs and telephones will be made in accordance with arrangements with the appropriate Cypriot authorities.

31. The Government recognizes the right of the Force to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Force. The Government will be informed of the nature of such arrangements. No interference shall take place with, and no censorship shall be applied to, the mail of the Force by the Government. In the event that postal arrangements applying to private mail of members of the Force are extended to operations involving transfer of currency, or transport of packages or parcels from Cyprus, the conditions under which such operations shall be conducted in Cyprus will be agreed upon between the Government and the Commander.

FREEDOM OF MOVEMENT

32. The Force and its members together with its service vehicles, vessels, aircraft and equipment shall enjoy freedom of movement throughout Cyprus. Wherever possible the Commander will consult with the Government with respect to large movements of personnel, stores or vehicles on roads used for general traffic. The Government will supply the Force with maps and other information, including locations of dangers and impediments, which may be useful in facilitating its movements.

USE OF ROADS, WATERWAYS, PORT FACILITIES, AND AIRFIELLS

33. The Force shall have the right to the use of roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges either by way of registration or otherwise, throughout Cyprus.

WATER, ELECTRICITY AND OTHER PUBLIC UTILITIES

34. The Force shall have the right to the use of water, electricity and other public utilities at rates not less favourable to the Force than those to comparable consumers. The Government will, upon the request of the Commander, assist the Force in obtaining water, electricity and other utilities required, and in the case of interruption or threatened interruption of service, will give the same priority to the needs of the Force as to essential Government services. The Force shall have the right where necessary to generate, within the premises of the Force either on land or water, electricity for the use of the Force, and to transmit and distribute such electricity as required by the Force.

CYPRIOT CURRENCY

35. The Government will, if requested by the Commander, make available to the Force, against reimbursement in such other mutually acceptable currency, Cypriot currency required for the use of the Force, including the pay of the members of the national contingents, at the rate of exchange most favourable to the Force that is officially recognized by the Government.

PROVISIONS, SUPPLIES AND SERVICES

36. The Government will, upon the request of the Commander, assist the Force in obtaining equipment, provisions, supplies and other goods and services required from local sources for its subsistence and operation. Sympathetic consideration will be given by the Commander in purchases on the local market to requests or observations of the Government in order to avoid any adverse effect on the local economy. Members of the Force and United Nations officials may purchase locally goods necessary for their own consumption, and such services as they need, under conditions not less favourable than for Cypriot citizens. If members of the Force and United Nations officials should require medical or dental facilities beyond those available within the Force, arrangements shall be made with the Government under which such facilities may be made available. The Commander and the Governement will co-operate with respect to sanitary services. The Commander and the Government shall extend to each other the fullest co-operation in matters concerning health, particularly with respect to the control of communicable diseases in accordance with international conventions; such co-operation shall extend to the exchange of relevant information and statistics.

LOCALLY RECRUITED PERSONNEL

37. The Force may recruit locally such personnel as required. The terms and conditions of employment for locally recruited personnel shall be prescribed by the Commander and shall generally, to the extent practicable, follow the practice prevailing in the locality.

SETTLEMENT OF DISPUTES OR CLAIMS

38. Disputes or claims of a private law character shall be settled in accordance with the following provisions:

(*a*) The United Nations shall make provisions for the appropriate modes of settlement of disputes or claims arising out of contract or other disputes or claims of a private law character to which the United Nations is a party other than those covered in sub-paragraphs (*b*) and (*c*) following.

(*b*) Any claim made by

(i) a Cypriot citizen in respect of any damages alleged to result from an act or omission of a member of the Force relating to his official duties;

(ii) the Government against a member of the Force; or

(iii) the Force or the Government against one another, that is not covered by paragraphs 39 or 40 of these arrangements,

shall be settled by a Claims Commission established for that purpose. One member of the Commission shall be appointed by the Secretary-General, one member by the Government and a chairman jointly by the Secretary-General and the Government. If the Secretary-General and the Government fail to agree on the appointment of a chairman, the President of the International Court of Justice shall be asked by either to make the appointment. An award made by the Claims Commission against the Force or a member thereof or against the Government shall be notified to the Commander or the Government, as the case may be, to make satisfaction thereof. [1]

(*c*) Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by administrative procedure to be established by the Commander.

39. All differences between the United Nations and the Government arising out of the interpretation or application of these arrangements which involve a question of principle concerning the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with the procedure of section 30 of the Convention.

40. All other disputes between the United Nations and the Government concerning the interpretation or application of these arrangements which are not settled by negotiation or other agreed mode of settlement shall be referred for final settlement to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one by the Government and an umpire to be chosen jointly by the Secretary-General and the Government. If the two parties fail to agree on the appointment of the umpire within one month of the proposal of arbitration by one of the parties, the President of the International Court of Justice shall be asked by either party to appoint the umpire. Should a vacancy occur for any reason, the vacancy shall be filled within thirty days by the method laid down in this paragraph for the original appointment. The Tribunal shall come into existence upon the appointment of the umpire and at least one of the other members of the tribunal. Two members of the tribunal shall constitute a quorum for the performance of its functions, and for all deliberations and decisions of the tribunal a favourable vote of two members shall be sufficient.

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[1] In this respect attention must be drawn to operative paragraph 6 of the Security Council resolution of 4 March 1964 (S/5575) whereby the Council, *inter alia*, recommends that all costs pertaining to the Force be:

"met, in a manner to be agreed upon by them, by the Governments providing contingents and by the Government of Cyprus. The Secretary-General may also accept voluntary contributions for this purpose".

It is understood that the obligations of the Commander to make satisfaction as provided for in paragraph 38 (*b*) of the present arrangements are necessarily limited under the aforementioned paragraph of the Security Council resolution to the extent (*a*) that funds are available to him for this purpose and/or (*b*) alternative arrangements are arrived at with the Participating Governments and the Government of Cyprus.

Liaison

41. The Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison in the implementation of the present agreement. Furthermore, arrangements will be made, *inter alia*, for liaison on a State and local level between the Force and the Government security forces to the extent the Commander deems this to be necessary and desirable for the performance of the functions of the Force in accordance with the Security Council resolution of 4 March 1964 (S/5575). In case of requests by the Government security forces for the assistance of the Force, the Commander, in view of the international status and function of the Force, will decide whether, within the framework of the aforesaid resolution, he may meet such requests. The Commander of the Force may make requests for assistance from the Government security forces, at the State or local level, as he may deem necessary in pursuance of the aforesaid resolution, and they will, as far as possible, meet such requests in a spirit of co-operation.

Deceased members: disposition of personal property

42. The Commander shall have the right to take charge of and dispose of the body of a member of the Force who dies in Cyprus and may dispose of his personal property after the debts of the deceased person incurred in Cyprus and owing to Cypriot citizens have been settled.

Supplemental arrangements

43. Supplemental details for the carrying out of these arrangements shall be made as required between the Commander and appropriate Cypriot authorities designated by the Government.

Contacts in the performance of the function of the Force

44. It is understood that the Commander and members of the Force authorized by him may have such contacts as they deem necessary in order to secure the proper performance of the function of the Force, under the Security Council resolution of 4 March 1964 (S/5575).

Effective date and duration

45. Upon acceptance of this proposal by your Governement, the present letter and your reply will be considered as constituting an agreement between the United Nations and Cyprus that shall be deemed to have taken effect as from the date of the arrival of the first element of the Force in Cyprus, and shall remain in force until the departure of the Force from Cyprus. The effective date that the departure has occurred shall be defined by the Secretary-General and the Government. The provisions of paragraphs 38, 39 and 40 of these arrangements, relating to the settlement of disputes, however, shall remain in force until all claims arising prior to the date of termination of these arrangements, and submitted prior to or within three months following the date of termination, have been settled.

In conclusion I wish to affirm that the activities of the Force will be guided in good faith by the task established for the Force by the Security Council. Within this context the Force, as established by the Secretary-General and acting on the basis of his directives under the exclusive operational direction of the Commander, will use its best endeavours, in the interest of preserving international peace and security, to prevent a recurrence of

fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions.

Accept, Sir, the assurances of my highest consideration.

U THANT
Secretary-General

His Excellency
Mr. Spyros A. Kyprianou
Minister for Foreign Affairs
c/o Permanent Mission of Cyprus to the United Nations
165 East 72nd Street
New York 21, N. Y.

II

Permanent Mission of the Republic of Cyprus
to the United Nations
165 East 72nd Street
New York 21, N. Y.

31 March 1964

Sir,

I have the honour to refer to your letter of 31 March 1964, in which you have proposed that the Republic of Cyprus and the United Nations should make the *ad hoc* arrangements contained therein which define certain of the conditions necessary for the effective discharge of the functions of the United Nations Force in Cyprus while it remains in Cyprus. Recalling that by letter of 4 March 1964, I informed you of the agreement of the Government of the Republic of Cyprus to the establishment of the Force, I now have the pleasure to inform you in the name of the Government of the Republic of Cyprus of its full agreement on, and its acceptance of, the terms of your letter.

The Government of the Republic of Cyprus agrees, furthermore, that subject to ratification by the Republic of Cyprus, your letter and this reply will be considered as constituting an agreement between Cyprus and the United Nations concerning the status of the United Nations Force in Cyprus. Pending such ratification the Government of the Republic of Cyprus undertakes to give provisional application to the arrangements contained in your letter and to use its best efforts to secure the earliest possible ratification of the agreement.

In conclusion, I wish to affirm that the Government of the Republic of Cyprus, recalling the Security Council resolution of 4 March 1964 (S/5575), and, in particular, paragraphs 2 and 5 thereof, will be guided in good faith, when exercising its sovereign rights on any matter concerning the presence and functioning of the Force, by its acceptance of the recommendation of the Security Council that a peace-keeping Force be established in Cyprus.

Accept, Sir, the assurances of my highest consideration.

Spyros A. KYPRIANOU
Minister for Foreign Affairs

His Excellency
U Thant
Secretary-General
United Nations
New York, N. Y.

9. EXCHANGES OF LETTERS CONSTITUTING AGREEMENTS BETWEEN THE UNITED NATIONS AND THE GOVERNMENTS OF CYPRUS, GREECE, TURKEY AND THE UNITED KINGDOM CONCERNING THE PRIVILEGES, IMMUNITIES, EXEMPTIONS AND FACILITIES TO BE ACCORDED TO THE UNITED NATIONS MEDIATOR AND HIS STAFF.[1] NEW YORK, 27 AND 30 MARCH 1964; NEW YORK, 27 AND 30 MARCH 1964; NEW YORK, 27 MARCH 1964 AND ANKARA, 31 MARCH 1964; NEW YORK, 27 MARCH AND 2 APRIL 1964

I

27 March 1964

Sir,

I have the honour to inform you that pursuant to Security Council resolution S/5575 of 4 March 1964, and in agreement with the Government of Cyprus and the Governments of Greece, Turkey and the United Kingdom, I have appointed H. E. Sakari Severi Tuomioja as Mediator to perform the functions defined in paragraph 7 of the aforesaid resolution. It is assumed that Mr. Tuomioja will in the course of his duties find it necessary to visit from time to time Cyprus, Greece, Turkey and the United Kingdom.

I am confident that, in the exercise of the functions entrusted to him by virtue of the aforesaid resolution, the Mediator and his staff will have the full co-operation of the Governments and the communities concerned and, in particular, will be accorded, in conformity with Article 105 of the Charter, all privileges and immunities necessary for the independent exercise of these functions.

It is my considered opinion that, in view of the nature of the position which he holds on behalf of this Organization and of the delicate and important functions entrusted to him, it would be necessary for the independent exercise of these functions that the Mediator, together with his staff, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys.

I have the honour, therefore, to express to Your Excellency the hope that your Government will be good enough to agree to extend to Mr. Tuomioja and his staff the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law, and that the appropriate authorities be notified accordingly.

Accept, Sir, the assurances of my highest consideration.

U THANT
Secretary-General

His Excellency
Mr. Spyros A. Kyprianou
Minister for Foreign Affairs
Ministry of Foreign Affairs
Nicosia
Cyprus

[1] Came into force, respectively, on 30 March 1964, 30 March 1964, 31 March 1964 and 2 April 1964. These agreements were subsequently extended to apply to the present United Nations Mediator, Mr. Galo Plaza, and his staff.

II

Permanent Mission of the Republic of Cyprus
to the United Nations
165 East 72nd Street
New York 21, N. Y.

30 March 1964

Excellency,

With reference to your letter of 27 March 1964, I have the honour to inform you that the Government of Cyprus agrees to extend to Mr. Tuomioja and his staff, for the duration of their assignment, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys. The appropriate authorities are being notified accordingly.

Accept, Excellency, the assurances of my highest consideration.

Spyros KYPRIANOU
Minister of Foreign Affairs
for the Republic of Cyprus

His Excellency
U Thant
Secretary-General
United Nations
New York, N. Y.

The exchanges of letters between the United Nations and the Governments of Greece, Turkey and the United Kingdom are similar to the above exchange of letters.

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.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1964, 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:[2]

[1] United Nations, *Treaty Series*, vol. 33, p. 261.

[2] 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.

State		*Date of receipt of instrument of accession or notification*	*Specialized agencies*
Algeria	Accession	25 March 1964	WHO, ICAO, ILO, FAO, UNESCO, BANK, FUND, UPU, ITU, WMO, IMCO
Congo (Democratic Republic of)	Accession	8 December 1964	WHO, ICAO, ILO, FAO, BANK, FUND, UPU, ITU, WMO, IFC, IDA, UNESCO
Cyprus	Notification of succession [1]	6 May 1964	WHO, ICAO, ILO, FAO, UNESCO, UPU, ITU, WMO, IMCO
Rwanda	Accession	15 April 1964	WHO, ILO, UNESCO, ITU, UPU, WMO
	Notification	23 June 1964	BANK, FUND, IDA
Yugoslavia	Notification	8 April 1964	FAO—revised text of annex II, IMCO, IFC, IDA

As of 31 December 1964, fifty States were parties to the Convention.

2. INTERNATIONAL LABOUR ORGANISATION

(*a*) Agreement between the Government of Ethiopia and the ILO concerning the establishment of an office of the ILO in Addis Ababa.[2] Signed at Addis Ababa on 10 December 1964

Article 3

Juridical Personality

The I. L. O. Office shall possess juridical personality. It shall have the capacity—

(*a*) to contract;
(*b*) to acquire and dispose of movable property; and
(*c*) to institute legal proceedings.

Article 5

Property, Funds and Assets

(1) The I. L. O. Office, its property and its assets shall enjoy immunity from every form of legal process except in so far as in any particular case the International Labour Office has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

[1] By a communication received on 6 May 1964, the Government of Cyprus notified the Secretary-General of the United Nations that it considers itself bound by the present Convention, the application of which had been extended to its territory before the attainment of independence, in respect of the specialized agencies indicated here.

[2] Came into force on 10 December 1964.

(2) The premises and archives of the I. L. O. Office shall be inviolable and its official correspondence and communications not be subject to any form of censorship.

(3) The I. L. O. Office shall enjoy for its official communications treatment not less favourable than that accorded by the Government to any foreign Government including foreign diplomatic missions in Ethiopia.

(4) The I. L. O. Office may freely hold funds in non-Ethiopian currency; it may freely transfer those funds from Ethiopia to other countries.

(5) The I. L. O. Office, its assets, income and other movable property shall be exempt—

(*a*) from all direct taxes, it being understood, however, that no claim of exemption shall be made from taxes which are, in fact, no more than charges for public utility services;

(*b*) from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the I. L. O. Office for its exclusive official use; it is understood, however, that articles imported under such exemption will not be sold in Ethiopia except under conditions agreed with the Government;

(*c*) from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article 6

Status of the Staff

(1) The staff of the I. L. O. Office, excepting those who are assigned to hourly rates, shall enjoy in the territory of Ethiopia the following privileges, immunities and exemptions:

(*a*) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) immunity from national service obligations, provided that, with respect to Ethiopian nationals, such exemption shall be confined to the staff who by reason of their duties the Government agrees to their temporary deferment in the call-up to avoid interruption in the continuation of the essential work of the I. L. O. Office;

(*c*) immunity, together with members of their families, from immigration restrictions and alien registration;

(*d*) exemption for staff, other than Ethiopian nationals and permanent foreign residents of Ethiopia, from any form of direct taxation on income derived from sources outside Ethiopia;

(*e*) the right for the staff, other than Ethiopian nationals and permanent foreign residents, to take out of Ethiopia funds in non-Ethiopian currencies without any restrictions or limitations, provided that they can show good cause for their lawful possession of such funds. Nothing said in this provision shall, however, be interpreted to limit the right of members of the staff whatever their nationality or residence undertaking official missions outside Ethiopia to take with them funds in non-Ethiopian currencies provided by the I. L. O. for the fulfilment of these missions;

(*f*) exemption from import duty and other levies and from prohibitions and restrictions on imports for their furniture and personal effects within six months after first taking up their post in Ethiopia or their permanent appointment to them. This exemption includes one automobile upon first installation.

It is understood, however, that articles imported under such exemption will not be sold in Ethiopia except under conditions agreed with the Government;

(*g*) in addition to the immunities and privileges for which provision is made herein, the Director and Deputy Director of the I. L. O. Office shall have, in respect of themselves, their spouses and minor children, such privileges, exemptions and facilities as are accorded in international law and practice to diplomatic representatives of comparable rank. The Director and Deputy Director shall, for this purpose, be incorporated by the Imperial Ethiopian Ministry of Foreign Affairs into the Diplomatic List.

(2) The privileges and immunities for which provision is made in this Agreement are granted for the purpose of carrying out effectively the aims and purposes of the Organisation and not for the personal benefit of the staff of the I. L. O. Office. The Director of the I. L. O. Office shall have the right and the duty to waive the immunity of any member of the staff in any case where such immunity would impede the course of justice and can be waived without prejudice to the interests of the Organisation. In the case of the Director of the I. L. O. Office, the Director-General of the International Labour Office shall have the right to waive the immunity.

Article 7

"*Laissez-Passer*"

(1) The Government shall recognise and accept the United Nations *laissez-passer* issued to the staff of the I. L. O. Office and experts invited to the I. L. O. Office on official business as a valid travel document.

(2) The Government shall issue courtesy visas to such holders when their request is accompanied by a certificate that they are travelling on the business of the I. L. O. Office.

Article 8

Abuses of Privileges and Settlement of Disputes

(1) The I. L. O. Office and its staff shall co-operate at all times with the appropriate Ethiopian authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges and immunities granted by this Agreement. It shall for this purpose establish such rules and regulations as it may deem necessary and expedient, and pay due regard to any representation made by the Government.

(2) Any dispute between the Organisation and the Government concerning the interpretation or application of this Agreement and its Annex 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 named by the Organisation, one to be named by the Government and the third to be chosen by agreement of both parties, or, in case of failure, by the President of the International Court of Justice.

ANNEX TO THE AGREEMENT

In addition to the privileges, immunities and facilities enumerated in Article 6 of the Agreement, the staff of the I.L.O. Office shall be accorded the following facilities and exemptions:

1. Repatriation facilities in time of international crises, together with members of their families, as would be accorded to the staff of other international organisations resident in Ethiopia.

2. Exemption for staff, other than Ethiopian nationals and permanent foreign residents of Ethiopia, from taxation on salaries, emoluments and indemnities paid to them by the International Labour Office.

It is understood, however, that the restriction "other than Ethiopian nationals and permanent foreign residents of Ethiopia", would not be applicable until such a time as Ethiopian nationals and permanent foreign residents of Ethiopia, presently employed by other international organisations, would be subjected to similar restrictions.

(*b*) Agreement between the Government of Uruguay and the ILO concerning the establishment of an Inter-American Vocational Training Research and Documentation Centre.[1] Signed at Montevideo on 16 December 1963

Article 3

The Government will grant to the Centre and to the personnel employed by the Director-General of the ILO the privileges and immunities provided for by the Convention on the Privileges and Immunities of the Specialized Agencies.

Article 5

The Government shall take all necessary measures to facilitate, within the national territory, the entry, exit and residence of all persons officially participating in the activities of the Centre, including those holding fellowships.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Agreement on co-operation between the African Institute of Economic Development and Planning and UNESCO.[2] Signed at Paris on 7 February 1964 and at Dakar on 6 March 1964

14. It is understood that the appropriate clauses of the agreement providing for the privileges and immunities of the Institute and of its staff members will cover the staff members of the Educational Planning Section [established within the Institute by UNESCO and the Institute], visiting experts, participants at meetings and seminars on the subject, as well as any equipment provided by UNESCO.

(*b*) Agreement between the Government of the Ivory Coast and UNESCO concerning the Regional Conference on the Planning and Organization of Literacy Programmes in Africa and the Conference of Ministers of Education of African Countries. Signed at Paris on 17 January 1964

IV. *Privileges and immunities*

The Government of the Republic of the Ivory Coast, which is a party to the Convention on the Privileges and Immunities of the Specialized Agencies and to annex IV to the said Convention, shall apply the provisions of the Convention and of the said annex to the said conferences. It shall impose no restrictions on the entry into and stay in its territory of persons of whatsoever nationality who are to participate in an official capacity in the said conferences.

[1] Came into force on 16 December 1963.

[2] Came into force on 6 March 1964.

V. *Damage and accidents*

In respect of damage caused to the premises and furniture made available to the Organization in connexion with the two conferences and accidents suffered by the participants and members of the Secretariat in the said premises, the liability incurred respectively by the Government of the Republic of the Ivory Coast and the Organization shall be as follows:

During the period when the said premises are made available to the Organization, the Government of the Republic of the Ivory Coast shall be liable for any damage to the premises, furniture and equipment and for any accidents suffered by the users within the said premises. On the other hand, the Organization shall make no objection to such measures as the Ivory Coast authorities may see fit to take with a view to the protection of the premises, furniture and equipment, especially against fire and theft.

(*c*) Letter constituting an agreement between the Government of France and UNESCO concerning the organization of the International Conference on Youth (Grenoble, 23 August-1 September 1964).[1] Signed at Paris on 7 and 29 February 1964

5. *Privileges and immunities*

The Government of the French Republic shall accord, in connexion with the said Conference, the privileges, immunities and facilities provided for in the Agreement regarding the Headquarters of UNESCO and the Privileges and Immunities of the Organization on French Territory, signed at Paris on 2 July 1954. In particular, it shall impose no restrictions on the entry into and stay in its territory of persons of whatsoever nationality who are to participate in an official capacity in the said Conference. The French Government shall also accord all other privileges and facilities required in order to ensure that the work of the Conference proceeds properly.

6. *Damage and accidents*

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

(*d*) Agreement between the Government of the Union of Soviet Socialist Republics and UNESCO concerning an inter-disciplinary meeting of experts on the biological aspects of the racial issue (Moscow, 12-18 August 1964).[2] Signed at Paris on 30 April and 8 June 1964

IV. Privileges and immunities

[Similar to article IV in (*b*) above]

(*e*) Agreement between the Government of the United Arab Republic and UNESCO concerning the Regional Conference on the Planning and Organization of Literacy Programmes in the Arab States (Alexandria, 10-18 October 1964).[3] Signed at Paris on 18 March 1964 and at Cairo on 1 June 1964

[1] Came into force on 29 February 1964.

[2] Came into force on 8 June 1964.

[3] Came into force on 1 June 1964.

3. *Privileges and immunities*

[Similar to article IV in (*b*) above]

4. *Damage and accidents*

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

(*f*) Agreement between the Government of Nigeria and UNESCO concerning the Conference on Research and Training related to Natural Resources in Africa (28 July-6 August 1964).[1] Signed at Paris on 15 April 1964 and at Lagos on 13 May 1964

3. *Privileges and immunities*

[Similar to article IV in (*b*) above]

4. *Damage and accidents*

The Government of Nigeria shall be responsible for dealing with any claims which may be brought by third parties against UNESCO, against its personnel, or against other persons performing services under this Agreement, and shall hold UNESCO and the above-named persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by UNESCO and the Government of Nigeria that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

(*g*) Agreement between the Government of Ghana and UNESCO concerning the Meeting of Directors of Educational Documentation Centres, Educational Research Institutes and Audio-Visual Services in Africa. Signed at Paris on 28 April 1964

3. *Privileges and immunities*

[Similar to article IV in (*b*) above]

(*h*) Agreement between the Government of the Union of Soviet Socialist Republics and UNESCO concerning the meeting of a joint group of experts on Photosynthetic Radiant Energy.[2] Signed at Paris on 30 July 1964 and at Moscow on 7 August 1964

The Government shall also apply to UNESCO, its officials and experts, the privileges and immunities provided in the Convention on the Privileges and Immunities of the Specialized Agencies, subject to Annex IV thereof, it being understood in particular that no restriction shall be imposed upon the rights of entry into, sojourn in, and departure from the territories of the Soviet Union of any persons participating in this meeting, without distinction of nationality.

[1] Came into force on 13 May 1964.

[2] Came into force on 7 August 1964.

(*i*) Agreement between the Government of Japan and UNESCO concerning the Regional Training Course in Theoretical and Applied Electronics.[1] Signed at Paris on 10 September 1964 and at Tokyo on 7 October 1964

This agreement contains provisions similar to those cited in (*h*) above.

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4. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Agreement on the Privileges and Immunities of the IAEA.[2] Approved by the Board of Governors of the IAEA on 1 July 1959

No instruments of acceptance of this agreement were deposited in 1964.

(*b*) Agreement between the IAEA and the Government of Italy concerning the establishment of an international centre for theoretical physics at Trieste.[3] Rome, 11 October 1963

Article VIII

Privileges and immunities

Section 20. In connection with the Centre the Government shall apply the Agreement on the Privileges and Immunities of the Agency to the extent that its provisions are applicable to this Agreement.

Section 21.

(*a*) The Government recognizes the inviolability of the Centre.

(*b*) Except as otherwise provided in this Agreement, the laws of the Italian Republic shall apply within the Centre.

(*c*) Except as otherwise provided in this Agreement, the courts of the Italian Republic shall have jurisdiction, as provided by law, over acts done and transactions taking place in the Centre.

(*d*) No officer or official of the Italian Republic, or other person exercising any public authority within the Italian Republic, shall enter the Centre to perform any duties therein except with the consent of, and under conditions approved by, the Director General of the Agency. The service of legal process, including the seizure of private property, may take place within the Centre only with the consent of, and under conditions approved by, the Director General of the Agency.

(*e*) The Agency shall prevent the Centre from being used as refuge by persons who are avoiding arrest under any law of the Italian Republic, required by the Government for extradition to another country, or endeavouring to avoid service of legal process.

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[1] Came into force on 7 October 1964.

[2] United Nations, *Treaty Series*, vol. 374, p. 147.

[3] On 20 November 1963, the Director General of the IAEA informed the Italian Government, pursuant to Section 29 of the agreement, that on the part of the IAEA all the necessary formalities for its entry into force had been completed. By a communication of 21 February 1964, the Italian Government undertook to apply the agreement *de facto*.

The provisions of sub-paragraphs (*a*), (*d*) and (*e*) shall not apply to the living quarters provided for the Centre's staff and fellows.

Section 22. The Government recognizes the right of the Agency to convene meetings at the Centre or, with the concurrence of the appropriate Italian authorities, elsewhere in the Italian Republic. At all meetings convened by the Agency, the Government shall take all appropriate steps to ensure that no impediment is placed in the way of full freedom of discussion.

Section 23. In accordance with section 8 of the Agreement on the Privileges and Immunities of the Agency, the Agency 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 on the understanding that the number of such vehicles shall at no time exceed 2 (two). The Government shall grant allotments of gasoline or other required fuel and lubricating oils for each such vehicle in the quantities and at the rates prevailing for members of diplomatic missions in the Italian Republic.

Section 24. Provided he comes within the category of officials referred to in section 20 of the Agreement on the Privileges and Immunities of the Agency, the Director of the Centre shall be accorded privileges and immunities, exemptions and facilities not less than those accorded by the Government to members of the Diplomatic Corps.

Section 25. In addition to the privileges and immunities they enjoy under the Agreement on the Privileges and Immunities of the Agency, officials of the Agency shall enjoy the following privileges and immunities within and with respect to the Italian Republic:

(*a*) Immunity from seizure of their personal baggage and any official baggage carried by them;

(*b*) As regards income derived from sources outside the Italian Republic, officials who are not Italian citizens shall be regarded as resident for fiscal purposes in their country of origin and shall not be under an obligation to submit tax returns in respect of such income;

(*c*) For officials who are not Italian citizens, freedom to maintain foreign currency accounts and at the termination of their employment in the Centre the right to take out of the Italian Republic, through authorized channels, without prohibition or restriction, and in the same currencies, the amounts standing to the credit of such accounts;

(*d*) The right, within six months of first taking up their posts in the Italian Republic, to import their furniture and effects, including one automobile each, in one or more shipments, free of duty and all prohibitions and restrictions on imports;

(*e*) All officials of the Agency shall receive from the Government a special card certifying the fact that they are officials of the Agency.

Section 26. Fellows shall enjoy exemption from any form of direct taxation on their fellowship grant, provided it is paid to them by the Agency or from any other non-Italian source.

Section 27.

(*a*) The appropriate Italian authorities shall impose no impediment to transit to or from the Centre of officials of the Agency, their families and members of their households and shall provide them with any necessary visas without charge and as promptly as possible as well as affording them any necessary protection in transit.

(*b*) The Director General and the appropriate Italian authorities shall, at the request of either of them, consult as to methods of facilitating entrance into the Italian Republic by persons coming from abroad who have to visit the Centre and who do not enjoy the privileges conferred by sub-paragraph (*a*) but fall into one or other of the following categories:

(i) Fellows of the Centre and their families;

(ii) Any other persons visiting the Centre on official business.

Any visas required by these persons shall be granted without charge.

(*c*) Nordic mutual emergency assistance agreement in connection with radiation accidents concluded between the IAEA[1] and the Governments of Denmark,[2] Finland,[3] Norway[1] and Sweden.[1] Signed at Vienna on 17 October 1963

Article IV

Liability

1. The Requesting State shall bear all risks and claims resulting from, occurring in the course of or otherwise connected with, the assistance rendered on its territory and covered by this Agreement. In particular, the Requesting State shall be responsible for dealing with claims which might be brought by third parties against the Assisting Party or personnel. Except in respect of liability of individuals having caused the damage by wilful misconduct or by gross negligence, the Requesting State shall hold the Assisting Party or personnel harmless in case of any claims or liabilities in connection with the assistance.

2. The Requesting State shall compensate the Assisting Party for the death of, or temporary or permanent injury to, personnel, as well as for loss of, or damage to, non-perishable equipment or materials, caused within its territory in connection with the assistance.

3. The Assisting State shall bear all risks and claims in connection with damage or injury occurring in its own territory.

4. The Requesting and the Assisting States shall be released from their obligations under paragraphs 1-3 to the extent that the damage is covered by an operator of a nuclear installation who is liable for nuclear damage under the applicable national law.

5. The provisions of this Article shall not prejudice any recourse action under the applicable national law, except that recourse actions can be brought against assisting personnel only in respect of damage or injury which they have caused by wilful misconduct or gross negligence.

Article VI

Facilities, Privileges and Immunities

The Requesting State shall afford, in relation to the assistance, the necessary facilities, privileges and immunities with a view to securing the expeditions performance of functions under this Agreement. In relation to assistance provided by the International Atomic Energy Agency, the Requesting State shall apply the Agreement on the Privileges and Immunities of the Agency.

[1] Came into force between the IAEA, Norway and Sweden on 19 June 1964.

[2] Came into force in respect of Denmark on 17 August 1964.

[3] Not in force as of 31 December 1964 in respect of Finland.

(*d*) Agreement between the IAEA and the Government of Argentina for assistance by the IAEA to Argentina in establishing a research and isotope production reactor project.[1] Signed at Vienna on 2 December 1964

Article VI

Agency inspectors

Section 9. The provisions relating to Agency inspectors shall be those set forth in the Annex to Agency document GC(V)/INF/39.[2] Argentina shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency to Agency inspectors and to any property of the Agency used by them in carrying out their functions.

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[1] Came into force on 2 December 1964.

[2] Section IV of this Annex reads as follows:

IV. *The privileges and immunities of the Agency's inspectors*

13. Agency inspectors shall be granted the privileges and immunities necessary for the performance of their functions. Suitable provision shall be included in each project or safeguards agreement for the application, in so far as relevant to the execution of that agreement, of the provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency excepting Articles V and XII thereof, provided that all parties to the project or safeguards agreement so agree.

14. Disputes between a State and the Agency arising out of the exercise of the functions of Agency inspectors will be settled according to an appropriate disputes clause in the pertinent project or safeguards agreement.

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. GENERAL ASSEMBLY (NINETEENTH SESSION)—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[1]

[*Rapporteur:* Mr. Hans Blix (Sweden)]

[*Original text: English*]

[*16 November 1964*]

MAIN HEADINGS

[1] Document A/5746.

Chapter I

INTRODUCTION

1. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established pursuant to General Assembly resolution 1966 (XVIII) of 16 December 1963, hereby submits its report to the General Assembly. This report is organized as follows: the introduction describes the establishment, terms of reference and organization of the session of the Special Committee; chapter II summarizes general remarks made in the Committee concerning the four principles of international law referred to it by the General Assembly in its resolution 1966 (XVIII) and concerning the task of the Committee; chapters III, IV, V and VI deal separately with the four principles setting out, in each case, first the written proposals and amendments submitted to the Committee, secondly an account of the debate in the Committee and thirdly the decisions of the Committee on each principle; chapter VII deals in the same manner with the question of methods of fact-finding, referred to the Special Committee by the General Assembly in its resolution 1967 (XVIII) of 16 December 1963.

A. *Tribute to the President, Government and people of Mexico*

2. At the outset of its report, the Special Committee wishes to place on record its deep gratitude to the President, Government and people of Mexico through whose most generous hospitality the Special Committee was enabled to hold its session in Mexico City. In this respect, at the conclusion of its work, the Committee adopted by acclamation the following resolution (A/AC.119/L.35):

"*The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,*

"*Having completed* its deliberations in Mexico City,

"*Expresses its profound appreciation* to the President, the Federal Government, and the people of Mexico for their gracious invitation to meet in Mexico City and for the generous hospitality and notable participation in the Committee's work, which has contributed so fully to the accomplishment of the task of the Special Committee."

B. *Establishment and composition of the Special Committee*

3. 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" was included by the General Assembly in the agenda of its seventeenth and eighteenth sessions. General Assembly consideration of this item at these sessions resulted in the adoption, *inter alia*, of resolutions 1815 (XVII) of 18 December 1962, and 1966 (XVIII) and 1967 (XVIII) of 16 December 1963. By paragraph 1 of its resolution 1966 (XVIII), the General Assembly decided:

"... to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States composed of 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...".

The President of the General Assembly, pursuant to the above provision, appointed the following Member States to serve on the Special Committee (A/5689): *Afghanistan, Argentina, Australia, Cameroon, Canada, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden,*

Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and *Yugoslavia*. Before the convening of the session of the Special Committee, *Afghanistan* informed the Secretary-General that, for unavoidable reasons, it was compelled to resign from membership in the Committee. The President of the General Assembly thereupon appointed *Burma* to replace Afghanistan in order to complete the membership of the Special Committee (A/5727). By letter of 2 September 1964, *Cameroon* informed the Secretary-General that it would be unable to participate in the session of the Special Committee.

4. In paragraph 2 of its resolution 1966 (XVIII), the General Assembly recommended the "Governments of the States designated members of the Special Committee, in view of the general importance and the technical aspect of the item, to appoint jurists as their representatives on the Special Committee." The list of representatives to the Special Committee, appointed in the light of this provision, is contained in annex I [*not reproduced*] to the present report.

C. *Terms of reference of the Special Committee*

5. At the seventeenth session of the General Assembly, the Assembly resolved, by operative paragraph 2 of its resolution 1815 (XVII):

"... 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...".

It decided, accordingly, in operative paragraph 3 of the same resolution, to study four such principles at its eighteenth session, 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;

"(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; and

"(*d*) The principle of sovereign equality of States."

These principles were referred to the Special Committee by the General Assembly, resolution 1966 (XVIII) providing, in operative paragraph 1, that the Committee would:

"... draw up a report containing, for the purpose of the progressive development and codification of the four principles so as to secure their more effective application, the conclusions of its study and its recommendations, taking into account in particular:

"(*a*) the practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations;

"(*b*) the comments submitted by Governments on this subject in accordance with paragraph 4 of resolution 1815 (XVII);

"(*c*) the views and suggestions advanced by the representatives of Member States during the seventeenth and eighteenth sessions of the General Assembly."

6. To assist the Committee in its task, the General Assembly requested the Secretary-General, in operative paragraph 4 of resolution 1966 (XVIII), to furnish it with certain documentation. In compliance with this request the Secretary-General provided the Committee, *inter alia*, with:

(*a*) A systematic summary of the comments, statements, proposals and suggestions of Member States in respect of the consideration by the General Assembly of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/AC.119/L.1 and Corr.1).

(*b*) A summary of the practice of the United Nations and of views expressed in the United Nations by Member States in respect of four of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/AC.119/L.2 and Corr.1).

The Committee also had available to it the comments from Governments on the four principles concerned (A/5725 and Add.1-6), the relevant records of the Sixth Committee and the General Assembly at the sixteenth,[2] seventeenth,[3] and eighteenth[4] sessions of the Assembly, and selected background documentation prepared by the Secretariat (A/C.6/L.537/Rev.1 and Corr.1).

7. In addition to the mandate conferred on the Special Committee by resolution 1966 (XVIII), the General Assembly also requested it, by resolution 1967 (XVIII), to include in its deliberations the question of methods of fact-finding. This resolution reads, in part, as follows:

"*The General Assembly*,

"*Taking into account* that, with regard to methods of fact-finding in international relations, a considerable practice is available to be studied for the purpose of the progressive development of such methods,

"*Believing* that such a study might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek other peaceful means of settlement of their own choice,

. . .

"3. *Requests* the Special Committee to include in its deliberations the subject-matter mentioned in the last preambular paragraph of the present resolution."

8. Comments submitted by Governments, pursuant to operative paragraph 1 of the above resolution, were placed before the Special Committee in documents A/5725 and Add. 1-6, and a report of the Secretary-General on methods of fact-finding, requested in operative paragraph 2 of the same resolution, was made available to the Committee in document A/5694.

D. *Organization of the session of the Special Committee*

9. After the conclusion of the eighteenth regular session of the General Assembly, the Government of Mexico, as already mentioned in paragraph 2 above, extended to the Special Committee, through the Secretary-General, an invitation to hold its session in Mexico City. After informal consultations between the Secretary-General and the States members of the Special Committee, it was decided to accept this invitation and, in consulta-

[2] *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70; *ibid., Sixth Committee*, 713th to 730th meetings; *ibid., Plenary Meetings*, 1081st meeting.

[3] *Ibid., Seventeenth Session, Annexes*, agenda item 75; *ibid., Sixth Committee*, 753rd to 774th and 777th meetings; *ibid., Plenary Meetings*, 1196th meeting.

[4] *Ibid., Eighteenth Session, Annexes*, agenda item 71; *ibid., Sixth Committee*, 802nd to 825th, 829th and 831st to 834th meetings; *ibid., Plenary Meetings*, 1281st meeting.

tion with the host State, a five-week session of the Committee was determined upon, to take place between 27 August and 1 October 1964.

10. The Committee held forty-three meetings in the course of its session. At its first meeting, on 27 August 1964, it elected the following officers:

Chairman: Mr. A. García Robles (Mexico)
First Vice-Chairman: Mr. Vratislav Pěchota (Czechoslovakia)
Second Vice-Chairman: Mr. K. Krishna Rao (India)
Rapporteur: Mr. Hans Blix (Sweden).

The Secretary-General of the United Nations was represented by Mr. C. A. Stavropoulos, Under-Secretary, Legal Counsel. Mr. C. A. Baguinian, Acting Director of the Codification Division of the Office of Legal Affairs, served as Secretary.

11. At its second meeting, on 28 August 1964, the Special Committee agreed on a tentative plan of work (A/AC.119/4) designed to allow for the consideration, in the time available to it, of all four principles of international law before it, as well as the question of methods of fact-finding. Under this plan of work, the Committee agreed to adopt a *seriatim* approach to the four principles and other matters before it, and to attempt to complete its work on each principle and on the question of methods of fact-finding within a certain number of meetings separately allocated to all these topics. The Committee also agreed to give early consideration to the establishment of a Drafting Committee.

12. At its fifteenth meeting, on 8 September 1964, the Special Committee adopted the following resolution (A/AC.119/5):

"*The Special Committee*

"*Decides* to establish a Drafting Committee composed of fourteen members with the following terms of reference:

"When the discussion of a subject has been completed, the Drafting Committee should consider the proposals, amendments and records of the Special Committee.

"On each principle and on the question of fact-finding, the Drafting Committee should have the task of preparing, without voting:

"(1) a draft text formulating the points of consensus; and

"(2) a list itemizing the various proposals and views on which there is no consensus but for which there is support.

"As envisaged by the plan of work (A/AC.119/4), the drafts formulated by the Drafting Committee on each subject should be distributed to the Special Committee as soon as they have been prepared. They will be considered together by the Special Committee, at the time reserved in the plan of work for their discussion in the Special Committee, for possible inclusion in its report to the General Assembly."

The Special Committee also decided, at the same meeting, that the members of the Drafting Committee and its Chairman should be appointed by the Chairman of the Special Committee. The Chairman announced, at the nineteenth meeting of the Special Committee, on 10 September 1964, that the Drafting Committee would be composed of the representatives of the following fourteen members of the Special Committee: *Argentina*, *Australia*, *Burma*, *Czechoslovakia*, *France*, *Ghana*, *Italy*, *Lebanon*, *Mexico*, *Nigeria*, *Union of Soviet Socialist Republics*, *United Kingdom of Great Britain and Northern Ireland*, *United States of America* and *Yugoslavia*. He further stated that *Italy* would serve on the Drafting Committee during its consideration of the four principles, but would be replaced by the *Netherlands* during the Drafting Committee's consideration of the question of methods of fact-finding.

Finally, the Chairman announced that the Drafting Committee would meet under the chairmanship of Mr. A. Fattal (Lebanon), and that the Rapporteur of the Special Committee would be permitted to attend sessions of the Drafting Committee as an observer.

13. At its thirty-fourth meeting, on 24 September 1964, the Special Committee reviewed the plan of work (A/AC.119/4) it had adopted (*see* para. 11 above) in the light of the progress achieved. It decided to revise the number of meetings and dates allocated to certain matters still outstanding and agreed that the Committee should extend its session by a further day, namely until and including 2 October 1964.

14. In view of the fact that the proposals relating to fact-finding which were submitted to the Special Committee, and which took the form of draft resolutions, were of a procedural and not of a substantive character, the Special Committee decided, at its thirty-seventh meeting, on 29 September 1964, that these proposals, instead of being referred to the Drafting Committee, should be studied by a working group, composed of *Guatemala, the Netherlands and the United Arab Republic*, which should endeavour to submit to the Special Committee a single draft resolution acceptable to all the sponsors of the original proposals (*see* para. 375 below).

15. At its thirty-eighth meeting, on 29 September 1964, the Special Committee considered further the manner in which the Drafting Committee should, as required in its terms of reference (*see* para. 12 above), prepare the list itemizing proposals and views on which there was no consensus but for which there was support. On the proposal of the Chairman, the Special Committee decided that the list should be prepared in the manner followed in the present report.

Chapter II

GENERAL COMMENTS ON THE PRINCIPLES REFERRED TO THE SPECIAL COMMITTEE AND ON THE TASK OF THE COMMITTEE

A. *General comments on the principles referred to the Special Committee*

16. It was generally agreed that the four principles referred to the Special Committee by the General Assembly in its resolution 1966 (XVIII) constituted corner-stones of peaceful relations among States. Far from being subordinate branches of international law, they were its very heart, and binding upon all States as general principles of law. They were also basic to a true understanding of the meaning of the Charter. It was said that the "consideration of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter" was perhaps the most important item ever discussed by the Sixth Committee of the General Assembly, and that the Special Committee must approach its task with this in mind.

17. It was further said that only through the application of the principles before the Special Committee could world peace be established and the scourge of war eliminated. Peaceful coexistence and co-operation among nations regardless of differences in their social and economic systems was the only basis on which peace and security could rest. Conditions were now propitious for strengthening peace and peaceful coexistence through the codification and progressive development of international law, and, more particularly, of its fundamental principles as expressed in the United Nations Charter and other instru-

ments of world significance. In these circumstances, the Special Committee could contribute to the universal observance of international law, which should be binding on all countries, large or small, weak or strong.

18. Representatives stressed the complexity of the four principles before the Special Committee, as they went to the very root of peaceful relations among States. They also emphasized the part played by those principles in determining the policies of their respective Governments, and expressed the hope that the Special Committee would spare no effort in seeking to strengthen and elucidate the principles before it.

B. *Task of the Special Committee*

19. The great majority of representatives commented upon their understanding of the task of the Special Committee, in the light of its terms of reference. Many of them were of the opinion that the results of the Committee's work should be embodied in a draft declaration or set of formulations for submission to the General Assembly. The view was also expressed that the formulations prepared by the Committee might eventually serve, when the General Assembly had completed its consideration of all the principles of international law concerning friendly relations and co-operation among States, as a basis for preparing separate conventions. A variety of views, however, were expressed on the scope and content of any declaration or formulations to be prepared by the Special Committee. These views are summarized below.

20. It was said, by some representatives, that if the Special Committee prepared a draft declaration, such a declaration should be more than a mere reiteration of the provisions of the Charter and should take account, as required in operative paragraph 1 of General Assembly resolution 1966 (XVIII), of the evolution that had occurred in international law during the past twenty years, both in the practice of States and of the United Nations and as a result of the work of the Sixth Committee at the seventeenth and eighteenth sessions of the General Assembly; it should also take account of the provisions of various multilateral treaties and of certain declarations of major international significance. Only by giving due weight to factors of the foregoing nature could the Special Committee properly discharge its function of presenting a report, under resolution 1966 (XVIII), which would contain the conclusions of its study and its recommendations "for the purpose of the progressive development and codification of the four principles so as to secure their more effective application." The Special Committee had functions to perform similar to those of the International Law Commission, under article 15 of its Statute, with respect to the codification and progressive development of international law. These functions also came expressly within the competence of the General Assembly under Article 13 of the Charter. As the International Law Commission and the General Assembly had found, it was virtually impossible to distinguish between codification and progressive development.

21. It was further argued that only by preparing concrete texts, for inclusion in conventions or a declaration, could the Special Committee secure the more effective application, as required by its terms of reference, of the four principles before it. Certain representatives stressed that the General Assembly had already recognized that the Charter was incomplete in certain respects, and could be supplemented by the adoption of Declarations codifying and developing certain Charter Articles, such as the Universal Declaration of Human Rights (General Assembly resolution 217 (III) A of 10 December 1948), the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960) and the Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 1904 (XVIII) of 20 November 1963). These Declarations had been adopted without anyone having objected that they were contrary to the Charter or violated the amendment procedures provided for in

Articles 108 and 109 of the Charter. It was further said that Declarations had proved to be of great practical importance and had, in some instances, become, through general acceptance, part of the common law of mankind.

22. Certain other representatives did not wholly share the foregoing views. While not ruling out the possibility of a declaration, some of these representatives expressed doubts about the utility of hasty declarations or statements which proclaimed in a non-binding fashion principles already binding upon States under the Charter. Where there had been failures on the part of the United Nations, this had not been due to lack of clarity of Charter principles or of their expression in detailed codes, but to the fact that certain States were not resolved to support any international system of law. In the absence of such a resolve, declarations or detailed formulations would have little utility in strengthening the application of the four principles before the Special Committee.

23. Some representatives also stressed that the Special Committee could not revise the Charter through the guise of "progressive development." If it sought to do so it would be acting outside its terms of reference and contrary to the provisions of the Charter which established procedures for amendment. It was further said that, on the pretext of spelling out the meaning of Article 2 of the Charter, certain representatives were attempting to add to it a number of entirely new concepts which themselves required definition and which in some cases were no more than political ideas. It was legitimate for the Special Committee to comment on and explain the four principles which the Assembly had asked it to study, but it could not go beyond that function to distort the meaning of the Charter. In drawing up its report, the Committee could express the opinion that the Charter suffered from certain deficiencies and compile a list of the points in which it no longer fully met the needs of the international community; but a clear distinction must be drawn between what was actually contained in the Charter and what was not. The Committee must always keep in mind the distinction between the *lex lata* and the *lex ferenda.*

24. It was further said that declarations could be a useful method of making progress towards the development of new law in certain new and unknown fields, where Member States wished to break new ground: an example was the Declaration of Legal Principles governing the Activities of States in the Exploration and Use of Outer Space (General Assembly resolution 1962 (XVIII) of 13 December 1963). However, the Special Committee was dealing with principles enshrined in the very heart of the Charter. If it extended or distorted those principles beyond their true meaning, it would do violence to the Charter itself and members of the Committee should therefore show a high sense of responsibility and restraint and must carefully confine themselves to those elements of the principles which were universally acknowledged to be necessary and direct corollaries of the Charter principles.

25. It was also said that the task of the Special Committee differed from that of the International Law Commission, in that the latter traditionally prepared draft articles for ultimate adoption by States, whereas the Special Committee had been set up to study certain principles and present a report capable of adoption by the General Assembly. Resolutions of the General Assembly did not in themselves constitute international law, but they might represent an important step in the process of making international law. The most important element in the process of evolving international law was universality. Resolutions adopted by a mere majority did not show what international custom was; accordingly, the Committee's basic function in studying the four principles was to ascertain the area in which there was a consensus among delegations. The Committee should aim at producing a document indicating the area of consensus within the Committee and capable of unanimous adoption by the General Assembly. However, the proposals placed before the Committee showed wide areas of disagreement; and while stress should be laid on areas of agreement, it was important also that matters on which there was no agreement should be recorded.

Chapter III

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

A. *Written proposals and amendments*

26. Written proposals concerning the first principle considered by the Special Committee, namely the principle indicated in the title of the present chapter, were submitted by *Czechoslovakia* (A/AC.119/L.6), by *Yugoslavia* (A/AC.119/L.7), by the *United Kingdom of Great Britain and Northern Ireland* (A/AC.119/L.8) and jointly by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15). On the submission of this latter joint proposal, *Yugoslavia*, as one of the co-sponsors, withdrew its original proposal. *Italy* introduced an amendment (A/AC.119/L.14) to the *United Kingdom* proposal. The texts of the foregoing proposals and amendment are set out below in the order of their submission to the Special Committee.

27. *Proposal by Czechoslovakia* (A/AC.119/L.6)

"*Prohibition of the threat of force or use of force in international relations*

"1. The threat of force 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, including the threat of force or use of force as a means of solution of territorial disputes and problems concerning frontiers between States, shall be prohibited.

"2. The planning, preparation, initiation and waging of a war of aggression shall constitute international crimes against peace giving rise to political and material responsibility of States and penal liability of the perpetrators of those crimes.

"3. Any propaganda for war, incitement to or fomenting of war and any propaganda for preventive war and for striking the first nuclear blow shall be prohibited. States shall take, within the framework of their jurisdiction, all measures, in particular legislative measures, in order to prevent such propaganda.

"4. States shall refrain from economic, political or any other form of pressure aimed against the political independence or territorial integrity of any State.

"5. The prohibition of the use of force shall not affect either the use of force pursuant to a decision of the Security Council made in conformity with the United Nations Charter or the rights of States to take, in the case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the United Nations Charter, or self-defence of nations against colonial domination in the exercise of the right to self-determination.

"6. In order to secure full effectiveness of the prohibition of the threat or use of force, States shall act in such a manner that an agreement for general and complete disarmament under effective international control will be reached as speedily as possible and will be strictly observed."

28. *Proposal by Yugoslavia* (A/AC.119/L.7)

"*The threat or use of force*

"1. The threat or use of force in any manner inconsistent with the Charter of the United Nations shall be eliminated from international relations and shall never be used as a means of settling international issues.

"2. States shall, accordingly, desist from resorting to, or relying upon, force in any of its forms in their relations with other States, and from exerting pressure, whether by military, political, economic, or any other means, against the political independence or territorial integrity of any other State.

"3. Any situation brought about by such means shall not be recognized.

"4. The prohibition of the use of force shall not affect either the use of collective measures pursuant to a decision of the Security Council or of the General Assembly made in conformity with the United Nations Charter, or the rights of States to take, in the case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the United Nations Charter, nor shall it affect the right of nations to self-defence against colonial domination in the exercise of the right of self-determination."

29. *Proposal by the United Kingdom* (A/AC.119/L.8) and *amendment by Italy* (A/AC.119/L.14)

Proposal by the United Kingdom
"*Threat or use of force*
"*Statement of principles*

"1. Every State has the duty to refrain in its 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.

"2. By the expression 'force' as used in paragraph 1 above is meant armed force. Armed force includes both the use by a Government of its regular naval, military or air forces and of irregular or volunteer forces.

"3. The prohibition of the threat or use of force embraces the duty of every State to refrain from organizing or encouraging the organization of armed bands within its territory or any other territory for incursions into the territory of another State.

"4. The prohibition of the threat or use of force embraces both the direct and indirect use of force. Accordingly, every State is under a duty to refrain from fomenting civil strife or committing terrorist acts in another State, or from tolerating organized activities directed towards such ends.

"5. The use of force is lawful when undertaken by or under the authority of a competent United Nations organ, including in appropriate cases the General Assembly, acting in accord with the Charter, or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence."

"*Commentary*

"(1) Paragraph 1 reproduces verbatim, in the form of a statement of the duties of States, the language of Article 2, paragraph 4, of the Charter; this is the basic principle enshrined in the Charter from which the other subsidiary principles set out in paragraphs 2 to 5 necessarily flow. Article 2, paragraph 4, of the Charter cannot, however, be viewed and interpreted in isolation. It must be considered in the context of the Charter as a whole, bearing in mind the purposes and principles stated in the Preamble and in Articles 1 and 2 as well as the provisions of Chapters VI and VII and notably Article 51. In particular, there is a clear and vital connexion between Article 2, paragraph 4, and Article 39 which deals with any 'threat to the peace, breach of the peace, or act of aggression'. The phrase 'threat or use of force' as used in Article 2, paragraph 4, is not wholly co-extensive with the language of Article 39, but the practice of the United Nations shows clearly that allegations of violations of the principle enshrined in Article 2, paragraph 4, have almost invariably been framed

in terms of Article 39. The powers and functions of the Security Council under Chapters VI and VII of the Charter in relation to the maintenance and restoration of international peace and security cover much wider ground that is comprehended within Article 2, paragraph 4, of the Charter; but it is nevertheless beyond dispute that the machinery set up under Chapters VI and VII of the Charter whereby the Security Council carries out its primary responsibility for the maintenance and restoration of international peace and security constitutes the framework within which allegations of violations of the basic principle prohibiting the threat or use of force can be investigated and determined.

"(2) Paragraph 2 explains what is meant by the term 'force'. The *travaux préparatoires* of the San Francisco Conference indicate that, in the context of Article 2, paragraph 4, of the Charter, the expression 'force' means physical force or armed force and does not include economic or political pressure. The second sentence of this paragraph incorporates the well-established principle that the use of irregular forces or volunteers under Government control in order to participate in a military campaign or to support active rebel groups constitutes a use of force within the meaning of the general prohibition in paragraph 1.

"(3) Paragraph 3 deals with the case where the threat or use of force results from the connivance or collusion by the authorities of a State in activities whereby armed bands are organized on its territory or permitted to use its territory as a base for the purpose of effecting incursions into the territory of another State. The principle imputing responsibility to any State which organizes or encourages such activities is clearly established, although, in particular cases, it may not always be easy to determine the true facts of the situation.

"(4) Paragraph 4 deals with another aspect of what is sometimes referred to as 'indirect aggression'. A definitive list of the actions which might be considered to fall within the concept of 'indirect aggression' would however be impossible to compile since it would of necessity have to deal with the whole range of subversive activities which may take many forms. Hence, the well-established principle which imputes responsibility of any State which engages in such activities is expressed in generalized terms, and its application in particular cases may give rise to differences of view because of the inherent difficulty of establishing the facts of the situation.

"(5) Paragraph 5 sets out in a non-exhaustive manner the principal circumstances in which the use of force is lawful. It is based on and reflects a number of provisions in the Charter, including Article 2, paragraph 4, and Article 10 and Chapters VII and VIII. Circumstances in which force may be used vary widely and an exhaustive definition of them would be impracticable.

"(6) The necessary complement to the prohibition of the threat or use of force is the duty of every State to settle its international disputes by peaceful means in such a manner that international peace and security and justice are not endangered."

30. The *amendment* (A/AC.119/L.14) submitted by *Italy* to the *United Kingdom* proposal was to the effect that the following paragraph 6 should be added to the Statement of Principles:

"6. In order to ensure effectiveness of the prohibition of the threat or use of force in international relations, States shall endeavour to make the United Nations security system more effective and shall comply fully and in good faith with the obligations placed upon them by the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security."

It was further explained in the amendment that, while it was in principle advanced to the *United Kingdom* proposal, it should also be understood, should that proposal not be adopted, as an addition to both the proposals of *Czechoslovakia* (new paragraph 7) and of *Yugoslavia* (new paragraph 5).

31. *Proposal by Ghana, India and Yugoslavia* (A/AC.119/L.15)

"*The threat or use of force*

"1. Every State has the duty to refrain in its international relations from 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; such threat or use of force shall be eliminated from international relations and shall never be used as a means of settling international issues.

"2. The term 'force' shall include:

"(*a*) the use by a State of its regular naval, military or air forces and of irregular or voluntary forces;

"(*b*) other forms of pressure, which have the effect of threatening the territorial integrity or political independence of any State.

"Any situation brought about by such means shall not be recognized.

"3. The prohibition of the use of force shall not affect either the use of force pursuant to a decision by a competent organ of the United Nations made in conformity with the Charter, or the rights of States to take, in case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter, or the right of peoples to self-defence against colonial domination in the exercice of their right to self-determination.

"4. No threat or use of force shall be permitted to violate the existing boundaries of a State and any situation brought about by such threat or use of force shall not be recognized by other States.

"5. Nothing in the present chapter shall authorize any State to undertake acts of reprisal."

B. *Debate*

1.—General comments

32. In their general comments on the principle which forms the subject of this chapter, representatives agreed that it represented a peremptory norm of international law, binding upon all States. Various representatives traced the history and development of the principle in their respective national cultures and legislation and they cited examples of its embodiment in particular or general international conventions to which they were parties and in international declarations to which they had subscribed. Reference was made, *inter alia*, to the Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, The Hague, 1907; the Treaty for the Renunciation of War, Paris, 1928 (the Kellogg-Briand Pact); the Anti-War Treaty of Non-Aggression and Conciliation, Rio de Janeiro, 1933; the Charter of the Organization of American States, Bogota, 1948, and the Charter of the Organization of African Unity, Addis Ababa, 1963; the Act of Chapultepec, Mexico City, 1945; the Declaration on World Peace and Co-operation, Bandung, 1955 (Bandung Declaration); the Declaration of the Heads of State or Government of Non-aligned Countries, Belgrade, 1961 (Belgrade Declaration), and the Declaration of the Council of the Heads of African States or Governments, Cairo, June 1964.

33. The history of the development of the principle was also traced by a number of representatives. It was said that the prohibition of the use or threat of force was the outcome of a long process of development. In the earlier development of international law, the question of the legality of war had not arisen. However, as the field of decision of States with respect to recourse to war had been narrowed by instruments such as the Covenant of the League of Nations and the Kellogg-Briand Pact, there had been an increas-

ing centralization in international society of the power of decision regarding war and peace. The Charter represented a particularly great step forward, in that it extended the prohibition on recourse to aggressive wars, established in the Kellogg-Briand Pact, to the use of force in general and even to the threat of the use of force. Moreover, the Charter went further than any other previous international instrument in depriving individual States of the power of deciding whether their actions at the international level involving the use of force were founded in law, the existence of the United Nations signifying, above all other factors, the political and legal centralization of such power for the purpose of maintaining peace. Not only did the Charter vest the power of decision in bodies representing the international community, but also vested in them the power of enforcement through the right to decide upon and apply sanctions. However, certain representatives stated, under the Charter system the centralization of powers of decision and action was not complete as the system of collective security, laid down in the Charter, depended, in the last analysis, upon the voluntary co-operation of Member States if it were to function. In order to remedy the limitations and imperfections of the Charter system, it had been realized, at the time that the Charter was drafted, that an exception would have to be made in favour of States by authorizing them to use force in cases of self-defence as defined and limited by the Charter. It was also said by some representatives that the only organ which is competent to take decisions regarding enforcement action is the Security Council and that the right of self-defence exists under Article 51 only in the case of an armed attack.

34. It was stressed that, in defining the rights and duties of States with respect to the prohibition on the threat or use of force, Article 2, paragraph 4, of the Charter could not be interpreted in isolation, but must be taken within the totality of the related rights and duties established in the Charter. The prohibition of the resort to force in Article 2, paragraph 4, was balanced on the one hand by the positive duty incumbent upon Member States under Article 2, paragraph 3, to settle disputes by peaceful means and by the powers vested in United Nations bodies in Chapter VI of the Charter with respect to the pacific settlement of disputes, and, on the other hand, by the powers granted the Organization —particularly the Security Council in Chapter VII of the Charter—to maintain or restore international peace and security.

35. It was also stressed that the prohibition on the threat or use of force must be interpreted today in the light of developments since the Charter was drafted. It was necessary to take into account the practice of the United Nations with respect to that prohibition and the role which the Organization had played in interpreting the law in each particular case and in taking the necessary action in seeking to restore or maintain peace. One representative said, in this respect, that to formulate general rules might detract from the competence of the Organization and reduce its contribution in the interpretation, application and development of Charter principles. It was further said that, in addition to practice under the Charter, account must also be taken of international instruments concluded since the Charter and embodying similar principles. Finally, it was necessary to give due weight to the changes of the last twenty years. In this latter respect, reference was made to the collapse of the colonial system, the emergence of the newly independent States, the development and progress of the socialist countries, and the great advances in science and technology, particularly in the field of the atom and the exploration of outer space.

2.—Meaning of the term "in their international relations"

36. While no written proposals were submitted seeking to elucidate this point, several representatives commented upon the term "in their international relations" as it appeared in Article 2, paragraph 4, of the Charter. Those who discussed the point generally agreed that the term had the effect of limiting the prohibition in Article 2, paragraph 4, to disputes between States. Thus the Charter did not prohibit disturbances and civil wars within any

particular State, or the use of force by that State in such disturbances or wars. However, difficulties of interpretation could arise if a particular group or community claimed international personality and recognition as a State, as such a group or community might invoke Article 2, paragraph 4, of the Charter and the right of self-defence while its adversary denied that it was entitled to do so.

3.—Meaning of the term "against the territorial integrity or political independence of any State"

37. A few representatives also commented upon their understanding of the meaning of the term "against the territorial integrity or political independence of any State" as contained in Article 2, paragraph 4, of the Charter. However, as in the case of the previous point, no written proposals were submitted attempting to define it. Some of these representatives said that the term in question did not limit or circumscribe the prohibition on the threat or use of force contained in the same Article. It had been inserted at San Francisco in order to guarantee the territorial integrity and political independence of small and weak States, and was not intended to mean that one State could use force against another on the pretext that it had no designs on the latter's territorial integrity or political independence but sought to maintain the established constitutional order or to protect a minority, or on any other pretext. It was also pointed out that force could not be exercised in the abstract; when used, it was directed against an international legal entity, including its political organization, population and territory.

38. One representative indicated his view that the interpretation of the term could give rise to difficulties. From the discussions at San Francisco and from the analyses of certain jurists it might appear that the term had a limiting effect. If this were correct, did, for example, certain types of border incidents in fact amount to a use of force against the territorial integrity of a State, when the very issue at stake was that of sovereignty over a particular area and when each party maintained the other to be guilty of aggression?

39. It was generally agreed that the words "any State", in the term under discussion, made it clear that Article 2, paragraph 4, was addressed to all States, both Members of the United Nations and non-members. In this respect, it was argued that, since non-members benefited from the provisions of Article 2, paragraph 4, they were also, by virtue of reciprocity, bound by that Article. They were also bound by it as its provisions now constituted a general rule of law. However, the question still remained: what was a "State"? One representative said that the practice of the United Nations had been not to give the concept of a State too liberal a content. Another representative agreed that there might be disagreement on whether a particular entity constituted a State. Nevertheless, if a State used force against an entity, claiming that it did not constitute a State, it might be in breach of Article 2, paragraph 4, and it would be for the competent United Nations organ to determine whether the entity in question was in fact a State.

4.—Meaning of the term "threat of force"

40. A few representatives commented on the meaning of the term "threat of force" as it appeared in Article 3, paragraph 4, of the Charter, without making any formal proposals with respect to it. It was stated that a threat of force could be direct or indirect, and that it could be expressed not only in deeds but also in words.

41. One representative emphasized a need for caution should the Special Committee decide to examine in detail the meaning of the term "threat of force", as it raised many problems. In this respect he posed a number of questions, without stating any position as to the answer which should be given to them. Did a "threat" of force include an increase

in military potential? Must such a threat be openly made and communicated to the State threatened? Furthermore, how could it be determined to what extent a State making a threat was resolved to go? Could a "threat of force" be recognized as having the character of an aggression, thus giving rise to the exercise of the right of self-defence? Did foreign military bases constitute a "threat", as some States claimed, or was not the point here involved political rather than legal?

5.—Definition of the term "force"

(i) *Armed force: regular and irregular or volunteer forces; armed bands; indirect aggression and armed reprisals*

42. The proposals of *Czechoslovakia* (A/AC.119/L.6) and of *Yugoslavia* (A/AC.119/L.7) made only general reference to armed force, and did not spell out the various forms of such force which the sponsors of those proposals considered to come within the prohibition of the threat or use of force contained in Article 2, paragraph 4, of the Charter. The proposal of the *United Kingdom* (A/AC.119/L.8, para. 2 (*see* para. 29 above)), on the other hand, stated that the term "force" meant armed force, and that it included the use by a Government of both regular forces and of irregular or volunteer forces. While not limiting itself to armed force, the joint proposal of *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15, para. 3 (*see* para. 31 above)) also specified that the term "force" included the use of regular and of irregular or volunteer forces. The *United Kingdom* proposal (A/AC.119/L.8, paras. 4 and 5 (*see* para. 29 above)) further contained provisions to the effect that States must refrain from organizing or encouraging the organization of armed bands for incursions into the territory of another State, and that the prohibition of the threat or use of force also embraced the direct or indirect use of force, every State thus being required to refrain from fomenting civil strife or committing terrorist acts in another State. Finally, the joint proposal of *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15, para. 5 (*see* para. 31 above)) contained a proviso to the effect that nothing in that proposal authorized any State to undertake acts of reprisal.

43. It was generally agreed that the prohibition of the threat or use of force embraced the threat or the use of regular armed forces in a manner contrary to Article 2, paragraph 4, of the Charter. Some brief discussion took place regarding volunteer forces, armed bands, direct and indirect uses of force and reprisals, and while a certain degree of consensus emerged on these matters, as described in the remainder of this sub-section of the present report, the Special Committee was unable to arrive at a consensus on a comprehensive definition of "force" in view, *inter alia*, of a disagreement as to whether the term embraced political, economic and other forms of pressure (*see* paras. 47 to 63 below).

44. Certain representatives stated that it would be too much of a simplification to restrict "armed force" to the classic concept of military invasion of a foreign territory: it must also include irregular forces or armed bands leaving a State to operate in another State and any military support by a State of subversive activities in another State. These were practices which were the cause of dangerous tensions in many parts of the world. Furthermore, references to these various forms of armed force in any formulation adopted by the Committee would be not only desirable but would also be consonant with the corresponding provisions of the draft code of offences against the peace and security of mankind adopted by the International Law Commission.

45. In this respect, it was also pointed out that consideration should be given to attempting to establish the point at which the responsibility of a State arose in connexion with the use of regular or irregular and volunteer forces. Thus, the presence of foreign military forces in the territory of a State without its authorization or after the withdrawal of that authorization was a usurpation of the State's sovereignty, but there were similar cases which were far less simple. Although the dispatch of volunteers might be considered

a form of indirect aggression, a whole range of situations must be envisaged, from the departure of individual volunteers—which entailed no violation of the principle of neutrality —to open participation in operations under the fiction of "the dispatch of volunteers". As regards the participation of individual volunteers in military actions, it was further stated that the legality of such participation had been recognized in all the relevant conventions concerning the laws and customs of war concluded from 1864 to 1949, including the Hague Convention of 1907 respecting the laws and customs of land warfare, and that this right was of particular importance for all cases where peoples were struggling against colonial domination. However, it was also pointed out that United Nations practice had taken a rather different point of view in connexion with the activities of volunteers in the Congo. Anyway, what should be prohibited was not the isolated cases of individual volunteers, but those in which States or Governments attempted to evade the prohibition of the threat or use of force by the transparent device of organizing irregular or volunteer forces to participate in armed ventures outside their own territory.

46. The opinion was expressed, with regard to armed reprisals, that such reprisals could not normally be placed on the same footing as self-defence. Reprisals were usually understood to mean an action taken after the fact, in other words, an act of revenge. They therefore fell within the scope of Article 2, paragraph 4. The Security Council had expressly recognized that view in its resolution of 9 April 1964 (S/5650), when it had condemned reprisals as being incompatible with the purposes and principles of the United Nations. This view should therefore find expression in any formulation adopted by the Special Committee. It was also stated, however, that the difficulty of defining reprisals might make it inadvisable to make direct reference to them in the formulations adopted by the Special Committee.

(ii) *Economic, political and other forms of pressure or coercion*

47. The proposals of *Czechoslovakia* (A/AC.119/L.6, para. 4 (*see* para. 27 above)) and of *Yugoslavia* (A/AC.119/L.7, para. 2 (*see* para. 28 above)) contained provisions to the effect that States should refrain from economic, political or any other forms of pressure against the political independence or territorial integrity of any State, while the joint proposal by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.16, para. 2 (*see* para. 31 above)) laid down that the term "force" included, in addition to armed force, "other forms of pressure, which have the effect of threatening the territorial integrity or political independence of any State". It also contained, as already pointed out (*see* para. 42 above), a proviso to the effect that nothing contained in it authorized any State to undertake acts of reprisal. The Special Committee debated in considerable detail whether the term "force" embraced pressures of the foregoing nature, and was unable to arrive at any consensus on this point, which was considered in the light of (*a*) the interpretation of Article 2, paragraph 4, both in its context in the Charter and with reference to other relevant Articles; (*b*) the legislative history of Article 2, paragraph 4, and (*c*) developments since the Charter and the current requirements of the world community. The debate on these aspects is summarized below.

48. It was generally agreed that Article 2, paragraph 4, could not be interpreted in isolation but must be read within the context of related Articles of the Charter. Representatives who were of the view that the term "force" embraced political, economic and other forms of pressure argued that where the Charter meant "armed force" it used that term, as, for example, in the Preamble and in Article 46. Where "force" alone was used, unless the context made it perfectly clear that a limitation to "armed force" was intended, such as in Article 44, a wider interpretation, to cover political, economic and other forms of pressure, was perfectly legitimate and in the interests of the progressive development of the principle established in Article 2, paragraph 4. The text of Article 2, paragraph 4, was not clearly limited either textually or by necessary implication to a prohibition of armed force alone.

Read in conjunction with the Preamble and Article 1, paragraphs 1 and 2, and Article 2, paragraph 3, of the Charter, the natural meaning of the term "force" in Article 2, paragraph 4, embraced all forms of force, rather than one specific form. Thus, in the Preamble, it was stated that the peoples of the United Nations were determined "to practice tolerance and live together in peace with one another as good neighbours"; Article 1, paragraph 1, established that the primary purpose of the United Nations was to maintain international peace and security; reference was made in Article 1, paragraph 2, to the development of "friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples"; and Article 2, paragraph 3, established the principle that international disputes should be solved solely by peaceful means. To give the fullest effect to the purposes and principles of the Charter, it was necessary to refrain from all forms of force, not only armed force, and the meaning which accorded most closely with the purposes and principles should be the one adopted in the event of differences of interpretation. Furthermore, it was a rule of interpretation that, in the event of obscurities in legal texts, they should be interpreted to give them their fullest effect. Therefore, any act prejudicial to the purposec of the United Nations, or directed against "the territorial integrity or political independense of any State", should be considered a resort to the threat or use of force.

49. Other representatives, however, argued that the term "force", as appearing in Article 2, paragraph 4, and as read in the context of other relevant Articles in the Charter, was clearly limited to "armed force". This interpretation accorded with the Preamble to the Charter, which stated that "armed force shall not be used, save in the common interest". In other respects the Charter also served to confirm the clear distinction that existed between measures involving economic pressure and measures involving the use of armed force. Article 41, for example, cited, among "measures not involving the use of armed force", such measures as "complete or partial interruption of economic relations". If such severe measures were classified as measures not involving the use of armed force, it was difficult to see how lesser methods of economic pressure could be categorized as violations of the prohibition or the threat or use of force.

50. It was further argued that, if the term "force" in Article 2, paragraph 4, of the Charter were to embrace political, economic and other forms of pressure, there would be a lacuna in the Charter; that there would be a whole series of situations with which the Organization would be unable to deal effectively, and that this could not have been the intention of the drafters of the Charter. In this respect, the powers of the Organization laid down in Chapter VII of the Charter were specifically directed to the threat or use of armed force. No powers were given to the Security Council to deal with economic or political demands, as distinct from threats to or breaches of the peace. Thus, except in the most extreme cases, the Security Council would be unable to act, as it could hardly categorize economic pressure as a threat to the peace, breach of the peace, or act of aggression. Consequently, the plain inference from the context of Article 2, paragraph 4, was that the force which a Member was prohibited from using or threatening like the force which the Organization was authorized to use, was armed force and nothing else. Furthermore, where the framers of the Charter had meant "armed force" they had not always referred to "armed force". The words "to use force" occurred twice in the Charter: once in Article 44, and once in Article 2, paragraph 4, and in the former case it could not mean anything but "armed force".

51. In support of the view that the term "force" embraced political, economic and other pressures, it was further argued that, in laying down the rules for the employment of force by the Security Council, Chapter VII of the Charter used the term "measures" to mean either non-military force, as in Article 41, or armed force, as in Article 51. Article 51 clearly referred to armed force since it dealt with measures taken in response to an armed attack. Thus, the force which the Security Council could employ through the various "measures" it was authorized to take could be either armed force or the economic and other

measures provided for in Article 41. It was therefore clear that the Charter, including Article 2, paragraph 4, did not seek to make a sharp distinction between armed and other forms of force.

52. In response to the view just set out, it was said that if it was true that economic measures coming within the ambit of Article 41 of the Charter constituted a use of force to which the prohibition in Article 2, paragraph 4, applied, States would be precluded from taking such measures except on a decision by the Security Council or in the case of self-defence. No foundation for such an interpretation could be found in the practice of States.

53. Further arguments for and against the inclusion of political, economic and other pressures within the meaning of "force" were advanced with reference to Article 51 of the Charter. Some representatives stated that if the term "force" included political, economic, and other forms of pressure, the question would arise whether a State could invoke the right of self-defence against such pressure. Article 51 of the Charter, however, referred only to the right of self-defence in the event of "armed attack". Consequently, there would either be a lacuna in the Charter, if "force" meant pressures other than "armed force", in respect of which a right of self-defence did not exist, or there would be a danger that Article 51 would in practice be extended to permit self-defence against political, economic and other pressures. It was difficult to believe that the framers of the Charter could have contemplated such a lacuna, and it was also undesirable to adopt an interpretation of "force" which might inevitably have the effect of broadening the concept of self-defence under Article 51 of the Charter.

54. Certain other representatives, however, said that the terms of Article 51 were perfectly clear, and that there was consequently no possibility that it could be extended to cover the use of armed force in self-defence against political, economic or other pressures. This, nonetheless, would not necessarily preclude States from taking measures of self-defence, other than armed measures, if they were the victims of political, economic or other pressures directed against their territorial integrity or political independence.

55. Many representatives who were of the view that "force", within the meaning of Article 2, paragraph 4, did not embrace political, economic and other forms of pressure, drew particular attention to the fact that, at the United Nations Conference on International Organization held at San Francisco, an amendment by Brazil to extend the prohibition contained in that Article to economic coercion was rejected. It was said that the rejection of this amendment by a large majority clearly established that, in the intention of the framers of the Charter, "force" in Article 2, paragraph 4, was confined to armed force.

56. On the other hand, certain representatives argued that the rejection of the Brazilian amendment did not necessarily mean that the San Francisco Conference did not agree with the ideas contained in that amendment. The rejection of that amendment was therefore not conclusive proof that the term "force" in Article 2, paragraph 4, had a limited meaning. From a reading of the text of the Brazilian amendment, it would appear that its purpose had been to try to link the question of intervention to the question of the threat or use of force. In rejecting that amendment, the drafters of the Charter had simply refused to identify the prohibition of the threat or use of force with the prohibition of intervention, and they had not intended to bring in question the meaning of the word "force". Had the latter been their intention, they would have substituted the words "armed force".

57. It was further argued that, whatever the intentions of the drafters of the Charter, the Charter, as a constitutional instrument, must now be interpreted in the light of current needs and of developments since it was drafted. The Charter was a source of standards of international law creating a new legal order and, consequently, a means of strengthening the international relationships established after the Charter's adoption. Had it been drafted with the participation of all the present Members of the United Nations, the fate of the Bra-

zilian amendment might well have been different. Even prior to, and certainly since, the drafting of the Charter, a number of international instruments had recognized that the concept of force included economic and political coercion. Thus, for example, the Charter of the Organization of American States, adopted in 1948, laid down in article 15 that the principle of non-intervention prohibited not only armed force but also any other form of interference or attempted threat against the personality of a State, while article 16 forbade the use of coercive measures of an economic or political character to force the sovereign will of another State. At the Bandung Conference of 1955, the African and Asian countries had included in their Declaration on World Peace and Co-operation the principle of "Abstention by any country from exerting pressures on other countries". Other important international instruments to be taken into account, in this respect, were the Belgrade Declaration, the Charter of the Organization of African Unity and the Moscow Test-Ban Treaty. The definition of "coercion" given by the International Law Commission in its report on the Law of Treaties[5] was also of relevance.

58. Not only were there precedents in other international instruments for regarding the term "force" as embracing political, economic and other forms of pressure, but such an interpretation was also consonant with modern needs, with the progressive development of the principle under consideration, and with the views expressed in the Sixth Committee by many delegations at the eighteenth session of the General Assembly. It responded to the wishes of Asian, African and Latin American States. Since the San Francisco Conference the course of events had shown that economic force was a force to be reckoned with, just as much as military force. Economic force could threaten the political independence and territorial integrity of States as seriously as armed force, particularly at the present time when many new and small States had acceded to independence. It had, for example, been demonstrated at the United Nations Conference on Trade and Development that economic exploitation and other forms of pressure sometimes undermined the sovereignty and political independence of newly established States.

59. Those representatives who believed that the term "force" was limited to armed force were of the opinion that not only was a contrary interpretation impossible in the light of the preparatory work of the Charter, the records of the Dumbarton Oaks Conference, the rejection of the Brazilian amendment, and the subsequent practice of the United Nations, but also was unnecessary and impractical in the light of modern realities. As regards United Nations practice, General Assembly resolutions 378 (V) and 380 (V) of 17 November 1950 showed, for instance, that the Assembly considered the term "force" to mean "armed force". International instruments, other than the Charter, which had been quoted as examples of prohibitions of economic and other pressures certainly did not establish that such pressures were embraced by the term "force". On the contrary, those instruments showed that where such pressures were to be covered, it was expressly stipulated.

60. To extend that term to cover political, economic and other forms of pressure would give rise to great difficulties of interpretation, and the Special Committee would have to consider what acts should be prohibited if economic pressure were to be prohibited. What, for example, would the situation be if a State imposed exchange control restrictions in its own interests, but which nevertheless had the effect of prejudicing the economy of another State which was largely dependent on tourism? More complex cases would be the raising of tariffs, nationalization of alien property motivated by political considerations, and the denial to a land-locked country of access to the sea. Could such acts be properly regarded as a threat or use of force contrary to Article 2, paragraph 4, of the Charter?

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[5] *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9* (A/5509), chapter II, draft article 36, paragraph 3 of the commentary.

61. Even if only political, economic and other pressures "against the political independence or political integrity of any State" were to be considered as prohibited under Article 2, paragraph 4, great difficulties would arise. Did that, for example, mean economic, political or other pressure sufficiently powerful to endanger the political independence or territorial integrity of a State, or did it refer to the purpose for which such pressure was applied? It would in any case be difficult to distinguish between such pressure and the less severe political and economic pressure to which States inevitably resorted in their diplomacy every day.

62. Even in a highly organized national community, with a well-developed legal system and a State monopoly of the use of force, individual and collective "pressure" continued to be an important factor in the actual regulation of society and was often, in this respect, the essential concomitant of the established and centralized authority responsible for putting the law into effect. It was all the more to be expected, therefore, in the as yet insufficiently organized international society of the present day, that "pressure" should play a still larger part in persuading States to comply with a minimul legal order. It should be recognized that, in an interdependent world, it was inevitable and desirable that States would attempt to influence the actions and policies of other States and that the objective of international law should not be to prevent such activity but rather to ensure that it was compatible with the sovereign equality of States and self-determination of their peoples. To prohibit entirely "any form of pressure" would be to render impossible normal diplomatic relations. It should be left to the Security Council or the General Assembly to decide whether economic or political pressure, in any particular case, threatened the political independence or territorial integrity of any State. To lay down a general rule in advance might be to interfere with the right of States to regulate their economic relations with other States and would thus increase the danger of international conflicts.

63. It was further argued that, while certain forms of political and economic pressure clearly violated the principles of international law, they should be considered within the context of intervention and not the context of force. To consider them in the latter context would not only raise objections of the nature already outlined, but would also permit the continuation of certain reprehensible and illegal forms of pressure under the guise that they were not directed against the political independence or territorial integrity of States. It was, however, also argued that, on the contrary, it was necessary to establish the prohibition on certain forms of pressure both in the context of the prohibition of the use of force and in that of intervention so as to provide for the complete protection of a State from without and from within.

6.—Use of force in territorial disputes and border claims

64. A prohibition against the threat or use of force in territorial disputes and boundary problems was contained in the proposals of *Czechoslovakia* (A/AC.119/L.6, para. 1 (*see* para. 27 above)) and of *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15, para. 4 (*see* para. 31 above)).

65. It was generally agreed that such threat or use of force for the settlement of territorial disputes and boundary problems was contrary to the principle under consideration. Many representatives were of the opinion that a prohibition to this effect merited particular mention in any formulation adopted by the Special Committee, as territorial disputes and border claims were a constant source of international tension, and had in the past been a primary cause of war. Specific reference to problems of this nature was also warranted by the fact that several international documents concluded since the Charter, including the Charter of the Organization of African Unity (article XIX), contained provisions prohibiting the threat or use of force as a means of settling territorial disputes and border problems.

As some States had in the past attempted to argue that such disputes and problems were not covered by the general terms of Article 2, paragraph 4, of the Charter, special importance should be attached to the enunciation by the Special Committee of a prohibition of the threat or use of force in such cases.

66. Some other representatives agreed that specific mention of territorial disputes and border claims in any formulation adopted by the Special Committee warranted further study. It was pointed out, however, that such mention would have to be carefully worded so as not to imply any restriction or limitation on the more general terms of the prohibition contained in Article 2, paragraph 4, of the Charter. There were other disputes, which could be just as critical as territorial and border disputes and which should also be settled solely by peaceful means.

67. One representative expressed the view that any prohibition of the threat or use of force in respect to territorial disputes and border claims could not be considered as legalizing or condoning the occupation of a territory by means contrary to the Charter or to United Nations resolutions. In reply to a question to this effect, one of the sponsors of the joint proposal by *Ghana, India* and *Yugoslavia* (A/AC.119/L.15) stated that this view was shared by the sponsors of that proposal. That proposal was not intended to condone any breach of international law relating to existing boundaries, and any dispute in such a case should be settled in conformity with the Charter.

7.—Wars of aggression

68. The proposal of *Czechoslovakia* (A/AC.119/L.6, para. 2 (*see* para. 27 above)) contained a proviso to the effect that the planning, preparation, initiation and waging of a war of aggression constituted international crimes against peace giving rise to political and material responsibility of States and penal liability of the perpetrators of these crimes.

69. Some representatives were of the view that any formulation adopted by the Special Committee should contain a provision along these lines. It was stated that such a provision would, in particular, be in accordance with the principles set forth in the Charter of the United Nations, and the charters of the international military tribunals at Nürnberg and for the Far East. Even prior to these international instruments, a number of treaties had been concluded which had declared aggressive war to be an international crime. The General Assembly had itself confirmed, in its resolution 95 (I) of 11 December 1946, that the planning, preparation, initiation, or waging of a war of aggression constituted international crimes. This principle therefore rested on adequately sound foundations, and appropriate devices could be found for determining when it had been violated.

70. Certain other representatives, while not specifically endorsing the formulation presented by *Czechoslovakia*, expressed the belief that mention of the principle could appropriately be made in some form or other in the Committee's recommendations.

71. Several representatives, however, while recognizing that wars of aggression constituted international crimes, were of the opinion that any general formulation would give rise to difficulties and was therefore undesirable. In this respect, attention was drawn to the difficulties which had previously arisen, and which were well known, concerning the definition of what constituted "aggression". Furthermore, it would be difficult to give practical effect to a general formulation if it did not indicate the means of arriving at a determination that aggression had been committed and of assessing material and penal responsibility.

72. One representative was of the view that the insertion of a provision on wars of aggression and the penal liability thus incurred was not only beyond the Committee's mandate but also completely unnecessary.

8.—Legal uses of force

73. All the proposals before the Special Committee on the principle under consideration contained provisions concerning the legal uses of force. It was generally agreed that any formulation adopted by the Special Committee should contain a provision on this subject, which was discussed at length in the Committee. In view of the length of the discussion it is summarized below, in the present section of the report, under a number of subheadings.

(i) *Use of force on the decision of a competent organ of the United Nations*

74. The proposal of *Czechoslovakia* (A/AC.119/L.6, para. 5 (*see* para. 27 above)) included, in legal uses, the use of force pursuant to a decision of the Security Council made in conformity with the United Nations Charter. In addition, the proposals of *Yugoslavia* (A/AC.119/L.7, para. 4 (*see* para. 28 above)) and of the *United Kingdom* (A/AC.119/L.8, para. 5 (*see* para. 29 above)) also referred expressly to the use of force when undertaken on the authority of the General Assembly. The joint proposal of *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15, para. 3 (*see* para. 31 above)) referred to the use of force "by a competent organ of the United Nations."

75. It was generally agreed that the use of force pursuant to a decision of the Security Council made in conformity with the Charter constituted a legal use. Some representatives also approved of express mention, among legal use of force, of such uses undertaken on the authority of the General Assembly pursuant to recommendations by the Assembly made under Articles 10 and 11 of the Charter. It was argued that such a reference was necessary to a complete enumeration of the legal uses of force in view of the role which the General Assembly was authorized to play, and had played, in the maintenance of international peace and security. Certain other representatives, however, expressed their disagreement in this respect. In their view, the Charter clearly laid down that the application of enforcement measures or the use of force could be decided upon and undertaken solely by the Security Council. Under the Charter, the Members of the United Nations conferred on the Security Council primary responsibility for the maintenance of international peace and security, and assigned to the General Assembly the quite different function of considering the general principles of co-operation in the maintenance of international peace and security and making recommendations with regard to such principles.

76. A number of representatives suggested that it would be sufficient if the Special Committee were to refer, in any formulation on the legal uses of force, to measures undertaken by or on the authority of a competent organ of the United Nations, acting in conformity with the Charter.

(ii) *Use of force on the decision of a regional agency*

77. The proposal by the *United Kingdom* (A/AC.119/L.8, para. 5 (*see* para. 29 above)) stated, *inter alia*, that the use of force was lawful when undertaken "by a regional agency acting in accordance with the Charter". No specific mention of regional agencies was contained in the other proposals before the Special Committee.

78. A number of representatives expressly supported mention, in any formulation adopted by the Special Committee, of measures which regional agencies might take under Chapter VIII of the Charter. In this respect, it was stated that certain regional agreements, such as the Inter-American Treaty of reciprocal assistance, which provided for the use of force by regional agencies, were fully consonant with the Charter and their validity had not been challenged. Furthermore, the Security Council had never questioned the rights of regional agencies in this respect.

79. Other representatives, however, expressed some reservations about express mention of the use of force by regional agencies, unless strictly circumscribed, and so worded as not to weaken the powers of the Security Council. In this connexion, it was stated that any decision by a regional organization to use coercive measures or force against a Member of the United Nations, without the authorization of the Security Council, would be a breach of the Charter and illegal. Members of the United Nations supporting such a decision would furthermore be acting in contravention of Article 103 of the Charter, which laid down that obligations under the Charter prevailed over obligations under any other international agreement.

(iii) *Use of force in the exercise of the right of individual or collective self-defence*

80. All the proposals before the Special Committee made reference to the legal use of force in the exercise of the right of individual or collective self-defence (*Czechoslovakia*, A/AC.119/L.6, para. 5 (*see* para. 27 above)); *Yugoslavia* (A/AC.119/L.7, para. 4 (*see* para. 28 above)); the *United Kingdom* (A/AC.119/L.8, para. 5 (*see* para. 29 above)); and *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15, para. 3 (*see* para. 31 above)). It was generally agreed that the right of individual or collective self-defence, as recognized in Article 51 of the Charter, constituted an exception to the prohibition on the threat or use of force contained in Article 2, paragraph 4, of the Charter, and that express mention should be made of this exception in any formulation adopted by the Special Committee.

81. A number of representatives spoke of the necessity of giving a restrictive interpretation to right of individual or collective self-defence. Such an interpretation was said to be essential to the maintenance of peace: any other interpretation which had the effect of increasing the individual competence of States to the detriment of that of the United Nations would be contrary to the Organization's purposes. It was stated, in these respects, that Article 51 of the Charter limited the right of self-defence to cases where an armed attack had occurred, to the exclusion of every other act, including provocation. Furthermore, it permitted its exercise only until such time as the Security Council had taken the measures necessary to maintain international peace and security. On the one hand, the Security Council could take further measures if its first measures did not restore peace; on the other, if the Council did not take the necessary measures, the victim of armed aggression could continue to exercise its right of self-defence.

82. One representative cited a number of theories, extending the concept of self-defence, which he believed to be dangerous and contrary to a proper interpretation of Article 51 of the Charter. He referred, *inter alia*, to the argument that the right of self-defence could be exercised not only in the case of armed attack, but also when the military potential and aggressive intentions of a State gave grounds for thinking it was preparing an attack. The answer to this argument was that armed attack was armed attack and nothing else. Pursuant to a recent theory, the prohibition of the threat or use of force was only relative and not absolute, since the strict interpretation of Article 2, paragraph 4, and Article 51 of the Charter might produce the result that States could violate the rights of other States with impunity, provided they did not resort to armed force. This argument was contrary to the centralization of authority in the United Nations as established by the Charter. According to a third theory, a belligerent whose adversary had violated the obligation not to use force could, in the exercise of a right of reprisal, use nuclear and thermonuclear weapons. However, this would be contrary to the principle of "proportionality", under which the response to an armed attack should be proportionate to the kind and nature of the attack. Furthermore, nuclear weapons could be considered as an instrument of genocide, which struck at armed forces and civilians indiscriminately, and which also violated the rights of neutral States which would be affected by their use.

(iv) *Use of force in self-defence against colonial domination*

83. A right of self-defence of peoples and nations against colonial domination, in the exercise of their right of self-determination, was included in the proposals of *Czechoslovakia* (A/AC.119/L.6, para. 5 (*see* para. 27 above)), of *Yugoslavia* (A/AC.119/L.7, para. 4 (*see* para. 28 above)), and of *Ghana, India* and *Yugoslavia* (A/AC.119/L.15, para. 3 (*see* para. 31 above)). Some representatives supported the inclusion of such a right in any formulation adopted by the Special Committee. In this respect, reference was made to the Charter of the Organization of African Unity which affirmed the right of African countries still under foreign domination to self-determination and proclaimed, on the part of the independent African States, their "absolute dedication to the total emancipation of the African Territories which are still dependent". Reference was also made to the Declaration of the Heads of State or Government of non-aligned countries adopted at Belgrade in 1961, section III of which demanded that an immediate stop should be put to armed action against dependent peoples and that the integrity of their national territory should be respected.

84. It was further stated that the practice of the United Nations itself had been against regarding the struggle of colonial peoples for liberation, which was one of the most important phenomena of the modern era, as a violation of the prohibition of the use of force. The Charter provisions undoubtedly covered the right of oppressed peoples to defend themselves against foreign oppression. The United Nations Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)) expressly stated that the subjection of peoples to alien subjugation was contrary to the United Nations Charter. The Declaration also reaffirmed that all peoples had the right to self-determination, and called for the cessation of all armed action or repressive measures directed against dependent peoples. Other resolutions of United Nations organs, dealing with specific colonial problems, also supported the application of the principle of self-determination, which should now be considered as a general principle of law.

85. It was further argued that the right of self-determination would be meaningless if it could not be defended against a colonial Power which attempted by force to deny it. If the Special Committee did not take this into consideration, it would jeopardize the progress already achieved by the United Nations in the vital field of decolonization. Were the Special Committee to adopt a proposal along the lines suggested by the *United Kingdom* (A/AC.119/L.8 (*see* para. 29 above)), this would be a serious challenge to the whole decolonization movement, for not only was it silent on the sanctity of the right of self-determination but it would brand as indirect aggression any meaningful support to a people acting in self-defence to assert that right, and migh entitle colonial Powers to invite other States to aid them in suppressing national liberation movements in their colonies. The work of laying down principles of law banning the use of force would be incomplete if it did not provide for the elimination of colonialism. The use of armed force, which was still being resorted to in a number of territories to repress the aspirations of their peoples to freedom and self-determination, violated the Charter and the resolutions adopted by the United Nations and was a flagrant example of the unlawful threat or use of force prohibited by Article 2, paragraph 4, of the Charter. Colonial rule was in contradiction with contemporary international law, the Charter and resolutions of the General Assembly.

86. On the other hand, some representatives were opposed to any formulation by the Special Committee which would include reference to a legal right of peoples and nations to self-defence against colonial domination. Some of these representatives stated that, while they were opposed to colonialism and recognized the right of colonial peoples and nations to self-determination, revolution was a political, not a legal, concept. While revolution might be the leaven of law, one could not speak of its intrinsic legality, and, except possibly for the French Constitution of 1793, it had never been regarded as a legal right.

87. It was further pointed out by some representatives that Article 2, paragraph 4, of the Charter only prohibited the threat or use of force against States, or, in other words, to entities having legal personality in international law. This prohibition did not extend to rebellions against the constituted authorities. A specific mention of a right of self-defence against colonial domination was therefore unnecessary. It would be sufficient, in the case of a genuine war of liberation, for the Security Council or the General Assembly to determine whether aggression by a colonial Power was involved. Furthermore, once a colonial people had won their independence, Article 51 of the Charter, concerning self-defence, granted adequate protection against armed intervention by the former metropolitan Power.

88. It was also argued that, if express mention were made of a right of self-defence against colonial domination, it would be a move backward towards the traditional concept of the "just war". The Declaration on the granting of independence to colonial countries and peoples, in its paragraph 6, rejected the concept of wars of liberation. Moreover, to sanction a so-called right of self-defence against colonial domination would be to encourage a nation to use force, contrary to the principles of the United Nations, and the reasons in favour of the prohibition of armed force in international relations were equally cogent in regard to the settlement of disputes relating to the exercise of self-determination. To make an exception in this latter case would only have the effect of greatly increasing existing tensions and would endanger international peace and security. It would give a State complete freedom to wage war provided that it appropriated the charge of colonial domination when so doing. In this latter context, it was relevant to note that Article 2, paragraph 4, of the Charter forbade a State to use force to impair the territorial integrity of another State and "wars of liberation" in many cases would have precisely that result. It would also be strange to restrict the concept of self-defence to cases of colonial domination when there were many other forms of domination, such as ideological domination. The question would also arise whether the right of an ethnic minority to self-defence against oppression by a majority belonging to another race should not also be recognized.

89. It was further stated that colonial rule, whether by way of the administration of a Trust Territory or otherwise, was not contrary to the Charter, and States administering dependent Territories, in accordance with the Charter, were responsible for the maintenance of law and order in those Territories. If a so-called right of self-defence against colonial domination were to be considered to derogate from the position just stated it would make it all the more unacceptable.

9.—Non-recognition or nullity of situations brought about by the illegal threat or use of force

90. The initial proposal of *Yugoslavia* (A/AC.119/L.7, para. 3 (*see* para. 28 above)) and the subsequent joint proposal of *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.15, para. 4 (*see* para. 31 above)) contained provisions to the effect that any situation brought about by the illegal threat or use of force should not be recognized. Some representatives expressed the opinion that any formulation adopted by the Special Committee should contain such a provision. The view was also expressed that situations brought about by the illegal threat or use of force should be considered null and void.

91. In favour of the non-recognition of situations brought about by the threat or use of force, it was argued that non-recognition of territorial conquests was a general principle of law within the meaning of Article 38 of the Statute of the International Court of Justice, both because of the number and importance of the conventions which embodied it and because it could be regarded as a corollary to the prohibition in Article 2, paragraph 4, of the Charter of the United Nations of the threat or use of force against the territorial integrity or political independence of any State. Reference was made to the principle of non-recognition of territorial conquests as embodied in article 17 of the Charter of the Organization of

American States, to the Anti-War Treaty of Non-Aggression and Conciliation (Rio de Janeiro, 1933) and to the draft Declaration on rights and duties of States (articles 9 and 11) prepared by the International Law Commission. It was stated that its enunciation also by the Special Committee would contribute to developing the juridical basis of the prohibition on the threat or use of force and would enhance the authority of international law in general.

92. The view was also advanced that the non-recognition of territorial conquests should not be regarded as a sanction. It was the result of a juridical and political evaluation of a situation which every State had the right to make for itself, and act accordingly. If, however, in certain cases, the juridical appraisal of the situation were made by the Security Council or the General Assembly, and the conclusion reached by those bodies that a situation had been brought about by the illegal threat or use of force, Member States would be under an obligation not to recognize that situation.

93. Some other representatives, while sympathizing with it, did not share the opinion that the Special Committee should attempt to lay down a general principle of non-recognition of situations brought about by the threat or use of force. Collective non-recognition had been tried in the past and had been found to be wanting. A general rule of non-recognition would be hard to apply, would give rise to difficulties of implementation and of determining whether a situation had in fact been brought about by the threat or use of force and might create more problems than it would solve. In particular, great difficulties would arise if a rule of non-recognition were regarded as having retroactive effect. Many territorial settlements in the past were based upon treaties following upon a resort to force and there would be not profit in calling such settlements in question. Even if restricted to the future, problems would arise. The United Nations was frequently called upon to supervise ceasefires in situations where there had been a recourse to force. Individual Members of the United Nations might differ as to which party in such situations had illegally resorted to force and non-recognition by individual States might thus hamper the efforts of the United Nations seeking to maintain and restore peace as a collective body.

10.—War propaganda

94. The proposal of *Czechoslovakia* (A/AC.119/L.6, para. 3 (*see* para. 27 above)) contained a proviso prohibiting war propaganda and providing that States should take the necessary legislative and other measures to this end.

95. Several representatives were in favour of including such a prohibition of war propaganda in the Special Committee's formulations. It was said that a provision of this nature was not new in United Nations practice, and had in fact been the subject of General Assembly resolution 110 (II) of 3 November 1947, on measures to be taken against propaganda and the inciters of a new war. The prohibition of war propaganda was a logical corollary of the principle being considered by the Special Committee. Propaganda should serve to promote the ideals of peace, friendship and understanding among peoples. It should not be used to educate young people in the spirit of war, as had been done in the past with disastrous consequences. Propaganda for striking the first nuclear blow was particularly dangerous in modern times and should be specifically prohibited.

96. Other representatives, while agreeing that war propaganda was undesirable, expressed reservations about including mention of it in any specific formulation adopted by the Special Committee, except possibly by way of commentary. It was stated that "war propaganda" was extremely difficult to define, and what might be regarded as a statement of fact in one country might be viewed as war propaganda in another. To attempt to define it would merely be to repeat the sterile discussions which had taken place in the United Nations in the two Special Committees on the Question of Defining Aggression. Furthermore, the greatest caution should be exercised in considering any general proposal providing

for legislation against war propaganda. Such a general proposal would open the way to violations of the very freedom of information which it was the responsibility of the United Nations to protect. The principle of not unduly restricting freedom of speech and thought was of overriding importance. It was further argued that, rather than attempting to draft a general formulation open to these objections, it should be left for the Security Council or the General Assembly to determine in each case whether war propaganda—or, for that matter, non-military pressures and wars of liberation—conducted by a particular State constituted a threat to the peace, breach of the peace or act of aggression.

97. Several representatives were of the view that the question of war propaganda should be more appropriately considered within the wider context of the diffusion of ideas tending to strengthen peace and friendship among peoples. If any condemnation of war propaganda were to be made by the Special Committee, it should be coupled with a statement on the importance of the free flow of information for the preservation of peace which had been the subject of General Assembly resolution 381 (V) of 17 November 1950.

11.—Disarmament

98. The proposal of *Czechoslovakia* (A/AC.119/L.6, para. 6 (*see* para. 27 above)) contained a provision to the effect that States should act in such a manner that an agreement for general and complete disarmament under effective international control would be reached as speedily as possible and strictly observed.

99. It was generally agreed that the question of disarmament was one of the most urgent tasks facing the present-day world, and that general and complete disarmament under effective international control would most effectively guarantee the removal of the threat of war. A number of representatives were of the opinion, in this context, that general and complete disarmament was an essential corollary of the principle under discussion giving rise to a legal duty on the part of States to co-operate with one another for the purpose of ensuring progressive disarmament until general and complete disarmament could be achieved. The Special Committee should therefore adopt a specific provision to this effect.

100. In support of the above view it was stated that, while in the past some had considered disarmament to be a purely political matter, the legal nature of the principle of general and complete disarmament could not be doubted since the conclusion in 1963 of the Moscow Treaty banning nuclear weapons tests in the atmosphere, in outer space and under water, which incorporated this principle in its preamble, and since the adoption of the General Assembly resolution on general and complete disarmament in 1959 (resolution 1378 (XIV) of 20 November 1959). Furthermore, the question of disarmament was so important that the Special Committee could not ignore it in approaching its task. It was important not only because of the dangers of nuclear war, but also because of the material resources squandered in the arms race.

101. Several representatives were of the opinion that, if disarmament were to be mentioned at all, it might perhaps be included in a commentary and should not form part of any formulation of the principle under consideration. They did not believe that the cause of disarmament would necessarily be advanced by an express declaration that States had a duty to co-operate in seeking to reach an agreement on general and complete disarmament.

102. Other representatives considered that the mention of disarmament should not be included in the Special Committee's recommendations. General and complete disarmament was a political, not a legal, question, and was the specific responsibility of other United Nations bodies, such as the Disarmament Committee. These representatives did not see how the Special Committee could make any useful contribution to the work of these latter bodies. It was futile to repeat the need for an agreement on general and complete

disarmament, without at the same time proposing a means of solving the difficulties in the way of the conclusion of such an agreement, particularly the question of inspection.

103. One representative considered that, while the question of nuclear and thermo-nuclear weapons was closely linked to the general problem of disarmament, it was a question which could be considered separately by the Special Committee from the point of view of the international legal order. Such weapons were contrary to the laws of mankind, but it had been maintained that "contrary to the laws of mankind" was not necessarily synonymous with "contrary to international law", and the *imprimatur* of the international community was still needed in order to make the use of such weapons an international crime.

12.—Making the United Nations security system more effective

104. In its amendment (A/AC.119/L.14, *see* para. 30 above) to the *United Kingdom* proposal (A/AC.119/L.8), *Italy* proposed the addition of a paragraph providing that States should endeavour to make the United Nations security system more effective and should comply fully and in good faith with obligations placed upon them by the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security. In this respect it was argued that the Charter provisions, imposing on Member States the obligation to make it possible for the United Nations to perform its functions in relation to peace and security, were no less binding and fundamental than those set forth in Article 2, paragraph 4, and in Article 51 of the Charter. If the prohibition of the threat or use of force were to be made more effective, it was essential that Member States should provide the Organization with the requisite means to take effective action to maintain international peace and security. Thus, if the Special Committee were to enumerate the duties of States with respect to the threat or use of force, it could not fail to include mention of the obligation to provide the Organization with the means to act effectively.

105. A number of representatives supported the *Italian* amendment, and stated that it deserved thorough study by the Special Committee. One representative, while expressing sympathy with the ideas contained in it, regretted that some other points put forward in the discussion and equally worthy of attention had not been included in that amendment.

C. *Decision of the Special Committee on the recommendations of the Drafting Committee*

1.—Decision

106. At its 42nd meeting, the Special Committee considered two papers submitted by the Drafting Committee, concerning the principle which forms the subject of this chapter. The texts of these two papers, in the order of their introduction to the Committee, were as follows:

Paper No. 1 (Drafting Committee Paper No. 10 and Corrigendum 1)

"Principle A

[*i. e.* 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.]

"I. *Draft text formulating the points of consensus*

"1. Every State has the duty to refrain in its 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.

"2. In accordance with the foregoing fundamental principle, and without limiting its generality:

(*a*) Wars of aggression constitute international crimes against peace.

(*b*) Every State has the duty to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed bands within its territory or any other territory for incursions into the territory of another State. [6]

(*c*) Every State has the duty to refrain from instigating, assisting or organizing civil strife or committing terrorist acts in another State, or from conniving at or acquiescing in organized activities directed towards such ends, when such acts involve a threat or use of force. [6]

(*d*) Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State, or as a means of solving its international disputes, including territorial disputes and problems concerning frontiers between States.

"3. Nothing in the foregoing paragraphs affects the provisions of the Charter concerning the lawful use of force.

"II. *List itemizing the various proposals and views on which there is no consensus but for which there is support*

"1. There was disagreement in the Special Committee in regard to the circumstances or situations in which the use of force was lawful in accordance with the Charter. The following were the points in this connexion on which no consensus could be reached:

(*a*) Whether the Security Council is the only United Nations organ competent to authorize the lawful use of force, or whether the General Assembly is also competent in that regard.

(*i*) For relevant proposals, *see* annex A, paragraph 1.
(*ii*) For relevant views, *see* annex B, paragraph 1 (*a*).

(*b*) Whether or not express mention should be made of the lawful use of force by a regional agency acting in accordance with the Charter.

(*i*) For relevant proposals, *see* annex A, paragraph 1.
(*ii*) For relevant views, *see* annex B, paragraph 1 (*b*).

(*c*) Whether or not the right of individual or collective self-defence should be stated to be in accordance with Article 51 of the Charter.

(*i*) For relevant proposals, *see* annex A, paragraph 1.
(*ii*) For relevant views, *see* annex B, paragraph 1 (*c*).

(*d*) Whether or not the legal uses of force include a right of nations or peoples to self-defence against colonial domination in the exercise of their right to self-determination.

(*i*) For relevant proposals, *see* annex A, paragraph 1.
(*ii*) For relevant views, *see* annex B, paragraph 1 (*d*)."

The other points on which no consensus could be reached were as follows:

"2. Whether States have a legal obligation to endeavour to make the United Nations security system more effective and to comply fully and in good faith with their obligations under the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security.

(*i*) For relevant proposal, *see* annex A, paragraph 2.
(*ii*) For relevant views, *see* annex B, paragraph 2.

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[6] The inclusion of sub-paragraphs (*b*) and (*c*) was agreed to by certain delegations only on the understanding that the substance of the two paragraphs should also be included under principle C [*i. e.* the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter] when that principle is drafted. The delegations in question were of the view that the acts mentioned in the two sub-paragraphs are pre-eminently acts of intervention although under certain circumstances they could become acts involving the threat or use of force.

"3. Whether States have a legal obligation to act in such a manner that an agreement for general and complete disarmament under effective international control will be speedily reached and strictly observed.

(*i*) For relevant proposal, *see* annex A, paragraph 3.
(*ii*) For relevant views, *see* annex B, paragraph 3.

"4. Whether to include a prohibition of propaganda for war, and an obligation for States to take, within the framework of their jurisdiction, all measures, including legislative measures, in order to prevent it.

(*i*) For relevant proposal, *see* annex A, paragraph 4.
(*ii*) For relevant views, *see* annex B, paragraph 4.

"5. Whether States have a legal duty not to recognize situations brought about by the illegal use or threat of force.

(*i*) For relevant proposal, *see* annex A, paragraph 5.
(*ii*) For relevant views, *see* annex B, paragraph 5.

"6. Whether to include a provision that nothing in connexion with this principle shall authorize States to undertake acts of reprisal.

(*i*) For relevant proposal, *see* annex A, paragraph 6.
(*ii*) For relevant views, *see* annex B, paragraph 6.

"7. The definition of the term 'force', in particular whether that term embraces economic, political or other forms of pressure.

(*i*) For relevant proposal, *see* annex A, paragraph 7.
(*ii*) For relevant views, *see* annex B, paragraph 7."

"Annex A

"PROPOSALS AND AMENDMENTS CONCERNING WHICH NO CONSENSUS WAS REACHED

"1. *Legal uses of force*

(*a*) *Czechoslovakia* (A/AC.119/L.6)

'5. The prohibition of the use of force shall not affect either the use of force pursuant to a decision of the Security Council made in conformity with the United Nations Charter or the rights of States to take, in the case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the United Nations Charter, or self-defence of nations against colonial domination in the exercise of the right to self-determination.'

(*b*) *United Kingdom* (A/AC.119/L.8)

'5. The use of force is lawful when undertaken by or under the authority of a competent United Nations organ, including in appropriate cases the General Assembly, acting in accord with the Charter, or by a regional agency acting in accordance with the Charter, or in exercise of the inherent right of individual or collective self-defence.'

'*Commentary*

'(5) Paragraph 5 sets out in a non-exhaustive manner the principal circumstances in which the use of force is lawful. It is based on and reflects a number of provisions in the Charter, including Article 2, paragraph 4, and Article 10 and Chapters VII and VIII. Circumstances in which force may be used vary widely and an exhaustive definition of them would be impracticable.'

(*c*) *Ghana, India and Yugoslavia* (A/AC.119/L.15)

'3. The prohibition of the use of force shall not affect either the use of force pursuant to a decision by a competent organ of the United Nations made in conformity with the Charter, or the rights of States to take, in case of armed attack, measures of individual or collective self-defence in accordance with Article 51 of the Charter, nor the right of peoples to self-defence against colonial domination in the exercise of their right to self-determination.'

"2. *Making the United Nations security system more effective*

Italy (A/AC.119/L.14)

'6. In order to ensure effectiveness of the prohibition of the threat or use of force in international relations, States shall endeavour to make the United Nations security system more effective and shall comply fully and in good faith with the obligations placed upon them by the Charter with respect to any form of contribution by Member States to the maintenance of international peace and security.'

"3. *Agreement for general and complete disarmament under effective international control*

Czechoslovakia (A/AC.119/L.6)

'6. In order to secure full effectiveness of the prohibition of the threat or use of force, States shall act in such a manner that an agreement for general and complete disarmament under effective international control will be reached as speedily as possible and will be strictly observed.'

"4. *War propaganda*

Czechoslovakia (A/AC.119/L.6)

'3. Any propaganda for war, incitement to or fomenting of war and any propaganda for preventive war and for striking the first nuclear blow shall be prohibited. States shall take, within the framework of their jurisdiction, all measures, in particular legislative measures, in order to prevent such propaganda.'

"5. *Non-recognition of situations brought about by illegal use or threat of force*

Ghana, India and Yugoslavia (A/AC.119/L.15)

'3. Any situation brought about by such means shall not be recognized.'

"6. *Acts of reprisal*

Ghana, India and Yugoslavia (A/AC.119/L.15)

'5. Nothing in the present Chapter shall authorize any State to undertake acts of reprisal.'

"7. *Meaning of 'force'*

(*a*) *Czechoslovakia* (A/AC.119/L.6)

'4. States shall refrain from economic, political or any other form of pressure aimed against the political independence or territorial integrity of any State.'

(*b*) *United Kingdom* (A/AC.119/L.8)

'2. By the expression "force" as used in paragraph 1 above is meant armed force...'

'Commentary

'(2) Paragraph 2 explains what is meant by the term "force". The *travaux préparatoires* of the San Francisco Conference indicate that, in the context of Article 2, paragraph 4, of the Charter, the expression "force" means physical force or armed force and does not include economic or political pressure...'

(*c*) *Ghana, India and Yugoslavia* (A/AC.119/L.15)

'2. The term "force" shall include:

(*a*) ...

(*b*) other forms of pressure, which have the effect of threatening the territorial integrity and political independence of any State.'

"Annex B[7]

"VIEWS EXPRESSED IN THE DISCUSSIONS, CONCERNING WHICH NO CONSENSUS WAS REACHED

"1. *Legal uses of force*

(*a*) On the decision of a competent organ of the United Nations

Romania (SR.7, p. 18, SR.16, p. 6) and *USSR* (SR.14, p. 12) referred only to the Security Council.

Italy (SR.7, pp. 6, 7), *Sweden* (SR.10, p. 11) and *Guatemala* (SR.14, p. 9) referred to a competent organ of the United Nations.

United States (SR.3, p. 17, SR.15, p. 19), *Nigeria* (SR.4, p. 10), *Netherlands* (SR.7, p. 12), *UAR* (SR.8, p. 8), *United Kingdom* (SR.16, p. 14), *Venezuela* (SR.16, p. 18) and *Australia* (SR.17, p. 11) preferred a formula mentioning both the Security Council and the General Assembly.

(*b*) By a regional agency

United States (SR.3, p. 17, SR.15, p. 19, SR.17, p. 17), *Sweden* (SR.10, p. 11), *United Kingdom* (SR.16, pp. 12-13), *Venezuela* (SR.16, p. 18) and *Australia* (SR.17, p. 11) supported a formula referring to regional agencies.

USSR (SR.14, p. 12) stated that any decision by a regional organization to use coercive measures or force against a Member of the United Nations without the authorization of the Security Council would be a breach of the Charter.

(*c*) Individual or collective self-defence

India (SR.3, p. 8), *Argentina* (SR.3, p. 11), *United States* (SR.3, p. 16), *Nigeria* (SR.4, p. 10), *Japan* (SR.5, p. 15), *Mexico* (SR.9, pp. 11-13) and *Sweden* (SR.10, p. 11) referred to individual or collective self-defence under Article 51 of the Charter.

Mexico (SR.9, pp. 11-13) stated that the right of self-defence continued to exist only until the Security Council had taken measures necessary to maintain international peace and security; *USSR* (SR.14, p. 12) criticized the United Kingdom proposal for not mentioning armed attack and the Security Council in connexion with self-defence.

United States (SR.3, p. 14) raised the question whether the threat of force gave rise to the right of self-defence. *Mexico* (SR.9, pp. 11-13) stated that self-defence was only permitted under Article 51 in the event of armed attack, to the exclusion of every other act, including provocation.

Lebanon (SR.3, pp. 11-12) and *United States* (SR.3, pp. 13-14) raised the question whether economic pressure or 'economic aggression' would give rise to a right of self-defence. *UAR* (SR.8, pp. 8, 9) replied that while the use of economic coercion justified the exercise by the victim country of its right to self-defence, the exercise of that right should not reach the point of using armed force.

Mexico (SR.9, p. 13) said that the use of nuclear weapons was in itself contrary to the Charter. *United States* (SR.15, pp. 15, 19) said that the Charter prohibited not the use of specific weapons, but the use or threat of force in certain ways.

(*d*) Self-defence against colonial domination

Czechoslovakia (SR.4, p. 6, SR.8, pp. 6-7), *Yugoslavia* (SR.4, p. 9, SR.9, p. 22), *USSR* (SR.5, p. 9, SR.14, p. 11), *Romania* (SR.7, p. 18, SR.16, p. 5), *UAR* (SR.8, pp. 8-9, SR.17, p. 16), *Ghana* (SR.10, pp. 14-15) and *India* (SR.17, p. 4) favoured the inclusion of a provision on the subject.

Japan (SR.5, pp. 14-15), *Canada* (SR.6, p. 9), *Italy* (SR.7, pp. 6-7, SR.16, p. 8), *Netherlands* (SR.7, p. 12), *Lebanon* (SR.7, p. 14), *Nigeria* (SR.7, p. 22), *Sweden* (SR.10, p. 9), *Dahomey* (SR.10, p. 12), *Guatemala* (SR.14, p. 7), *United States* (SR.15, pp. 15, 19, SR.17, p. 18), *United Kingdom* (SR.16, p. 14), *Venezuela* (SR.16, pp. 17-18) and *Australia* (SR.17, pp. 14-15) opposed such a provision.

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[7] The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

"2. *Making the United Nations security system more effective*

Italy (SR.16, pp. 7-9), *Australia* (SR.17, p. 9) and *United States* (SR.17, p. 18) supported the Italian amendment; *United Kingdom* (SR.16, p. 15) found it acceptable in principle, but wished to give further thought to its wording and placement in the text; *Yugoslavia* (SR.17, p. 9) expressed sympathy with the ideas of the amendment, but thought that it would not be easy to incorporate in the statement of the principle; and *UAR* (SR.17, p. 16) considered that it deserved thorough study.

"3. *Agreement for general and complete disarmament under effective international control*

Czechoslovakia (SR.4, p. 6), *USSR* (SR.5, p. 9), *Romania* (SR.7, p. 18), *UAR* (SR.8, p. 10) and *Poland* (SR.9, p. 7) favoured the inclusion of a provision on the subject.

Netherlands (SR.9, p. 11) stressed the urgency of disarmament, but could not yet make proposals how the Committee could avoid the objection that it was futile to repeat the need for an agreement without proposing a solution of the difficulties involved.

Italy (SR.7, p. 7), *Nigeria* (SR.7, p. 22), *Sweden* (SR.10, p. 10), *United States* (SR.15, p. 18), *United Kingdom* (SR.16, pp. 14-15), *Venezuela* (SR.16, p. 17) and *Australia* (SR.17, p. 13) opposed the inclusion of a provision on the subject in principle A.

Sweden (SR.10, p. 10) and *United Kingdom* (SR.16, pp. 14-15) suggested that the subject might be dealt with in the commentary.

"4. *War propaganda*

Czechoslovakia (SR.4, p. 6), *USSR* (SR.5, p. 8), *Romania* (SR.7, p. 18) and *Poland* (SR.9, p. 8) favoured the inclusion of a provision on the subject.

United States (SR.3, p. 14, SR.15, pp. 15, 18), *Nigeria* (SR.7, p. 21), *Sweden* (SR.10, p. 9), *Italy* (SR.16, p. 8), *United Kingdom* (SR.16, p. 13), *Venezuela* (SR.16, p. 17) and *Australia* (SR.17, p. 13) opposed the inclusion of such a provision.

Netherlands (SR.7, p. 11) was in doubt as to the desirability of retaining the notion of war propaganda in principle A, and thought that any provision on the question should take account of constitutional restrictions to which the executive authority was subject in that respect.

"5. *Non-recognition or nullity of situations brought about by illegal use or threat of force*

Nigeria (SR.4, p. 10, SR.7, p. 21) stated that changes brought about or advantages acquired through the threat or use of force would be considered null and void.

India (SR.3, p. 8) said that a situation resulting from a use of force to violate the frontiers of a State should not be recognized by other States; *Mexico* (SR.9, pp. 15-16) favoured the inclusion of the principle of non-recognition of territorial conquests, and stated that if the Security Council or the General Assembly had determined that a territorial acquisition had been brought about by the threat or use of force, Members would be required to apply the principle of non-recognition; *Argentina* (SR.3, p. 10), *Guatemala* (SR.14, p. 8), *Romania* (SR.16, p. 6) and *Venezuela* (SR.16, p. 17) favoured inclusion of the principle of non-recognition.

Japan (SR.5, p. 13) asked how a situation brought about by force or pressure could be declared null and void.

Netherlands (SR.7, p. 11), *Sweden* (SR.10, p. 11), *United Kingdom* (SR.16, p. 15) and *Australia* SR.17, p. 13) considered such a provision inadvisable.

"6. *Acts of reprisal*

Mexico (SR.9, p. 15) and *India* (SR.17, p. 5) supported the inclusion of a provision on acts of reprisal.

"7. *Meaning of 'force'*

Argentina (SR.3, p. 11), *United States* (SR.3, p. 12, SR.15, pp. 17-18), *United Kingdom* (SR.5, pp. 12-13, SR.16, p. 13), *France* (SR.6, pp. 5-6), *Italy* (SR.7, p. 6), *Netherlands* (SR.7, p. 8), *Lebanon* (SR.7, p. 14), *Australia* (SR.10, p. 7, SR.17, p. 12), *Sweden* (SR.10, p. 10), *Guatemala* (SR.14, p. 7)

and *Venezuela* (SR.16, p. 16) expressed the view that the meaning of 'force' in Article 2, paragraph 4, of the Charter was confined to armed force.

Mexico (SR.9, pp. 14-15) saw no legal reason why 'force' should not embrace certain forms of economic, political and other pressure, but opposed including economic, ideological, indirect or other aggression in the concept in order to avoid enlarging the scope of self-defence.

India (SR.3, pp. 7, 8, SR.17, p. 4), *Czechoslovakia* (SR.4, p. 6, SR.8, pp. 4-6), *Yugoslavia* (SR.4, p. 9, SR.9, pp. 20-21, SR.17, pp. 5-9), *Nigeria* (SR.4, p. 10, SR.7, p. 23), *USSR* (SR.5, p. 8, SR.14, pp. 10-11), *Ghana* (SR.5, p. 17, SR.10, p. 14), *Romania* (SR.7, p. 17, SR.16, pp. 4-5), *UAR* (SR.8, p. 9), *Poland* (SR. 9, p. 8), *Madagascar* (SR.9, p. 17) and *Burma* (SR.9, pp. 18-19) expressed the view that the meaning of 'force' was not confined to armed force, but extended to economic, political and other forms of pressure or coercion.

Sweden (SR.10, p. 10) suggested that the Committee's draft should exclude any affirmation that the term 'force' was either limited to armed force or included economic and other non-military forms of pressure."

Paper No. 2

"Principle A

[*i. e.* 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 Committee was unable to reach any consensus on the scope or content of this principle.

(*a*) For proposals and amendments, *see* annex A.

(*b*) For views expressed during the discussion, *see* annex B."

"Annex A

"PROPOSALS AND AMENDMENT CONCERNING WHICH NO CONSENSUS WAS REACHED

"*Proposal by Czechoslovakia* (A/AC.119/L.6) (Reproduced in paragraph 27 of the report.)

"*Proposal by Yugoslavia* (A/AC.119/L.7) (Reproduced in paragraph 28 of the report.)

"*Proposal by the United Kingdom* (A/AC.119/L.8) *and amendment thereto by Italy* (A/AC.119/L.14) (Reproduced in paragraphs 29 and 30 of the report, respectively.)

"*Proposal by Ghana, India and Yugoslavia* (A/AC.119/L.15) (Reproduced in paragraph 31 of the report.)

"Annex B[8]

"VIEWS EXPRESSED IN THE DISCUSSIONS, CONCERNING WHICH NO CONSENSUS WAS REACHED

"A. *Meaning of 'in their international relations'*

India (SR.3, p. 7) said that certain groups or communities might claim international personality or statehood and that consequently any use or threat of force against them would be subject to Article 2, paragraph 4; also, a State could not use force against any other State, whether or not a Member of the United Nations.

[8] The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

United States (SR.3, p. 15), *Madagascar* (SR.9, p. 17), *Sweden* (SR.10, p. 9) and *Australia* (SR.17, p. 14) stated that Article 2, paragraph 4, did not apply to civil wars or rebellions. *Sweden* (SR.10, p. 9) suggested a provision that rebellions were not forbidden under Article 2, paragraph 4, in order to clarify that struggles for independence were permitted. *Guatemala* (SR.14, p. 7) suggested a provision that Article 2, paragraph 4, did not cover the force to which a State might resort in order to suppress an internal rebellion. *Australia* (SR.17, p. 14) said that the Charter could not give legal recognition to a right of insurrection.

"B. *Meaning of 'against the territorial integrity or political independence'*

United States (SR.3, pp. 15-16) said that analysis of the phrase was very difficult. *Madagascar* (SR.9, pp. 17-18) and *Sweden* (SR.10, p. 10) said that the phrase did not limit the scope of the prohibition of the use or threat of force. *Guatemala* (SR.14, p. 8) said that force could not be used in the abstract, but when used, it was directed against an international legal entity, including its political organization, its population and its territory.

"C. *Meaning of 'threat of force'*

Argentina (SR.3, p. 11) said that the threat of force could be direct or indirect. *United States* (SR.3, p. 14) was of the opinion that the threat must be openly made and communicated by some means to the State threatened, and referred to the use of military force if proffered demands were not accepted. *Madagascar* (SR.9, p. 17) said that the threat could be expressed not only in deeds but also in words.

"D. *Meaning of 'force'*

Argentina (SR.3, p. 11), *United States* (SR.3, p. 12, SR.15, pp. 17-18), *United Kingdom* (SR.5, pp. 12-13, SR.16, p. 12), *France* (SR.6, pp. 5-6), *Italy* (SR.7, p. 6), *Netherlands* (SR.7, p. 8), *Lebanon* (SR.7, p. 14), *Australia* (SR.10, p. 7, SR.17, p. 12), *Sweden* (SR.10, p. 10), *Guatemala* (SR.14, p. 7) and *Venezuela* (SR.16, p. 16) expressed the view that the meaning of 'force' in Article 2, paragraph 4, of the Charter was confined to armed force.

Mexico (SR.9, pp. 14-15) saw no legal reason why 'force' should not embrace certain forms of economic, political ant other pressure, but opposed including economic, ideological, indirect or other aggression in the concept in order to avoid enlarging the scope of self-defence.

India (SR.3, pp. 7, 8, SR.17, p. 4), *Czechoslovakia* (SR.4, p. 6, SR.8, pp. 4-6), *Yugoslavia* (SR.4, p. 9, SR.9, pp. 20-21, SR.17, pp. 5-9), *Nigeria* (SR.4, p. 10, SR.7, p. 23), *USSR* (SR.5, p. 8, SR.14, pp. 10-11), *Ghana* (SR.5, p. 17, SR.10, p. 14), *Romania* (SR.7, p. 17, SR.16, pp. 4-5), *UAR* (SR.8, p. 9), *Poland* (SR.9, p. 8), *Madagascar* (SR.9, p. 17) and *Burma* (SR.9, pp. 18-19) expressed the view that the meaning of 'force' was not confined to armed force, but extended to economic, political and other forms of pressure or coercion.

Sweden (SR.10, p. 10) suggested that the Committee's draft should exclude any affirmation that the term 'force' wat either limited to armed force or included economic and other non-military forms of pressure.

"1.—Irregular or volunteer forces, and armed bands

Argentina (SR.3, p. 11) stated that the prohibition covered irregular forces or armed bands leaving a State to operate in another State. *Sweden* (SR.10, p. 9), *Guatemala* (SR.14, p. 8) and *Venezuela* (SR.16, p. 16) supported the inclusion of a provision on the subject.

United States (SR.3, p. 13) and *USSR* (SR.14, p. 9) stated that the departure of individual volunteers and their participation in military actions were legal. *United Kingdom* (SR.16, p. 11) and *Australia* (SR.17, p. 11) said that Governments could not organize volunteer forces and send them to another State.

USSR (SR.14, p. 11) said that paragraphs 2, 3 and 4 of the United Kingdom proposal could be invoked against national liberation movements and against States wishing to assist them.

"2.—Indirect use of force

Argentina (SR.3, p. 11) stated that the prohibition should cover any military support by a State of subversive activities in another State. *Canada* (SR.6, p. 9) said that subversion, infiltration by

trained guerrillas, and the supply of arms to insurrectionary forces should be outlawed. *Madagascar* (SR.9, p. 17) said that the fomenting of internal disorder on behalf of a foreign Power should be regarded as a use of force. *Guatemala* (SR.14, p. 8) said that all States had the duty to refrain from provoking internal conflicts or committing terroristic acts in the territory of other States and not to tolerate activities organized for that purpose. *Sweden* (SR.10, p. 9), *United Kingdom* (SR.16, p. 12) and *Venezuela* (SR.16, p. 16) supported the United Kingdom proposal.

USSR (SR.14, p. 11) said that paragraphs 2, 3 and 4 of the United Kingdom proposal could be invoked against national liberation movements and against States wishing to assist them.

"3.—Use of force in territorial disputes and boundary problems

India (SR.3, p. 8), *Czechoslovakia* (SR.4, pp. 5-6), *USSR* (SR.5, pp. 7-8), *Canada* (SR.6, p. 9) and *Sweden* (SR.10, p. 11) considered that a prohibition of force in territorial disputes would be useful; *United States* (SR.15, p. 17) suggested including it as a commentary; and *United Kingdom* (SR.16, p. 13) said that the proposals merited further study.

United States (SR.3, p. 16) raised the question whether a State should be considered to have used force illegally if it had resisted in good faith another State endeavouring to affirm its sovereignty —a sovereignty subsequently recognized to it—over a portion of territory.

UAR (SR.17, p. 16) stated that the three-Power proposal did not condone the occupation of territory by means contrary to the Charter or to United Nations resolutions; *Ghana* (SR.17, p. 18) confirmed the interpretation.

France (SR.6, p. 4) said that the last phrase of the first paragraph of the Czechoslovak proposal gave the paragraph a more restrictive meaning than it would otherwise possess.

"4.—Wars of aggression

USSR (SR.5, p. 8) and *Czechoslovakia* (SR.4, p. 6, SR.8, pp. 7-8) supported the Czechoslovak proposals; *Netherlands* (SR.7, pp. 10-11) favoured retention of the notion of the penal liability of perpetrators of international crimes against peace; *Sweden* (SR.10, p. 9) favoured mention of the threat or waging of wars of aggression; and *Romania* (SR.16, p. 6) considered the definition of Principle A should cover the concept of political, material and moral responsibility for violations of that principle.

Japan (SR.5, p. 15) and *Italy* (SR.7, p. 7) raised the question how, or by what organ, political and material responsibility of a State would be established. *Czechoslovakia* (SR.8, pp. 7-8) replied that an appropriate device would be found in case of any violation of international peace and security.

United Kingdom (SR.16, p. 13) and *Venezuela* (SR.16, p. 16) found the Czechoslovak proposal unclear.

Nigeria (SR.7, p. 21) and *United States* (SR.15, p. 18) opposed inclusion of a provision on the subject.

"5.—Acts of reprisal

Mexico (SR.9, p. 15) and *India* (SR.17, p. 5) supported the inclusion of a provision on acts of reprisal.

United States (SR.17, p. 18) considered such a provision unnecessary.

"6.—Economic, political and other forms of pressure or coercion
(see also above under the heading *Meaning of "force"*)

Japan (SR.5, p. 14) asked whether the Czechoslovak and Yugoslav proposals meant economic and political pressure sufficiently powerful to endanger the political independence or territorial integrity of a State, or whether they referred to the purpose for which the pressure was applied.

Nigeria (SR.7, p. 22) stated that paragraph 2 of the Yugoslav proposal was somewhat succinct.

"E. *Legal uses of force*

"1.—On the decision of a competent organ of the United Nations

Romania (SR.7, p. 18, SR.16, p. 6) and *USSR* (SR.14, p. 12) referred only to the Security Council.

Italy (SR.7, pp. 6, 7), *Sweden* (SR.10, p. 11) and *Guatemala* (SR.14, p. 9) referred to a competent organ of the United Nations.

United States (SR.3, p. 17, SR.15, p. 19), *Nigeria* (SR.4, p. 10), *Netherlands* (SR.7, p. 12), *UAR* (SR.8, p. 8), *United Kingdom* (SR.16, p. 14), *Venezuela* (SR.16, p. 18) and *Australia* (SR.17, p. 11) preferred a formula mentioning both the Security Council and the General Assembly.

"2.—By a regional agency

United States (SR.3, p. 17, SR.15, p. 19, SR.17, p. 17), *Sweden* (SR.10, p. 11), *United Kingdom* (SR.16, pp. 12-13), *Venezuela* (SR.16, p. 18) and *Australia* (SR.17, p. 11) supported a formula referring to regional agencies.

USSR (SR.14, p. 12) stated that any decision by a regional organization to use coercive measures or force against a Member of the United Nations without the authorization of the Security Council would be a breach of the Charter.

"3.—Individual or collective self-defence

India (SR.3, p. 8), *Argentina* (SR.3, p. 11), *United States* (SR.3, p. 16), *Nigeria* (SR.4, p. 10), *Japan* (SR.5, p. 15), *Mexico* (SR.9, pp. 11-13) and *Sweden* (SR.10, p. 11) referred to individual or collective self-defence under Article 51 of the Charter.

Mexico (SR.9, pp. 11-13) stated that the right of self-defence continued to exist only until the Security Council had taken measures necessary to maintain international peace and security; *USSR* (SR.14, p. 12) criticized the United Kingdom proposal for not mentioning armed attack and the Security Council in connexion with self-defence.

United States (SR.3, p. 14) raised the question whether the threat of force gave rise to the right of self-defence. *Mexico* (SR.9, pp. 11-13) stated that self-defence was only permitted under Article 51 in the event of armed attack, to the exclusion of every other act, including provocation.

Lebanon (SR.3, pp. 11-12) and *United States* (SR.3, pp. 13-14) raised the question whether economic pressure or 'economic aggression' would give rise to a right of self-defence. *UAR* (SR.8, p. 9) replied that while the use of economic coercion justified the exercise by the victim country of its right to self-defence, the exercise of that right should not reach the point of using armed force.

Mexico (SR.9, p. 13) said that the use of nuclear weapons was in itself contrary to the Charter. *United States* (SR.15, pp. 15, 19) said that the Charter prohibited, not the use of specific weapons. but the use or threat of force in certain ways.

"4.—Self-defence against colonial domination

Czechoslovakia (SR.4, p. 6, SR.8, pp. 6-7), *Yugoslavia* (SR.4, p. 9, SR.9, p. 22), *USSR* (SR.5, p. 9, SR.14, p. 11), *Romania* (SR.7, p. 18, SR.16, p. 5), *UAR* (SR.8, pp. 8-9, SR.17, p. 16), *Ghana* (SR.10, pp. 14-15) and *India* (SR.17, p. 4) favoured the inclusion of a provision on the subject.

Japan (SR.5, pp. 14-15), *Canada* (SR.6, p. 9), *Italy* (SR.7, pp. 6-7, SR.16, p. 8), *Netherlands* (SR.7, p. 12), *Lebanon* (SR.7, p. 14), *Nigeria* (SR.7, p. 22), *Sweden* (SR.10, p. 9), *Dahomey* (SR.10, p. 12), *Guatemala* (SR.14, p. 7), *United States* (SR.15, pp. 15, 19, SR.17, p. 18), *United Kingdom* (SR.16, p. 14), *Venezuela* (SR.16, pp. 17-18) and *Australia* (SR.17, pp. 14-15) opposed such a provision.

"F. *Corollaries of the prohibition of the use or threat of force*

"1.—Non-recognition or nullity of situations brought about by illegal use of force

Nigeria (SR.4, p. 10, SR.7, p. 21) stated that changes brought about or advantages acquired through the threat or use of force would be considered null and void.

India (SR.3, p. 8) said that a situation resulting from a use of force to violate the frontiers of a State should not be recognized by other States; *Mexico* (SR.9, pp. 15-16) favoured the inclusion of the principle of non-recognition of territorial conquests, and stated that if the Security Council or the General Assembly had determined that a territorial acquisition had been brought about by the threat or use of force, Members would be required to apply the principle of non-recognition; *Argen-*

tina (SR.3, p. 10), *Guatemala* (SR.14, p. 8), *Romania* (SR.16, p. 6) and *Venezuela* (SR.16, p. 17) favoured inclusion of the principle of non-recognition.

Japan (SR.5, p. 13) asked how a situation brought about by force or pressure could be declared null and void.

Netherlands (SR.7, p. 11), *Sweden* (SR.10, p. 11), *United Kingdom* (SR.16, p. 15) and *Australia* (SR.17, p. 13) considered such a provision inadvisable.

"2.—War propaganda

Czechoslovakia (SR.4, p. 6), *USSR* (SR.5, p. 8), *Romania* (SR.7, p. 18) and *Poland* (SR.9, p. 8) favoured the inclusion of a provision on the subject.

United States (SR.3, p. 14, SR.15, pp. 15, 18), *Nigeria* (SR.7, p. 21), *Sweden* (SR.10, p. 9), *Italy* (SR.16, p. 8), *United Kingdom* (SR.16, p. 13), *Venezuela* (SR.16, p. 17) and *Australia* (SR.17, p. 13) opposed the inclusion of such a provision.

Netherlands (SR.7 p. 11) was in doubt as to the desirability of retaining the matter of war propaganda in Principle A and thought that any provision on the question should take account of constitutional restrictions to which the executive authority was subject in that respect.

"3.—Agreement for general and complete disarmament under effective international control

Czechoslovakia (SR.4, p. 6), *USSR* (SR.5, p. 9), *Romania* (SR.7, p. 18), *UAR* (SR.8, p. 10) and *Poland* (SR.9, p. 7) favoured the inclusion of a provision on the subject.

Netherlands (SR.7, p. 11) stressed the urgency of disarmament, but could not yet make proposals how the Committee could avoid the objection that it was futile to repeat the need for an agreement without proposing a solution of the difficulties involved.

Italy (SR.7, p. 7), *Nigeria* (SR.7, p. 22), *Sweden* (SR.10, p. 10), *United States* (SR.15, p. 18), *United Kingdom* (SR.16, pp. 14-15), *Venezuela* (SR.16, p. 17) and *Australia* (SR.17, p. 13) opposed the inclusion of a provision on the subject in principle A.

Sweden (SR.10, p. 10) and *United Kingdom* (SR.16, pp. 14-15) suggested that the subject might be dealt with in the commentary.

"4.—Making the United Nations security system more effective

Italy (SR.16, pp. 7-9), *Australia* (SR.17, p. 9) and *United States* (SR.17, p. 18) supported the Italian amendment; *United Kingdom* (SR.16, p. 15) found it acceptable in principle, but wished to give further thought to its wording and placement in the text; *Yugoslavia* (SR.17, p. 9) expressed sympathy with the ideas of the amendment, but thought that it would not be easy to incorporate in the statement of the principle; and *UAR* (SR.17, p. 16) considered that it deserved thorough study."

107. By 13 votes to 10, with 2 abstentions, the Special Committee decided to put Paper No. 2 to the vote first.

108. By 11 votes to 2, with 12 abstentions, the Special Committee adopted Paper No. 2.

2.—Explanations of vote

109. Explanations of vote were given by the representatives of Romania, Ghana, the Netherlands, Yugoslavia, the USSR, Lebanon, Argentina, the United States, Burma, the United Arab Republic, Czechoslovakia, Canada, India, the United Kingdom, Italy, Australia, Poland and Guatemala.

110. The representative of *Romania* said that he had abstained in the vote on Paper No. 2 because he had intended to vote in favour of Paper No. 1. Paper No. 1 represented a step forward in the development of the principle to which it related and contained some of the elements which should be included in any statement of that principle. In the view of his delegation, a complete statement of that principle should, however, also include the following additional elements: a condemnation of the threat or use of force by States in their international relations as a violation of the Charter and as incompatible with the stand-

ards of the contemporary world; the duty of every State to refrain in its international relations from any form of pressure, whether direct or indirect, military, political, economic or other 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 every State to refrain from any pressure against peoples struggling to achieve their independence; the duty of States to co-operate with a view to achieving general and complete disarmament and a prohibition of propaganda advocating the use of force in international relations.

111. The representative of *Ghana* said that he had voted for Paper No. 2 because, in his view, it was the only proposal actually before the Special Committee. Paper No. 1 had been drawn up solely for the purpose of reaching a compromise and several delegations had made substantial concessions to achieve that end. However, one delegation had finally indicated it could not support that Paper as it stood, it had therefore failed to achieve its purpose and was thus not properly before the Committee. In view of the fact that, nonetheless, Paper No. 1 was reproduced in the report of the Special Committee, he wished to place on record his views on the contents of that Paper. Self-determination was the very essence of peaceful coexistence; the colonial peoples were therefore justified in using every possible means to liberate themselves. Such a right would assuredly have been written into the Charter had it been drafted in 1964, for the "fundamental human rights" referred to in the Preamble were irreconcilable with the continued existence of colonialism. The greatest service the Committee could have rendered the colonial peoples would have been to give a legal formulation to their right of self-defence: that had been the purpose of the proposal by Ghana, India and Yugoslavia (A/AC.119/L.15). The Committee had not done so; it must accordingly be placed on record that his delegation could not accept paragraphs 2 (*b*) and (*c*) of section I of Paper No. 1 as affecting that right, and must therefore reserve its position on those paragraphs until the right of self-defence against colonial domination was expressly recognized in any formulation of the principle under consideration.

112. The representative of the *Netherlands* said that, in explaining his vote, he wished to comment on the results of the Special Committee's work. The Committee had not been able to reach any agreement on the scope or content of the first three of the principles before it. Consequently, the agreement reached on the fourth principle, namely the principle of sovereign equality (*see* para. 339 below), presented such an incomplete picture of international law as to constitute a travesty. In approving that latter principle, his delegation clearly presupposed that the points contained therein would not remain mere isolated statements. Specifically, if, when the General Assembly had concluded its consideration of the matter, a draft statement of principles was drawn up, it would be very difficult for his Government to accept those principles unless they accorded proper recognition to the role played in international law by the procedures used by the United Nations for the peaceful settlement of disputes, including the procedure of judicial settlement. His delegation had emphasized both in the Sixth Committee and in the Special Committee that such procedures and the full utilization of other procedures existing under international law were indispensable for the progressive development of international law. His delegation had therefore made its vote in favour of the Drafting Committee's proposal relating to the pacific settlement of international disputes (*see* para. 201 below) contingent on agreement being reached on that aspect of the matter, as it would also have done in the case of Paper No. 1 relating to the prohibition of the threat or use of force, if that Paper had been put to the vote.

113. The representative of *Yugoslavia* said that his delegation deeply regretted the fact that the Special Committee had been unable to reach agreement on Paper No. 1, the text of which was the result of very long discussions and the patient efforts of many delegations. That was why, although he was not opposed to the proposal contained in Paper No. 2, his delegation had abstained in the vote on that document. With respect to Paper No. 1, his delegation considered that section I thereof contained only some of the elements which the

principle concerned should comprise. His delegation had thus only agreed to Paper No. 1 as a compromise, and subject to the reservation stated in the foot-note to section I to the effect that the substance of paragraphs 2 (*b*) and (*c*) of that section should be included also under the principle of non-intervention when it was drafted. Furthermore, in the view of his delegation, these two paragraphs could not be interpreted independently of the other paragraphs which should properly form part of the principle, including the exceptions to the prohibition on the threat or use of force, and the right of colonial peoples to fight for their freedom.

114. The representative of the *Union of Soviet Socialist Republics* said that the Drafting Committee had laboured unremittingly to reach agreement on the elements to be included in the formulation of the principle relating to the prohibition of the threat or use of force. Thanks to the flexibility and wisdom shown by many delegations which wished to further the development of international law, it had finally drawn up a compromise text, Paper No. 1, which listed, in section I, the provisions acceptable to all delegations and, in section II, several very important provisions on which it had not been possible to reach agreement. That document had been accepted by all the members of the Drafting Committee subject to approval by their Governments. Such approval had not eventually been forthcoming from the Government of one member of the Drafting Committee, thus depriving Paper No. 1 of any value, a regrettable development because that document actually contained a promising compromise formula. His delegation had therefore abstained in the vote on Paper No. 2. As regards the actual contents of Paper No. 1, his delegation had stated in the Drafting Committee that it agreed to the points contained in section I of that Paper as they were points forming part of the formulation of the principle prohibiting the threat or use of force. However, his delegation did not consider that the points enumerated in section I exhausted the content of that principle. The formulation thereof would be complete only if it likewise included the provisions contained in paragraphs 1 (*a*) and (*c*), 3, 4, and 7 (*a*) of Annex A of Paper No. 1. He also stated that in the view of his delegation, the Committee had only completed the first stage of its work. He further stressed that the use of force by colonial peoples fighting for their liberation from colonial domination was lawful and that, therefore, paragraphs 2 (*b*) and (*c*) of section I of Paper No. 1 did not deal with either the right of colonial peoples to resort to armed force for their liberation or the right of other States to assist them. Reviewing the results of the Committee's work, he said that in his delegation's view some progress had been made; there had been a detailed discussion, based on actual texts, and the Committee had worked out some initial elements which would facilitate further work on the subject. Owing to obstruction by one delegation, however, the Committee had been unfortunately prevented from going further in the case of the first three principles before it. His delegation nevertheless hoped that, when the matter went before the General Assembly, that delegation would find it possible to support measures backed by the overwhelming majority of Members.

115. The representative of *Lebanon* said that he deeply regretted that the Drafting Committee had been unable to submit a text on the principle under consideration which eventually enjoyed a full consensus. The failure, however, was not as complete as it might seem at first sight, for Paper No. 1 had been endorsed by thirteen members of the Drafting Committee and had been provisionally endorsed by the delegation of the fourteenth member subject to consultation with its Government. It was all the more regrettable that in the end the efforts of the various blocs to achieve solidarity had led nowhere.

116. The representative of *Argentina* said that he regretted the direction which the Special Committee's work had taken, particularly in that, when it had considered the conclusions of the Drafting Committee, it had changed the order of the principles before it and studied first of all the conclusion regarding the principle of sovereign equality, which had not been a good omen for the future. After the adoption of those conclusions, he had hoped

that the Special Committee would also adopt specific formulations with respect to the principle of pacific settlement of international disputes and particularly to the principle of non-intervention, to which the Latin American countries traditionally attached exceptional importance. That, however, had unfortunately not been the case. Furthermore, it had not been possible to put Paper No. 1 regarding the principle relating to the prohibition of the threat or use of force to the vote because of the incomprehensible attitude of certain delegations. It was therefore in order to protest against the tactics used to prevent Paper No. 1 from being put to the vote, although agreement could have been reached on it, that his delegation had voted against Paper No. 2.

117. The representative of the *United States* said that he had voted in favour of Paper No. 2. He sincerely regretted that the Special Committee had not reached agreement on the wording of section I of Paper No. 1. Had that Paper been put to the vote as it stood, his delegation would not have been able to support it. While he had provisionally approved the text of that Paper, this had been on the understanding that it was subject to consultation with his Government and further consideration in the Drafting Committee in the light of instructions received by representatives from their Governments. For legal reasons, his Government had found itself unable to accept one provision of the text of Paper No. 1 because, in its view, paragraph 2 (*d*) of section I was open to misinterpretation, and more particularly the phrase "Every State has the duty to refrain from the threat or use of force to violate the existing boundaries of another State." His delegation was of the view that, since Article 2, paragraph 4, of the Charter provided that States must refrain from the threat or use of force against the territorial integrity of other States, it was obvious that they were bound to respect the frontiers of other States. As Article 2, paragraph 4, of the Charter thus contained a binding treaty provision on the point, it would be extremely ill-considered for the Special Committee not only to try to restate what was already incontestably accepted but, what was more serious, to make such a statement in an ambiguous form which could hardly fail to give rise to legal controversies and numerous difficulties of interpretation. The text of paragraph 2 (*d*) of section I of Paper No. 1 was incautious because it flatly stated that every State had the duty to refrain from the threat or use of force to violate existing boundaries, without any qualifications. It could thus be open to the interpretation that it failed to take account of the law of hot pursuit. Moreover, the express mention in this form of territorial disputes and violations of boundaries in the principle relating to the prohibition of the threat or use of force was, in the view of his delegation, particularly unjustifiable as the Special Committee had already agreed, in relation to the principle of sovereign equality, to state that the territorial integrity and political independence of a State were inviolable. Despite the fact that his delegation did not believe there was any need for including a text on this particular point in the principle concerning the prohibition of the threat or use of force, it had suggested alternative wordings or approaches to paragraph 2 (*d*) including a wording to the following effect: "It is the duty of every State to refrain from the threat or use of force to change the existing frontiers of another State or as a means of settling territorial disputes and problems concerning frontiers between States." The word "change", which was factual, was better than the term "violate", which was too subjective. It should therefore have satisfied those who considered it desirable to insert a clause on territorial disputes in the principle under consideration. However, this suggestion, as in the case of others made by his delegation, had been categorically rejected. His delegation had, for example, further suggested that the words "to violate the existing boundaries of another State, or" should be deleted from paragraph 2 (*d*), and that, instead, statements for the record should be made by delegations of their understanding that, under Article 2, paragraph 4, of the Charter, their Governments had the duty to respect the boundaries of other States. This suggestion had not been accepted. His delegation had also been prepared to accept a suggestion by the *United Kingdom* that the text should read: "Every State

has a duty to refrain from the threat or use of force to violate existing boundaries of another State with a view to effecting a change in the latter State's boundaries or as a means of solving its territorial disputes and problems concerning frontiers between States." This suggestion, however, had been also rejected by a small minority of delegations. His delegation was therefore not responsible for a failure to reach final agreement on the principle under consideration. He also wished to place on record the position of his delegation on certain other points covered in section I of Paper No. 1. In its understanding, the word "acquiesce" as used in paragraph 2 (*c*) meant that a State had knowledge of and legal authority to deal with actions which were at variance with the provision in that paragraph, yet wilfully failed to put a stop to them. Lastly, his delegation interpreted paragraph 3 of section I to mean that nothing in paragraphs 1 and 2 affected the lawful use of force consistent with the Charter of the United Nations.

118. The representative of *Burma* stated that his delegation had abstained from the vote on Paper No. 2 for the same reasons as the representative of Yugoslavia. In the view of his delegation, Paper No. 2 did not reflect the actual situation in the Drafting Committee.

119. The representative of the *United Arab Republic* stated that, in the view of his delegation, Paper No. 1 was not properly before the Committee as it had been objected to by one delegation. This view was confirmed by the Drafting Committee's submission of Paper No. 2, which could not conceivably be reconciled with Paper No. 1. As his delegation had thus considered that there was only one text before the Special Committee, it had abstained when the motion to give priority to Paper No. 2 had been put to the vote. The reason why it had abstained during the voting on Paper No. 2 itself was that, in its view, the great amount of effort which had been expended on consideration of the principle in question should have led to a formulation in keeping with the developments in international life since the adoption of the Charter. It had therefore been unable to support a draft which simply declared the inability of the Special Committee to reach a consensus on the principle. On the other hand, as Paper No. 2 had represented the only course of action open to the Committee at that late stage, he had not been able to vote against it. As regards the specific contents of Paper No. 1, which had not been discussed in the Special Committee, his delegation wished to reserve its position.

120. The representative of *Czechoslovakia* said that his delegation deeply regretted that the Special Committee had been unable to take action on Paper No. 1. Though far from perfect, that text had represented a compromise reached after long and difficult negotiations and had it been put to the vote his delegation would have been able to support it. At the same time, it would have explained that it did not consider that section I of Paper No. 1 was exhaustive, and it would have stressed the importance which it attached to the inclusion of paragraphs 1 (*a*), 3, 4, 5, 6 and 7 (*a*) of annex A of the same Paper in the formulation of the principle. The great efforts which had gone into the preparation of Paper No. 1 had been rendered futile by the failure of one delegation to ratify what had appeared to be unanimously accepted. The suggestions made by that latter delegation with respect to paragraph 2 (*d*) of section I of Paper No. 1, in particular the deletion of reference to the violation of boundaries, would have impaired the balance of the proposal as a whole. The delegation of Czechoslovakia could not accept any legal arguments in favour of the deletion of a reference to what was generally considered a part of international law. Believing as it did that agreement could have been reached on the principle under consideration, his delegation had been unable to vote in favour of Paper No. 2.

121. The representative of *Canada* said that his delegation had abstained during the voting on Paper No. 2 because it had not been convinced that there was really a profound and irremediable disagreement on the points set out in Paper No. 1. Even though agree-

ment had not been finally reached, he believed that the Committee's work on this principle had been valuable and should advance the work of the Sixth Committee.

122. The representative of *India* stated that the proposal by Ghana, India and Yugoslavia (A/AC.119/L.15) concerning boundaries, in the form in which it had been incorporated in Paper No. 1, had been accepted by thirteen members of the Drafting Committee. But one country alone finally frustrated the work of the Special Committee, by insisting on amendments which would not have served the interests of peace. This was all the more regrettable since the opposition by one delegation to the formulation of the principle relating to the prohibition of the threat or use of force was done by claiming to defend the United Nations Charter. That delegation had taken the position that it did not want the singling out of any particular provision of the Charter or to restate it. Yet it had supported many other proposals entailing restatement of what was obvious in the Charter and had desired to single out the use of force and regional agencies and to debar any mention of reprisals.

123. The representative of the *United Kingdom* said that it had been with regret that he had voted in favour of Paper No. 2. Paper No. 1 contained the points on which a provisional consensus had been achieved, and while he had had difficulties with some points, notably paragraph 2 (*a*) in section I, he would have been prepared to support Paper No. 1 as a whole, subject to further study by Governments. As a result of the last minute difficulties which had arisen, however, it had become clear that the Committee's only course was to report to the General Assembly that it had been unable to reach a consensus on the principle relating to the prohibition of the threat or use of force. The Committee's work, nevertheless, had not been entirely wasted. Paper No. 1, which showed the large measure of agreement reached, would be included in the Committee's report and the progress made could be built upon by the General Assembly and elsewhere. The Committee had been entirely right in its decision to proceed by way of consensus. The development of international law was not a question for a majority vote and the only logical course was to proceed by consensus.

124. The representative of *Italy* said that his delegation had voted in favour of Paper No. 2, in spite of the fact that it embodied a negative conclusion. Regardless of differences on specific points, one of the fundamental reasons why the Special Committee had failed in such a large part of its task was the refusal of a number of delegations to accept all the institutions and institutional implications of the United Nations Charter. It was in the institutional structure of the United Nations and the functions and powers of United Nations bodies, rather than in the formulation of rules of conduct, that the essential ways and means to make the principles of the Charter more effective should be found. This was particularly true of the four principles referred to the Special Committee. By minimizing or disregarding the institutional apparatus and by trying to set the international community back to an even more inorganic stage than it had reached in the twentieth century, a number of delegations had made the Committee's task far more difficult. He was confident that the General Assembly would dispose of such retrograde conceptions of contemporary international law and of the United Nations. It was to be hoped that the Committee's work would serve as a basis for further endeavours in more favourable circumstances.

125. The representative of *Australia* said that his delegation's vote in favour of Paper No. 2 should not be interpreted as arising from any affection for that document or for the result it recorded. His delegation, however, felt it had in self-respect no alternative but to vote for it, as it had been adopted without dissent in the Drafting Committee, and as it was clear that consensus on Paper No. 1 had broken down. The point on which consensus had broken down was however a narrow one, concerning the wording of an illustrative provision which could have had no independent legal effect, having regard to the terms of Article 2, paragraph 4, of the Charter. For that reason, his delegation could have accepted para-

graph 2 (*d*) of section I of Paper No. 1 in any of the forms suggested. In his view, the failure to reach a consensus on the principle under consideration was not the end but only the beginning of United Nations work in the progressive development and codification of that principle.

126. The representative of *Poland* said that his delegation had abstained in the vote on Paper No. 2 because it considered that Paper No. 1 would better serve the progress of international law. While the statement of the principle under consideration contained in section I of Paper No. 1 was not exhaustive, it represented a reasonable compromise and his delegation would have voted in favour of it had it been put to the vote.

127. The representative of *Guatemala* stated that the Committee's session had not been a failure as the principles before it had been carefully examined and the positions of delegations were now better understood. His delegation had voted in favour of Paper No. 2 because it was a faithful reflection of the outcome of the Committee's discussions. In view of the close link between the prohibition of the threat or use of force and the principle of non-intervention, which was an immutable principle of Latin American and general international law, the Committee's work would have lacked a certain balance had it adopted a formulation on the one principle and not on the other.

Chapter IV

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

A. *Written proposals and amendments submitted during the initial debate*

128. In regard to the above principle, five written proposals were submitted to the Special Committee by *Czechoslovakia* (A/AC.119/L.6), by *Yugoslavia* (A/AC.119/L.7), by the *United Kingdom of Great Britain and Northern Ireland* (A/AC.119/L.8), by *Japan* (A/AC.119/L.18) and jointly by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19). *Yugoslavia* withdrew its original proposal (A/AC.119/L.7) in favour of the three-Power proposal (A/AC.119/L.19) submitted by that country, *Ghana* and *India*. Four written amendments to the proposal by the *United Kingdom* (A/AC.119/L.8) were submitted by France (A/AC.119/L.17), by *Canada* and *Guatemala* (A/AC.119/L.20), by the *Netherlands* (A/AC.119/L.21) and by *Canada* (A/AC.119/L.22). The amendment by *Canada* and *Guatemala* (A/AC.119/L.20) was later withdrawn by its sponsors. The texts of the above-mentioned proposals and amendments are given below in the order in which they were submitted to the Special Committee.

129. *Proposal by Czechoslovakia* (A/AC.119/L.6)

"*The principle of peaceful settlement of disputes*

"1. States shall settle their international disputes solely by peaceful means so that international peace, security and justice are not endangered.

"2. The parties to a dispute shall enter first into direct negotiation, and, having regard to the circumstances and the nature of the dispute, may also use by common agreement other peaceful means of settling disputes, such as enquiry, mediation, conciliation, arbitration or judicial settlement, and resort to regional agencies or arrangements."

130. *Proposal by Yugoslavia* (A/AC.119/L.7)

"*Peaceful settlement of disputes*

"1. International disputes shall be settled solely by peaceful means, in a spirit of understanding, on a basis of sovereign equality and without the use of any form of pressure.

"2. States shall, accordingly, seek early, appropriate and just settlement of their international disputes by such peaceful means as may previously have been agreed upon between them or such other peaceful means as may be most appropriate according to the circumstances and the nature of the dispute, in particular those means indicated in Article 33 of the Charter.

"3. In seeking a peaceful settlement, the parties to a dispute, as well as all other States, shall refrain from any action that could aggravate the situation."

131. *Proposal by the United Kingdom* (A/AC.119/L.8) *and amendments by France* (A/AC.119/L.17), *Canada* and *Guatemala* (A/AC.119/L.20), *Netherlands* (A/AC.119/L.21) and *Canada* (A/AC.119/L.22)

Proposal by the United Kingdom

"*Peaceful settlement of disputes*

"*Statement of principles*

"1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

"2. The parties to any such dispute shall first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

"3. Unless they are capable of settlement by some other means, legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

"*Commentary*

"(1) The language of paragraph 1 follows closely that of Article 2, paragraph 3, of the Charter. Although the primary objective of the United Nations, as an organization, is to ensure the maintenance of international peace and security, it is essential to bear in mind that the Organization is equally dedicated to the concept that the principles of justice must be respected.

"(2) Paragraph 2, the language of which follows closely that of Article 33 of the Charter, spells out, in a non-exhaustive manner, the various means of peaceful settlement. Broadly speaking, the means of peaceful settlement thus enumerated fall into two categories:

(*a*) those means which, so far as the terms of settlement are concerned, depend upon voluntary acceptance by the parties;

(*b*) those means which oblige the parties to accept settlement determined by a third party organ.

Negotiation, mediation, inquiry and conciliation fall into the first of these categories; arbitration and judicial settlement fall into the second. Although reference to regional agencies or arrangements is not a means of settlement in itself, resort to such regional agencies or arrangements, which may incorporate either or both of the categories of peaceful settlement, should in any case be encouraged. Although the means of negotiation is that most commonly used, at least in the initial stages, for the peaceful settlement of international disputes, it is not the only or necessarily the most effective method of resolving a dispute. In the event that the method of negotiation is initially adopted by the parties to a dispute and does not result in a solution, the parties should continue to seek a solution by making use of one of the other means of peaceful settlement enumerated, having regard to the nature of the dispute.

"(3) Paragraph 3 emphasizes the principle, enshrined in Article 36, paragraph 3, of the Charter, that legal disputes should as a general rule be referred by the parties to the International Court of Justice. All States Members of the United Nations are *ipso facto* parties to the Statute of the Court. The principle that legal disputes should as a general rule be referred to the Court also finds expression in operative paragraph 3 of Part C of General Assembly resolution 171 (II) of 14 November 1947. The second preambular paragraph of Part C of that resolution draws attention to the consideration that the International Court of Justice could settle or assist in settling many disputes in conformity with the principles of justice and international law if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services. In this connexion, operative paragraph 1 of Part C of the resolution draws the attention of those States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible.

"(4) The second sentence in paragraph 3, which is based on Article 95 of the Charter, makes it clear that parties to a dispute of a legal nature may entrust the solution of their differences to other means of judicial settlement."

132. *The French amendment* (A/AC.119/L.17) to the *United Kingdom* proposal provided for the addition to the statement of principles in that proposal of a new paragraph 4 as follows:

> "4. Recourse to any one of the means of peaceful settlement of disputes, in conformity with an undertaking freely entered into, shall not be regarded as derogating from the sovereignty of the State."

133. *The amendment* (A/AC.119/L.20) by *Canada* and *Guatemala* to the United Kingdom proposal, which was later withdrawn by its sponsors, proposed the insertion of the following new paragraph between paragraphs 2 and 3 of the statement of principles in that proposal:

> "Parties to a dispute which, notwithstanding resort to the procedures mentioned in the previous paragraph, and in particular resort to the procedures provided for by regional agencies or arrangements, remains unsettled should, in accordance with the relevant provisions of the Charter, bring it before the General Assembly or the Security Council as the case may be."

134. *The Netherlands amendment* (A/AC.119/L.21) to the *United Kingdom* proposal provided for the addition, at the end of paragraph 3 of the statement of principles on that proposal, of the following:

> "General multilateral conventions adopted under the auspices of the United Nations should contain a clause providing that disputes relating to the interpretation or application of the convention which the parties have not agreed to settle, or have not been able to settle, by some other peaceful means, may be referred on the application of any party to the International Court of Justice."

135. Lastly, the *Canadian amendment* (A/AC.119/L.22) to the *United Kingdom* proposal provided for the addition of the following new paragraph at the end of the statement of principles in the proposal:

> "Nothing in the foregoing paragraphs prejudices or derogates from the powers and functions which are vested by the provisions of the Charter in the General Assembly and the Security Council respectively in relation to the pacific settlement of international disputes."

136. *Proposal by Japan* (A/AC.119/L.18)

"*Peaceful settlement of disputes*

"The following paragraph shall be inserted in the principal and operative part of the outcome of the Special Committee:

'Every State should accept the compulsory jurisdiction of the International Court of Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, as soon and with as few reservations as possible.'"

137. *Proposal by Ghana, India and Yugoslavia* (A/AC.119/L.19)

"*Peaceful settlement of disputes*

"1. Every State shall settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice are not endangered.

"2. Unless otherwise provided for, the parties to any dispute shall, first of all, seek a solution by direct negotiations; taking into account the circumstances and the nature of the dispute, they shall seek a solution by inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

"3. (*a*) If any dispute is not capable of settlement by some other means and if the parties agree that it is essentially legal in nature, such a dispute shall, as a general rule, be referred by all the parties to it to the International Court of Justice in accordance with the provisions of the Statute of the Court. The parties may, however, entrust the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

(*b*) In accordance with the provisions of Article 9 of the Statute of the International Court of Justice concerning the election of the judges of the Court, the United Nations shall take early steps to assure that in the Court as a whole there are represented more fully and equitably the main forms of civilization and the principal legal systems of the world. At the same time, it is the duty of the United Nations to continue its efforts in the field of the progressive development of international law and its codification in order to strengthen the legal basis of the judicial settlement in international disputes.

"4. States should, as far as possible, include in the bilateral and multilateral agreements, to which they become parties, provisions concerning the particular peaceful means mentioned in Article 33 of the Charter of the United Nations, by which they desire to settle their differences.

"5. In view of their gravity and their tendency to increase tensions rapidly and, thereby, endanger international peace and security, territorial disputes and problems concerning frontiers shall be settled solely by peaceful means.

"6. In seeking a peaceful settlement, the parties to a dispute, as well as other States, shall refrain from any action which may aggravate the situation and shall act in accordance with the purposes and principles of the Charter of the United Nations and the provisions of this Chapter."

B. *Debate*

1.—General obligation to settle international disputes by peaceful means

138. The principle stated in Article 2, paragraph 3, of the United Nations Charter, that States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, was generally recognized

by the representatives who took part in the debate as a legal obligation which contemporary international law imposed on all States members of the international community. Proposals concerning this general obligation were submitted by *Czechoslovakia* (A/AC.119/L.6, para, 1 (*see* para. 129 above)), *Yugoslavia* (A/AC.119/L.7, para. 1 (*see* para. 130 above)), the *United Kingdom* (A/AC.119/L.8, para. 1 (*see* para. 131 above)) and *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19, para. 1 (*see* para. 137 above)).

139. It was stated that the principle of peaceful settlement appeared as the logical corollary of the injunction to refrain from the threat or use of force contained in Article 2, paragraph 4, of the Charter. The history of international law and international relations showed that the two principles had developed side by side. As international law had progressively outlawed the threat or use of force in the settlement of international disputes, the procedures for the peaceful settlement of disputes had necessarily been developed, within their juridical framework, to help solve the conflicts of interest which inevitably arose in the relations among States.

140. In this respect the Charter represented the final stage in an evolution marked by a series of international instruments and acts which, as they had progressively restricted the right to resort to war recognized by traditional international law, had at the same time gradually developed the means of peacefully settling disputes and established the legal obligation of States to use such means. During the debate mention was also made of the Calvo and Drago doctrines, the Permanent Commissions of Inquiry set up by the Bryan treaties, the Hague Conventions for the Pacific Settlement of Disputes, 1899 and 1907, the Covenant of the League of Nations and the Kellogg-Briand Pact.

141. A number of representatives pointed out that, despite the historical importance of the instruments and acts antedating the Charter, the principle of the peaceful settlement of international disputes did not assume its full value and importance until the Charter had prohibited the use of force and proclaimed the sovereign equality of States. Since the adoption of the Charter, the principle had been universally recognized and proclaimed in a series of multilateral international instruments, such as the Pact of the League of Arab States, 1945, the Inter-American Treaty of Reciprocal Assistance, 1947, the Charter of the Organization of American States, 1948, the Treaty of Friendship, Co-operation and Mutual Assistance (Warsaw Treaty), 1955, the Bandung Declaration, 1955, the Belgrade Declaration, 1961, and the Charter of the Organization of African Unity, 1963. The newly independent countries of Africa had shown the importance they attached to the peaceful settlement of disputes with the recent adoption, in fulfilment of article XIX of the Charter of African Unity, of a Protocol of Mediation, Conciliation and Arbitration. The Commission of Mediation, Conciliation and Arbitration established under the Charter of the Organization of African Unity was considered one of the principal organs of that organization. At the same time, the principle of peaceful settlement of international disputes had been emphasized in numerous bilateral instruments and declarations, such as the Joint Communiqué issues in 1959 by the United States and the Soviet Union and the 1961 joint declaration by the same countries on the principle of general and complete disarmament.

142. Some representatives stressed the practical importance of the principle of peaceful settlement of international disputes for the promotion of friendly relations and co-operation, the strengthening of peaceful coexistence among States and the maintenance of peace and security. Certain of them emphasized that the need to settle international disputes solely by peaceful means was today more imperative than ever, particularly taking into account the recent advances of science and technology which had multiplied the possibilities of conflict and had increased the capacity for mutual destruction.

143. Other representatives stressed that the principle of pacific settlement should not be considered in isolation, but together with the other principles before the Committee.

The effective and impartial application of these other principles depended in large measure upon the development of the principle of the peaceful settlement of disputes. These representatives considered that the development of international law would be greatly advanced if progressive solutions could be reached on the principle of the peaceful settlement of disputes.

144. To the above observations on the development, significance and importance of the principle of peaceful settlement of international disputes, some representatives added a number of general remarks on specific legal questions raised by the formulation and interpretation of that principle.

145. Some representatives considered that the distinction between political and legal disputes should not be overlooked. Although they recognized that the distinction between the two types of dispute was never absolute, they believed that some disputes were undoubtedly mainly legal in character while others were mainly political. In principle, legal disputes were those in which the parties disagreed as to their respective rights and duties and in which they could reach a settlement on the basis of existing law, while political disputes were those in which the parties were trying to change existing law. Such a distinction, these representatives held, would mark an advance, because it would facilitate the submission of legal disputes to judicial settlement, thus at least avoiding the settlement of that category of disputes by reference to political criteria and by political means. Other representatives, however, argued that all international disputes had a political aspect which could not be ignored, so that any distinction between political and legal disputes would be purely academic and impossible to apply, and would yield no positive results.

146. With regard to the question which category of international disputes was covered by the Charter, one representative pointed out that the Charter was concerned with disputes likely to endanger international peace and security, as provided in Article 33, paragraph 1. If there was no such danger, the parties need not even seek a settlement of the dispute. Moreover, Article 2, paragraph 3, according to that representative, did not impose on Members of the United Nations the obligation to settle their disputes by peaceful means, but the obligation not to resolve them by any other means. Thus it would be lawful for two States parties to a dispute which did not endanger peace to maintain the *status quo* without violating the Charter. What the Charter laid down was not so much that disputes should be settled but that international peace and security should not be threatened. On the other hand, another representative indicated that while Article 33 and various other provisions of Chapter VI of the Charter, particularly Articles 36 and 37, dealt only with disputes "the continuation of which is likely to endanger the maintenance of international peace and security", that did not relieve States of the obligation to try to settle in good faith and by peaceful means the less serious disputes which came within the ambit of the more general terms of Article 2, paragraph 3. Article 2, paragraph 3, that representative held, applied to all international disputes, including those the continuation of which was not likely to endanger the maintenance of international peace and security. That interpretation was confirmed by the Preamble to the Charter, in which States declared that they were determined to "live together in peace with one another as good neighbours", and by Article 1, paragraph 2, of the Charter which provided that one of the purposes of the United Nations was "to develop friendly relations among Nations"—from which the same representative deduced that the authors of the Charter had not only wished to propose methods of peaceful settlement but had also wanted international disputes to be actually settled.

147. Some representatives stressed that under Article 1, paragraph 1, and Article 2, paragraph 3, of the Charter, international disputes were to be settled in conformity with "the principles of justice and international law", in such a manner "that international peace and security, and justice, are not endangered". In that connexion, some representatives

urged that the reference in the Charter to justice should be confirmed, since settlements of disputes by peaceful means, but contrary to justice, would increase the risk of violence and could not be lasting.

148. Finally, one representative raised the question when a dispute should be considered to have arisen. That representative said that there was now the beginning of a body of international case-law on the subject, since both the Permanent Court of International Justice and the International Court of Justice had given opinions on the question. It appeared from that incipient case-law that it was not enough for one party to affirm or deny the existence of a dispute, nor was it a question of whether there was a real conflict between the interests of the parties; what had to be shown in order to establish whether a dispute had arisen was that the claims of the parties must be genuinely opposed. The same representative added that although that criterion might be useful in the application of Article 2, paragraph 3, and Article 33 of the Charter, there remained the problem of distinguishing between true and false claims, since States should not be entitled to the consideration of claims devoid of all foundation and good faith through the use of fallacious legal arguments.

2.—Means of peaceful settlement of international disputes

149. It was generally recognized that the Charter system leaves the parties to disputes free to choose the means of peaceful settlement they consider most suitable. However, the various speakers who took part in the discussion stressed the merits of one or other means of peaceful settlement, or argued that the question should be approached from the point of view not only of the *lex lata* but also of the *lex ferenda* so as to improve the existing procedures of settlement to the greatest possible extent. Provisions concerning the means of settlement in general were contained in the proposals submitted by *Czechoslovakia* (A/AC.119/L.6, para. 2 (*see* para. 129 above)), *Yugoslavia* (A/AC.119/L.7, para. 2 (*see* para. 130 above)), the *United Kingdom* (A/AC.119/L.8, para. 2 (*see* para. 131 above)) and *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19, para. 2 (*see* para. 137 above)).

150. A number of representatives pointed out that, in dealing with the principle of peaceful settlement of international disputes, the Committee should not overlook the existence of the General Act of 26 September 1928 for the pacific settlement of international disputes, revised by resolution 268 (III) of 28 April 1949 of the General Assembly. One representative, emphasizing that the General Act was a great step forward in the history of procedures for the peaceful settlement of international disputes, suggested that States Members of the United Nations should be urged to accede to it.

151. It was also pointed out by a number of representatives that not all international disputes affected the vital interests of States, and that therefore it was desirable that States should agree on various means of settlement before specific disputes arose, since that would at least facilitate the settlement of less important disputes.

152. Various representatives felt that the existence of procedures for the settlement of international disputes was one thing and the obligation of States to use those procedures quite another. States should be urged, they felt, to resort to the procedures in question, since it was pointless to improve existing means or create new ones if States showed no inclination to resort to them. Some representatives stressed the possibility of strengthening the means of peaceful settlement through the international organizations which had come into being since the Second World War. In this respect, one representative drew attention to the American Treaty of Pacific Settlement (Pact of Bogota), concluded under the auspices of the Organization of American States in 1948, which he said to be the most advanced instrument on the subject in existence, since it laid down that any dispute which had not been resolved by one pacific procedure must be submitted to another, and so on until the dispute had been settled.

153. Finally, one representative pointed out that the establishment and use by States of means of peaceful settlement of disputes was intimately bound up with one of the most difficult and complex problems arising in the international community—that of peaceful change of existing conditions.

154. The following is a summary of the views expressed during the debate on each of the recognized means of peaceful settlement of disputes, with the main points of agreement and disagreement to which they gave rise:

(*i*) *Direct negotiation*

155. The debate on this means of peaceful settlement revolved around the question whether it was necessary or appropriate to give direct negotiation special legal emphasis as against the other means of peaceful settlement recognized by international law and set forth in the Charter. Many arguments were advanced on that question.

156. A number of representatives urged that direct negotiation was the fundamental means of resolving international disputes and had been established as such by international law and State practice. They had no intention, they asserted, of belittling the importance of or the part played by other means of peaceful settlement; their attitude was based solely on the function actually performed by direct negotiations in international relations. Thus, if direct negotiation was the means by which most international disputes were settled, that was due to the fact that by its very nature it most adequately met the need for the prompt and flexible settlement of international disputes, that it better preserved the equality of the parties, that it could be used for the settlement of both political and legal disputes, and that it offered the most effective means for the peaceful settlement of disputes. Moreover, direct negotiations best promoted compromise, and prevented disputes from acquiring proportions which made them a threat to international peace and security, since they made it possible for conflicts to be dealt with as soon as they arose. Furthermore, direct negotiation was a means which did not oblige third States to take up a specific position on disputes which did not affect their interests or threaten international peace and security. Indeed, it was thanks to direct negotiation, these representatives held, that world war had been avoided on more than one occasion—as, for example, during the Cuban crisis of 1962—and that the principles of peaceful coexistence had been reinforced and developed in international relations. In addition, the means of direct negotiation, while it brought about the settlement of disputes, could at the same time bring into being rules regulating future relations between the States concerned, thus promoting the development of international law through the conclusion of multilateral and bilateral agreements. Accordingly, these representatives felt that explicit recognition should be given to the international reality that direct negotiation constituted the principal means for the settlement of disputes. One of these representatives asserted that the means of direct negotiation could not be unilaterally renounced by States, and was therefore the sole means of settlement which, in this sense, was obligatory on them.

157. In support of their view, the representatives who argued for recognition of the means of direct negotiation pointed out that negotiation was given a prominent place in international treaties, agreements and other acts, and they mentioned, in this connexion: article 21 of the Charter of the Organization of American States; article II of the American Treaty of Pacific Settlement; chapter I, article 1, of the Revised General Act for the Pacific Settlement of International Disputes approved by the General Assembly on 28 April 1949; article 17 of the Statute of the International Atomic Energy Agency; the Belgrade Declaration of 1961; the United States-USSR Joint Communiqué of 27 September 1959, and General Assembly resolution 1616 (XV) of 21 April 1961. They also stressed that the Charter itself, in Article 33 (1), mentioned negotiations in first place.

158. Other representatives, however, while recognizing the great importance of direct negotiation, which was the very essence of diplomacy, felt that it should not be given priority over the other means of settlement of disputes, since that would be to distort the principles which were the foundation of the entire existing system of peaceful settlement of disputes. In their view, the constant trend in the development of international law in this regard since the nineteenth century had been to transcend the stage of negotiation and to establish and improve more institutional means of settlement based on recourse to third parties or organs. The development of international institutions in recent years reflected just that trend. These representatives recognized that direct negotiation was a normal and current practice and that many international disputes were resolved by its means. They held, however, that the considerable drawbacks of that method of settlement should not be overlooked. Direct negotiation had disadvantages, demonstrated by history, which, according to the representatives in question, ruled it out as the ideal, principal or exclusive means of peaceful settlement of international disputes. Thus, direct negotiation did not allow the facts to be established objectively and impartially, nor enable third parties to exercise a moderating influence on the dispute, nor prevent the putting forward of exaggerated claims which might aggravate the dispute, nor ensure equal terms, since usually one of the parties was in a weaker position than the other; nor could it be used for the solution of certain types of disputes, nor guarantee the solution of a dispute since either party could choose to be intransigent at any moment. Direct negotiation was essential in order to try to reconcile conflicting interests, but the real problem arose when such reconciliation was not possible, namely, when it had not been possible to resolve the dispute by negotiation.

159. One representative expressed the view that negotiations should always be conducted in good faith, without any form of pressure and without affecting the legitimate interests of a State or people. If these conditions were not satisfied, negotiations might, under certain circumstances, even constitute intervention.

160. With respect to the argument that negotiations not only settled disputes but could also establish rules regulating future relations between the States concerned, another representative stated that negotiation as a means for concluding international agreements was quite distinct from, and should not be confused with, negotiation as a means of pacific settlement of disputes.

161. Those representatives who felt that negotiation should not be given a particular priority were also of the view that the establishment of a hierarchy among the methods of peaceful settlement of disputes would be contrary to the system laid down by Article 33, paragraph 1, and other provisions of the Charter. Article 33 left the parties free to choose the means of settlement they preferred, and that freedom was recognized without reservations and at all times. It would therefore be inadmissible to modify the Charter system on that important point by attempting to establish a kind of legal obligation to negotiate *nolens volens*. What the Charter did was to provide that when the parties could not reach agreement on the choice of the means of settlement therein set forth, they might have recourse to the United Nations itself in order to try to reach a solution, in accordance with the provisions of Chapter VI. The Charter did not give preference to negotiation or to any other method of solving disputes, and an attempt to weaken its provisions in that regard would not contribute to the progressive development of international law. If the Charter mentioned negotiations first, it was because in the majority of cases the parties had recourse to that method first, but that did not imply that the parties were obliged to proceed in that manner, considering the other means as accessory or secondary. Some of the representatives in question pointed out that direct negotiation gave the parties great freedom of action, but that in the case of certain disputes it would be wiser to renounce that freedom and accept in advance a more formal method of settlement which would enable objective rules to be applied.

162. Accordingly, in the view of these representatives, there would be no justification for stating, as a general principle, that recourse should be had to direct negotiation in the first place. The choice of means would depend on the will of the parties and the nature of the dispute.

163. Finally, other representatives pointed out that reference might be made in the first place to the method of direct negotiation but without implying that preference had to be given to that means of settlement over any other desired by the parties. They considered that while it was significant that instruments such as the United Nations Charter, the Bandung Declaration, the Belgrade Declaration, the Charter of the Organization of American States and the Charter of the Organization of African Unity gave negotiation pride of place among the means of settling disputes, negotiation was not in itself sufficient unless it was accompanied by the desire of the parties to co-operate, neither was it a guarantee of justice. For these representatives, negotiation might justifiably be mentioned first since it was the first step towards the peaceful settlement of a dispute and was the most ancient method used by States. Furthermore, in the reality of international life, it solved the majority of disputes. That, however, was not at all the same thing as regarding it as the sole means of settlement or as a means to which the parties were obliged to have recourse, since Article 35 of the Charter adopted a flexible criterion and established that the parties could use means "of their own choice". In this connexion, the same representatives took the view that when a treaty stipulated a specific means of settlement other than direct negotiation, the States parties should obviously apply it, and also that the right of States to bring disputes of a particularly serious nature before the appropriate United Nation organ could not be called in question.

(*ii*) *Inquiry, mediation and conciliation*

164. Some representatives referred to the procedures for inquiry, mediation and conciliation established by regional organizations, such as the Organization of American States, the Organization of African Unity and various European organizations. One of them dwelt upon the procedures of mediation and conciliation which were within the terms of reference of the organs of the United Nations and drew attention to the Panel for Inquiry and Conciliation which had been established by the General Assembly of the United Nations (General Assembly resolution 268 (III) of 28 April 1949).

(*iii*) *Arbitration*

165. Referring to the problems connected with the settlement of legal disputes, one representative raised the question of the improvements which could be made in existing conventional arbitration procedure. After pointing out the drawbacks and shortcomings inherent in the three means by which, under existing law, disputes could be brought before an arbitration tribunal—namely, the conclusion of an *ad hoc* agreement *(compromis)*, the inclusion in a treaty of a "compromissory clause", and the conclusion of a "general treaty of arbitration"—the representative suggested that the following measures might be taken to remedy those drawbacks and shortcomings: (*a*) acceptance of the competence of the International Court of Justice to determine whether a dispute was a legal one; (*b*) acceptance of the competence of the International Court of Justice to determine whether a dispute was justifiable under the terms of the arbitration treaty; (*c*) agreement that the International Court of Justice or its President would settle questions connected with the composition of the arbitral tribunal or other procedural matters, in conformity with article 3 of the United Nations draft articles on arbitral procedure, which had been drawn up by the International Law Commission; and (*d*) generalization of the practice whereby States agreed to accept judicial settlement whenever arbitration failed.

(*iv*) *Judicial settlement*

166. The proposals of the *United Kingdom* (A/AC.119/L.8, para. 3 (*see* para. 131 above)), *Japan* (A/AC.119/L.18 (*see* para. 136 above)) and *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19, para. 3 (*see* para. 137 above)) contained particular provisions relating to this mode of settlement.

167. The debate on judicial settlement of international disputes centred on whether, in the formulation of the principle relating to peaceful settlement, particular mention should be made of the role of the International Court of Justice in the matter and whether it was advisable to appeal to States to accept the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute.

168. With regard to the first of these points, some representatives pronounced themselves in favour of an explicit reference to the Court in the formulation of the principle of peaceful settlement of disputes. They stated that it would be inconceivable not to mention the important role of the International Court of Justice in that respect.

169. Other representatives, however, argued that such a reference was not necessary from either a strictly legal or a practical point of view and might give rise to ambiguity regarding the nature of the Court's jurisdiction, particularly if the reference was a general one which did not go into details. Still other representatives said that they had no objection to reference being made to the Court, provided that it was not at the expense of other means of settlement provided for in Article 33 of the Charter and in other relevant Charter provisions.

170. The question of the timeliness and desirability of an appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice provoked greater controversy. Representatives favouring or opposing such an appeal put forward numerous arguments in support of their positions.

171. The representatives who were in favour of an appeal for the acceptance of the compulsory jurisdiction of the Court believed that the Special Committee should recommend that States should accept that jurisdiction under Article 36, paragraph 2, of the Statute of the Court. The procedure for the judicial settlement of international disputes would thereby be improved and international law would be strengthened. States which accepted the compulsory jurisdiction of the Court, in the opinion of these representatives, were obviously more concerned over the possible consequences of their legal obligations than the States which had not yet accepted the compulsory jurisdiction. This resulted in a basic difference of approach to the formulation of substantive rules of international law and thereby hindered its development. Moreover, acceptance of the Court's compulsory jurisdiction, being an act entirely dependent on the will of States, could not be considered a limitation or renunciation of their sovereignty. Thus it could not be maintained that the nearly forty States which had accepted the Court's compulsory jurisdiction had abandoned their sovereignty. It was argued, furthermore, that States always exercised their freedom of action within the framework of international law. That freedom, however, as far as the choice of means of peaceful settlement was concerned, was contingent on the other party's agreeing to choose the same means of settlement. Agreement in this respect might be easier to achieve if all States were under the ultimate obligation of submitting their disputes to the Court.

172. It was also pointed out that the Statute provided for the acceptance of the Court's compulsory jurisdiction in Article 36, paragraph 2, and that the General Assembly was in no way barred from inviting States to accept it. In fact, General Assembly resolution 171 (II) of 14 November 1947 proclaimed the desirability of the acceptance by States of the compulsory jurisdiction of the Court. It was clear that resort to the Court offered considerable advantages and greater guarantees than other means of settlement. For one thing, in the

light of the objectivity and impartiality of the Court, the real inequality in the strength of States would not affect the outcome as in the case of other means of settlement, and final settlement, being based on law, could be accepted by unsuccessful parties without feeling that they had lost prestige. Furthermore, the inadequate development of international law and the lack of an international legislator enhanced the importance of the function of the International Court of Justice since it could fill the existing gaps by means of a case-law adapted to the needs of an evolving international community.

173. The representatives who favoured such an appeal recognized that the compulsory jurisdiction of the Court had been rejected by the San Francisco Conference and other subsequent conferences and that its general acceptance raised considerable difficulties. However, they considered that the present signs of a reduction in international tension suggested that the time would be opportune for an appeal. They added that the small proportion of States which at present accepted the compulsory jurisdiction of the Court and the nature of some reservations attached to those acceptances should not prevent the attention of States from being drawn to a method of settlement which had great advantages both for individual States and for the international community as a whole.

174. Those representatives who opposed an appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice said that it would not accord with the realities of international life and recent experience in the matter. They argued that to attempt to put the compulsory jurisdiction of the International Court of Justice first among means of peaceful settlement would be to adopt a doctrinaire position contrary to the principle of sovereign equality and independence of States and to the principle of free choice by all States parties to a dispute of the most suitable means of peaceful settlement in the light of their interests and the nature and circumstances of the dispute in question. According to these representatives, recognition of the Court's jurisdiction should be optional, since the history of international law and more recent diplomatic events showed that the great majority of the States making up the international community did not consider compulsory jurisdiction either appropriate or advisable, and that only some forty States had adhered to the optional clause in Article 36, paragraph 2, of the Statute of the Court. Moreover, a number of States which had accepted the Court's compulsory jurisdiction had done so with reservations which virtually nullified their acceptance. It was recalled that the San Francisco Conference had rejected compulsory jurisdiction and that Article 36, paragraph 3, of the Charter and Article 36, paragraph 1, of the Statute of the Court excluded such jurisdiction from the Charter system by declaring that disputes were to be referred to the Court by all parties, not merely by one. Furthermore, it was stressed that the various conferences on the codification of international law which had been held under the auspices of the United Nations, such as the 1958 Conference on the Law of the Sea, the 1961 Conference on Diplomatic Intercourse and Immunities, and the 1963 Conference on Consular Relations, had also rejected the inclusion of articles prescribing the compulsory jurisdiction of the Court in the conventions adopted and had limited themselves to setting it out in optional protocols, which had so far received an insignificant number of ratifications or accessions.

175. Other representatives, who also opposed an appeal for acceptance of compulsory jurisdiction, pointed out that the small degree of integration so far achieved by the international community was an obstacle to the more general acceptance of such jurisdiction and that that was particularly true of the States which had recently achieved independence, as was shown by the fact that very few of the new States Members of the United Nations had accepted such jurisdiction. In that regard it was pointed out that, in order for many States to have confidence in the Court's jurisdiction, it was essential not to appeal for acceptance of compulsory jurisdiction, but to speed up the process of codification and progressive development of international law and to ensure that the membership of the Court reflected

a more equitable geographical distribution. Some representatives felt that the attitude adopted by the new States was justified because of the situation in which they found themselves as a result of having formally inherited legal obligations deriving from the colonial regime to which they had been subjected, and that Article 38, paragraph 1 (*c*), of the Statute of the Court, which provided that the Court should decide in accordance with "the general principles of law recognized by civilized nations", was not likely to dispel the new States' lack of confidence. One representative also stated that the organs of the United Nations themselves had done nothing to help dispel the lack of confidence in the Court since they had almost always resolved disagreements as to their competence without consulting it. (Further arguments advanced in the same respect appear in part 3 of the present chapter.)

176. To illustrate the views outlined above, some representatives pointed out that the States belonging to geographical areas which had reached a high degree of integration had accepted the obligation to submit a wide range of legal disputes to the International Court of Justice, while States belonging to other areas which had not yet attained the same degree of integration distrusted the procedure of judicial settlement of disputes. Thus, they noted that while article 1 of the European Convention for the Pacific Settlement of Disputes, and article XXXI of the American Treaty of Pacific Settlement, gave considerable prominence to the procedure of judicial settlement, the Charter of the Organization of African Unity had omitted mention of that procedure as one of the means of peaceful settlement of disputes. Finally, a number of representatives pointed out that the existence of tension and distrust in international relations made it difficult to determine when a dispute was a legal one and that, consequently, the best way to secure more frequent recourse to judicial settlement would be to first define the legal aspects of the political questions which most directly affected international peace and security.

177. During the debate on the procedure of judicial settlement, some representatives expressed the view that the parties to a dispute should first of all agree that the dispute was essentially legal in nature before referring it to the Court. Other representatives, however, firmly opposed any mention of such a proviso since it would in many cases afford States a pretext for circumventing the jurisdiction of the Court and since, moreover, Article 36, paragraph 3, of the Charter conferred upon the Security Council the power to decide, as a first step, whether or not a dispute was a legal one for the purpose of referral to the International Court of Justice.

178. Some representatives, who rejected any appeal for adherence to the optional clause, nonetheless stated that their respective countries had accepted the Court's jurisdiction in the case of certain technical conventions, or had otherwise provided for compulsory arbitration. Other representatives considered this to be an encouraging development.

(v) Resort to regional agencies or arrangements

179. Some representatives stressed that account should be taken of a recent trend in the peaceful settlement of international disputes, namely, resort to regional agencies or arrangements. It was clear, in their view, that regional agencies were often better qualified than world organizations to settle a certain type of dispute arising within their own regions; furthermore, the value of recourse to such regional agencies had been amply shown by the recent practice of the new Organization of African Unity and by the history of older bodies such as the League of Arab States, the Organization of American States and the European organizations. One representative also said that Article 20 of the Charter of the Organization of American States specified, in conformity with Article 52 of the Charter of the United Nations, that all international disputes that might arise between American States should be submitted to the peaceful procedures set forth in the regional organization's Charter before being referred to the Security Council of the United Nations. Another representative,

however, expressed the view that regional agencies were not the final answer, since the disputes which engaged the attention of the international community were often those that arose between States belonging to different regions.

(vi) Resort to the competent bodies of the United Nations

180. The joint amendment of *Canada* and *Guatemala* (A/AC.119/L.20 (*see* para. 133 above)) and the amendment of *Canada* (A/AC.119/L.22 (*see* para. 135 above)) to the *United Kingdom* proposal (A/AC.119/L.8) made reference to the settlement of disputes by the Security Council or the General Assembly.

181. Various representatives said that, in the formulation of the means of peaceful settlement of international disputes, it would not be enough simply to list the traditional methods of settlement which appeared in Article 33 of the Charter, since the institutional procedures for settlement under Articles 34 to 38 in Chapter VI and Article 14 in Chapter IV of the Charter were the most important innovation in that regard in the Charter, an innovation begun at the world level by the Covenant of the League of Nations. These representatives held that a careful consideration of those institutional procedures in the Charter was necessary, because United Nations practice daily demonstrated that many international disputes were settled by recourse to such procedures. Thus, they considered, in order to avoid a gap in the formulation of the principle of peaceful settlement of international disputes the vital role often played by the competent bodies of the United Nations in the peaceful settlement of international disputes should be stressed.

182. One representative emphasized that the Charter system for the settlement of international disputes by recourse to United Nations bodies represented an important step forward, since by means of such procedures those bodies could deal with both "situations" and "disputes" and were authorized to put forward recommendations. Another representative was in favour of redoubling efforts to secure the more direct involvement of United Nations bodies in the procedures for the peaceful settlement of international disputes and pointed out in that connexion that the granting of exceptional powers of decision to the General Assembly had contributed to the settlement of the question of the former Italian colonies.

(vii) Advisory opinions of the International Court of Justice

183. Referring to possible means of strengthening and perfecting the means of peaceful settlement of international disputes, some representatives said that the advisory opinion of the International Court of Justice should be sought more frequently and that its conclusions should command general respect. They considered, in view of the Court's prestige and authority, that attention should be given to the possibility of making greater use of that institution both to develop United Nations law and to settle disputes between States.

(viii) Good offices and legal consultation

184. One representative stressed that Article 33, paragraph 1, of the Charter did not explicitly mention either good offices or legal consultation among the means of peaceful settlement, but that such omissions were not important since the list in Article 33 was not exhaustive and under the terms of that Article the parties could resort to "other peaceful means of their own choice". He recalled that the San Francisco Conference had expressly decided to add inquiry to the means listed in the Dumbarton Oaks draft, but had omitted good offices, which had not been separated from mediation despite their distinct legal character. On the other hand, good offices were included in the list of means or procedures for peaceful settlement in the Charter of the Organization of American States. Another

representative drew attention to the proposal put forward by certain countries for the establishment of a permanent commission of good offices as a subsidiary organ of the United Nations General Assembly.

3.—Questions relating to the principle of peaceful settlement of disputes

185. During the debate on this principle, various questions were raised as being in one manner or another related to the peaceful settlement of international disputes and which were later dealt with in proposals and amendments submitted by the members of the Committee. These issues, with a summary of the observations made on them, are set forth hereunder.

(i) The duty to settle territorial and frontier disputes by peaceful means

186. The proposal submitted by *Ghana, India* and *Yugoslavia* (A/AC.119/L.19, para. 5 (*see* para. 137 above)) referred to territorial and frontier disputes and stated that they should be settled solely by peaceful means. The sponsors of the proposal observed that, as in the course of the discussions on the principle of prohibition of the threat or use of force a number of delegations had expressed their misgivings with regard to territorial disputes and frontier problems (referred to in the proposal by *Czechoslovakia* (A/AC.119/L.6 (*see* para. 27 above)), they had thought it appropriate, in the treatment of this principle, to make an explicit and specific reference to the duty to settle this category of disputes peacefully, in view of the fact that the gravity and nature of this category of disputes frequently made them serious threats to international peace and security. While no observations were made on this provision of the three-Power proposal during the debate, one representative referred to the letter on the subject of the peaceful settlement of territorial and frontier questions sent by the Chairman of the Council of Ministers of the USSR, on 31 December 1963, to the Heads of States or Governments of all countries.

(ii) The duty to refrain from aggravating the situation

187. The proposal by *Yugoslavia* (A/AC.119/L.7, para. 3 (*see* para. 130 above)) and the proposal submitted by *Ghana, India* and *Yugoslavia* (A/AC.119/L.19, para. 6 (*see* para. 137 above)) contained a provision on this subject.

188. A number of representatives observed that the duty to settle disputes by peaceful means implied a duty of States to refrain from aggravating the situation. This duty, they said, was incumbent both on the States parties to the disputes and on third States, since any dispute between States affected the entire international community, so that all States had the duty of helping to settle it by refraining from exacerbating it. It was pointed out that the recent Protocol of Mediation, Conciliation and Arbitration adopted by the Organization of African Unity provided that when a dispute had been referred to the Commission of Mediation, Conciliation and Arbitration, all members of the Organization had the duty of refraining from any act likely to aggravate the situation.

(iii) Resort to means of peaceful settlement does not derogate from the sovereignty of States

189. This question was dealt with in the amendment by *France* (A/AC.119/L.17 (*see* para. 132 above)) to the *United Kingdom* proposal (A/AC.119/L.8).

190. A number of representatives expressed the view that in order to dispel certain misgivings and to remove any doubt on the matter, it would be advisable to specify clearly that a State's consent to submit a dispute to a judge or arbitrator or to any other means of pacific settlement was an act of its own free will and therefore, far from impairing its sovereignty, constituted a supreme manifestation of that sovereignty. As the sovereignty of

each State was subject to the supremacy of international law, the use of procedures recognized by international law for the settlement of disputes could in no way be regarded as incompatible with the principle of sovereign equality of States. These observations were not challenged by any representative, although one representative felt that such a provision would be out of place in the conclusions to be adopted on the principle of peaceful settlement of international disputes.

(iv) Composition of the International Court of Justice

191. The proposal submitted by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19, para. 3 (*b*) (*see* para. 137 above)) mentioned the question of the composition of the International Court of Justice.

192. Some representatives expressed the view that the geographical composition of the International Court of Justice was one of the reasons for the fact that many States showed reluctance to enlist its services for the settlement of their disputes or refused to accept its compulsory jurisdiction. Thus, these representatives felt that a more equitable representation of the various geographic groups and juridical systems of the world was essential if States were to be encouraged to resort to the International Court of Justice and to accept its compulsory jurisdiction. A revision of the Court's composition, they considered, would help to increase the confidence of States in the Court as the principal judicial organ of the United Nations, and, therefore, to develop the procedure of peaceful settlement of international disputes. One representative pointed out that his country had submitted to the General Assembly a proposal that the number of judges of the International Court of Justice should be increased.

193. However, other representatives pointed out that the composition of the Court raised complex problems, and that the rules for the election of its members could not be radically altered. The best means of improving the representation of the geographical groups which regarded themselves as still under-represented, they argued, was not to change the rules for the election of the Court's members but to give due weight to the importance of the matter when elections took place. Thus, it was pointed out that at the last elections to the Court, held in 1963, it had been clear that the States Members of the United Nations had endeavoured—while still respecting the rules in force—to improve the balance within the Court between the various geographical groups. In addition, they argued that the Court had always shown objectivity and impartiality and that, moreover, there were certain geographical groups which, though adequately represented in the Court, nevertheless did not resort to it for the settlement for their international disputes.

(v) Codification and progressive development of international law

194. The proposal by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19, para. 3 (*b*) (*see* para. 137 above)) referred also to this matter.

195. In connexion with the use of arbitration and compulsory judicial settlement as means for the peaceful settlement of disputes, some representatives stressed the vital importance of the codification and progressive development of international law as a means of obtaining general and unqualified acceptance of such procedures by the great majority of the States making up the international community. In their view, the lack of confidence which many States at present displayed in such procedures was due in large measure to the antiquated, inequitable, fragmentary and uncertain character of many of the rules comprising the body of substantive rules of existing international law.

196. Thus, those representatives pointed out, no State could risk endangering its vital interests by having recourse to procedures of arbitration or compulsory judicial settle-

ment as long as uncertainty remained about the scope and content of international law. They also pointed out that the decision to accept or reject compulsory jurisdiction was not made in a vacuum, but carried with it the implicit acceptance of the body of substantive legal rules relevant to the subject matter of the dispute in question. That explained the misgivings of the new and developing States, since the majority of them had not taken part in the process of the creation and development of the institutions and rules of international law, which had been consolidated and systematized during the nineteenth and early twentieth centuries. Many of those rules, they added, such as, for example, the rules relating to State responsibility and to the protection of foreign investments, profoundly affected the situation of the new or economically weak States and had been established, in part, contrary to their interests. Consequently, in the opinion of those representatives, many States now considered those rules unjust, though formally sanctioned by international law, thus creating a dichotomy between international legality and justice, the inevitable result of which was that such States preferred to resort to political action rather than submit their disputes to arbitration or compulsory judicial settlement. Lastly, those representatives considered it essential that the United Nations should continue its efforts for the codification and progressive development of international law with a view to securing the juridical basis for the settlement of disputes, as General Assembly resolutions 1505 (XV) of 12 December 1960, 1686 (XVI) of 18 December 1961 and 1815 (XVII) of 18 December 1962, in particular, emphasized.

(vi) Disputes relating to the application and interpretation of conventions

197. The *Netherlands* amendment (A/AC.119/L.21 (*see* para. 134 above)) to the *United Kingdom* proposal and the proposal by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.19, para. 4 (*see* para. 137 above)) stated that treaties should contain clauses relating to the settlement of disputes.

198. With a view to establishing and developing the procedure of judicial settlement as a means for the settlement of disputes, some representatives advocated recognition that at least one particular category of disputes, namely, disputes relating to the interpretation and application of multilateral conventions adopted under the auspices of the United Nations, should as a matter of principle be referred to the International Court of Justice, as proposed in the *Netherlands* amendment. In the view of those representatives, such conventions contained carefully drafted and precise rules of international law which had been drawn up with the participation of all States Members of the United Nations and disputes arising in regard to their interpretation or application constituted a special well-defined category.

199. Thus, those representatives considered it natural that a State which had voluntarily subscribed to the rules contained in those conventions and had accepted the rights and obligations deriving therefrom should undertake to use a procedure of impartial settlement of disputes, such as recourse to the International Court of Justice, in the event of a dispute between it and another State party to the convention over the extent of those rights and obligations. They added, moreover, that the compulsory jurisdiction of the International Court of Justice in the settlement of such disputes would be mandatory only in cases where the parties had refused or failed to settle the dispute through the use of other means of peaceful settlement. Lastly, one representative suggested that, with a view to improving the chances of a provision to that effect being accepted by the General Assembly, it would be advisable that such a provision should be limited to multilateral conventions relating to social, cultural or scientific questions adopted under the auspices of the United Nations.

200. The sponsors of the three-Power proposal thought it better to do no more than indicate that States should include in the bilateral and multilateral agreements to which they became parties provisions concerning the particular peaceful means mentioned in Article 33 of the Charter by which they desired to settle their differences.

C. *Decision of the Special Committee on the recommendation of the Drafting Committee*

201. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee Paper No. 13):

"Principle B

[*i. e.* 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 Committee was unable to reach any consensus on the scope or content of this principle.

(*a*) For proposals and amendments, *see* annex A.

(*b*) For views expressed during the discussion, *see* annex B."

"Annex A

"PROPOSALS AND AMENDMENTS CONCERNING WHICH NO CONSENSUS WAS REACHED

Proposal by Czechoslovakia (A/AC.119/L.6) (Reproduced in paragraph 129 of the report.)

Proposal by Yugoslavia (A/AC.119/L.7) (Reproduced in paragraph 130 of the report.)

Proposal by the United Kingdom (A/AC.119/L.8) and *amendments by France* (A/AC.119/L.17), *Canada and Guatemala* (A/AC.119/L.20), *Netherlands* (A/AC.119/L.21) and *Canada* (A/AC.119/L.22) (Reproduced in paragraphs 131, 132, 133, 134 and 135 respectively.)

Proposal by Japan (A/AC.119/L.18) (Reproduced in paragraph 136 of the report.)

Proposal by Ghana, India and Yugoslavia (A/AC.119/L.19) (Reproduced in paragraph 137 of the report.)

"Annex B[9]

"VIEWS EXPRESSED IN THE DISCUSSIONS, CONCERNING WHICH NO CONSENSUS WAS REACHED

"A. *General obligation of peaceful settlement of international disputes*

Argentina (SR.19, pp. 15-16): the Charter is concerned only with those disputes between States which are likely to endanger international peace and security. *United States* (SR.22, p. 20): Article 2, paragraph 3, of the Charter relates to all international disputes, whether or not likely to endanger international peace and security.

Argentina (SR.19, p. 15): a 'dispute' is a disagreement on points of fact or law, a contradiction or a difference in juridical doctrine between States. *United States* (SR.22, pp. 21-22): a 'dispute' is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons, where the claim of one is positively opposed by the other; there is no dispute if the claim on one side is totally unfounded.

Italy (SR.21, pp. 4-5) and *France* (SR.21, p. 16): political disputes, and the distinction between them and legal disputes, should not be ignored.

"B. *Settlement of border disputes*

Ghana (SR.22, p. 9) and *India* (SR.24, p. 21) supported inclusion of a provision on the subject.

"C. *Modes of settlement*

"1.—In general

India (SR.23, pp. 7-8): 'Unless otherwise provided for' in three-Power draft covers the case where bilateral or multilateral treaties to which States are parties provide a method for solving

[9] The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

disputes, and also covers the right of the parties to bring a dispute before the appropriate United Nations organ. 'Of their own choice' refers to a choice made either before or after a dispute has arisen.

Ghana (SR.22, p. 7): means of settlement should be chosen 'by common agreement'.

United States (SR.22, p. 19): undesirable to require agreement of all parties.

"2.—Negotiations

United Arab Republic (SR.24, p. 5): negotiations should be carried out (1) in good faith, (2) in the absence of all forms of pressure, and (3) without affecting the legitimate interests of another State or people.

Czechoslovakia (SR.18, pp. 4-5, SR.21, pp. 23-24), *Yugoslavia* (SR.18, p. 7), *Romania* (SR.19, pp. 11-13), *USSR* (SR.20, pp. 4-5, SR.22, p. 29) and *Poland* (SR.20, p. 10): special emphasis should be given to direct negotiation as a means of settlement. *Czechoslovakia* (SR.18, p. 4): negotiation cannot be unilaterally renounced. *India* (SR.23, pp. 5-7): particular reference should be made to direct negotiations as the pre-eminent means of settlement, but that means need not be resorted to first in all disputes.

United Kingdom (SR.10, pp. 6, 7, SR.24, p. 9), *Argentina* (SR.19, p. 18), *France* (SR.21, p. 14), *Lebanon* (SR.21, p. 21), *Mexico* (SR.22, p. 14), *United States* (SR.22, pp. 19, 23), *Dahomey* (SR.23, p. 11), *UAR* (SR.24, pp. 4-5) and *Australia* (SR.24, pp. 16-19): undesirable or unnecessary to lay special stress on negotiations.

"3.—Good offices

Argentina (SR.19, pp. 17-18) referred to good offices. *Italy* (SR.21, p. 13) referred to a proposal for a permanent commission of good offices as a subsidiary organ of the General Assembly.

"4.—Legal consultation

Argentina (SR.10, p. 18) referred to legal consultation as a means of settlement.

"5.—Mediation and conciliation

Italy (SR.21, pp. 12-13) referred to regional conciliation procedures, to mediation and conciliation by the Security Council, the Secretary-General, and *ad hoc* bodies, and to the existing United Nations Panel for Inquiry and Conciliation.

"6.—Arbitration

Italy (SR.21, pp. 9-10) suggested improvements in arbitral procedure: (1) acceptance of the competence of a court to determine whether a dispute is a legal one, (2) acceptance of the competence of a court to determine whether the dispute is justiciable within the terms of the arbitration treaty, (3) a provision for settlement by the International Court of Justice or its President of disagreements on the composition of the arbitral tribunal or other procedural matters, and (4) an undertaking for judicial settlement whenever negotiation or arbitration fails.

"7.—Judicial settlement

Japan (SR.18, pp. 11-12, SR.21, pp. 17-21, SR.24, p. 10), *Italy* (SR.21, pp. 8-9), *United States* (SR.22, p. 18), *Sweden* (SR.22, pp. 25-27), *United Kingdom* (SR.24, p. 8) and *Australia* (SR.24, pp. 19-20): Committee should appeal for the acceptance of the compulsory jurisdiction of the International Court of Justice, with as few reservations as possible. *Nigeria* (SR.18, p. 10): appeal to all States to make more use of the International Court of Justice, where appropriate, having regard to the provisions of its Statute, particularly Article 36.

Romania (SR.19, pp. 13-14), *USSR* (SR.20, pp. 6-7, SR.22, p. 26), *Poland* (SR.20, pp. 8-10), *Lebanon* (SR.21, pp. 21-23), *Czechoslovakia* (SR.21, pp. 25-26), *Burma* (SR.21, pp. 26-27), *Ghana* (SR.22, pp. 6-7, 8), *India* (SR.23, pp. 8-9) and *UAR* (SR.24, pp. 5-6): Committee should not appeal to States to accept the compulsory jurisdiction of the International Court of Justice. *Dahomey* (SR.23, p. 11): best solution would be to affirm the principle of voluntary acceptance of the jurisdiction of a supreme international tribunal, but it would be difficult to agree on a text, so Articles 2, paragraph 3, 33 and 36 of the Charter should be reaffirmed.

France (SR.21, pp. 16-17), *Mexico* (SR.22, p. 14), *Yugoslavia* (SR.23, p. 12) and *UAR* (SR.24, pp. 5-6) supported including a reference to the International Court of Justice.

United States (SR.22, p. 19) and *United Kingdom* (SR.24, pp. 7, 21) opposed the phrase 'if the parties agree that it is essentially legal in nature' in para. 3 of the three-Power draft.

"8.—Advisory opinions of the International Court of Justice

Mexico (SR.22, p. 13) and *United States* (SR.22, p. 17) referred to advisory opinions as a means of settlement of disputes.

"9.—Revised General Act for the Pacific Settlement of International Disputes

Italy (SR.21, p. 13) referred to the Revised General Act. *Sweden* (SR.22, p. 25) suggested an appeal to States to accede to it.

"10.—Resort to regional agencies or arrangements

Italy (SR.21, p. 12), *Ghana* (SR.22, p. 7), *Sweden* (SR.22, p. 25) and *UAR* (SR.24, p. 5) supported the reference to regional agencies or agreements.

"11.—Settlement through United Nations organs

Italy (SR.21, pp. 5, 10-12), *France*, (SR.21, p. 16), *Mexico* (SR.22, pp. 12-13), *Sweden* (SR.22, p. 25), *Canada* (SR.23, p. 5), *Guatemala* (SR.23, p. 5), *United Kingdom* (SR.24, p. 9) and *Australia* (SR.24, p. 15): the role of United Nations organs, in particular the Security Council and the General Assembly, should not be overlooked.

"D. *Corollaries of the obligation of peaceful settlement*

"1.—Obligation not to aggravate the situation

Yugoslavia (SR.18, p. 7, SR.23, pp. 12-13), *Nigeria* (SR.18, p. 9), *Romania* (SR.19, p. 13) and *Ghana* (SR.22, p. 7) expressed support for a provision on the subject.

"2.—Disputes clauses in agreements and conventions

Netherlands (SR.19, p. 10, SR.24, pp. 11-13), *Italy* (SR.21, p. 8), *France* (SR.21, p. 16), *United States* (SR.22, p. 18), *United Kingdom* (SR.24, p. 9) and *Australia* (SR.24, p. 15) supported the Netherlands amendment. *Lebanon* (SR.24, p. 14) suggested adding 'and relating to social, cultural or scientific questions' after 'under the auspices of the United Nations' in the Netherlands amendment, in order to make it more acceptable to the General Assembly. (For States which opposed an appeal for acceptance of the compulsory jurisdiction of the International Court of Justice, see under heading C. 7 above.)

"3.—Elections to the International Court of Justice

Lebanon (SR.21, p. 23), *Burma* (SR.21, p. 26), *Ghana* (SR.22, pp. 6, 8) and *UAR* (SR.24, p. 6): the situation would be improved if the Court were made more representative of the different legal systems of the world.

United States (SR.22, p. 17) and *United Kingdom* (SR.24, p. 9): a provision on the subject would be superfluous.

"4.—Progressive development and codification of international law

Ghana (SR.22, p. 9), *Mexico* (SR.22, p. 12) and *Yugoslavia* (SR.23, p. 12): facilitating the process of shaping international law would contribute to the settlement of disputes.

"5.—Provision that recourse to peaceful settlement does not derogate from sovereignty

France (SR.21, p. 15), *United States* (SR.22, p. 18), *United Kingdom* (SR.24, p. 9), and *Australia* (SR.24, p. 14) supported the French amendment.

USSR (SR.22, p. 29): French amendment is somewhat vague and has little relevance."

Chapter V

THE DUTY NOT TO INTERVENE IN MATTERS WITHIN THE DOMESTIC JURISDICTION OF ANY STATE, IN ACCORDANCE WITH THE CHARTER

A. *Written proposals and amendments*

202. Five written proposals concerning the third principle considered by the Special Committee were submitted by *Czechoslovakia* (A/AC.119/L.6), by *Yugoslavia* (A/AC.119/L.7), by the *United Kingdom of Great Britain and Northern Ireland* (A/AC.119/L.8), by *Mexico* (A/AC.119/L.24), and by *Ghana, India* and *Yugoslavia* (A/AC.119/L.27). On the submission of the latter joint proposal, *Yugoslavia*, as one of the co-sponsors, withdrew its original proposal. *Guatemala* introduced an amendment (A/AC.119/L.25) to the *United Kingdom* proposal. An amendment to the *United Kingdom* proposal was also submitted by the *United States* (A/AC.119/L.26). These proposals and amendments were as follows:

203. *Proposal by Czechoslovakia* (A/AC.119/L.6)

"*The Principle of Non-Intervention*

"1. States shall refrain from any direct or indirect intervention under any pretext in the internal or external affairs of any other State. In particular, any interference or pressure by one State or group of States for the purpose of changing the social or political order in another State shall be prohibited.

"2. States shall refrain from any acts, manifestations or attempts aimed at a violation of the territorial integrity or inviolability of any State.

"3. States shall refrain from exerting pressure by any means, including the threat to sever diplomatic relations, in order to compel one State not to recognize another State."

204. *Proposal by Yugoslavia* (A/AC.119/L.7)

"*Non-Intervention*

"1. No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State.

"2. Accordingly, States shall refrain from any form of interference or attempted threat against the independence or right to sovereign equality of any other State and in particular its right to select its political, economic and social system and to pursue the development thereof.

"3. States shall therefore especially refrain from:

(*a*) using or encouraging the use of coercive measures of a political or economic character to force the sovereign will of another State either in the field of its internal or external relations, in order to obtain advantages of any kind;

(*b*) attempting to impose a political or social system on another State;

(*c*) interfering in civil strife in another State;

(*d*) organizing, assisting, fomenting, inviting, or tolerating subversive or terrorist activities against another State;

(*e*) interfering with or hindering in any form or manner the free disposition of the natural wealth and resources of another State."

205. *Proposal by the United Kingdom* (A/AC.119/L.8) *and amendments by Guatemala* (A/AC.119/L.25) and the *United States* (A/AC.119/L.26):

Proposal by the United Kingdom

"*Statement of principles*

"1. Every State has the right to political independence and territorial integrity.

"2. Every State has the duty to respect the rights enjoyed by other States in accordance with international law, and to refrain from intervention in matters within the domestic jurisdiction of any other State."

"*Commentary*

"Non-Intervention

"(1) The basic principle in paragraph 1 is reflected in the United Nations Charter, for example, in Article 2, paragraph 4.

"(2) The first part of paragraph 2 expresses the duty of States correlative to the right enjoyed by them under paragraph 1.

"The second part of paragraph 2, which expresses the classic doctrine of non-intervention to be found in numerous multilateral, regional and bilateral treaties, is a particular application of the first part. The wording does, however, leave certain questions unresolved, as, for example, what is meant by 'intervention' and what is meant by 'matters within the domestic jurisdiction'. In the context of inter-State relations, 'intervention' connotes in general forcible or dictatorial interference.

"(3) In considering the scope of 'intervention', it should be recognized that in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and self-determination of their peoples.

"(4) It would, therefore, be impossible to give an exhaustive definition of what constitutes 'intervention'. Much of the classic conception of intervention has been absorbed by the prohibition of the threat or use of force against the political independence or territorial integrity of States in accordance with Article 2, paragraph 4, of the Charter. There are, however, other forms of intervention, in particular the use of clandestine activities to encompass the overthrow of the Government of another State, or to secure an alteration in the political and economic structure of that State, which illustrate the dangers of attempting an exhaustive definition of what constitutes 'intervention'.

"(5) In the event that a State becomes a victim of unlawful intervention practised or supported by the Government of another State, it has the right to request aid and assistance from third States, which are correspondingly entitled to grant the aid and assistance requested. Such aid and assistance may, if the unlawful intervention has taken the form of subversive activities leading to civil strife in which the dissident elements are receiving external support and encouragement, include armed assistance for the purpose of restoring normal conditions."

206. The amendment submitted by *Guatemala* (A/AC.119/L.25) to the *United Kingdom* proposal was to the following effect:

"(1) Replace paragraph 2 by the following:

"2. Every State has the duty to respect the rights enjoyed by other States in accordance with international law. Correlatively, the fundamental rights of States are not subject to impairment in any form."

"(2) Add the following new paragraph 3:

"3. No State or group of States has the right to intervene, directly or indirectly for any reason whatever, in matters within the domestic jurisdiction of States. In consequence, the principle of non-intervention bars not only the use of armed force

but also any other form of interference of an economic or political nature designed to force the sovereign will of another State."

207. The *United States* submitted the following amendment (A/AC.119/L.26) to the *United Kingdom* proposal:

"(1) In paragraph 2 under 'Statement of Principles', insert, after 'intervention', the words 'contrary to the Charter'.

"(2) Add a new paragraph 3 under 'Statement of Principles':

"3. The United Nations is not authorized to intervene in matters which are essentially within the domestic jurisdiction of any State, and nothing in the Charter requires any Member to submit such matters to settlement under the Charter; but this principle is subject to the authority granted the Security Council under Chapter VII of the Charter concerning action with respect to threats to the peace, breaches of the peace, and acts of aggression."

"(3) In paragraph (2) under 'Commentary', delete everything after 'The second part of paragraph 2' and substitute:

"makes clear that the obligation referred to springs from Article 2, paragraph 4, of the Charter, which constitutes a limitation of State action. The scope of the word 'intervention' is indicated by the wording of Article 2, paragraph 4. However, the concept of 'domestic jurisdiction' is not expressly included in Article 2, paragraph 4."

"(4) Substitute a new paragraph (3) under 'Commentary', as follows:

"3. Paragraph 3 reflects the content of Article 2, paragraph 7, of the Charter. Article 2, paragraph 7, contains the only express reference in the Charter regarding non-intervention. However, it may be noted that neither in Article 2, paragraph 7, nor elsewhere in the Charter is there any express definition of either 'intervention' or 'domestic jurisdiction'."

"(5) In paragraph (4) under 'Commentary', delete 'therefore', after 'it would' in the first line. Delete everything after 'exhaustive definition of what constitutes intervention' and substitute:

"or 'domestic jurisdiction'. In considering the scope of 'intervention', it should be recognized that, in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and self-determination of their peoples."

208. *Proposal by Mexico* (A/AC.119/L.24)

"*Principle C: The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

"1. Every State has the duty to refrain from intervening, alone or in concert with other States, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits any form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

"2. Consequently, every State has the duty to refrain from carrying out any of the acts specified hereunder, as also any other acts which may possibly be characterized as intervention:

"(1) The use or encouragement of the use of coercive measures of an economic or political nature in order to force the sovereign will of another State and obtain from the latter advantages of any kind;

"(2) Permitting, in the areas subject to its jurisdiction, or promoting or financing anywhere:

(*a*) The organization or training of land, sea or air armed forces of any type having as their purpose incursions into other States;

(*b*) Contributing, supplying or providing arms or war materials to be used for promoting or aiding a rebellion or seditious movement in any State, even if the latter's Government is not recognized; and

(*c*) The organization of subversive or terrorist activities against another State;

"(3) Making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages;

"(4) Preventing or attempting to prevent a State from freely disposing of its natural riches or resources;

"(5) Imposing or attempting to impose on a State a specific form of organization or government;

"(6) Imposing or attempting to impose on a State the concession to foreigners of a privileged situation going beyond the rights, means of redress and safeguards granted under the municipal law to nationals."

209. *Proposal by Ghana, India and Yugoslavia* (A/AC.119/L.27)

"*Principle C: Non-intervention*

"1. No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State; nor to interfere in the right of any State to choose and develop its own political, economic and social order in the manner most suited to the genius of its people.

"2. Accordingly no State may use or encourage the use of coercive measures of an economic or political character to force the sovereign will of another State and obtain from it advantages of any kind. In particular States shall not:

(*a*) organize, assist, foment, incite or tolerate subversive or terrorist activities against another State or interfere in civil strife in another State;

(*b*) interfere with or hinder, in any form or manner, the promulgation or execution of laws in regard to matters essentially within the competence of any State;

(*c*) use duress to obtain or maintain territorial agreements or special advantages of any kind; and

(*d*) recognize territorial acquisitions or special advantages obtained by duress of any kind by another State."

210. *Mexico* also submitted to the Special Committee a working paper (A/AC.119/L.23) containing the inter-American texts relating to the principle of non-intervention and expressed the hope that elements might be found in those texts which could be used by the Special Committee for the more effective discharge of its task. The working paper referred to Articles 15-17 of the Charter of the Organization of American States, 1948, to Article 1 of the Convention relating to Duties and Rights of States in the Event of Civil Strife, 1928, and to the Draft instrument on violations of the principle of non-intervention, prepared by the Inter-American Juridical Committee, 1959.

B. *Debate*

1.—General comments

211. In their general comments on the principle which forms the subject of the present chapter, a number of representatives stressed its importance for the maintenance and promotion of friendly relations and co-operation among States. The principle of non-intervention was described by some representatives as one of the corner-stones of the political and legal system created by the United Nations and as the foundation of peaceful coexistence, guaranteeing the sovereign equality of States. They emphasized that the principle acquired special importance for smaller countries, particularly those which had emerged from colonial domination, as its observance was the guarantee of their sovereignty and of their independent development. In this respect the principle of non-intervention complemented the principle of self-determination. However, the principle of non-intervention also had importance for all States, as its observance would ensure that every State enjoyed all its rights under international law.

212. The principle, it was said, was also closely connected with the maintenance of international peace and security. Intervention in the affairs of other States could be a source of international tension and violence and, as one representative pointed out, might in the extreme case even lead to thermonuclear war.

213. One representative emphasized that the principle of non-intervention, which called for respect for the will of peoples, prohibited the export either of counter-revolution to socialist countries or of revolution to the capitalist countries.

2.—Basis of the principle

214. Several representatives traced the development of the concept of non-intervention from a political principle to a principle of general international law. They recalled that it had been given expression in Article 15 (8) of the League of Nations Covenant, had been embodied in the Convention on Rights and Duties of States in 1933, and further affirmed in the Additional Protocol relative to Non-intervention adopted at the Inter-American Conference for the Maintenance of Peace held in 1956. It was also contained in the Declaration of American Principles of 1938, in the Act of Chapultepec of 1945 and other international instruments. Several representatives emphasized the inter-American contribution to the development of the principle, which culminated in the Charter of the Organization of American States and the Pact of Bogota of 1948.

215. Differences of opinion appeared in the Special Committee as to the extent the Charter of the United Nations governed the general question of non-intervention by States in the affairs of other States.

216. The majority of representatives who pronounced themselves on the matter said that, while the Charter contained no provision dealing explicitly with the principle of non-intervention by States, that principle must be regarded as implicit in it. One representative stated that it was extremely dangerous to try to prove that the principle of non-intervention was not implicitly contained in the United Nations Charter, for it would then have to be assumed that since intervention was not prohibited under the Charter, it was permissible. Several representatives suggested that the embodiment of the principle clearly followed from the fact that, by proclaiming the sovereign equality of States, the Charter prohibited one State from interfering in the affairs of another State and protected the second State against such interference. In customary law, sovereign equality was the foundation of the duty of non-intervention, and sovereign equality would be meaningless if States were entitled to intervene in the domestic affairs of other States. Thus the legal concept of non-inter-

vention, as between States Members of the United Nations, could be regarded as springing from the concepts of respect for the personality and political independence of the State, as well as from its juridical equality, which concepts constituted elements of sovereign equality. Several representatives who advocated the above interpretation of the United Nations Charter said that, since Article 2, paragraph 7, prohibited intervention by the Organization in the domestic affairs of Member States, that prohibition should extend *a fortiori* to Member States in their relations with other States. It was also stated that the principle of non-intervention was a corollary of the principle of respect for the territorial integrity and political independence of States, protected by Article 2, paragraph 4, of the Charter, which postulated implicitly the free and unhampered development of States as an aspect of their national independence. Some delegates observed, moreover, that intervention was entirely contrary to the spirit underlying Article 2, paragraph 7, to the purposes of the United Nations set forth in Article 1, paragraph 2, and to other provisions of Chapter I of the Charter. The Charter was an instrument to promote peace through progress, co-operation, equality and non-intervention. The right to self-determination of peoples also clearly implied the principle of non-intervention, as did the obligation of States to respect the political and social systems chosen by each people. Moreover, it was also suggested by one representative that the principle constituted an obligation not to oppose peoples struggling for their interdependence, who had the inalienable and sovereign right to establish their national government without any outside interference and were free to establish political, economic and cultural relations with other States and, if necessary, to replace an obsolete economic and social system.

217. It was further maintained that, under General Assembly resolution 1966 (XVIII) of 16 December 1963, the Committee was to study principles of international law and, as the debates and documents in the General Assembly clearly showed, the principle of non-intervention came within the framework of international law in general. While the Charter was to be the basis of the Committee's work, the Committee was nonetheless free to take into consideration new elements which had arisen since the signing of the Charter.

218. Several representatives submitted that the various Charter provisions, mentioned above, had to be interpreted both individually and in combination. One representative, who shared the view that the Charter imposed the duty of non-intervention both on the United Nations and on States, stated that the introductory sentence of Article 2 could not be interpreted as meaning that some of the principles applied to the Organization and others to the Member States. The provisions of that Article should not be interpreted too restrictively, and both the Member States and the Organization should act in conformity with all the principles in question.

219. One representative stressed, on the other hand, that Article 2 (7) of the Charter was explicitly concerned only with non-intervention by the United Nations, and declared that there were no grounds for supposing that that provision extended to States the prohibition imposed upon the Organization. It was clear by application of the principle *expressio unius est exclusio alterius* that, in the matter of intervention, Article 2, paragraph 7, was not concerned with the actions of States. State intervention was dealt with in Article 2, paragraph 4, which involved only the threat or use of force and could not be stretched to encompass all sorts of extraneous standards of conduct, whether or not they might be desirable in themselves. Apart from Article 2, paragraph 4, the drafters of the Charter had not dealt separately and expressly with intervention by States. He warned that it might be dangerous, and to some extent unrealistic, to give too broad an interpretation to the notion of non-intervention. The limited character of the Charter's concern with State intervention was evidenced, *inter alia*, by the fact that less than three years after the drafting of the Charter a substantial group of Member States had felt it necessary to enter into additional multilateral treaty commitments regarding non-intervention by States, and the *travaux prépara-*

toires of the San Francisco Conference did not support the interpretation that Article 2, paragraph 7, was even by implication applicable to intervention by States. When the authors of the Charter had meant in that paragraph to refer to States, they had done so explicitly.

220. Another representative recalled the *travaux préparatoires* relating to the principle of non-intervention, and stated that, in the light thereof, the meaning of the present Article 2, paragraph 7, of the Charter was, firstly, that each State had entire liberty of action in matters essentially within its domestic jurisdiction, and secondly, that the United Nations might only intervene in such matters provided they fell definitely within the purview of the enforcement measures envisaged in Section B of Chapter VIII of the Report of Rapporteur of Committee I/1 to Commission I of the San Francisco Conference on International Organization. He observed, however, that the principle established in Article 2, paragraph 7, had now become a general rule of law regulating the relations between States.

221. Disputing the limited concept of Article 2, paragraph 4, of the United Nations Charter described above, one representative stated that much of the classic conception of non-intervention had been absorbed by the prohibition of the threat or use of force contained in that provision. While the threat or use of force undoubtedly represented the most obvious case of intervention, that form of intervention constituted a special legal category because it came under special legal rules, not applicable to other acts of intervention. There was a correlation between Article 2, paragraph 4, and Article 51. The gradual inclusion of acts distinct from the use of force in the category covered by Article 2, paragraph 4, tended to strengthen the trend to use acts distinct from armed attack in order to justify the exercise of the right of self-defence, i. e. in the last analysis, in order to legitimize preventive war. The General Assembly itself, in laying down the Committee's terms of reference, had distinguished between the prohibition of the use of force and the principle of non-intervention. His delegation had therefore omitted the prohibition of the use of force from its proposal, while including everything else covered by the traditional concept, i. e. acts of intervention *stricto sensu* which did not constitute a use of force.

222. Another representative stated that even if allowance were made for the interpretation of Article 2, paragraph 4, as meaning only the prohibition of armed force, the context of Article 2, paragraph 7, was wider than that of Article 2, paragraph 4, since the latter referred not only to armed intervention but also to acts of economic, political and other intervention.

223. In the view of one representative, the two basic elements of the classic definition of non-intervention were contained in Article 2, paragraph 4: the prohibition of coercion of the will of another State by the threat or use of force, and the prohibition of attempts by such means on the territorial integrity or political independence of another State. In his view "territorial integrity" and "political independence" belonged to the reserved sphere of competence of States, which included all questions essentially within their domestic jurisdiction.

224. Another representative observed that the reference to territorial integrity and political independence in Article 2, paragraph 4, could not be of much assistance in determining either the existence or the scope of the duty of non-intervention, since that paragraph was not expressly concerned with the duty of non-intervention, but only incidentally touched on it in connexion with the general prohibition of the use of force.

225. Many representatives referred to various international instruments concluded subsequent to the Charter, or decisions of international organs, which embodied the principle of non-intervention. Some of the examples cited were—apart from the Pact of Bogota (American Treaty on Pacific Settlement) and the Charter of the Organization of American

States—the Pact of the League of Arab States, the Declarations adopted at Bandung in 1955 and at Belgrade in 1961, the Charter of the Organization of African Unity, 1963, the Warsaw Treaty, 1955, the Vienna Convention on Consular Relations, 1963, the Vienna Convention on Diplomatic Relations, 1961, General Assembly resolutions 290 (IV) of 1 December 1949 and 380 (V) of 17 November 1950 and various other decisions by the United Nations relating to non-intervention. These instruments and decisions showed, it was said, that the principle of non-intervention was a fundamental rule of international law recognized by all States.

226. Some representatives maintained that the inter-American concept of non-intervention should be universally applicable. It had been endorsed by many States, and its strict injunctions were consistent with the interests of most members of the international community. It was difficult to see why certain activities which were unlawful from any objective points of view should be prohibited in relation to some States and permitted in relation to others. Other representatives thought that the principle of non-intervention in regard to relations between States must be laid down in explicit and precise terms on the basis of article 15 of the Charter of the Organization of American States (*see* para. 239 below) and having regard to Article 2, paragraph 7, of the United Nations Charter.

227. Another representative recalled, however, that article 15 of the Charter of the Organization of American States was broader than any principle of State conduct found in the United Nations Charter. It was the United Nations Charter and not the Charter of the Organization of American States which the Committee was considering.

3.—The question of intervention in internal and external affairs

228. Some representatives favoured prohibiting intervention in the external as well as the internal affairs of States, on the basis of the collective experience of the American States as reflected in Articles 15 and 16 of the Charter of the Organization of American States. They considered that external independence was an attribute of sovereignty just as much as internal independence, and that certains forms of interference in the external affairs of States might amount to direct or indirect intervention in their domestic affairs, or *vice versa*

229. Some other representatives took the position that no valid distinction could be made between intervention in internal and in external affairs. They considered that it was not easy in practice to distinguish between internal and external affairs, and that, moreover, many questions which had led to intervention had both external and internal aspects which could not be separated. Internal and external affairs embraced all the activities of a State in the exercise of its sovereignty.

4.—The question of the desirability of defining activities considered to constitute intervention

230. Several representatives believed that the principle of non-intervention required a new formulation which would take into account the recent developments that had occurred in its application and the practice both of the United Nations and of States that had evolved in the light of Charter and other treaty principles and of the present-day needs of the international community. It was also stressed that strict compliance with the principle in the daily practice of all States without exception must be ensured. These representatives agreed that it was impossible to enumerate all the possible forms of intervention and that a more complete codification should be attempted in the future; but, in their view, the absence of such a codification at the present time should not prevent the Committee from illustrating what it meant by intervention. They favoured a categorical statement prohibiting intervention, supplemented by an enumeration of the main types of actions which, in fact, consti-

tuted intervention. One representative stated that it was not enough to draw implications from the various provisions of the Charter; rather, the great juridico-political principles of non-intervention should be given express formulation. He considered that the subject offered an excellent example of the kind of task which the General Assembly had entrusted to the Special Committee. What the Committee had to deal with was a principle which was implicit in the Charter without being stated expressly in it. The Committee would thus not be establishing a principle which did not appear in the Charter, neither would it be revising or repeating the Charter's provisions; it would be stating that principle in the light of the historical experience and practice of States and of the United Nations, and in the light of treaties and of the present-day needs of the international community. The codification and progressive development of international law were, in the present instance, in his view, inseparably linked.

231. In the view of other representatives, however, it was unwise and unprofitable for the Committee to define intervention, because extending it would stultify the growth of international co-operation, and restricting it would leave States without protection against very real dangers. It was not possible, in their opinion, to turn every apparently useful political idea into a legal formula or to foresee all the possible conflicts which might arise. They opposed the tendency to try to draw up texts too detailed to be applied effectively. Instead, they preferred that international organs should in each case decide what constituted a lawful act and what constituted unlawful intervention. Any attempt at definition, they believed, was doomed to failure, as intervention was an extremely fluid concept and the competent international organs would always be able to determine in each instance whether or not intervention had taken place.

232. One representative considered that a definition of intervention, which was both precise enough and broad enough to be adequate, would represent a major step forward in general international law, and at the same time would be the best means of eliminating one of the principal sources of international conflict. However, he was uncertain whether such a definition was possible, for neither the authors of the Charter nor, before them, those of the Covenant of the League of Nations, had tried to define intervention or its necessary corollary, domestic jurisdiction. Although the American States had made efforts to do so, article 15 of the Charter of the Organization of American States, which would remain a classic text in that regard, did more to emphasize than to solve the problem of the definition of intervention, and article 16 of that text immediately raised the question where the line of demarcation lay between what a State could or could not legitimately do in its normal relations with another State. With regard to the draft instrument prepared by the Inter-American Juridical Committee, he felt that that method perhaps pointed the way to the future, and deserved comparison with the attempt made by the International Law Commission in article 2 of its Draft Code of Offences against the Peace and Security of Mankind, ant with the definition of the reserved sphere attempted by the Institute of International Law in 1954.

233. One representative considered that too rigid a formulation of the rules of non-intervention might lead to serious contradictions when the Special Committee came to study the principle of equal rights and self-determination of peoples. However, those difficulties did not necessarily rule out any detailed formulations.

234. Another representative believed that the duty of non-intervention could not be stated in detailed terms except possibly through the formulation of proposals *de lege ferenda*. The *lex lata* could provide only a highly generalized statement of that duty and there was some utility in attempting to spell out the general rule. However, by trying to specify the prohibition of intervention in too much detail, the Committee would run the risk of reaching the absurd position where States would scarcely be able to take any action in their interna-

tional relations if some other State objected. Some criteria must therefore be found for limiting to matters really domestic the prohibition on intervention. His delegation also experienced real difficulties, in regard to the duties of States, in accepting concepts which were too broad and too vague.

5.—The meaning of "domestic jurisdiction"

235. One representative observed that the principle of non-intervention simply protected the freedom of choice without an independent State could not exist as such, a freedom frequently termed the "domestic jurisdiction" of a State. That freedom had both internal and external aspects and consisted, *inter alia*, in a State's right to choose what should be its own political, social, economic and legal system, provided, of course, that it respected human rights and fundamental freedoms; whether to entertain diplomatic relations with other States; whether to enter into agreements; and whether to participate in regional and other international organizations. That being generally accepted, the difficulty was to judge whether a State's conduct was a necessary implication of the right of choice it had exercised. In any event, a State could not invoke its sovereignty in order to justify a violation of the rights of another State, nor could a protest or a demand for reparations from such other State be considered illicit intervention. It therefore seemed legally incorrect to equate freedom of choice with the sovereign will of a State, since the latter, too, covered all the activities of a State. If, however, the freedom of choice was limited to the essential matters to which he had referred, it could be said that in principle a State should be protected against any action by another State designed to impose a particular choice upon it.

236. Some representatives, when referring to the rules of international law on the question of domestic jurisdiction, recalled that, apart from the Corfu Channel case and that of the Nationality Decrees issued in Tunis and Morocco, the only fundamental text in the matter was the Advisory Opinion of the Permanent Court of International Justice relating to the interpretation of Article 15 (8) of the Covenant of the League of Nations. It was noted that the Court, referring to the relative nature of the concept of domestic jurisdiction, had envisaged one exception only—the case where such jurisdiction was restricted by obligations undertaken by one State towards other States. The substitution, in the Charter, of the formula "matters which are essentially within the domestic jurisdiction" of States for that of the Covenant which had referred to matters "solely" within their jurisdiction, had in no way detracted from that interpretation. If anything, the reserved sphere was even more extensive in the Charter than in the Covenant.

237. The definition of domestic jurisdiction formulated in the Tunis and Morocco Nationality Decrees case meant that the question whether a proposed exercise of power was within a State's domestic jurisdiction could not be determined until all its obligations bearing on a situation had been examined. The development of communications, transport and travel across national boundaries had given each State a very real interest in what occurred in the territory of other States, so that from the standpoint of actual interest few questions could be regarded as wholly domestic; and if the law were to reflect actual conditions it must give protection to those actual interests, recognizing a State's claim to reparation for injuries to itself or its nationals and to reasonable access to trade, information, cultural exchanges and transit in the territory of other States. Such rights had developed either by custom or by treaty, and the domestic jurisdiction of States in the legal sense had been continually reduced as the real interest of States in the territory of others had been recognized and given legal protection.

6.—The meaning of "intervention"

238. Apart from general formulations submitted to the Special Committee in writing and reproduced in the first part of the present chapter, several representatives offered definitions or expressed their understanding of the term "intervention".

239. Several representatives recalled the provisions of Article 15 of the Charter of the Organization of American States, which provided that: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements."

240. One representative considered that an accurate definition of the concept might be as follows: it was the coercive nature of an act of interference which made that act "intervention", whether the act in question involved the use of force or merely economic or political pressure. Interference must manifest itself by action or inaction, or by a threat of a hostile nature or deemed to be hostile if the State in question did not yield to it. That did not mean that to constitute intervention the act of interference must in fact force the victim State into compliance. Even if that State refused to be coerced or intimidated by threats, there might be an intention on the part of the intervening State to coerce the sovereign will of the other State. According to the general principles of law, the intention of the agent could be presumed from the nature of the act performed. According to Calvo, the form which the intervention took did not in any way change its nature. Intervention could be practised by processes of diplomacy. It could be more or less direct, more or less overt. It could be directed against the internal or external affairs of the State. According to some authorities, such as Westlake, intervention meant exclusively intervention in internal affairs. However, that position failed to take account of the fact that external independence was an attribute of sovereignty just as much as internal independence. Lastly, intervention presupposed the existence of a state of peace between the States concerned.

241. Another representative, differentiating between "permissible" and "impermissible" intervention, stated that impermissible intervention was the dictatorial exercise of influence over the internal affairs or foreign policy of a State, aimed at destroying its markets, violating its laws, damaging its prestige and reputation, controlling its policy or subverting its government. It included such activities as propaganda, espionage, infiltration, bribery, assassination, assistance to guerrillas, and peremptory diplomatic demands. However, it was only when such activities were carried out by agents of a Government with a view to controlling or subverting the Government of another State that they contravened the principle under consideration. Propaganda or subversive activity short of military expeditions undertaken by private individuals or enterprises were not usually regarded as intervention unless there was government complicity.

242. In the view of another representative, any attempt to define intervention must cover, in addition to respect for sovereignty, the idea of coercion, namely of abnormal or improper pressure exercised by one State on another State in order to force it to change its internal structure in a direction favourable to the interests of the State applying such coercion. However, he did not think that such a attempt was possible in the present state of international relations. For the last two decades the idea of intervention, which was itself connected with the increase in the number of sovereign States, had been undergoing an inflation, and the concept of sovereignty had undergone a similar inflation. The idea of intervention had been applied to the most diverse situations, and today reference was commonly made to economic or ideological intervention with or without such improper coercion, which he regarded as the true criterion of intervention.

243. One representative said he believed in the dynamic nature of the Charter and considered that it should be interpreted so as to give it its fullest effect. But he rejected interpretations the derivation of which were at best dubious, particularly when such interpretations were not necessary to the effective functioning of the Organization or when they watered down rules clearly stated in the Charter, and, moreover, particularly when such

interpretations would carry no weight with countries which were accustomed to take little notice of those rules.

244. Taking a similar position, another representative expressed the view that any attempt to spell out the various activities constituting intervention was a task which, for purely practical reasons, was beyond the scope of the Special Committee. He said that it must always be remembered that the principle of non-intervention operated within the framework of the flexible Charter system and that allegations of unlawful intervention, particularly if they gave rise to a dispute or a situation whose continuance would endanger international peace and security, could always be brought before a competent organ of the United Nations for decision. It was in that flexible and pragmatic manner, which was natural to countries applying the common law system, that the content of the law relating to intervention should continue to be developed.

7.—The question of permissible intervention

245. Some representatives distinguished between "permissible" and "impermissible" intervention. It was said that, in the present-day world, States were increasingly interdependent, and that tendency was bound to become more pronounced. Thus the risk must be avoided of seeming to thwart progress by categorizing as intervention what was in fact part of normal diplomatic activities. Without wishing to defend all forms of political, economic or material pressure, some representatives were of the opinion that certain forms of pressure promoted rather than hindered progress and could be advantageous to States.

246. One representative suggested that States should recognize as mandatory the rules of international law, agree to limit their freedom of action in certain fields under multilateral agreements, and, above all, transfer some of their powers to the appropriate organs of the United Nations. It was important to realize that any progress made by the United Nations must reflect in some degree a surrender of national sovereignty, and that such a process was in the interest of peace and stability. When the Organization had undertaken the task of maintaining law and order in the Middle East and in Africa, and of speeding the process of decolonization, individual Powers had been obliged to recognize a limitation on their freedom of action in those spheres. The authority of the United Nations as a body must take precedence over that of its individual Member States.

247. Another representative drew the conclusion, from the case concerning the Tunis and Morocco Nationality Decrees, that the principle of non-intervention could not be invoked with respect to such questions as *apartheid* in the Republic of South Africa, the oppression of Africans in Central Africa, the denial of the right of self-determination, and other colonialist and neo-colonialist practices which had been the subject of many resolutions in the General Assembly. He also observed that, in formulating proposals on the principle of non-intervention, the Special Committee should take into consideration the exceptions provided for in Articles 11, 14, 36, 37, 39, 55 and 73 of the United Nations Charter, which gave the Organization itself extensive power to make decisions or recommendations in certain circumstances.

248. One representative recalled that, although the illegality of intervention was acknowledged to be a general rule by most authorities, the view had also been advanced that some exceptions should be made to that rule because there were certain rights which should take precedence over the right to independence and that therefore intervention was lawful when its purpose was to defend a higher right. While intervention, in such cases, was not a right in the ordinary legal meaning of the term, international practice recognized certain exceptions to the rule of non-intervention. Those who denied the lawfulness of intervention, or the existence of a right of intervention, based their argument on the nature of the right

to independence and sovereignty: if there was a right of intervention, that right would violate another right. The same representative said that in exceptional cases there could be lawful interventions, such as measures taken in self-defence or as sanctions, or with the consent of the State which was the victim of the intervention.

249. Other representatives could not support any attempt to make a distinction between "lawful" or "unlawful" intervention. In their view, such a distinction would only serve to justify one category, so-called lawful intervention.

8.—Acts prohibited under the principle of non-intervention

(i) Activities aimed against the political, economic and social system of a State and imposition or attempt to impose on a State a specific form of organization or government

250. Proposals characterizing activities of the nature indicated in the present sub-heading as unlawful intervention were submitted by *Czechoslovakia* (A/AC.119/L.6, para. 1 (*see* para. 203 above)), by *Yugoslavia* (A/AC.119/L.7, paras. 2 and 3 (*see* para. 204 above)), jointly by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.27, para. 1 (*see* para. 209 above)) and by *Mexico* (A/AC.119/L.24, para 2, sub-para. (5) (*see* para. 208 above)).

251. It was explained that these proposals had been dictated by the consideration that any interference aimed at infringing the right of a State to decide the course of its own political, social or economic development could cause international friction that might endanger peace, and that any external pressure exercised against the right of a State freely to choose a particular social system or political regime should therefore be unconditionally prohibited. This point needed particular stress in view of the present division of the world into opposing ideological camps and differing political and economic systems and it was also of special importance to States which had recently attained independence. It should be formulated so as to prohibit not only armed intervention, but all other forms of direct or indirect intervention in the internal or external affairs of States, more especially intervention of a political or economic nature and political or economic pressure aimed at preventing peoples from choosing their social system or from taking economic measures to further their interests in their own countries.

252. However, one representative could not agree to broad formulations of the foregoing nature. If adopted, such formulations would make it unpermissible for other States to interfere when a State's social or political order was characterized by the systematic suppression of political or other human rights; these other States would be unable even to express condemnation of such situations as *apartheid*, colonialism or totalitarism, since that might be considered pressure aimed at changing the existing order in another State. The same representative said that the Charter did not include either expressly or by necessary implication such restrictions on the freedom of action of States.

(ii) Acts aimed against the personality, sovereign equality and rights enjoyed by other States in accordance with international law and against their territorial integrity and inviolability

253. Proposals to include some or all acts of the nature indicated in this sub-heading as acts of intervention were submitted by *Czechoslovakia* (A.AC.119/L.6, para. 2 (*see* para 203 above)), *Yugoslavia* (A/AC.119/L.7, para. 2 (*see* para. 204 above)), the *United Kingdom* (A/AC.119/L.8, para. 2 (*see* para. 205 above)), *Guatemala* (A/AC.119/L.25, para. 1 (*see* para. 206 above)) and *Mexico* (A/AC.119/L.24, para. 1 (*see* para. 208 above)).

254. Representatives advocating a provision along these lines stated that the prohibition of the use of force laid down in Article 2, paragraph 4, of the Charter implied a cor-

relative right on the part of States to political independence and territorial integrity. Any act, manifestation or attempt directed against the territorial integrity or inviolability of a State was not only an invasion of its sovereignty but also prejudicial to peaceful relations among States. Once the right to political independence and territorial integrity was accepted, the conditions under which States could exercise that right must be established. This could be done by imposing on States the duty to respect the rights enjoyed by other States in accordance with international law. Some representatives felt that reference should also be made, in this context, to the right of every State to free and organic development. The object was to ensure that every State freely enjoyed all its rights under international law and was able to assert its personality as a State.

255. In support of inclusion of some formulations along the foregoing lines, it was said that provisions in similar terms were to be found in the Charter of the Organization of American States and in many multilateral, regional and bilateral treaties.

256. One representative, referring to the *Czechoslovak* proposal, said that it was intended, apparently, to prohibit acts not involving the threat or use of force, for otherwise it would be redundant. But what exactly were "manifestations" not amounting to the threat or use of force, "aimed at a violation of the territorial integrity or inviolability" of a State, and what reason would such elusive and ephemeral conduct give any State to fear for the actual integrity of its territory? The territorial integrity of States was already amply protected by Article 2, paragraph 4; only harm could result from the proliferation of rhetoric having no purpose but variety.

(iii) Acts against the self-determination of peoples

257. Apart from the discussion of the basis of the principle of non-intervention, of which it was said that the principle of self-determination implied, *inter alia*, the principle in non-intervention, certain remarks on self-determination of peoples were also made in connexion with acts constituting unlawful intervention.

258. Some representatives stated that, since the principle of non-intervention, as stated in particular in Article 2, paragraph 7, of the Charter, had repeatedly been invoked against the interests of colonial peoples fighting for independence, that principle should be so formulated as not to hinder the self-determination of colonial peoples, and so as to protect the sovereignty and independent development of new States against external interference. It was recalled, in this connexion, that the Heads of State or Government of the non-aligned countries had given special attention to the principle of non-intervention at the Belgrade Conference in 1961 and had in their final communiqué expressed their determination that "no intimidation, interference or intervention should be brought to bear in the exercise of the right of self-determination of peoples, including their right to pursue constructive and independent policies for the attainment and preservation of their sovereignty."

259. One representative believed that efforts should be made to solve the colonial problem through peaceful procedures, a broader interpretation of Chapter XI of the Charter, the development of the right of petition and the right of the United Nations to intervene under Article 2, paragraph 7, and more effective action by the Security Council, particularly by non-exercise of the right of veto.

260. Another representative pointed out that the self-determination referred to in Article 1, paragraph 2, of the Charter was the self-determination of peoples, a concept which might not always coincide with the concept of self-determination of States, and which left open the possibility of orderly change.

(iv) Coercive measures of a political or economic nature to force the sovereign will of another State in order to obtain advantages of any kind

261. Proposals containing elements of the above formulation were submitted by *Yugoslavia* (A/AC.119/L.7, para. 3 (*a*) (*see* para. 204 above)), *Mexico* (A/AC.119/L.24, para. 2 (1) (*see* para. 208 above)) and *Guatemala* (A/AC.119/L.27, para 2 (*see* para. 206 above)).

262. Several representatives emphasized that there was a definite need to provide for the prohibition of both direct and indirect intervention by one State in the affairs of another, which would also include political, economic and other kinds of interference, pressure or intervention which could infringe upon the sovereignty of a State and its political independence. The nuclear age made it an absolute necessity that States should adopt a higher standard of conduct in these respects.

263. One representative, advocating the inclusion of the words "coercive measures of an economic or political nature" in any formulation which might be adopted, recognized that the interplay of mutual influences and the exercise of certain pressures were a part of international relations. That was clear enough, for example, from the bilateral negotiations connected with the conclusion of any trade treaty, and particularly the way in which concessions were granted. But there were also many types of economic pressure a State might resort to in the exercise of its sovereignty which were plainly unlawful, and which would be difficult to reconcile with the United Nations Charter, particularly Articles 55 and 56 and Article 2, paragraph 2, and with the general principle of law which condemned certain actions as "abuses of rights". The same was true at the political level. What the Committee should be concerned with was not the influence that States normally exerted on each other, but solely with cases of manifestly unlawful pressure. It had been argued that it was impossible to draw up in advance a general definition of the term "unlawful pressure", and that reference to such pressure was therefore undesirable. That argument was hardly convincing. There were many juridical concepts, even basic ones, which did not lend themselves to precise definition. The difficulties which would face the organs that would have to apply the concept of "coercive measures of an economic or political nature" would be the same as those resolved every day by courts all over the world and by the political organs in all countries which applied juridical rules. Those rules should be interpreted in a reasonable way, taking account of the times, the environment and political, economic, social and juridical trends. Furthermore, the words "coercive measures of an economic or political nature" already appeared in multilateral treaties signed by a great many States, which had had no difficulty in accepting them. In any event, the difficulty of defining certain terms precisely could not be used as an argument to demolish the principle that some kinds of pressure were unlawful and constituted intervention. To fail to brand such kinds of pressures as intervention, on the pretext that it was difficult to define them, would be tantamount to legalizing them.

264. Some representatives, however, did not share the foregoing views. It was pointed out, in this connexion, that the principle of non-intervention had its inherent limits and could never be invoked to bar the exercise, by another State, of its fundamental freedom of choice in essential matters, or in order to declare illegal the measures which a State might take to counteract a violation of its rights. Even if such counter-measures could be considered as a form of "pressure", they could not be characterized as unlawful intervention in matters within the domestic jurisdiction of another State. In an interdependent world, it was inevitable and desirable that States should try to influence the actions and policies of other States. It was not the purpose of international law to prohibit such activities, but rather to ensure that they were compatible with the sovereign equality of States and the self-determination of peoples. Moreover, while some concepts could be used within the legal

system of a State, since there were tribunals which were particularly well equipped to give an authorized interpretation of them, there was no such general and automatic resort to tribunals within the international system. Without some body authorized to give a binding interpretation, there were no effective means of resolving the wide differences of opinion which would arise if a formulation of the nature here under consideration were to be adopted.

(*v*) *The threat to sever diplomatic relations in order to compel one State not to recognize another State and making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages*

265. Proposals characterizing as intervention acts of the nature indicated in the present sub-heading were submitted by *Czechoslovakia* (A/AC.119/L.6, para. 3 (*see* para. 203 above)) and by *Mexico* (A/AC.119/L.24, paras. 2 and 3 (*see* para. 208 above)).

266. Representatives supporting the inclusion of a provision along these lines stressed that the establishment or severance of diplomatic relation, like the recognition or non-recognition of a State, were manifestations of sovereignty and that the exercise by a State of its sovereign rights should not be subject to any pressure whatever, since any pressure so exercised constituted intervention. It was also said that the use of such tactics prevented third States from exercising their inalienable right to participate in international relations, thereby weakening the concept of universality on which contemporary law was founded.

267. Explaining the reasons for the adoption of such a formulation, one representative stated that every State, as a corollary to its sovereignty, had the right to decide freely and without pressure whether a new State fulfilled the conditions for recognition as a subject of international law. It was nevertheless important that decisions on recognition should be in keeping with reality, in order to avoid confused situations in which potential aggressors might be tempted to use force against States which they did not recognize as such. In according or refusing recognition, States were performing what had been called a quasi-judicial function as members of the international community. That function must not be performed arbitrarily, nor must its performance be the subject of pressure by third States. He believed that such pressure constituted a violation of international law—as did similar pressure used to compel a State to vote in a particular way in an international organization. The prohibition of the kind of pressure to which he referred was not expressly contained in any instrument of positive international law, but he considered that it followed from the general principles of international law. In international law, it was an abuse of rights *(abus de droit)* to exercise rights in such a way as to interfere in matters within the competence of other Governments. The same representative contended that, although States had the right to recognize other States and decide the extent of their relations with them—thus, for example, they could refrain from establishing diplomatic relations with certain States and maintain only commercial relations with them—they were not entitled to abuse that right by threatening to sever diplomatic relations in order to compel other States to recognize or refrain from recognizing new States or Governments, for such action constituted illegal intervention in the external affairs of sovereign States. The Hallstein doctrine adopted by the Federal Republic of Germany was not a doctrine of simple non-recognition but a programme of non-recognition involving the exercise of pressure on third States.

268. Several representatives, on the other hand, disagreed with the foregoing position. They stressed that the act of recognizing States or Governments was a highly political one, and, although it was governed to an important extent by norms of international law, those norms allowed States considerable discretion. The decision whether to recognize a State, or whether to seek to induce others to recognize it or refrain from doing so, could at present only be left to individual States. Every sovereign State enjoyed a perfectly legitimate exercise of the right to be the sole judge of the way it chose to conduct its diplomatic relations.

The decision of the Federal Republic of Germany in following the Hallstein doctrine was a decision which was exclusively within its domestic jurisdiction and did not constitute a direct or indirect intervention in the external affairs of other States. Moreover, the Hallstein doctrine operated only in relation to one very special case, namely, the *de facto* political division of Germany. It should also be recalled that the maintenance or severance of diplomatic relations was a matter entirely within the discretion of the sending States; if the threat to sever diplomatic relations was conceived of as a means of unlawful pressure, it should not be confined to a threat with one particular purpose in mind. Everybody knew that a State could try to exert pressure on another State, with which it had a dispute, by threatening to sever, or by actually severing, diplomatic relations. While such action was likely to be self-defeating, it could not be disputed that a State was perfectly entitled to decide with which other States it wished to maintain diplomatic relations.

(vi) Organization or training of land, sea or air forces of any type having as their purpose incursions into other States

269. A proposal formulating the duty of every State to refrain from carrying on and permitting, in the areas subject to its jurisdiction, or from promoting or fomenting anywhere, the activities described in the present heading was submitted by *Mexico* (A/AC.119/L.24, para. 2 (2) (*see* para. 208 above)). It was not, however, the subject of any discussion within the present context.

(vii) Subversive or terrorist activities against another State or interference in civil strife in another State

270. Proposals characterizing as intervention subversive activities and interference in civil strife were submitted by *Yugoslavia* (A/AC.119/L.7, paragraph 3 (*c*), (*d*) (*see* para. 204 above)), by *Mexico* (A/AC.119/L.24, paragraph 2 (*c*) (*see* para. 208 above)), and by *Ghana, India and Yugoslavia* (A/AC.119/L.27, paragraph 2 (*a*) (*see* para. 209 above)). It was indicated that the text of the latter three-Power draft was inspired by the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee.

271. One representative stressed that in the world of today, subversion was perhaps the most common and most dangerous form of intervention, whether it consisted of hostile propaganda, or of incitement to revolt or to the violent overthrow of the established order. Such forms of subversion, which were themselves ancient, had come to characterize the ideological struggle which divided the world today. Their goal was no longer to overthrow a rival or hostile government, but to change completely the political, economic and social structure of another State in the name of supposedly superior ideological principles. That ideological struggle was now assuming so violent a character that it presented, in the atomic age, enormous risks.

272. The very purpose of the principle of non-intervention was to halt the ideological struggle at a time when it was taking on certain political aspects which endangered the peace of the world. The instrument of that struggle being *par excellence* subversion, it was necessary to prohibit subversive activities as categorically as possible.

273. Speaking on the forms of subversive or terrorist acts with support from outside as the most typical cases of violation of the principle of non-intervention, another representative pointed out that such forms included not only the organization, training and preparation on the territory of one State or groups of individuals who would then infiltrate into another State for purposes of subversion and terrorism. They also included encouragement, material aid, provocation and any support of whatsoever kind given by a State to seditious

minority groups operating in another State against the established order and seeking to overthrow the Government and the political and social system freely chosen by the inhabitants.

274. In the view of one representative, the principle of non-intervention should be formulated so as to place Governments or States under the obligation to prevent their territories from being used by non-governmental organizations to prepare subversion against other States. In addition, further consideration should be given to the neo-colonialist practice of extracting consent for the establishment of military bases or for other concessions in the territory of a colonial country as a condition for the granting of independence. Such practices constituted quasi-intervention, and compromised from the outset the territorial integrity of the future State. Furthermore, mutual defence treaties between colonial Powers and their former colonies had been used on occasion as pretexts both for interfering in the latter's internal affairs and for buttressing unpopular regimes in the new States.

(viii) Contribution, supply or provision of arms or war materials to be used for promoting or aiding a rebellion or seditious movement in any State

275. A proposal characterizing the above activities as intervention was submitted by *Mexico* (A/AC.119/L.24, para. 2 (2) (*b*) (*see* para. 208 above)). It was not discussed at any length in the Special Committee.

(ix) Interference with or hindrance of the promulgation or execution of laws in regard to matters essentially within the domestic jurisdiction of any State

276. A proposal characterizing acts of the above nature as intervention was submitted jointly by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.27, para. 2 (*b*) (*see* para. 209 above)). This draft was to be based upon the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee.

277. One representative expressed some doubts about this formulation, saying that the domestic jurisdiction of States was not a water-tight compartment, and that certain measures taken by a State might have full effect only if they were recognized or even supported by other States.

(x) Prevention or attempt to prevent a State from freely disposing of its natural wealth and resources

278. Proposals on the above subject were submitted by *Yugoslavia* (A/AC.119/L.7, paragraph 3 (*e*) (*see* para. 204 above)) and by *Mexico* (A/AC.119/L.24, paragraph 2 (4) (*see* para. 208 above)).

279. One representative stressed that the condemnation of intervention in this sphere would represent a step forward in the progressive development of the principle that States had the right to dispose of their natural riches and resources, a right proclaimed by the General Assembly in resolutions 626 (VII) of 21 December 1952 and 1803 (XVII) of 14 December 1962. However, it was not enough simply to proclaim legal norms; efforts must be made to ensure their actual application, bearing in mind the level of development of international law and more particularly the possibilities of practical action by the United Nations. The latter factor was linked, in turn, to the degree of interdependence of States, and it was the rapid rate at which that interdependence was growing that would do most to promote the elaboration of new norms of international law governing friendly relations and co-operation among States.

280. Another representative, however, expressed a different view. He said that if any formulation on the right to dispose freely of natural wealth and resources was intended to deal only with acts involving force, it was superfluous, since such acts were already ruled out by Article 2, paragraph 4. If it went beyond that Article, as he assumed was the intention in the present instance, it raised the following question: when did an act become one hindering the free disposition of wealth and resources and cease to be merely a move in the process of free bargaining by which sovereign States endeavoured to accommodate their mutual interests? The drafts before the Committee might well be invoked to forbid import restrictions, measures of currency control, international agreements for the exploration or development of natural resources, commodity exchange agreements and the like, whether they were fair or not, for they did not indicate how fair arrangements were to be distinguished from unfair ones. Either the provision would prohibit a great variety of normal and useful transactions among States or it would prohibit none, leaving each State free to brand as illegal "interference with the free disposition of natural wealth" any action which on a particular occasion it might find distasteful or contrary to its interests. Some representatives pointed out that the General Assembly had adopted resolution 1803 (XVII) of 14 December 1962, which contained a carefully worded and reasonably balanced treatment of the subject of permanent sovereignty over natural resources, and the matter might well be left there.

(xi) Imposition or attempt to impose on a State concessions to foreigners of a privileged situation going beyond the rights, means of redress and safeguards granted under the municipal law to nationals

281. A proposal characterizing as intervention acts of the nature indicated in the present sub-heading was submitted by *Mexico* (A/AC.119/L.24, para. 2 (6) (*see* para. 208 above)).

282. One representative observed that this proposed provision would appear to alter established international law, which provided for a minimum standard in the treatment of aliens, and would substitute for that pillar of progressive international law the flexible standard of national treatment. The clause would prohibit only "imposing or attempting to impose" on a State the observance of a minimum standard, but that raised the question of what was "imposing or attempting to impose". He asked whether requesting or requiring a State to submit to international adjudication its failure to treat aliens in accordance with the minimum standard of international law was illicit imposition. In his view, the difficulty raised by the broad phraseology of the clause became plain in the light of such questions.

(xii) The use of duress to obtain or maintain territorial agreements or special advantages of any kind

283. A proposal to characterize as intervention duress to obtain or maintain territorial agreements was submitted jointly by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.27, paragraph 2 (*c*) (*see* para. 209 above)).

284. This proposal was stated to be based upon the draft instrument on violations of the principle of non-intervention prepared by the Inter-American Juridical Committee. It was not the subject of any individual comment in the Special Committee.

(xiii) The recognition of territorial acquisitions or special advantages obtained by duress of any kind by another State

285. A provision on the above matter was proposed jointly by *Ghana*, *India* and *Yugoslavia* (A/AC.119/L.27, paragraph 2 (*d*) (*see* para. 209 above)). It was not the subject of any discussion in the Special Committee.

(xiv) Prohibition of intervention by the United Nations

286. The *United States* submitted a formulation on the prohibition of intervention by the United Nations as an amendment (A/AC.119/L.26 (*see* para. 207 above)) to the proposal of the *United Kingdom*.

287. One representative stated that the Committee could not adequately discharge its responsibility if it overlooked that portion of the duty of non-intervention which was expressly laid down in the Charter and related to the duty of the United Nations not to intervene in matters within the domestic jurisdiction of States.

288. Another representative believed that a distinction should be made between the sovereignty of States in their mutual relations and the limited sovereignty of States in their relations with the United Nations. While he considered the principle of non-intervention as fully applicable in relations between States, this did not apply to legitimate collective measures taken by the United Nations in the common interest for the defence of peace. There was nothing to prevent the United Nations from taking up questions of international concern, even if they did not relate directly to the maintenance of peace and security.

289. One representative remarked that the *United States* amendment merely reproduced in slightly different terms the ideas set forth in Article 2, paragraph 7, of the Charter and that from the point of view of the development of the principle of non-intervention, it introduced few new elements and merely served the purpose of recognizing in a document the fact that the principle already existed.

290. As indicated in the first section of the present Chapter, some representatives considered that the Committee's task was to emphasize the duty, not of the United Nations, but of States not to intervene in the internal affairs of other States, and to consider principles of international law concerning friendly relations and co-operation among States, no doubt in accordance with the Charter, but nevertheless among States. These representatives considered that it would be unfortunate for the Special Committee to embark upon the discussion of the scope and significance of Article 2, paragraph 7, of the Charter in relation to the activities of United Nations organs, although the relevance of that provision to the principle of non-intervention had been recognized.

291. One representative noted that the report of the Sixth Committee (A/5671) on the item which led to the establishment of the Special Committee showed that the Sixth Committee had considered that both Article 2, paragraph 7, as applied to the United Nations, and the duty of non-intervention, as applied to States in their relations *inter se*, were properly included within the Special Committee's mandate. The work of the Sixth Committee therefore afforded no grounds for excluding from the Special Committee's work the duty of non-intervention as between States or the duty of non-intervention as applied to the Organization itself.

C. *Decision of the Special Committee on the recommendation of the Drafting Committee*

292. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee Paper No. 9):

"**Principle C**

[*i. e.* The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.]

"The Committee was unable to reach any consensus on the scope or content of this principle.

(*a*) For proposals and amendments, see annex A.

(*b*) For views expressed during the discussion, see annex B."

"**Annex A**

"PROPOSALS AND AMENDMENTS CONCERNING WHICH NO CONSENSUS WAS REACHED

Proposal by Czechoslovakia (A/AC.119/L.6) (Reproduced in paragraph 203 of the report.)

Proposal by Yugoslavia (A/AC.119/L.7) (Reproduced in paragraph 204 of the report.)

Proposal by the United Kingdom (A/AC.119/L.8) *and amendments thereto by Guatemala* (A/AC.119/L.25) *and the United States* (A/AC.119/L.26) (Reproduced in paragraphs 205, 206 and 207 of the report, respectively.)

Proposal by Mexico (A/AC.119/L.24) (Reproduced in paragraph 208 of the report.)

Proposal by Ghana, India and Yugoslavia (A/AC.119/L.27) (Reproduced in paragraph 209 of the report.)"

"**Annex B**[10]

"VIEWS EXPRESSED IN THE DISCUSSIONS, CONCERNING WHICH NO CONSENSUS WAS REACHED

"1. *Relation of the principle of non-intervention to the Charter*

Delegations referred to the following provisions of the Charter:

Preamble

Yugoslavia (SR.25, p. 7) considered that the Preamble was one of the relevant provisions.

Article 1

India (SR.32, p. 9) referred to Article 1, paragraph 1; *Yugoslavia* (SR.25, p. 7) and *USSR* (SR.28, p. 11) referred to Article 1, paragraph 2; and *Mexico* (SR.30, p. 6) referred to Article 1, paragraph 2 and other provisions of Chapter I.

Article 2, paragraph 1

Czechoslovakia (SR.25, p. 5), *Yugoslavia* (SR.25, p. 7, SR.31, p. 11), *Romania* (SR.26, p. 7), *Mexico* (SR.30, p. 5, SR.32, p. 22), *Canada* (SR.31, p. 8) and *Australia* (SR.32, pp. 11-12) referred to this paragraph.

Article 2, paragraph 4

Yugoslavia (SR.25, p. 8, SR.31, p. 11) *United Kingdom* (SR.26, p. 5), *USSR* (SR.30, pp. 18-19), *Ghana* (SR.32, p. 24), *USA* (SR.29, p. 8), *Mexico* (SR.30, pp. 6-7), *Guatemala* (SR.32, p. 5) and *Czechoslovakia* (SR.32, p. 29) referred to this paragraph. *India* (SR.29, p. 13): the principle of non-intervention is a direct corollary of the principle of respect for the territorial integrity and political independence of States.

USA (SR.29, pp. 8-12, SR.32, pp. 25-27): intervention by States is dealt with in the Charter only in Article 2, paragraph 4, and only in so far as the threat or use of force is involved.

[10] The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened, in the present annex, to mention of the summary record number only.

Mexico (SR.30, p. 7): the threat or use of force should not be dealt with under intervention. *Australia* (SR.32, pp. 12-13): Article 2, paragraph 4, cannot be of much assistance in determining the existence or the scope of the duty of non-intervention; the threat or use of force should be dealt with only under Principle A.

Article 2, paragraph 7

Yugoslavia (SR.25, p. 8, SR.31, p. 12), *Romania* (SR.26, p. 7), *USSR* (SR.28, p. 11, SR.30, pp. 18-19), *Ghana* (SR.29, p. 4, SR. 32, p. 23) *Mexico* (SR.30, pp. 5-6, SR.32, pp. 21-22), *Burma* (SR.31, pp. 4-5) and *Australia* (SR.32, pp. 10-12): Article 2, paragraph 7, prohibits intervention by States as well as by the United Nations.

Czechoslovakia (SR.25, p. 5) mentioned Article 2, paragraph 7, as prohibiting intervention by the United Nations. *United Kingdom* (SR.26, pp. 4-5, SR.32, pp. 19-20) recognized the relevance of the provision to Principle C, and found some value in a reference to it in connexion with the United Nations itself. *France* (SR.28, p. 9): Article 2, paragraph 7, concerns only the obligation of the United Nations not to intervene, but international law imposes that obligation on States.

USA (SR.29, p. 8, SR.30, p. 23, SR.32, pp. 25-28): Article 2, paragraph 7, is not concerned with actions of States.

UAR (SR.30, p. 21): the area excluded from intervention by States is broader than the area excluded from intervention by the United Nations under Article 2, paragraph 7.

Article 55

Yugoslavia (SR.25, p. 7): Article 55 is relevant.

"2. *Desirability and possibility of defining intervention*

Czechoslovakia (SR.25, p. 4), *Yugoslavia* (SR.25, pp. 8-9), *Poland* (SR.25, p. 10), *Romania* (SR.26, p. 8), *USSR* (SR.28, p. 16, SR.30, p. 19) and *Mexico* (SR.30, p. 6): desirable and possible to define intervention.

Argentina (SR.28, pp. 4-5), *Mexico* (SR.30, p. 11, SR.32, p. 19), *Burma* (SR.31, p. 5), *Canada* (SR.31, p. 9), *Guatemala* (SR.32, p. 4) and *Venezuela* (SR.32, pp. 14-17): the definition of intervention in the inter-American system, in particular in article 15 of the Charter of the Organization of American States, should be taken as a model.

United Kingdom (SR.26, p. 5, SR.32, pp. 18-19): unwise and unprofitable to attempt to define intervention. *France* (SR.28, pp. 8, 10): desirable to define; any attempt must cover idea of coercion —*i. e.* abnormal or improper pressure exercised by one State on another State in order to force it to change its internal structure in a direction favourable to the interests of the State applying the coercion; but such an attempt is not possible in the present state of international relations. *Lebanon* (SR.30, p. 16) and *UAR* (SR.30, p. 21): impossible to define. *USA* (SR.30, p. 23): let international organs be judges of what is unlawful intervention.

"3. *Intervention in internal and external affairs*

Czechoslovakia (SR.25, p. 6), *Yugoslavia* (SR.25, p. 8), *Poland* (SR.25, p. 10), *United Kingdom* (SR.26, p. 4), *Romania* (SR.26, p. 7), *Argentina* (SR.28, p. 5), *USSR* (SR.28, p. 12), *Nigeria* (SR.28, p. 18), *Mexico* (SR.30, p. 10) and *Netherlands* (SR.30, p. 13): interference in internal affairs or domestic jurisdiction of another State is illegal.

Czechoslovakia (SR.25, p. 6), *Yugoslavia* (SR.25, p. 8), *Poland* (SR.25, p. 10), *Argentina* (SR.28, p. 5), *USSR* (SR.28, p. 15), *Nigeria* (SR.28, p. 18) and *Mexico* (SR.30, pp. 10-11): interference in external affairs of another State is also illegal.

Netherlands (SR.30, p. 13), *Guatemala* (SR.32, p. 7) and *United Kingdom* (SR.32, p. 17): difficulties with the expression 'internal and external affairs'. *Australia* (SR.32, p. 13): the domestic jurisdiction of a State does not extend to all its internal and external policies.

"4. *The question of permissible intervention or pressure*

Argentina (SR.28, pp. 6-7): in exceptional cases—*e. g.* measures taken in self-defence, as sanctions, or with the consent of the victim—intervention is lawful. *Ghana* (SR.29, p. 6): intervention may be permissible or impermissible.

United Kingdom (SR.26, p. 6): inevitable and desirable that States will seek to influence the actions and policies of other States; certain forms of pressure can promote and not hinder progress. *France* (SR.28, p. 10): the criterion of intervention is improper coercion. *USA* (SR.29, pp. 10-11): pressure is lawful where there is a systematic suppression of political or other human rights. *Netherlands* (SR.30, p. 15): pressure is not illegal when used by a State in order to counteract a violation of its rights.

Romania (SR.26, p. 8): all intervention is unlawful.

"5. *Acts prohibited under the principle of non-intervention*

(*a*) Activities against the political, economic and social system of a State and imposition or attempt to impose on a State a specific form of organization or government

Czechoslovakia (SR.25, p. 5), *Yugoslavia* (SR.25, pp. 8, 9), *Poland* (SR.25, p. 10), *USSR* (SR.28, pp. 11, 12, 15), *Nigeria* (SR.28, p. 18) and *Burma* (SR.31, p. 4): such acts are unlawful intervention. *India* (SR.29, p. 15): any form of interference or attempted threat against the personality of a State or against its political economic or cultural elements is prohibited.

Netherlands (SR.30, p. 13): a State has a right to choose its own political, social, economic and legal system, provided it respects human rights and fundamental freedoms.

USA (SR.32, p. 27): prohibition of "interference" in the right of a State to choose and develop its own political, economic and social order is too broad.

(*b*) Acts aimed against the personality, sovereign equality and rights enjoyed by other States in accordance with international law

Yugoslavia (SR.25, p. 8), *Poland* (SR.25, p. 10), *United Kingdom* (SR.26, p. 5) and *Romania* (SR.26, p. 8) referred to a right of political independence; *United Kingdom (ibid.)* to the rights enjoyed by States in accordance with international law; *Nigeria* (SR.28, p. 18) to sovereign rights; and *India* (SR.29, p. 15) to the personality of a State or its political, economic and cultural elements.

Netherlands (SR.30, p. 14): a State cannot invoke its sovereignty in order to justify violation of the rights of another State.

Madagascar (SR.31, pp. 6-7): there should not be an excessive concern for the preservation of national sovereignty.

UAR (SR.30, p. 22): proposal to prohibit interference with rights enjoyed by States in accordance with international law gives rise to difficulties of interpretation.

(*c*) Acts aimed against the territorial integrity or inviolability of States

Czechoslovakia (SR.25, p. 6), *Yugoslavia* (SR.25, p. 8), *Poland* (SR.25, p. 10), *United Kingdom* (SR.26, p. 5), *Romania* (SR.26, p. 8) and *Guatemala* (SR.32, p. 6): such acts are unlawful.

United Kingdom (SR.32, p. 17): any "act" or "attempt" aimed at violation of territorial integrity would be a threat or use of force, and should be dealt with under Principle A.

(*d*) Acts against the self-determination of peoples

Poland (SR.25, p. 10) and *USSR* (SR.28, pp. 11-12): such acts are forbidden by the Charter. *Ghana* (SR.29, p. 7): illegal to extract consent for military bases as a condition for granting independence, or for a former colonial Power to use a mutual defence treaty as a pretext for interfering in internal affairs of a former colony or for buttressing an unpopular regime.

(*e*) The threat to sever diplomatic relations in order to compel one State not to recognize another State, and making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages

Czechoslovakia (SR.25, p. 6), *Poland* (SR.25, pp. 10-12, SR.31, pp. 9-11, SR.32, pp. 28-29) and *USSR* (SR.28, p. 17): the threat to sever diplomatic relations in order to compel one State not to recognize another is illegal.

Nigeria (SR.28, p. 19): exercise of the sovereign rights to establish and sever diplomatic relations should not be subject to pressure.

Mexico (SR.30, pp. 10-11) and *Poland* (SR.31, pp. 10-11): no State may make its recognition of another Government contingent on the conclusion of a treaty granting its nationals privileges or exemptions.

France (SR.28, pp. 10-11), *USA* (SR.29, p. 11), *Netherlands* (SR.30, pp. 13, 14), *Lebanon* (SR.30, p. 16) and *United Kingdom* (SR.32, pp. 17-18): States have discretion regarding recognition of and maintenance of diplomatic relations with other States, and no provision restricting them in those respects should be included.

Canada (SR.31, p. 8): a potential conflict between proposals for the non-recognition of situations brought about by the use of force and proposals concerning the recognition of States.

(*f*) Organization or training of forces having the purpose of incursions into other States, subversive or terrorist activities, interference in civil strife in another State, or provision of arms or war materials for promoting rebellion or sedition

Ghana (SR.29, p. 6): propaganda, espionage, infiltration, bribery, assassination, assistance to guerrillas, etc., carried out by agents of a Government with a view to controlling the Government of another State, are illegal; (SR.29, p. 7): States have the obligation to prevent their territories from being used to prepare subversion against other States.

Mexico (SR.30, pp. 12-13, SR.32, p. 23): subversive activities, hostile propaganda, incitement to revolt or to violent overthrow of the established order, with the aim of changing the political, economic and social structure of another State in the name of ideological principles, are illegal.

Venezuela (SR.32, p. 16): organization, training and preparation on the territory of one State of groups to infiltrate into the territory of another State for purposes of subversion and terrorism, and any support of seditious minority groups operating in the territory of another State against the established order, are illegal.

USA (SR.32, p. 28): subversive acts are prohibited by the Charter.

United Kingdom (SR.32, p. 17): many of these activities fall primarily under Principle A.

(*g*) Interference with or hindrance of the promulgation or execution of laws in regard to matters essentially within the jurisdiction of any State

Netherlands (SR.30, p. 15): doubts about such a provision.

(*h*) Preventing or attempting to prevent a State from freely disposing of its natural wealth and resources

Yugoslavia (SR.25, p. 8, SR.31, p. 12): a provision on the subject would be a step in progressive development.

USA (SR.29, pp. 9-10): such a provision would go beyond the Charter and would be superfluous.

(*i*) Imposition or attempt to impose on a State the concession to foreigners of a privileged situation compared with nationals

USA (SR.29, p. 12): provision would alter existing international law, which provides a minimum standard for treatment of aliens.

(*j*) The use of duress to obtain or maintain territorial agreements or special advantages

India (SR.29, p. 16) and *UAR* (SR.30, p. 22) supported such a provision.

"6. *Non-recognition of territorial acquisitions or special advantages obtained by duress*

India (SR.29, p. 16), *UAR* (SR.30, p. 22) and *Guatemala* (SR.32, p. 6) supported such a provision.

Canada (SR.31, p. 8): a potential conflict between proposals for the non-recognition of situations brought about by the use of force and proposals concerning the recognition of States.

"7. *Prohibition of intervention by the United Nations*

USA (SR.29, pp. 8-9), *Australia* (SR.32, pp. 10-11) and *United Kingdom* (SR.32, pp. 19-20): the point should be covered.

Guatemala (SR.32, p. 5): the Committee is not required to examine the relations of States with the United Nations, which come under Article 2, paragraph 7, of the Charter.

India (SR.32, p. 8): non-intervention by States, individually or collectively, rather than by the United Nations, should be stressed."

Chapter VI

THE PRINCIPLE OF SOVEREIGN EQUALITY OF STATES

A. *Written proposals*

293. Four written proposals concerning the principle of sovereign equality of States were submitted by *Czechoslovakia* (A/AC.119/L.6), by *Yugoslavia* (A.AC.119/L.7), by the *United Kingdom of Great Britain and Northern Ireland* (A/AC.119/L.8) and jointly by *Ghana, India, Mexico* and *Yugoslavia* (A/AC.119/L.28). On the submission of the latter joint proposal, *Yugoslavia* withdrew its original proposal. The texts of the foregoing proposals are set out below in the order of their submission to the Special Committee.

294. *Proposal by Czechoslovakia* (A/AC.119/L.6)

"*The principle of sovereign equality of States*

"1. States are sovereign and as such are equal among themselves, as subjects of international law they have equal rights and duties, and reasons of a political, social, economic, geographical or other nature cannot restrict the capacity of a State to act or assume obligations as an equal member of the international community.

"2. Each State shall respect the supreme authority of each other State over the territory, including territorial waters and air space of the latter State, and shall also respect its independence in international relations.

"3. Each State shall have the right to take part in the solution of international questions affecting its legitimate interests, including the right to join international organizations and to become party to multilateral treaties dealing with or governing matters involving such interests.

"4. The sovereignty of a State is based on the inalienable right of every nation to determine freely its own destiny and its social, economic and political system, and to dispose freely of its national wealth and natural resources. Territories which, in contravention of the principle of self-determination, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power."

295. *Proposal by Yugoslavia* (A/AC.119/L.7)

"*Sovereign equality*

"1. All States shall have the right to sovereign equality, which shall include:

(*a*) the right of their territorial integrity and political independence,

(*b*) the right to determine their political status, to select their social, economic and cultural systems and to pursue the development thereof, and to conduct their foreign policy, without outside intimidation or hindrance,

(*c*) the free disposal of their natural wealth and resources,

(*d*) the right to legal equality and to full and equal participation in the life of the community of nations and in the creation and modification of rules of international law.

"2. They shall be entitled to every assistance on the part of the international community in making such equality effective, particularly in the economic field."

296. *Proposal by the United Kingdom* (A/AC.119/L.8)

"*Sovereign equality*

"*Statement of principles*

"1. The principle of the sovereign equality of States includes the following elements:

(*a*) that States are juridically equal;

(*b*) that each State enjoys the rights inherent in full sovereignty;

(*c*) that the personality of the State is respected, as well as its territorial integrity and political independence;

(*d*) that the State should, under international order, comply faithfully with its duties and obligations.

"2. The principle that States are juridically equal means that States are equal before the law.

"3. Every State has the duty to conduct its relations with other States in conformity with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law."

"*Commentary*

"(1) Article 2, paragraph 1, of the Charter of the United Nations declares that 'the Organization is based on the principle of the sovereign equality of all its Members'. The concept of 'sovereign equality' was first enunciated in paragraph 4 of the Four-Power Declaration on General Security adopted at the Moscow Conference on 1 November 1943. During the course of the San Francisco Conference in 1945, the phrase 'sovereign equality' was subjected to careful analysis. The Conference eventually accepted that the notion of 'sovereign equality' comprehended the four elements set out in paragraph 1.

"(2) Paragraph 2 expressed what is meant by the concept of juridical equality. The thought underlying this paragraph has been expressed in numerous declarations adopted by non-governmental bodies as well as in article 5 of the Draft Declaration on the Rights and Duties of States adopted by the International Law Commission in 1949.

"(3) Juridical equality connotes equality before the law; it does not preclude States, in the exercise of their sovereignty, from entering freely into treaty or other conventional arrangements whereby the contracting parties undertake certain obligations either towards each other or more generally, notwithstanding that the future freedom of action of the Contracting Parties may be qualified by the terms of the agreement in question.

"(4) Paragraph 3 expresses one of the most fundamental principles of international law relevant not only to the doctrine of sovereign equality but to the whole corpus of principles concerning friendly relations and co-operation among States. The principle embodied in paragraph 3 is directly relevant to the doctrine of sovereign equality in the sense that, while States are entitled to enjoy and exercise the rights inherent in full sovereignty, they must equally comply with their duty to respect the supremacy of international law."

297. *Proposal by Ghana, India, Mexico and Yugoslavia* (A/AC.119/L.28)

"*The principle of sovereign equality of States*

"1. All States have the right to sovereign equality, which among others, includes the following elements:

(*a*) that each State enjoys the rights inherent in full sovereignty;

(*b*) that the personality of a State is inviolable as well as its territorial integrity and political independence;

(*c*) the right to determine their political status, to choose their social, economic and cultural systems and pursue their development as they see fit and to conduct their internal and external policies without intervention by any other State; and

(*d*) the right to the free disposal of their natural wealth and resources.

"2. Correspondingly, every State has the duty to discharge faithfully its international obligations especially to live in peace with other States."

B. *Debate*

1.—General comments

298. Some representatives recalled that the principle forming the subject of this chapter had been enunciated for the first time in the Declaration of the 1943 Moscow Conference. It had thereafter been embodied in the Dumbarton Oaks Proposals, and ultimately in Article 2, paragraph 1, of the United Nations Charter. It was pointed out that it was also referred to in Article 78 of the Charter. It was further said that, since the signing of the Charter, the principle of sovereign equality had been stated and restated in many bilateral and multilateral agreements and had found its place in official declarations and in the practice of States. The principle must therefore be considered as a generally binding rule of contemporary international law.

299. A number of representatives stressed the importance of the principle of sovereign equality as a legal foundation for friendly relations and co-operation among all States and some of them emphasized the importance of the principle for peaceful coexistence. It was characterized as a touchstone of proper relations between all States of the world and as an expression both of the recent evolution of the notion of State sovereignty under the influence of the increasing interdependence of States, and of the growing trend towards the democratization of international life. In these circumstances the concept of sovereignty had been conditioned by the concept of equality within a new form of diplomacy based on collective security and international co-operation. It was further observed that, if all nations were equal in size and power, the principle of sovereign equality of States would be less important than it in fact was. However, it was an objective of the international community that existing disparities should, so far as possible, not be allowed to create injustice or to place a State in an adverse position in its dealings with other States. Some representatives considered that the events of the period since the adoption of the Charter had demonstrated not only the validity, usefulness and significance of this principle, but also a need for its development. New aspects had emerged in the two past decades, which required codification in order to ensure that the principle was more fully and effectively applied. One representative remarked that the principle of sovereign equality of States in inter-State relations was as sacrosanct as the principle of racial equality in individual human relations.

300. Some representatives considered the sovereignty of States as the corollary of the right of nations to self-determination; it was recalled that the Charter of the United Nations in its Preamble spoke of the equal rights of men and women and of nations large and small, while the principle of equal rights, together with that of self-determination of peoples, was stated in Article 1, paragraph 2, and Article 55.

301. Several representatives drew the attention of the Special Committee to the component elements of the concept of sovereign equality adopted by the San Francisco Conference, namely the juridical equality of States, the enjoyment by each State of the rights inherent in full sovereignty, respect for the personality of the State, as well as its territorial integrity and political independence, and the faithful compliance by the State with its international duties and obligations. They favoured the definition approved by the San Francisco Conference as the only satisfactory statement of the *lex lata* and considered that its omission from any statement on sovereign equality adopted by the Special Committee would be a retrogressive step.

302. Several other representatives, however, took the view that appropriate changes should be incorporated in the San Francisco text and that it was not suitable merely to reiterate that interpretation. They thought that the San Francisco interpretation required development in the light of the current needs of the world community, taking into account the progress achieved since 1945 in international law and in decolonization.

303. Apart from written proposals and amendments containing statements or formulations of the principle, reproduced in part A of the present chapter, the oral suggestions set out in the remainder of this section of the report were submitted in the course of debate for the consideration of the Special Committee.

304. One representative suggested that a statement on the principle of sovereign equality might incorporate the following points: States, irrespective of their size, population, resources, wealth, form of government or time of accession to independence, were entitled equally to enjoy the rights inherent in full sovereignty and were thereby equally entitled to the rights conferred by international law; they were juridically equal and equal before the law, being entitled to the impartial application of the rules of international law in the settlement of disputes which were referred to the United Nations, and to the International Court of Justice and other international tribunals; they were equally entitled to full respect for their personality, as well as their territorial integrity and political independence; and were equally obliged, under international order, to comply faithfully with their international duties and obligations; accordingly, the sovereignty of the State should be exercised in accordance with, and not in defiance of, law; limitations on State conduct flowed naturally from the community relationship of States and from special obligations freely assumed by them; such limitations were not incompatible with the sovereign equality of States; on the contrary, they enabled equal and independent sovereign States to exist; and such freely assumed obligations constituted an expression of sovereignty.

305. Another representative suggested the following formulation:

"(1) The sovereign equality enjoyed by all States implies the right to their territorial integrity and political independence, the right to the free disposal of their wealth and natural resources, the right to self-determination and the right to equal legal and economic opportunity.

"(2) All States shall enjoy equal rights and have equal duties."

306. One representative thought that the statement of the principle of sovereign equality should include the following provisions: that States had the obligation to respect the political independence and territorial integrity of other States and their right to establish their political status, to choose their economic and cultural systems, to continue their development and conduct their foreign policies without foreign intervention or intimidation, and to dispose of their natural wealth and resources; that States had equal rights and duties in international life; that their juridical capacity could under no circumstances be limited; and that States had the obligation to respect the right of other States to participate in international life.

307. One representative, speaking on the concepts of sovereignty and equality in the Charter, said that, in his view, a State's sovereignty consisted in its absolute right to complete internal autonomy and complete external independence. The principle of sovereignty was not limited by a State's acceptance of certain legal limitations imposed by the Charter; on the contrary, the acceptance of those limitations was the consequence of the application of the principle of sovereignty. The two component elements of that principle, juridical equality and sovereignty, were fully sanctioned by the Charter; the inequality of the system of voting in the Security Council was, in his view, merely the result of the political circumstances following the Second World War.

2.—Equal rights and duties of States

308. Written proposals referring to the equal rights and duties of States were submitted by *Czechoslovakia* (A/AC.119/L.6, para. 1 (*see* para. 294 above)), *Yugoslavia* (A/AC.119/L.7, para. 1 (*see* para. 295 above)) and the *United Kingdom* (A/AC.119/L.8, paras. 1 and 2 *see* para. 296 above)).

309. A number of representatives understood sovereign equality not as equality of power but rather juridical equality of all States irrespective of their size, strength, wealth, economic or military power, volume of production or social and economic structure, degree of development or geographical location. That would mean, in the view of these representatives, that all States, large and small, were equal before the law and that no State could claim special treatment or advantages on any pretext, or seek to dominate other States. Having equal rights and duties under international law, States should enjoy equal opportunities to exercise their rights and fulfil their duties. Consequently, any discrimination aimed at impairing the sovereign rights of States amounted to a violation of the principle of sovereign equality.

310. One representative stated that the Charter, following the example set by the Moscow Declaration of 1943, had brought together in Article 2, paragraph 2, two different principles, that of equality and that of sovereignty. He said that the principle of equality should, of course, be understood to imply juridical equality, i. e. the equal rights reaffirmed by the Preamble to the Charter, respect for which was, according to Article 1, paragraph 2, the basis for friendly relations among peoples. Juridical equality was not otherwise defined in the Charter and he felt that the Committee was entitled to define the concept more precisely if it saw fit. Unfortunately, it was in the nature of things that juridical equality was not always accompanied by *de facto* equality, but it was characteristic of the spirit of the age that efforts were being made by States, individually and collectively, to minimize *de facto* inequalities through economic, technical, scientific and cultural co-operation.

311. It was recalled that the Charter of the Organization of African Unity did not confine itself to affirming the principle of sovereign equality but added the specific statement, in article 5, that all its Member States enjoyed equal rights and had equal duties. The Declaration adopted by the Bandung Conference also affirmed the equality of all races and nations, while the Charter of the Organization of American States stressed the importance of respect for the personality, sovereignty and independence of States.

312. Some representatives emphasized that the concept of juridical equality was, of course, an integral part of the concept of sovereign equality. The trend of developments had, however, focused attention on another aspect of equality, namely economic equality. One representative expressed the view that the economically advanced countries were under the obligation to do what they could to narrow the gap between themselves and the underdeveloped countries.

313. Another representative recalled that the recent United Nations Conference on Trade and Development had adopted, as General Principle One, a statement that economic relations between countries should be "based on respect for the principle of sovereign equality of States, self-determination of peoples and non-interference in the internal affairs of other countries". Similarly, the joint declaration made by the seventy-seven developing countries at the conclusion of the Conference stated that: "The developing countries attach cardinal importance to democratic procedures which afford no position of privilege in the economic and financial, no less than in the political sphere".

3.—Respect for the personality, territorial integrity and political independence of States

314. The concept of the inviolability of the personality, territorial integrity and political independence of States was considered by some representatives as an element forming part of the principle of sovereign equality. Proposals to this effect were submitted by *Yugoslavia* (A/AC.119/L.7, para. 1 (*a*) (*see* para. 295 above)), by the *United Kingdom* (A/AC.110/L.8, para. 1 (*see* para. 296 above)) and jointly by *Ghana*, *India*, *Mexico* and *Yugoslavia* (A/AC.119/L.28, para. 1 (*b*) (*see* para. 297 above)).

315. One representative suggested that the formulation of the concept in question should make it clear that no State was entitled to conduct any experiment or resort to any action which was capable of having harmful effects on other States or endangering their security. The Moscow Test-Ban Treaty and General Assembly resolutions 1884 (XVIII) of 17 October 1963 and 1962 (XVIII) of 13 December 1963 marked important progress in that direction. So far as concerned the concept of territorial integrity, any formulation of the principle should in his view state that that concept could not be invoked by colonial Powers for the purpose of perpetuating their rule over other territories and peoples.

316. Another representative suggested that the concept of political independence might be developed, perhaps on the basis of article 9 of the Charter of the Organization of American States, which laid down that the State had the right to provide for its preservation and prosperity and consequently to organize itself as it saw fit, subject only to the rights of other States under international law. As was obvious, that principle was closely related to the principle of respect for the personality of the State.

4.—The right of States to choose their social, political and economic system

317. Proposals concerning the right of States to choose their social, political and economic system were submitted by *Czechoslovakia* (A/AC.119/L.6, para. 4 (*see* para. 294 above)), by *Yugoslavia* (A/AC.119/L.7, para. 1 (*b*) (*see* para. 295 above)) and jointly by *Ghana*, *India*, *Mexico* and *Yugoslavia* (A/AC.119/L.28, para. 1 (*c*) (*see* para. 297 above)).

318. Some representatives suggested that sovereign equality implied the right of each State freely to establish the political, social and economic structure, without external interference or intimidation, which was best suited to the interests of its people. It was said that the independence of the State implied an independent domestic policy, namely independence in political, social and economic organization and in cultural, political and economic life. Internationally, the sovereignty of the State was manifested in its independence in the conduct of foreign policy. Reference was made in this respect to the Declaration of the Bandung Conference and the Belgrade Declaration.

319. One representative expressed some reservations on the four-Power proposal contained in sub-paragraph (*c*) of document A/AC.119/L.28 and said that it would provide a better basis for agreement if it were worded on the following lines: "The right to determine their political status, to choose their social, economic and cultural systems and freely pursue their development in accordance with international law". In connexion with the corollaries

of the principle of sovereign equality, one representative said that consideration should be given to the possibility of including in the principle two further clauses contained in the Charter of the Organization of American States: the principle that the fundamental rights of States might not be impaired in any manner whatsoever (article 8) and the principle that the right of each State to protect itself and to live its own life did not authorize it to commit unjust acts against another State (article 11).

5.—The right of States to participate in the solution of international problems, and in formulating and amending the rules of international law, to join international organizations, and to become parties to multilateral treaties affecting their legitimate interests

320. The right formulated in the above sub-heading was considered by certain representatives as a very important feature of the principle of sovereign equality of States, or as a corollary to this principle. Proposals containing a provision regarding it were submitted by *Czechoslovakia* (A/AC.119/L.6, para. 3 (*see* para. 294 above)) and by *Yugoslavia* (A/AC.119/L.7, para. 1 (*d*) (*see* para. 295 above)).

321. It was said that in the modern world, which formed one international community and in which international law was consequently universal in character, each State, by virtue of the principle of sovereign equality, had the right described in the sub-heading. The old rules of international law were being adapted to meet the needs of the modern community of States or replaced by new ones, and the newly established States had the right to play their part in that process. Any attempt to impede the achievement of universality in international life, the arbitrary refusal of certain States to recognize new States and attempts to exclude them from the exercise of their rights as sovereign subjects of international law, were incompatible with respect for the principle of sovereignty and for the rights of other States, constituted discrimination and were contrary to the principle of equality.

322. Other representatives, however, could not accept the foregoing views. They said that Article 4 of the Charter reserved to the Organization the right to determine which States met the requirements of admission to membership and that the formulation of a "right to join international organizations" therefore caused considerable difficulties. Similarly, they pointed out that it was customary to reserve to the parties to multilateral treaties the right to determine the scope of participation therein. Furthermore, the practice of the United Nations served to confirm that multilateral conventions were not automatically open to all States.

6.—The right of States to sovereignty over their territory

323. A proposal dealing with the right of States to sovereignty over their territory was submitted by *Czechoslovakia* (A/AC.119/L.6, para. 2 (*see* para. 294 above)). Some representatives felt that such a right should include an express provision to the effect that the jurisdiction of States, within the limits of their territory, was exercised equally over all the inhabitants, whether nationals or aliens, and over its territory, including its territorial waters and air space. It was said that the principle of sovereign equality prohibited any encroachment upon the authority of the State in these respects.

324. Some representatives considered that this right included also the right of a State to dispose freely of its natural wealth and resources. This point is dealt with in the following section of the present chapter of this report.

325. It was suggested that the principle here considered could be based either on article 12 of the Charter of the Organization of American States or on article 2 of the Draft Declaration on Rights and Duties of States prepared by the International Law Commission, and that it should also be laid down that aliens could not claim rights superior to those enjoyed by nationals.

326. Some representatives stated that equality of rights, under modern international law, must be recognized not only to States but also to nations moving towards independence. Accordingly, territories under colonial domination must not be regarded as part of the territory of the colonial Power. Other representatives, however, found no basis for such a position in the Charter. One of them stated that he could only understand the position to mean that Chapters XI, XII and XIII of the Charter were no longer part of international law. Moreover, the idea that territories under colonial rule did not form part of the territory of the colonial Power seemed to him to be inconsistent with paragraph 6 of General Assembly resolution 1514 (XV) of 14 December 1960.

327. Another representative suggested that the principle included the right of a State to require the removal of any foreign troops or military bases from its territory. This point was particularly relevant to countries whose accession to independence had been conditioned upon the presence of such troops or bases. The presence in certain countries of military bases and foreign troops contrary to the expressed will of the countries concerned, gave rise to tensions which threatened international peace and security and rendered ineffective the rules of international law, which were based on the sovereign consent of the States making up the international community. The same representative recalled that the Belgrade Declaration had stated that the establishment and maintenance of foreign military bases in the territories of other countries was a violation of the latters' sovereignty.

7.—The right of States to dispose freely of their natural wealth and resources

328. Proposals on the right of States to dispose freely of their natural wealth and resources were submitted by *Czechoslovakia* (A/AC.119/L.6, para. 4 (*see* para. 294 above)), by *Yugoslavia* (A/AC.119/L.7, para. 166) (*see* para. 295 above)) and jointly by *Ghana, India, Mexico* and *Yugoslavia* (A/AC.119/L.28, para. 1 (*d*) (*see* para. 297 above)).

329. This right was considered by some representatives as one of the great achievements of the post-Charter era and they believed that it should be properly included in the formulation of the principle of sovereign equality. Some of them understood the right to mean that every State might suspend or terminate any agreement with respect to the disposal of natural wealth and resources, subject only to its liability at law to make compensation. In the view of these representatives, no provisions of international law, or of treaties which might no longer correspond to current requirements, could be invoked to justify interference with a nation's right to dispose of its resources.

330. Other representatives, while not disputing the proposition that States had the right to the free disposal of their natural wealth and resources, felt that as a statement of a legal principle it should be balanced by a reference to General Assembly resolution 1803 (XVII) of 14 December 1962. Moreover, the Committee should be wary of enumerating as legal principles concepts which were partly or even essentially political or economic in character.

331. One representative, saying that a statement of the principle should respect the requirements of international law and economics, suggested the following formulation: "the right, subject to international law and to terms of agreements entered into by the State, to the free disposal of its natural wealth and resources."

8.—The duty of States to comply faithfully with international duties and obligations

332. Provisions formulating a duty of States to comply faithfully with international duties and obligations were contained in the proposals submitted by the *United Kingdom* (A/AC.119/L.8, para. 1 (*see* para. 296 above)) and by *Ghana, India, Mexico* and *Yugoslavia* (A/AC.119/L.28, para. 2 (*see* para. 297 above)).

333. Several representatives were in favour of the inclusion of express mention of this duty of States within a statement on the principle of sovereign equality. It was said that equality of rights implied the performance of duties. One representative observed that a balanced draft should give greater emphasis to duties, as did the Charter, which was replete with duties complementing rights.

334. One representative considered that it should be borne in mind that the International Law Commission's Draft Declaration on Rights and Duties of States had represented in its entirety an attempt to establish a comprehensive balance in relations between States, and that it had not been adopted. Moreover, everyone recognized that international law still suffered from a number of basic defects: firstly, it did not cover several vital areas of international relations; secondly, it remained vague with respect to several other areas; thirdly, it had not yet abolished some of the methods still advocated by certain States with a view to the retention of unjust privileges; and, finally, there was no central body to interpret and apply its rules.

9.—The relationship between State sovereignty and international law

335. Proposals bearing in certain respects upon the relationship between State sovereignty and international law were submitted by *Czechoslovakia* (A/AC.119/L.6, paras. 1 and 4 (*see* para. 294 above)), *Yugoslavia* (A/AC.119/L.7, para. 1 (*see* para. 295 above)), by the *United Kingdom* (A/AC.119/L.8, paras. 1 and 3 (*see* para. 296 above)) and jointly by *Ghana, India, Mexico* and *Yugoslavia* (A/AC.119/L.28, para. 1 (*see* para. 297 above)).

336. Several representatives stated that the sovereignty of each State was subject to the supremacy of international law. The principle of equality of States, by its very nature, presupposed a community of States organized in accordance with an international juridical order. Equality, sovereign or otherwise, was simply inconceivable without the supremacy of law. It was said that the Charter refrained from defining the principle of sovereignty, but it did not impose on sovereignty any limitations other than those resulting from the obligations accepted by Members in subscribing to the Charter, *i. e.*, those deriving from international law. It was not sovereignty which limited international law but international law which limited sovereignty, in the full exercise of which each State accepted the rules necessary for the conduct of international relations. It was hard to see, it was said, how peace and security could be maintained in the modern world if the supremacy of international law were not accepted.

337. Several representatives, however, took a different position. On the one hand, they refused to adhere to the theory of absolute sovereignty prevailing in the past two centuries, as it had been the negation of international law. On the other hand, they also refused to subscribe to the theory of "world law" and a "world government". It was said that the theory of the super-State was incompatible with the sovereignty and equality of States, and could lead to violations of the rights of small States and of peoples fighting for their independence, and to interference in the domestic affairs of States. Respect for the sovereignty of the State was, in the view of these representatives, a basic condition for the maintenance of world peace and for co-operation among States. It was the foundation of contemporary international law, which reflected the voluntary agreement of States. Sovereign States were both the creators of the rules of international law and the entities to which those rules were addressed, in other words, the entities which were bound to comply with them. Furthermore, it was the sovereign States of the world themselves, which, in the last analysis, guaranteed the application of international law. Any abridgement of sovereignty, and any attempt to assert the supremacy of international law, was incompatible with the present order of international life, and steadfast respect for international law and State sovereignty, a corner-stone of international law, was an essential factor in the development of friendly

relations among States, meeting the needs of all States, particularly those which had only recently won their independence. Sovereignty was the basis and *raison d'être* of international law: entities existed with exclusive jurisdiction over particular territories; simultaneously there was a normative order which those entities had voluntarily established. Certainly, international law imposed limitations on State sovereignty, but international law, in its turn, was limited in those spheres which the national State reserved to itself.

338. One representative stated that, according to classical theory, the concept of sovereignty had a positive aspect (the right to give orders) and a negative aspect (the right not to take orders); that doctrine had been criticized by the realistic school as being anti-juridicial in nature and uncertain in content. Modern theory had attempted to remove those objections by advancing the concept of limited sovereignty, which was in contradiction with the distinguishing characteristic of sovereignty, *i. e.* its absoluteness. There had also been a parallel trend towards identifying that concept with the concept of independence, which implied that national jurisdiction was exclusive. Despite those difficulties and contradictions, however, international jurisprudence held the sovereignty of States to be an axiom of international life which was not open to discussion.

C. *Decision of the Special Committee on the recommendation of the Drafting Committee*

1.—Decision

339. On the recommendation of the Drafting Committee, the Special Committee, at its 39th meeting, adopted unanimously the following text (Drafting Committee Paper No.7/Rev. 1):

"Principle D

[*i. e.* The principle of sovereign equality of States]

"I. *The points of consensus*

"1. All States enjoy sovereign equality. As subjects of international law they have equal rights and duties.

"2. In particular, sovereign equality includes the following elements:

(*a*) States are juridically equal.

(*b*) Each State enjoys the rights inherent in full sovereignty.

(*c*) Each State has the duty to respect the personality of other States.

(*d*) The territorial integrity and political independence of the State are inviolable.

(*e*) Each State has the right freely to choose and develop its political, social, economic and cultural systems.

(*f*) Each State has the duty to comply fully and in good faith with its international obligations, and to live in peace with other States.

"II. *List itemizing the various proposals and views on which there is no consensus but for which there is support*

"1. The question whether or not reasons of a political, social, economic, geographical or other nature can restrict the capacity of a State to act or assume obligations as an equal member of the international community.

(*a*) For relevant proposal, *see* annex A, paragraph 1.

(*b*) For relevant views, *see* annex B, paragraph 1.

"2. The question whether States have the right to take part in the solution of international questions affecting their legitimate interest, including the right to join international organizations and to becomes parties to multilateral treaties dealing with or governing such interest.

(*a*) For relevant proposal, *see* annex A, paragraph 2.

(*b*) For relevant views, *see* annex B, paragraph 2.

"3. The question whether States have the right to dispose freely of their natural wealth and resources.

(*a*) For relevant proposals, *see* annex A, paragraph 3.

(*b*) For relevant views, *see* annex B, paragraph 3.

"4. The question whether territories which, in contravention of the principle of self-determination, are still under colonial domination can be considered as integral parts of the territory of the colonial Power.

(*a*) For relevant proposal, *see* annex A, paragraph 4.

(*b*) For relevant views, *see* annex B, paragraph 4.

"5. The question whether every State has a duty to conduct its relations with other States in conformity with the principle that the sovereignty of each State is subject to the supremacy of international law.

(*a*) For relevant proposal, *see* annex A, paragraph 5.

(*b*) For relevant views, *see* annex B, paragraph 5.

"6. The questions whether the jurisdiction of a State is exercised equally over all inhabitants, whether nationals or aliens, and whether aliens can claim rights superior to those of nationals.

For relevant view, *see* annex B, paragraph 6.

"7. The principle that the fundamental rights of States may not be impaired in any manner whatsoever.

For relevant view, *see* annex B, paragraph 7.

"8. The principle that the right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.

For relevant views, *see* annex B, paragraph 8.

"9. The question whether economically advanced countries have the obligation to do what they can to narrow the gap between themselves and the less developed countries.

For relevant view, *see* annex B, paragraph 9.

"10. The question whether a State has the right to remove any foreign troops or military bases from its territory.

For relevant view, *see* annex B, paragraph 10.

"11. The question whether a State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States or endangering their security.

For relevant views, *see* annex B, paragraph 11.

"12. Reference to the objective (in the Preamble of the Charter) of establishing conditions under which justice and respect for obligations under international law can be maintained.

For relevant view, *see* annex B, paragraph 12."

"Annex A

"PROPOSALS CONCERNING WHICH NO CONSENSUS WAS REACHED

"1. *Czechoslovakia* (A/AC.119/L.6)

"1. ...reasons of a political, social, economic, geographical or other nature cannot restrict the capacity of a State to act or assume obligations as an equal member of the international community.

"2. *Czechoslovakia* (A/AC.119/L.6)

"3. Each State shall have the right to take part in the solution of international questions affecting its legitimate interests, including the right to join international organizations and to become party to multilateral treaties dealing with or governing matters involving such interest.

"3. (*a*) *Czechoslovakia* (A/AC.119/L.6)

"3. The sovereignty of a State is based on the inalienable right of every nation to... dispose freely of its national wealth and natural resources...

(*b*) *Ghana, India and Yugoslavia* (A/AC.119/L.28)

"1. All States have the right to sovereign equality which, among others, includes the following elements:

...

(*d*) the right to the free disposal of their natural wealth and resources.

"4. *Czechoslovakia* (A/AC.119/L.6)

"4. ...territories which, in contravention of the principle of self-determination, are still under colonial domination cannot be considered as integral parts of the territory of the colonial Power.

"5. *United Kingdom* (A/AC.119/L.8)

"3. Every State has the duty to conduct its relations with other States in conformity with... the principle that the sovereignty of each State is subject to the supremacy of international law."

"Annex B [11]

"Views expressed in the discussions, concerning which no consensus was reached

"1. The question whether or not reasons of a political, social, economic, geographical or other nature can restrict the capacity of a State to act or assume obligations as an equal member of the international community

Czechoslovakia (SR.33, p. 5), *Romania* (SR.33, p. 14) and *Poland* (SR.35, p. 4) favoured a provision that the capacity of a State could not be so restricted.

United Kingdom (SR.35, pp. 7-8): no objection to the concept, but as formulated it would give rise to political controversy.

"2. The question whether States have the right to take part in the solution of international questions affecting their legitimate interests, including the right to join international organizations and to become parties to multilateral treaties dealing with or governing such interests

Czechoslovakia (SR.33, p. 5), *Romania* (SR.33, p. 12), *Poland* (SR.35, p. 4), *USSR* (SR.35, p. 18) and *Ghana* (SR.35, p. 22) favoured a provision recognizing such a right.

Mexico (SR.33, p. 7): difficult to speak of such a right at the present time. *France* (SR.35 p. 6): the Special Committee should not deal with the problem. *United Kingdom* (SR.35, p. 8) and *Australia* (SR.35, pp. 23-24): difficulties in view of Article 4 of the Charter and United Nations practice in regard to multilateral conventions.

"3. The question whether States have the right to dispose freely of their natural wealth and resources

Czechoslovakia (SR.33, p. 5), *Mexico* (SR.33, p. 9), *Yugoslavia* (SR.33, p. 10), *Romania* (SR.33, p. 14), *UAR* (SR.35, p. 10), *India* (SR.35, p. 16), *USSR* (SR.35, pp. 17-18) and *Nigeria* (SR.35, p. 20) favoured a provision recognizing such a right; *Ghana* (SR.35, p. 21) believed States had such a right, subject only to their liability at law to make compensation.

[11] The reference numbers given in this annex are to the summary records of the Special Committee, issued under the symbol A/AC.119/SR.1-43. For purposes of convenience, the references have been shortened in the present annex to mention of the summary record number only.

United Kingdom (SR.35, p. 9): agree in principle, but should be balanced by a reference to General Assembly resolution 1803 (XVII). *United States* (SR.35, p. 13) redraft: "the right, subject to international law and to the terms of agreements entered into by the State, to the free disposal of its natural wealth and resources". *Japan* (SR.35, p. 22): reference unnecessary and inappropriate. *Australia* (SR.35, p. 24): wondered whether there were exceptions to the principle.

"4. The question whether territories which, in contravention of the principle of self-determination, are still under colonial domination can be considered as integral parts of the territory of the colonial Power

Czechoslovakia (SR.33, p. 6) and *UAR* (SR.35, p. 11) favoured a provision that such territories cannot be so considered.

United Kingdom (SR.35, p. 8) and *Australia* (SR.35, p. 24): such a provision would be unacceptable.

"5. The question whether every State has a duty to conduct its relations with other States in conformity with the principle that the sovereignty of each State is subject to the supremacy of international law

Netherlands (SR.34, p. 6), *France* (SR.35, p. 6), *United Kingdom* (SR.35, p. 7) and *Japan* (SR. 35, p. 22) favoured a provision to that effect.

Mexico (SR.33, p. 8): great difficulty in accepting such a provision. *Romania* (SR.33, pp. 12-14, SR.35, pp. 24-25), *UAR* (SR.35, p. 12), *USSR* (SR.35, p. 19) and *Ghana* (SR.35, p. 22): opposed to such a provision.

"6. The questions whether the jurisdiction of a State is exercised equally over all inhabitants, whether nationals or aliens, and whether aliens can claim rights superior to those of nationals

Mexico (SR. 33, p. 7) expressed the view that aliens could not claim rights superior to those of nationals.

"7. The principle that the fundamental rights of States may not be impaired in any manner whatsoever

Mexico (SR.33, p. 9) suggested the inclusion of the principle.

"8. The principle that the right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State

Mexico (SR.33, p. 9) suggested the inclusion of the principle.

"9. The question whether economically advanced countries have the obligation to do what they can to narrow the gap between themselves and the less developed countries

UAR (SR.35, pp. 9-10) stated that there was such an obligation.

"10. The question whether a State has the right to remove any foreign troops or military bases from its territory

UAR (SR.35, p. 10) stated that there was such a right.

"11. The question whether a State has the right to conduct any experiment or resort to any action which is capable of having harmful effects on other States or endangering their security

UAR (SR.35, p. 11) and *India* (SR.35, p. 16) favoured a provision that States have no such rights.

"12. Reference to the objective (in the Preamble of the Charter) of establishing conditions under which justice and respect for obligations under international law can be maintained

Australia (SR.35, p. 23) suggested such a reference."

2.—Explanations of vote

340. The representatives of the USSR, Italy, Czechoslovakia, Romania, the United Kingdom, the United Arab Republic, Yugoslavia, Canada, Australia, India and Nigeria made statements, explaining their position on the above text.

341. The representative of the *Union of Soviet Socialist Republics* said that the principle could be fully covered only if it took into account a number of points such as the rights of States to determine freely their social, economic and political system and to dispose freely of their natural wealth and resources. He agreed with the points set out in section I of the recommendation of the Drafting Committee, but considered that those points did not exhaust the content of the principle, and that the number of the points in section II would need to be included in the formulation if the principle of sovereign equality was to be fully embraced.

342. The representative of *Italy* accepted (*d*) and (*e*) of paragraph 2 of section I on the understanding that nothing in those sub-paragraphs was to be interpreted as prejudicial to the powers and functions conferred upon the United Nations by the Charter in any field.

343. The representative of *Czechoslovakia* accepted the recommendation of the Drafting Committee with the understanding that the elements in section I did not exhaust all the constituent elements of the principle. In particular, he considered that the principle included as constituent parts the elements contained in paragraphs 1, 2, 3 and 4 in annex A.

344. The representative of *Romania* considered that an adequate formulation of the principle should contain other elements, such as those suggested by his delegation.

345. The representative of the *United Kingdom* approved the text on the understanding that this and other texts formulating the area of consensus would be the subject of further study by Governments before the next General Assembly session. There was one point in section II to which his delegation attached importance.

346. The representative of the *United Arab Republic* regarded the elements in section I as some of the elements which should be included in the formulation of the principle. He reserved his delegation's rights to press in the General Assembly for the inclusion of other important elements, including the right of States to economic equality, and the point covered by paragraph 4 in annex A.

347. The representative of *Yugoslavia* accepted the formulation in section I, but declared that he still adhered to the views expressed by his delegation regarding other elements which should be included in any formulation of the principle of sovereign equality.

348. The representative of *Canada* reserved the right to propose more detailed rules at a later stage if in the light of the study of the principles as a whole, a more detailed formulation seemed necessary.

349. The representative of *Australia* accepted the formulation in section I on the understanding that it represented the area within which consensus had been reached in the Committee's discussions, and that the other part contained proposals which had been considered but which had not obtained a consensus, all points being open for further consideration in the General Assembly.

350. The representative of *India* shared the reservations expressed by *Yugoslavia*.

351. The representative of *Nigeria* recalled that his delegation had proposed a number of points, including the right of States to dispose freely of their national wealth and resources, the right of self-determination, and the right to equal economic opportunity. Although those points were not included in section I, he supported that section in a spirit of compromise and would press for the inclusion of the points he had mentioned at a later stage.

352. Speaking upon the occasion of the adoption of the Special Committee's report, the representative of *Poland* said that he wished to place on record that, while accepting section I of the Drafting Committee's recommendation, his delegation nonetheless remained of the view that that section did not exhaust all the constituent elements of the principle of sovereign equality, and should also have contained provisions relating to the right of States to participate fully in international conferences and general multilateral agreements.

Chapter VII

THE QUESTION OF METHODS OF FACT-FINDING

A. *Written proposals*

353. A working paper concerning the question of methods of fact-finding was submitted to the Special Committee by the *Netherlands* (A/AC.119/L.9), which also proposed a draft resolution (A/AC.119/L.29) for adoption by the Committee. A further draft resolution was proposed by *India, the United Arab Republic* and *Yugoslavia* (A/AC.119/L.30). The texts of these documents are as follows:

354. *Working paper by the Netherlands* (A/AC.119/L.9)

"*The question of methods of fact-finding*

"In order to channel and facilitate the discussion on agenda item 6.II, Consideration of the Question of Methods of Fact-finding in accordance with General Assembly resolution 1967 (XVIII) of 16 December 1963,[12] the Netherlands delegation deems it useful to submit in advance the following views and considerations.

"1. Both in the field of the settlement of disputes and in the framework of intergovernmental organization and multilateral treaties, a distinction should be made between:

(*a*) decision-making functions;

(*b*) inquiry, by a person or a body of recognized standing and the highest reliability and impartiality;

(*c*) technical collection and examination of factual evidence by experts in the field.

Any international fact-finding organ or centre should comprise function (*b*) and (*c*), with (*c*) subordinated to (*b*).

"2. It follows from the foregoing that any fact-finding body should never have decision-making functions and should always be an auxiliary or subsidiary body either to higher, decision-making organs or to the parties in a dispute. It could never operate unless under the authority of such a higher organ or on the request of the parties. Consequently, a fact-finding body could never encroach upon the authority of organs like the General Assembly or the Security Council.

"3. In the view of the Netherlands delegation, an international fact-finding body should not supersede the existing schemes in so far as those are specially adapted to the requirements of one particular organization or convention. Furthermore, the services of a fact-finding body should be subject to voluntary acceptance by the decision-making parties or body.

[12] Report of the Secretary-General (A/5694 and Add. 1 and 2).

"4. In view of the fact that, owing to the lack of time, the study prepared by the Secretary-General (A/5694) does not deal with international inquiry, as envisaged in some treaties as a means of ensuring their execution or within the framework of international organizations, and in view of the rather limited number of comments received from Governments, the Netherlands delegation will not in the present working paper submit concrete proposals to the Committee.

It wishes, however, to give an outline of several modalities, possibilities and particular aspects of establishing a special organ for fact-finding which might be considered.

"A. *Procedures for establishing a special organ*

(*a*) Departing from existing arrangements or frameworks.

1. Revision of the Hague Treaty of 1907;

2. Revision of the General Act of 1949;

3. Revision of resolution 268 D (III) establishing a Panel of Enquiry and Conciliation.

(*b*) Establishment of a new organ which would not confine its activities to fact-finding as a means of settlement of disputes.

1. By a resolution of the General Assembly on the recommendation of the Sixth Commitee and in pursuance of Articles 7, paragraph 2, and/or 22 of the Charter.

2. Through a diplomatic conference on the basis of a text prepared by the ILC, the Sixth Committee or an *ad hoc* body.

"B. *Relationship and subordination to the United Nations and in particular the General Assembly, the Security Council, the Secretary-General and the International Court of Justice*

"C. *Terms of reference of a special fact-finding organ*

1. Investigation of facts, events, situations and circumstances on behalf of the United Nations and its organs, the specialized agencies and other international organizations for the purpose of policy-planning, programming and decision-making.

2. Investigation of facts, events, situations and circumstances in the area of treaty compliance on behalf of the parties or the international organizations concerned.

3. Investigation of facts, events, situations and circumstances in the area of peaceful settlement of disputes and matters of peace and security on behalf of the parties concerned and international organizations and particularly the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice or international arbitral tribunals.

4. Other possibilities.

"D. *The composition of a special organ for fact-finding*

1. Permanent secretariat under the Secretary-General.

2. (*a*) Panel of highly regarded and qualified persons, appointed by the Secretary-General, who would be readily available and who could utilize the services of individual experts or investigators;

(*b*) Council for fact-finding, composed of x members and an equal number of alternate members, both elected for a certain number of years by the General Assembly; this council could utilize the services of individual experts or investigators;

(*c*) Other possibilities."

355. *Draft resolution by the Netherlands* (A/AC.119/L.29)

"*The Special Committee*,

"*Having considered* the item The Question of Methods of Fact-finding,

"*Having studied* the Report of the Secretary-General,

"*Having heard* the views expressed by its members,

"*Believing* that the Report of the Secretary-General clearly shows the value of and the need for impartial fact-finding in the settlement of international disputes,

"*Considering*, however, that further study is required on the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities, complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek other peaceful means of settlement of their own choice or to the authority of any organ of the United Nations to choose other means of fact-finding,

"*Recommends* the following draft resolution for adoption by the General Assembly:

'*The General Assembly*,

'*Recalling* its resolutions 1967 (XVIII) on the question of methods of fact-finding,

'*Having considered* the report of the Special Committee established under General Assembly resolution 1966 (XVIII),

'*Noting* the report of the Secretary-General and the comments submitted by Governments pursuant to operative paragraphs 1 and 2 of resolution 1967 (XVIII),

'*Considering* that the question of Methods of Fact-finding requires further study,

'1. *Requests* the Secretary-General to complete his study on the relevant aspects of the problem and in particular with regard to fact-finding not relating to the settlement of international disputes and to report to the General Assembly at its twentieth session;

'2. *Invites* Member States to submit in writing to the Secretary-General, before July 1965, any views or further views they may have on this subject in the light of the reports of the Secretary-General and the report of the Special Committee established under General Assembly resolution 1966 (XVIII) and in particular on the following aspects:

(*a*) the need for international fact-finding in general;

(*b*) existing arrangements for fact-finding and their effectiveness;

(*c*) the need for new machinery for fact-finding, its composition and its terms of reference;

'3. *Requests* the Secretary-General to transmit these comments to Member States before the beginning of the twentieth session.'"

356. *Draft resolution by India, the United Arab Republic and Yugoslavia* (A/AC.119/L.30)

"*The Special Committee*,

"*Having considered* the item 'The Question of Methods of Fact-finding', together with the report of the Secretary-General,

"*Being unable*, due to lack of time, to discuss in detail and to formulate any conclusions on the item,

"1. *Congratulates* the Secretary-General on his excellent report on this subject;

"2. *Recommends* to the General Assembly to take note of the part of that report concerning this item, and to invite Member States which have not submitted their comments in writing to do so at an early date with a view to determining the desirability of further consideration of this item by the appropriate organ of the United Nations."

B. *Debate*

1.—General comments

357. In their general comments on the question of methods of fact-finding, many representatives stressed the need for further study before any definite decisions could be arrived at. An insufficient number of Governments had so far submitted written comments on the question; and the Special Committee had not been able to devote, within the limited time available to it, a sufficient number of meetings to conduct a full review. A number of representatives also felt that the report of the Secretaty-General on the question of methods of fact-finding (A/5694) should be supplemented to cover the aspects of inquiry not related to the settlement of international disputes before any firm recommendation could be made.

358. Certain representatives drew attention to various questions which they believed required an answer before substantive action with respect to methods of fact-finding could be decided upon. For example, why were the existing means inadequate to needs of the world community? To the extent that they had been unsuccessful, what were the reasons for their failure? What grounds were there for thinking that a specialized organization to which recourse would be optional would succeed where previous attempts had failed or given less than satisfactory results? Was the method of fact-finding possible without the simultaneous determination of the political content of the facts, and was it reconcilable with the almost universal refusal of States to submit their political disputes to judgement?

359. A number of representatives stressed the importance which their Governments attached to the establishment of the true facts of international disputes. Such establishment was of cardinal importance if international peace and security were to be preserved. There should be no reluctance among States to accept the investigation of facts. Whenever the facts were in dispute, States unfortunately tended to interpret the situation so as to suit their own ends. Greater resort to the procedure of fact-finding was therefore necessary.

360. One representative stated that the development of methods of fact-finding, with the development of all United Nations enforcement and settlement procedures, was among the few real answers to the problem of making the Charter and its principles more effective with a view to ensuring friendly relations among States. It was therefore regrettable that while the Special Committee had been able to debate at relative length the formulation of mere principles, or rules of conduct, it was not to have an opportunity to devote itself seriously to the study of fact-finding methods. However much they might need clarification and development, the basic rules of the Charter were already available for Member States and United Nations bodies to apply; it was in the field of institutions that improvements were most urgently needed. The adoption of more adequate methods of fact-finding would be an important part of that process of improvement. The same representative expressed the belief that the attitude of Governments towards the institutionalization of fact-finding procedures would in the long run prove a far more decisive test of goodwill in international relations than any degree of enthusiasm for the proliferation of general principles of rules of conduct. It was very easy to formulate rules; the difficulty lay in their application, and only international organs could effectively deal with that problem.

361. On the other hand, a number of representatives stressed that care must be taken no to undermine, through the creation of any new organ or in any other way, the existing arrangements provided for in the United Nations Charter or to infringe the rights of the prin-

cipal organs of the United Nations, particularly the Security Council. The task of the Special Committee was to concentrate on the elaboration and development of principles of international law, not to prepare new procedures overlapping existing United Nations arrangements and encroaching on the right of States to choose freely and in conformity with the Charter the means of settling their disputes. Furthermore, as the Secretariat had already made a thorough study of the question of methods of fact-finding, it was not necessary for it to undertake any further work in this respect. The fact that very few States had submitted comments in response to the request contained in General Assembly resolution 1967 (XVIII) showed that most States did not attach great importance to the matter. The Special Committee should not submit a draft resolution on methods of fact-finding, but could simply state in its report that it had discussed the matter.

2.—Historical development of the institution of international inquiry or fact-finding

362. Some representatives referred to the historical development of the institution of international inquiry or fact-finding. It was said, in this respect, that the institution of international inquiry had evolved from an independent means of settlement of disputes into a procedure subsidiary to other means. The Hague Conventions of 1899 and 1907 had contained detailed provision for inquiry, and some disputes had been solved satisfactorily under the procedures established. The Bryan treaties of 1913-1915 had provided for permanent commissions of inquiry, but they had not been effective in practice, probably because they had made recourse to the commissions of inquiry binding and because the commissions were entitled to initiate action. Under the League of Nations, inquiry procedure had become an instrument of preliminary investigation available to the Council and the Assembly as central organs of conciliation. However, it had been little used. The General Act for the Pacific Settlement of International Disputes of 1928, revised in 1949, as also numerous bilateral treaties concluded during the same period, provided for commissions of conciliation and inquiry. One representative stated that in the post-war period inquiry had taken on more and more the character of a subsidiary institution enabling organs of the United Nations to choose the course of action that should be followed in the light of prevailing circumstances.

363. Referring to the report of the Secretary-General on methods of fact-finding (A/5694), one representative stated that it showed that, while there had been relatively frequent recourse to commissions of inquiry or conciliation before and immediately after the First World War, such bodies had been little used in recent years. During the present century, States had had at their disposal three different systems of inquiry and conciliation—the systems of the Hague Conventions, the League of Nations and the United Nations. In addition, more than 200 treaties provided for inquiry procedures had been concluded between States between 1919 and 1940.

364. Another representative outlined the experience of the Inter-American system with methods of fact-finding. He said that under the system established by the Organization of American States, members had at their disposal various means of establishing the facts of a dispute. Thus, under the Inter-American Treaty of Reciprocal Assistance, the Organ of Consultation had appointed committees of inquiry in almost all the cases in which that instrument had been invoked, and the information thus obtained had made it possible to settle the disputes in question. Yet that very success highlighted one of the greatest deficiencies in the Inte-American system—the lack of truly effective provision for establishing adequate procedures for the pacific settlement of disputes and determining the appropriate means for their application. The requisite instrument existed—the American Treaty on Pacific Settlement (Pact of Bogota)—but it had so far been ratified by only nine States. The successes of the Inter-American community in the peaceful solution of conflicts had been achieved in spite of that deficiency, which should be remedied by a larger number of ratifi-

cations, with the smallest possible number of reservations, of the American Treaty on Pacific Settlement. That Treaty provided for procedures of investigation and conciliation, the purpose of which was to clarify the points at issue and try to bring the parties to agreement in conditions acceptable to both or all of them. If, in the view of the parties, the controversy related exclusively to questions of fact, the committee making the inquiry limited itself to investigating those questions. In any case, the conclusions of the committee of investigation and conciliation were not binding with respect to either questions of fact or questions of law, but were simply recommendations submitted to the parties to facilitate a peaceful settlement. Mention should also be made of the Inter-American Peace Committee, one of whose major functions was to investigate the facts underlying international disputes. That Committee acted at the request of any State directly interested in a dispute, but only with the consent of the other party or parties, and it required the express consent of States to carry out investigations in their territory. The Committee's conclusions, which were not binding on the parties, were set forth in a report submitted not only to the higher organs of the Organization of American States, but also to the United Nations Security Council. It should be stated in conclusion that the successes achieved by the Inter-American system in relation to fact-finding were due in large measure to the flexibility which the present system allowed.

3.—Accession to the Revised General Act for the Pacific Settlement of Disputes and participation in the Panel for Inquiry and Conciliation available under General Assembly resolution 268 D (III)

365. Some delegates stated that consideration should be given to the General Assembly addressing an appeal to Member States to accede to the Revised General Act for the Pacific Settlement of Disputes and to participate in the Panel for Inquiry and Conciliation available under General Assembly resolution 268 D (III) of 28 April 1949. In this respect, attention was drawn to the fact that only six States were parties to the Revised General Act. One representative stated, furthermore, that before any decision were made in favour of such an appeal by the General Assembly, consideration should be given to ways of making both the General Act and the Panel more effective fact-finding instruments. He noted that inquiry combined with conciliation had not worked satisfactorily and thought that the Panel of Inquiry and Conciliation had probably never been used for the following reasons:

(1) too much stress was laid on conciliation;

(2) the rules of procedure were rather scant and unclear;

(3) the Panel did not provide sufficiently for the need of technical fact-finding by experts in the field; and

(4) the articles relating to its use did not make it clear whether the report of a Commission chosen from the Panel was binding or not.

4.—Establishment of a permanent fact-finding body and the review of existing machinery for fact-finding

366. Some representatives stated that, while the position of their Governments could only be established after further study of the question of methods of fact-finding, there would already appear to be sufficient evidence to warrant very serious consideration of the possibility of establishing a permanent fact-finding body. The mere existence of some new international fact-finding machinery might in itself result in greater resort to the procedure of fact-finding, and would probably lead to higher standards in the presentation of their cases by States. Furthermore, the independent and impartial determination of the facts might assist the settlement of disputes through negotiations or lead the parties to agree on some further third-party procedure. Such machinery would also serve to accord fact-finding a more important place in international affairs.

367. The United Nations was in a better position than it had been even only five years ago both to assess the need for international fact-finding machinery in general and to determine what features should be incorporated in any new machinery that might be set up. Much experience in the use of fact-finding procedures had been accumulated both within and outside the United Nations, and that invaluable body of empirical evidence should be taken into account.

368. The question of fact-finding machinery had characteristically been raised in connexion with the types of circumstances envisaged in Chapters VI and VII of the Charter. Obviously, those were not the only circumstances in which international organizations were concerned with the determination of facts, and it would be worth while to explore the question whether new machinery or the increased use of existing procedures might be needed to perform the fact-finding function in spheres other than that relating to the settlement of disputes. Perhaps the improvement of fact-finding techniques in areas where national interests did not clash so sharply would serve to increase the international community's confidence in fact-finding procedures to be employed in connexion with disputes falling under the provisions of Chapters VI and VII.

369. One representative expressed the view that the establishment of impartial fact-finding machinery was in fact inevitable as it was part of the process of the elaboration of rules of international law, and responded to a need of the international community at the present stage of its development.

370. Another representative stressed that if new fact-finding machinery were to be established, it should meet the following criteria, which he thought were reflected in United Nations experience:

(1) Recourse to any fact-finding body should be based on voluntary acceptance;

(2) The body in question should be a subsidiary one, in accordance with Articles 22 or 29 of the United Nations Charter or Article 50 of the Statute of the International Court of Justice;

(3) It should be at the disposal of the parties to a dispute or to United Nations organs without prejudice to the right of the parties or the organs concerned to choose other means of fact-finding;

(4) Its reports should not be binding, any final decision resting with the parties or the organ concerned;

(5) It should be complementary to existing schemes for fact-finding;

(6) It should combine fact-finding proper with technical investigation by experts in the field.

371. Other representatives, who supported in principle the idea of establishing new fact-finding machinery, expressed their broad agreement with such criteria. In particular, it was pointed out that, under the foregoing principles, fact-finding functions were kept separate from decision-working functions. Fact-finding must be recognized as a distinct operation if States were to be encouraged to resort to it, and it should not be regarded as a commitment to further procedures. One representative favoured the establishment of a new international body for fact-finding, to which all Members of the United Nations would automatically be parties, and which should have compulsory jurisdiction. He recognized, however, that voluntary acceptance of jurisdiction might be more practical.

372. Some other representatives stated that they would be unable to endorse the idea of establishing a new international fact-finding body. The parties to a dispute should have

the widest possible choice of means of settlement; that was one of the reasons why many States had refused to recognize the compulsory jurisdiction of the International Court of Justice and would be likewise opposed to the setting up of new fact-finding machinery. The experience gained since the signing of the Hague Convention of 1899 and the Bryan Treaties showed that a permanent fact-finding body was unnecessary; the United Nations itself, as well as individual States, had at their disposal a great variety of means of obtaining information, and the establishment of a special international fact-finding body might encourage attempts to circumvent the United Nations organs, particularly the Security Council, and thereby undermine the Charter. From the practical standpoint, moreover, it was difficult to see how a permanent body could be set up which would be both capable of inquiring into the complicated circumstances of the manifold disputes characteristic of the present era and at the same time acceptable to all the parties. Under existing international law and practice, means of inquiry were available which allowed the parties the utmost flexibility in fixing conditions and procedures; a permanent fact-finding body, on the other hand, would not easily be able to adapt itself to the special circumstances of a particular case. Careful study of the question led to the conclusion that the idea of establishing such a body was both impractical and legally disputable, for it might well complicate rather than simplify the settlement of disputes and could in some instances infringe the sovereignty of the States parties. Finally, to consider the question of fact-finding would only divert the Special Committee from its main task, that assigned to it under General Assembly resolution 1966 (XVIII) of 16 December 1963.

373. Representatives who shared the foregoing view stressed that the real question was not the creation of a new machinery, but the more effective use of that which already existed. As regards the creation of new machinery, it was further argued that it was wrong to suppose that the entire factual position connected with a particular dispute could be objectively assessed by an international fact-finding organ; in most disputes, it would be very hard to separate the factual elements from legal and political issues. Disputes frequently centred not so much in points of fact as in questions arising from the moral or juridical implications of those facts; moreover, the wide variety of the *ad hoc* bodies which had been set up by the United Nations indicated the difficulty of establishing one body to deal with all contingencies. The *ad hoc* fact-finding bodies which had been established from time to time by the United Nations had formed part of the machinery of the peace-keeping system created under the Charter. The close inter-connexion between fact-finding and peace-keeping operations had helped to ensure the maintenance of international peace and security; it was undesirable that a separate international fact-finding body should duplicate the functions of United Nations organs in that respect. Moreover, an international fact-finding centre might not command the same respect as United Nations fact-finding bodies. The possibility of misuse of commissions of inquiry had been mentioned in the Security Council in 1946 by the Netherlands representative, who had pointed to the danger of setting up commissions of inquiry as a matter of course whenever one State lodged a complaint against another State, whether or not the complaint was adequately substantiated. It seemed evident that a permanent fact-finding body could be similarly misused.

374. On the other hand, representatives who favoured in principle the creation of a new fact-finding organ believed that it could be created with sufficient flexibility to meet all demands made upon it and to have available experts on the great variety of questions which might be put to it. Furthermore, if such an organ were created along the lines indicated in paragraph 370 above, it could not be said that States would be compelled to resort to it, this being purely voluntary. Finally, it could not be seriously maintained that such an organ would infringe upon or derogate from the responsibilities of United Nations organs, as it would be subsidiary to such organs.

C. *Decision of the Special Committee*

1.—Decision

375. At the thirty-seventh meeting of the Special Committee it was decided, on the proposal of the Chairman, that a working group, composed of the representatives of *Guatemala*, the *Netherlands* (the sponsor of the draft resolution in document A/AC.119/ L.29), and the *United Arab Republic* (representing the three sponsors of the draft resolution in document A/AC.119/L.30), should endeavour to draw up and submit to the Committee a draft resolution which would be acceptable to the sponsors of the two resolutions on the question of methods of fact-finding which had been previously submitted to the Special Committee (*see* paras. 355 and 456 above).

376. At the thirty-eighth meeting of the Special Committee, as the result of the meeting of the working group, a draft resolution was submitted by *Guatemala* (A/AC.119/L.33), in the light of which the sponsors of the two other resolutions before the Committee withdrew those resolutions. The Special Committee thereupon adopted the resolution submitted by *Guatemala* by 22 votes to none, with four abstentions. The resolution reads as follows:

"*The Special Committee*,

"*Having considered* the item 'The Question of Methods of Fact-Finding', together with the report of the Secretary-General,

"*Noting* that few Member States have as yet submitted their views in response to General Assembly resolution 1967 (XVIII),

"*Being unable*, due to lack of time, to formulate conclusions on the item,

"*Recommends* that the General Assembly take note of that part of its report which concerns this item, bring to the attention of Member States the report of the Secretary-General and the relevant documents, and invite Member States to submit their comments in writing at an early date."

2.—Explanations of vote

377. In explanation of vote, the representatives of *Romania*, *Poland*, the *USSR* and *Czechoslovakia* referred to their earlier statements on the question of methods of fact-finding both in the Sixth Committee and in the Special Committee and stated that they were opposed to the idea underlying the question of methods of fact-finding and the creation of new machinery for fact-finding purposes. Nevertheless, as the draft resolution prepared by the working group was of a purely procedural character, they were able to abstain instead of voting against that resolution.

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2. AIDE-MÉMOIRE CONCERNING SOME QUESTIONS RELATING TO THE FUNCTION AND OPERATION OF THE UNITED NATIONS PEACE-KEEPING FORCE IN CYPRUS[13]

[10 April 1964]

Function of the Force

1. The Security Council, by paragraph 5 of its resolution S/5575 of 4 March 1964, recommended that the function of the United Nations Peace-Keeping Force in Cyprus should be "in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law order and a return to normal conditions".

[13] Document S/5653.

2. In carrying out its function, the United Nations Force shall avoid any action designed to influence the political situation in Cyprus except through contributing to a restoration of quiet and through creating an improved climate in which political solutions may be sought.

Guiding principles

3. The Secretary-General has the responsibility for establishing the Force and for its direction. The Force, whose composition and size are to be established in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom, is a United Nations Force, whose Commander has been appointed by the Secretary-General.

4. The Force is under the exclusive control and command of the United Nations at all times.

5. The Secretary-General is responsible to the Security Council for the conduct of this Force, and he alone reports to the Security Council about it.

6. The Commander of the Force, who is responsible to the Secretary-General, receives, as appropriate, directives from the Secretary-General on the exercise of his command and reports to the Secretary-General. The executive control of all units of the Force is at all times exercised by the Commander of the Force.

7. The contingents comprising the Force are integral parts of it and take their orders exclusively from the Commander of the Force.

8. The Force has its own headquarters whose personnel is international in character and representative of the contingents comprising the Force.

9. The Force shall undertake no functions which are not consistent with the definition of the function of the Force set forth in paragraph 5 of the Security Council resolution of 4 March 1964. Any doubt about a proposed action of the Force being consistent with the definition of the function set forth in the resolution must be submitted to the Secretary-General for decision.

10. The troops of the Force carry arms which, however, are to be employed only for self-defence, should this become necessary in the discharge of its function, in the interest of preserving international peace and security, of seeking to prevent a recurrence of fighting, and contributing to the maintenance and restoration of law and order and a return to normal conditions.

11. It would be desirable from the standpoint of effective operation of the United Nations Force that the Greek and Turkish troops now stationed in Cyprus should be placed under the over-all command of the Commander of the Force. Although the United Nations has no specific mandate to require this, the Secretary-General has urged this course on the Governments concerned.

12. The personnel of the Force must refrain from expressing publicly any opinion on the political problems of the country. They must also act with restraint and with complete impartiality towards the members of the Greek and Turkish Cypriot communities.

13. There is a clear distinction between the troops of the British contingent in the United Nations Force and the British military personnel in Cyprus, such as those manning the British bases not included in the United Nations Force.

14. The Status of the Force Agreement, concluded between the Government of Cyprus and the United Nations, covers matters such as freedom of movement, jurisdiction, responsibilities, discipline, etc., and has been circulated as a Security Council document (S/5634).[14]

[14] See p. 40 of this *Yearbook*.

15. The operations of the Force and the activities of the United Nations Mediator are separate and distinct undertakings and shall be kept so. Nevertheless, in the nature of the case, the activities are complementary in the sense that the extent to which the Force shall be able to ensure quiet in Cyprus will help the task of the Mediator, while on the other hand any progress effected by the Mediator will facilitate the functioning of the Force.

Principles of self-defence

16. Troops of UNFICYP shall not take the initiative in the use of armed force. The use of armed force is permissible only in self-defence. The expression "self-defence" includes:

(*a*) the defence of United Nations posts, premises and vehicles under armed attack;

(*b*) the support of other personnel of UNFICYP under armed attack.

17. No action is to be taken by the troops of UNFICYP which is likely to bring them into direct conflict with either community in Cyprus, except in the following circumstances:

(*a*) where members of the Force are compelled to act in self-defence;

(*b*) where the safety of the Force or of members of it is in jeopardy;

(*c*) where specific arrangements accepted by both communities have been, or in the opinion of the commander on the spot are about to be, violated, thus risking a recurrence of fighting or endangering law and order.

18. When acting in self-defence, the principle of minimum force shall always be applied, and armed force will be used only when all peaceful means of persuasion have failed. The decision as to when force may be used under these circumstances rests with the commander on the spot whose main concern will be to distinguish between an incident which does not require fire to be opened and those situations in which troops may be authorized to use force. Examples in which troops may be so authorized are:

(*a*) attempts by force to compel them to withdraw from a position which they occupy under orders from their commanders, or to infiltrate and envelop such positions as are deemed necessary by their commanders for them to hold, thus jeopardizing their safety;

(*b*) attempts by force to disarm them;

(*c*) attemps by force to prevent them from carrying out their responsibilities as ordered by their commanders;

(*d*) violation by force of United Nations premises and attempts to arrest or abduct United Nations personnel, civil or military.

19. Should it be necessary to resort to the use of arms, advance warning will be given whenever possible. Automatic weapons are not to be used except in extreme emergency and fire will continue only as long as is necessary to achieve its immediate aim.

Protection against individual or organized attack

20. Whenever a threat of attack develops towards a particular area, commanders will endeavour to restore peace to the area. In addition, local commanders should approach the local leaders of both communities. Mobile patrols shall immediately be organized to manifest the presence of UNFICYP in the threatened or disturbed areas in whatever strength is available. All appropriate means will be used to promote calm and restraint.

If all attempts at peaceful settlement fail, unit commanders may recommend to their senior commander that UNFICYP troops be deployed in such threatened areas. On issue of specific instructions to that effect from UNFICYP headquarters, unit commanders will announce that the entry of UNFICYP Force into such areas will be effected, if necessary, in the interests of law and order.

If, despite these warnings, attempts are made to attack, envelop or infiltrate UNFICYP positions, thus jeopardizing the safety of troops in the area, they will defend themselves and their positions by resisting and driving off the attackers with minimum force.

Arrangements concerning cease-fire agreements

21. If UNFICYP units arrive at the scene of an actual conflict between members of the two communities, the commander on the spot will immediately call on the leaders of both communities to break off the conflict and arrange for a cease-fire while terms which are acceptable to both communities are discussed. In certain cases it may be possible to enforce a cease-fire by interposing UNFICYP military posts between those involved, but if this is not acceptable to those involved in the conflict, or if there is doubt about its effectiveness, it should not normally be done, as it may only lead to a direct clash between UNFICYP troops and those involved in the conflict.

Paragraph 2 of the resolution adopted by the Security Council on 4 March 1964

22. The Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, has been asked by the Security Council, in paragraph 2 of the resolution adopted on 4 March 1964, to take all additional measures necessary to stop violence and bloodshed in Cyprus. UNFICYP, therefore, shall maintain close contact with the appropriate officials in the Government of Cyprus in connexion with the performance of the function and responsibilities of the Force.

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3. REGULATIONS FOR THE UNITED NATIONS FORCE IN CYPRUS[15]

[25 April 1964]

I. General Provisions

1. *Issuance of Regulations.* The Regulations for the United Nations Force in Cyprus (UNFICYP) (hereinafter referred to as the Force) are issued by the Secretary-General and shall be deemed to take effect from the date that the first elements of the Force are placed under the United Nations Commander. The Regulations, and supplemental instructions and orders referred to in Regulations 3 and 4, shall be made available to all units of the Force.

2. *Authority of Regulations.* The present Regulations and supplemental instructions and orders issued pursuant thereto shall be binding upon all members of the Force. Contravention thereof shall constitute an offence subject to disciplinary action in accordance with the military laws and regulations applicable to the national contingent to which the offender belongs.

3. *Amendments and supplemental instructions.* These Regulations may be amended or revised by the Secretary-General. Supplemental instructions consistent with the present Regulations may be issued by the Secretary-General as required with respect to matters not delegated to the Commander of the Force (hereinafter referred to as the Commander).

[15] Document ST/SGB/UNFICYP/1. Came into force on 10 May 1964.

4. *Command Orders.* The Commander may issue Orders not inconsistent with resolutions of the Security Council relating to the Force, these Regulations and amendments thereto, and with supplemental instructions referred to in Regulation 3:

(*a*) In the discharge of his duties as Commander of the Force; or

(*b*) In implementation or explanation of these Regulations.

Command Orders shall be subject to review by the Secretary-General.

5. *Definitions.* The following definitions shall apply to the terms used in the present Regulations:

(*a*) The "Commander of the United Nations Force in Cyprus" or the "Commander" is the general officer appointed by the Secretary-General to exercise in the field full command of the Force.

(*b*) The "United Nations Force in Cyprus" or "Force" is the subsidiary organ of the United Nations described in Regulation 6 below.

(*c*) A "member of the United Nations Force in Cyprus" or a "member of the Force" is the Commander and any person, belonging to the military services of a State, who is serving under the Commander and any civilian placed under the Commander by the State to which such civilian belongs.

(*d*) A "Participating State" is a Member of the United Nations that contributes military personnel to the Force. A "Participating Government" is the Government of a Participating State.

(*e*) The "authorities of a Participating State" are those authorities who are empowered by the law of that State to enforce its military or other law with respect to the members of its armed forces.

(*f*) The "Host State" is the Republic of Cyprus. The "Host Government" is the Government of the Host State.

II. International Character, Uniform, Insignia, and Privileges and Immunities

6. *International character.* The United Nations Force in Cyprus is a subsidiary organ of the United Nations established pursuant to the resolution of the Security Council of 4 March 1964 (S/5575) and consists of the Commander and all personnel placed under his command by Member States. The members of the Force, although remaining on their national service, are, during the period of their assignment to the Force, international personnel under the authority of the United Nations and subject to the instructions of the Commander, through the chain of command. The functions of the Force are exclusively international and members of the Force shall discharge these functions and regulate their conduct with the interest of the United Nations only in view.

7. *Flag.* The Force is authorized to fly the United Nations flag in accordance with the United Nations Flag Code and Regulations. The Force shall display the United Nations flag and emblem on its Headquarters and on its posts, vehicles and otherwise as decided by the Commander. Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Commander.

8. *Uniform and insignia.* Members of the Force shall wear their national uniform in accordance with their national uniform regulations and with such identifying United Nations insignia as the Commander, in consultation with the Secretary-General, shall prescribe. Civilian dress may be worn at such times and in accordance with such conditions as may be authorized by the Commander.

9. *Markings.* All means of transportation of the Force, including vehicles, vessels and aircraft, and all other equipment when specifically designated by the Commander, shall bear a distinctive United Nations mark and United Nations licence number.

10. *Privileges and immunities.* The Force, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the Organization provided in Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations and the Agreement between the United Nations and the Republic of Cyprus signed on 31 March 1964. The entry without duty or restrictions of equipment and supplies of the Force, and of personal effects required by members of the Force by reason of their presence in the Host State with the Force, shall be effected in accordance with details to be arranged with the Host State. The Provisions of Article II of the Convention on the Privileges and Immunities of the United Nations shall also apply to the property, funds and assets of Participating States used in the Host State in connexion with the national contingents serving in the Force.

III. Authority and Command in the United Nations Force in Cyprus

11. *Command authority.* The Secretary-General, pursuant to authority under the resolution of the Security Council of 4 March 1964 (S/5575), shall issue directives to the Commander as appropriate. The Commander exercises in the field full command authority of the Force. He is operationally responsible for the performance of all functions assigned to the Force by the United Nations, and for the deployment and assignment of troops placed at the disposal of the Force.

12. *Chain of command and delegation of authority.* The Commander shall designate the chain of command for the Force, making use of the officers of his Headquarters staff and the commanders of the national contingents made available by Participating Governments. He may delegate his authority through the chain of command. Changes in commanders of national contingents made available by Participating Governments shall be made in consultation among the Secretary-General, the Commander and the appropriate authorities of the Participating Government concerned. The Commander may make such provisional emergency assignments as may be required. Subject to the provisions of these Regulations, the Commander has full and exclusive authority with respect to all assignments of members of his Headquarters staff and, through the chain of command, of all members of the Force, including the deployment and movement of all contingents in the Force and units thereof. Instructions from the principal organs of the United Nations shall be channelled by the Secretary-General through the Commander and the chain of command designated by him.

13. *Good order and discipline.* The Commander shall have general responsibility for the good order and discipline of the Force. He may make investigations, conduct inquiries and require information, reports and consultations for the purpose of discharging this responsibility. Responsibility for disciplinary action in national contingents provided for the Force rests with the commanders of the national contingents. Reports concerning disciplinary action shall be communicated to the Commander who may consult with the commander of the national contingent and, if necessary, through the Secretary-General with the authorities of the Participating State concerned.

14. *Investigation of incidents and losses.* The Commander shall establish and ensure the effective implementation of procedures for the reporting and investigation of incidents, accidents and losses involving the Force or its members or property used by the Force, making use of the military police, as appropriate, in particular in the following cases: (*a*) any

incident involving (i) death or serious injury to a member of the Force, or (ii) death, injury or property damage to a person or persons not belonging to the Force, wherein a member of the Force or property used by the Force is involved; (*b*) the occurrence or discovery of any loss of, or damage to equipment, stores or other property used by the Force, whether owned by the Force or by contingents, which exceeds an amount to be determined by the Force Commander and cannot be ascribed to normal wear and tear.

15. *Military police.* The Commander shall provide for military police for any camps, establishments or other premises which are occupied by the Force in the Host State and for such areas where the Force is deployed in the performance of its functions. Elsewhere military police of the Force may be employed, in so far as such employment is necessary to maintain discipline and order among members of the Force or to conduct investigations relating to the Force or its members. For the purpose of this Regulation, the military police of the Force shall have the power to take into custody any member of the Force who thereupon shall be transferred as soon as possible to the custody of his own national contingent commander pending any action taken in accordance with paragraph 13 of the present Regulations. Nothing in this Regulation is in derogation of the authority of arrest conferred upon members of a national contingent *vis-à-vis* one another.

IV. General Administrative, Executive and Financial Arrangements

16. *Authority of the Secretary-General.* The Secretary-General of the United Nations shall have authority for all administrative and executive matters affecting the Force and for all financial matters pertaining to the receipt, custody and disbursement of voluntary contribution in cash or in kind for the maintenance and operation of the Force. He shall be responsible for the negotiation and conclusion of agreements with Governments concerning the Force, the composition and size of the Force being established in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom, and the manner of meeting all costs pertaining to the Force being agreed by the Governments providing contingents and by the Government of Cyprus. Within the limits of available voluntary contributions, he shall make provisions for the settlement of any claims arising with respect to the Force that are not settled by the Governments providing contingents or the Government of Cyprus. The Secretary-General shall establish a Special Account for the United Nations Force in Cyprus to which will be credited all voluntary cash contributions for the establishment, operation and maintenance of the Force and against which all payments by the United Nations for the Force shall be charged. The United Nations financial responsibility for the provision of facilities, supplies and auxiliary services for the Force shall be limited to the amount of voluntary contributions received in cash or in kind.

17. *Operation of the Force.* The Commander shall be responsible for the operation of the Force and, subject to the limitation in Regulation 16, for arrangements for the provision of facilities, supplies and auxiliary services. In the exercise of this authority he shall act in consultation with the Secretary-General and in accordance with the administrative and financial principles set forth in Regulations 18-23 following.

18. *Headquarters.* The Commander shall establish the Headquarters for the Force and such other operational centres and liaison offices as may be found necessary.

19. *Finance and accounting.* Financial administration of the Force shall be limited to the voluntary contributions in cash or in kind made available to the United Nations and shall be in accordance with the Financial Rules and Regulations of the United Nations and the procedures prescribed by the Secretary-General.

20. *Personnel.*

(*a*) The Commander of the Force shall be appointed by the Secretary-General. The Commander shall be entitled to diplomatic privileges, immunities and facilities in accordance with sections 19 and 27 of the Convention on the Privileges and Immunities of the United Nations. The Commander may appoint to his Headquarters staff, officers made available by the Participating States and such other officers as may be recruited in agreement with the Secretary-General. Such officers on his Headquarters staff and such other senior field officers as he may designate shall be entitled to the privileges and immunities of article VI of the Convention on the Privileges and Immunities of the United Nations.

(*b*) The Commander shall arrange with the Secretary-General for such international recruitment or detailment of staff from the United Nations Secretariat or from the specialized agencies to serve with the Force as may be necessary. Unless otherwise specified in the terms of their contracts such personnel are staff members of the United Nations, subject to the Staff Regulations thereof and entitled to the privileges and immunities of United Nations officials under articles V and VII of the Convention on the Privileges and Immunities of the United Nations.

(*c*) The Commander may recruit such local personnel as the Force requires. The terms and conditions of employment for locally recruited personnel shall be prescribed by the Commander and shall generally, to the extent practicable, follow the practice prevailing in the locality. They shall not be subject to or entitled to the benefits of the Staff Regulations of the United Nations, but shall be entitled to immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity as provided in section 18 (*a*) of the Convention on the Privileges and Immunities of the United Nations and shall be exempt from taxes on their salaries and emoluments received from the Force and from national service obligations as provided in section 18 (*b*) and (*c*) of the said Convention. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by administrative procedure to be established by the Commander.

21. *Administration.* The Commander with his civilian administrative staff shall, in accordance with procedures prescribed by him within the limits of Regulation 16, and in consultation with the Secretary-General, arrange for:

(*a*) the billeting and provision of food for any personnel attached to the Force for whom their own Government has not made provision;

(*b*) the establishment, maintenance and operation of service institutes providing amenities for members of the Force and other United Nations personnel as authorized by the Commander;

(*c*) the transportation of personnel and equipment;

(*d*) the procurement, storage and issuance of supplies and equipment required by the Force which are not directly provided by the Participating Governments;

(*e*) maintenance and other services required for the operation of the Force;

(*f*) the establishment, operation and maintenance of telecommunication and postal service for the Force;

(*g*) the provision of medical, dental and sanitary services for personnel in the Force.

22. *Contracts.* The Commander shall, within the limits of Regulation 16, enter into contracts and make commitments for the purpose of carrying out his functions under these Regulations.

23. *Public information.* Public information activities of the Force and relations of the Force with the Press and other information media shall be the responsibility of the Commander acting in accordance with policy defined by the Secretary-General.

V. Rights and Duties of Members of the Force

24. *Respect for local law and conduct befitting international status.* It is the duty of members of the Force to respect the laws and regulations of the Host State and to refrain from any activity of a political character in the Host State or other action incompatible with the international nature of their duties. They shall conduct themselves at all times in a manner befitting their status as members of the United Nations Force in Cyprus.

25. *United Nations legal protection.* Members of the Force are entitled to the legal protection of the United Nations and shall be regarded as agents of the United Nations for the purpose of such protection.

26. *Instructions.* In the performance of their duties the members of the Force shall receive their instructions only from the Commander and the chain of command designated by him.

27. *Discretion and non-communication of information.* Members of the Force shall exercise the utmost discretion in regard to all matters relating to their duties and functions. They shall not communicate to any person any information known to them by reason of their position with the Force which has not been made public, except in the course of their duties or by authorization of the Commander who shall act in consultation with the Secretary-General in appropriate cases. The obligations of this Regulation do not cease upon the termination of their assignment with the Force.

28. *Honours and remuneration from external sources.* No member of the Force may accept any honour, decoration, favour, gift or remuneration incompatible with the individual's status and functions as a member of the Force.

29. *Jurisdiction*

(*a*) Members of the Force shall be subject to the criminal jurisdiction of their respective national States in accordance with the laws and regulations of those States. They shall not be subject to the criminal jurisdiction of the courts of the Host State. Responsibility for the exercise of criminal jurisdiction shall rest with the authorities of the Participating State concerned, including as appropriate the commanders of the national contingents.

(*b*) Members of the Force shall not be subject to the civil jurisdiction of the courts of the Host State or to other legal process in any matter relating to their official duties.

(*c*) Members of the Force shall remain subject to the military rules and regulations of their respective national States without derogating from their responsibilities as members of the Force as defined in these Regulations and any rules made pursuant thereto.

(*d*) Disputes involving the Force or its members shall be settled in accordance with such procedures provided by the Secretary-General as may be required, including the establishment of a claims commission or commissions. Supplemental instructions defining the jurisdiction of such commissions or other bodies as may be established shall be issued by the Secretary-General in accordance with article 3 of these Regulations.

30. *Customs duties and foreign exchange regulations.* Members of the Force shall comply with such arrangements regarding customs and foreign exchange regulations as may be made between the Host State and the United Nations.

31. *Identity cards.* The Commander, under the authority of the Secretary-General, shall provide for the issuance and use of personal identity cards certifying that the bearer is a member of the United Nations Force in Cyprus. Members of the Force may be required to present, but should not surrender, their identity cards upon demand of such authorities of the Host State as may be mutually agreed between the Commander and the Host Government.

32. *Driving.* In driving vehicles, members of the Force shall exercise the utmost care at all times. Orders concerning driving of service vehicles and permits or licences for such operation shall be issued by the Commander.

33. *Pay.* Responsibility for pay of members of the Force shall rest with their respective national State. They shall be paid in the field in accordance with arrangements to be made between the appropriate pay officer of their respective national State and the Commander.

34. *Dependants.* Members of the Force may not be accompanied to their duty station by members of their families except where expressly authorized and in accordance with conditions prescribed by the Secretary-General in consultation with the Commander.

35. *Leave.* The Commander shall specify conditions for the granting of passes and leave.

36. *Promotion.* Promotions in rank for members of the Force remain the responsibility of the Participating Governments.

VI. Relations between the Participating Governments and the United Nations

37. *Channel for communications.* The channel for communications between the United Nations and the Participating Governments concerning their units in the Force, or the Force itself, shall be United Nations Headquarters in New York, through their Permanent Missions to the Organization.

38. *Visits to the Force.* Visits to the Force by officials of the Participating Governments shall be arranged with the Commander through United Nations Headquarters in New York.

39. *Service-incurred death, injury or illness.* In the event of death, injury or illness of a member of the Force attributable to service with the Force, the respective State from whose military services the member has come will be responsible for such benefits or compensation awards as may be payable under the laws and regulations applicable to service in the armed forces of that State. The Commander shall have responsibility for arrangements concerning the body and personal property of a deceased member of the Force.

VII. Applicability of International Conventions

40. *Observance of Conventions.* The Force shall observe and respect the principles and spirit of the general international Conventions applicable to the conduct of military personnel.

B. Decisions, recommendations and reports of a legal character by inter-governmental organizations related to the United Nations

1. UNIVERSAL POSTAL UNION

Decisions of a legal character adopted by the XVth Universal Postal Congress (Vienna, 1964)

(*a*) RESOLUTION C 16—JURIDICAL GUARANTEES FOR OFFICIALS OF THE INTERNATIONAL BUREAU

(Original text: French)

The Congress,

in view of

on the one hand, the 1964 report of the ELC - Doc. 13, and on the other hand, item 31, chapter VI, of the Supplement to the comprehensive report on the work of the Executive and Liaison Committee 1957-1964 (Congress - Doc. 3),

recognizing

that it is in the interests of all the member countries of the Universal Postal Union to ensure for officials of the International Bureau of the UPU juridical guarantees similar to those enjoyed by officials of other international organizations,

charges

the Executive Council to study the problem in its entirety and to take the necessary decisions so that, in administrative and disciplinary matters, the rights of officials of the International Bureau may be adapted as soon as possible to those enjoyed by officials of other international organizations.

[Prior to 1966, the treatment of appeals against administrative and disciplinary decisions concerning the staff of the International Bureau was within the competence of the *Département politique fédéral* (Federal Political Department) and the *Conseil fédéral suisse* (Swiss Federal Council), as organs of the International Bureau's supervisory authority. The adoption of this resolution C 16 resulted in the affiliation in 1965 of the Universal Postal Union with the Administrative Tribunal of the International Labour Organisation.]

(*b*) RESOLUTION C 22—IMMEDIATE APPLICATION OF PROVISIONS ADOPTED BY THE VIENNA CONGRESS RELATING TO THE EXECUTIVE COUNCIL (EC) AND TO THE MANAGEMENT COUNCIL OF THE CONSULTATIVE COMMITTEE FOR POSTAL STUDIES (CCPS)

(Original text: French)

The Congress,

taking account

of the new composition which has been adopted for the EC and for the Management Council of the CCPS as well as the new duties entrusted to these two organs by virtue of the Acts to be submitted for the signature of the Plenipotentiaries,

considering

that these Acts will not come into force until 1 January 1966,

desiring

that the EC and the Management Council of the CCPS begin work without delay,

decides

that the provisions of the Acts to be submitted for signature by the Plenipotentiaries shall be applied immediately in so far as the EC and the Management Council of the CCPS are concerned, in order that these organs might in particular meet in constitutive session at Vienna.

[The Acts of the UPU adopted by a Congress come into force only after a relatively long period of time following the closure of the Congress, in order to allow Postal Administrations to make the necessary arrangements. However, the development of certain circumstances and the internal life of the Union require that the new provisions relating to the organization, functioning and work of the various permanent organs be implemented promptly. Accordingly, the Ottawa Congress of 1957 and the Vienna Congress of 1964 decided by special resolution that provisions adopted by those Congresses relating to the Executive Council and the Management Council of the Consultative Committee for Postal Studies should be applied immediately.]

2. INTERNATIONAL ATOMIC ENERGY AGENCY

Standing Committee on Civil Liability for Nuclear Damage

(*a*) TERRITORIAL SCOPE OF THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE—NOTE BY THE SECRETARIAT [16]

(Original text: English)—(10 March 1964)

I.—*Introduction*

1. The governmental experts of OECD on Civil Liability, while elaborating a draft Additional Protocol to the Paris Convention in order to bring the Paris Convention in line with the Vienna Convention and thus to enable Member States of OECD to ratify both Conventions, found it difficult to determine how to interpret the Vienna Convention in respect of its territorial scope in the absence of a relevant provision. In particular, they were not clear whether Contracting Parties to the Vienna Convention could or could not determine the geographical extent of coverage under the Convention and, especially, whether they could extend the provisions of the Convention in respect of nuclear incidents occurring or nuclear damage suffered in non-contracting States. Such uncertainty, it was felt, might cause difficulties to a Party to the Paris Convention who is also a Party to the Vienna Convention if that party wishes to apply Article 2 of the Paris Convention which, as revised in the additional Protocol, reads as follows:

> "This Convention does not apply to nuclear incidents occurring in the territory of non-contracting States or to damage suffered in such territory, unless otherwise provided by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and except in regard to rights referred to in Article 6 (*e*)."

The experts agreed that the Standing Committee should be asked to discuss as a matter of utmost urgency exactly what was the territorial scope of the Vienna Convention.

2. In order to facilitate discussion of this problem in the Standing Committee, possibly with a view to the Committee arriving at an agreed interpretation of the Convention, the Secretariat has, in the present note, indicated some relevant points from the discussions on the subject which preceded the adoption of the Convention and has also tried to analyse the present text of the Convention.

[16] Document CN-12/SC/2.

II.—*History*

3. The text prepared by the Intergovernmental Committee on Civil Liability at its second series of meetings, which formed the basis of the discussion at the International Conference held in Vienna from 29 April to 19 May 1963, contained the following Article I.A:

> "This Convention shall not apply to nuclear incidents that occur or to nuclear damage that is suffered in the territory of a non-contracting Party unless the law of the Installation State so provides." [17]

4. A similar provision was already contained in the draft text of the Panel of experts and the inclusion of that provision was not disputed until the second meeting of the Intergovernmental Committee. [18] The draft article was not adopted in the Plenary Session of the International Conference (CN-12/OR.4, paras 49-69) [17] and was thus not included in the final version of the Vienna Convention on Civil Liability for Nuclear Damage.

5. Some of the reasons which led the Intergovernmental Committee to propose the inclusion of a provision on the lines of Article I.A in the Vienna Convention were indicated in the article-by-article commentary prepared by the Secretariat (CN-12/3) as follows:

"*Incidents or Damage in Non-Contracting States*

"38. The Convention is applicable, in principle, only to nuclear incidents which occur and to damage suffered on the territory of Contracting Parties, or outside the territory of any State (e. g. on the High Seas) if the operator liable is subject to the Convention. However, the law of the Installation State may extend the application of the Convention to incidents and to damage occurring in non-contracting States. It may, without violating the Convention, provide that claims resulting from an incident occurring on the territory of a Contracting Party shall be governed by the Convention (e. g. be included in the limit of liability) even though the damage is suffered in a non-contracting State. Installation States may also wish to extend the application of the Convention to incidents occurring in non-contracting States in the course of international transportation to or from Contracting States. Such extension of the rules of the Convention can of course be binding only upon the courts of a Contracting State in which suits for such foreign damage might be brought, or where execution of judgements may be sought because the defendant has assets there. Within these limits, such extension would generally protect operators, by eliminating the possibility that actions be filed against them on the basis of ordinary tort law."

6. In the discussions of former Article I.A during the International Conference, a number of arguments against the incorporation of Article I.A in the Convention were presented. It was, in particular, stated that the extension of the benefits of the Convention to a non-contracting State without any corresponding obligations under the Convention would be an extraordinary situation. Among others, it would eliminate any incentive for a non-contracting State to accede to the Convention. Further, compensation of persons having suffered damage on the territory of non-contracting States would reduce the limited liability fund available for compensation of persons having suffered damage on the territory of Contracting States. Finally, the argument was put forward that it was contrary to international law to apply the Convention to non-contracting States and also that, in general, the provision would have no effect in international law.

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[17] Corrections to be noted in para. 69 of this document (English and Russian versions only): substitute "*first* part of Article I.A" for "second part of Article I.A". For the discussions of the Committee of the Whole, reference is made to (provisional) documents CN-12/CW/OR.3, paras. 51-61,/OR.4, paras. 3-56, /OR. 5, paras. 1-50.

[18] See document CN-12/2, page 7.

7. The International Convention of 1962 on the Liability of Operators of Nuclear Ships contains in Article XIII a provision in the opposite sense of the proposed Article I.A. It reads:

> "This Convention applies to nuclear damage caused by a nuclear incident occurring in any part of the world and involving the nuclear fuel of, or radioactive products or waste produced in, a nuclear ship flying the flag of a Contracting State."

III.—*Relationship to Non-Contracting States*

General International Law

8. It follows from international law that (whatever the Convention might say) the Convention is only binding in relations between the Contracting Parties. Thus it cannot confer obligations upon non-contracting States, nor will it confer any rights upon those unless in special circumstances it is clear that this was intended. It is thus evident that, whatever the Convention provides, the courts of non-contracting States are not obliged to apply its provisions. Nor are they obliged to apply law which any Contracting State may have enacted based upon the provisions of the Convention. A different matter is that the courts of non-contracting States will do so in those cases where their own national conflicts law refers to the law of such Contracting Party. However, this follows not from the terms of the Convention, but from the inherent right of States to determine the contents of their own national law and from the consonant right of other States to determine in their national conflicts law that their courts shall in certain cases apply foreign law. Except for this indirect effect, the provisions of the Convention will not operate to determine the rights of nationals of non-contracting States or of any other persons who may have suffered damage and who sue in the courts of a non-contracting State. On the other hand, the rights of nationals of non-contracting States will indirectly (*i. e.* through the *lex fori*) be governed by the provisions of the Convention if they sue in the courts of a Contracting State. This, too, follows from national and general international law, not from the terms of the Convention.

IV.—*Relationship between Contracting Parties*

Interpretation of the Provisions of the Convention. General

9. The problem to be considered in the present note is thus reduced to that of determining whether, *even in so far as the relations between the Contracting Parties are concerned,* the Convention covers only nuclear incidents occurring within their own territories and nuclear damage suffered therein, or whether it covers also incidents occurring and damage suffered on the high seas and on the territory of a non-contracting State ("territorial scope").

10. The question of the territorial scope of the Convention arises, as already indicated, in two respects, first in respect of the place where the nuclear incident occurred and secondly in respect of the place where the nuclear damage was suffered. Both these aspects of the territorial scope are covered in the present paper. On the other hand, this paper does not deal with a third aspect of the delimitation of the scope of the Convention, viz. that of the nationality of the person suffering nuclear damage (the "personal scope"). This problem has been proposed as a separate item on the agenda of the Standing Committee by the United Kingdom, which has suggested the inclusion in the provisional agenda of "Nationality scope of the Convention" in order to obtain clarification that Article VII(3) of the Convention is not intended to restrict the rights of Contracting Parties to allow compensation to be paid to victims who are nationals of States not Parties to the Convention.

11. It follows from the definitions of "operator" and "Installation State" in Article I(1) (*c*) and (*d*) that the Convention applies only if an operator of a Contracting Party is involved.

Thus, the Convention does not apply to incidents that occur in a nuclear installation situated within the territory of a non-contracting State, regardless of the nationality of the person operating that installation. Equally, the Convention is not applicable to nuclear incidents occurring in the course of transport of nuclear material between non-contracting States, even if the incident occurs during transit of such material through the territory of a Contracting State. Nor does it apply to incidents occurring on the high seas, unless the nuclear installation was operated by or under the authority of a Contracting Party.

12. The nature and purpose of the Convention is to unify substantive and procedural rules of civil (private) law of the Contracting Parties. If the Convention contains no explicit provisions on the territorial scope of its rules, it must be investigated whether an interpretation of the remaining text and the general principles of public international law, including those of private law that form part of it, provide an answer to the question, or whether Contracting Parties are free to determine unilaterally, according to their own conflict of law rules, whether an operator is to be liable for foreign nuclear incidents or damage.

13. The Convention contains no *general* provision stating in terms of "geography" the extent of liability of an operator as designated or recognized by a Contracting Party, neither in the definitions of "nuclear damage" or "nuclear incident", nor in the provisions defining the liability of the operator; it does, however, in Articles II(1) and XI(2) and (3) envisage the possibility of nuclear incidents occurring outside the territory of Contracting Parties. In accordance with what has been outlined in paragraph 12, it is then necessary first to examine the more specialized provisions of the Convention.

V.—*Transport*

14. Article II(1) (*b*) (*iv*) and (*c*) (*iv*) provide for the liability of the operator in case of transport of nuclear material to or from a non-contracting State, until the material in question has been unloaded from the means of transport by which it has arrived in the territory of that non-contracting State or from the moment such material has been loaded on the means of transport by which it is to be carried from the territory of that State. The text thus refers to nuclear incidents that might occur outside the territory of Contracting States, since liability under the Convention ends only at a point within the territory of a non-contracting State (or begins at such point). The article thus deals with a situation which contains what may be conveniently called a "foreign element". These provisions pre-suppose the possibility that incidents outside the territory of a Contracting Party may be covered and constitute an argument against the interpretation that the Convention applies only to incidents within Contracting States and may not be applied outside their territory, as in such case the reference to loading and unloading in non-contracting States would be meaningless. The question of whether they constitute an argument for compulsory coverage is another one. And even if such compulsory coverage of incidents taking place in the territory of non-contracting States is assumed to follow from the article, it does not necessarily follow that such compulsory coverage extends also to *damage suffered* in such non-contracting State.

15. The other provisions of Article II(1) (*b*) (*ii*) and (*iii*) and (*c*) (*ii*) and (*iii*) which deal with transport between operators of Contracting States do not provide for any interruption of the liability of the operators concerned, the liability of the consignee begins immediately after liability of the consignor ends. These provisions, too, thus permit the application of the Convention to incidents wherever they occur, including the territory of non-contracting States, although these are not mentioned as they are under (*iv*). However, this does not necessarily mean that the territorial scope of the Convention *must* be so wide. And even if this interpretation is given to the provision, it does not necessarily cover also *damage suffered* in non-contracting States.

16. The draft text of Article II prepared by the Intergovernmental Committee contained an introductory provision to that article "subject to the provisions of Article I.A...". This proviso would have prevented an interpretation of Article II in the sense that there is liability of operators for events occurring on the territory of non-contracting States. This introductory provision has disappeared as a direct and necessary consequence of the deletion of Article I.A.

17. It may be argued that the main purpose of Article II(1) (in conjunction with Article II(5)) is to determine the exclusive liability of an operator and, in case of transport, any transfer of liability between operators. Therefore, any conclusion based upon incidental reference to the territory of a non-contracting State or on the principle of "uninterrupted" liability of operators in that article is not decisive. The territorial scope of the Convention, a problem distinct from that dealt with in Article II, may then not be determined by that article.

18. In reality, it might be said, the problem is not settled by the Convention and Contracting Parties are free either to enact specific legislation or to apply rules of conflict of law already in existence, as they can in many other fields for which the Convention contains no rules which require or prohibit a certain type of legislative action. Jurisdictional competence for nuclear incidents occurring outside the territory of Contracting Parties is already determined by Article XI and the Courts competent pursuant to that article will apply their own law including conflict of law rules. Although a number of States may base their decision as to the applicable law on the principle of *lex loci delicti*, it cannot be said that this principle is common to all States or a general principle of *public* international law which binds States as legislators (it should be observed that even the application of this principle will not result in all instances in the application of the law of the State where the nuclear incident occurred).

19. Since a Contracting State is not compelled to apply the law of another, non-contracting State in such cases, the question as to the possible material content of the law of such Contracting State calls for examination: in particular, is a State under rules of general international law prevented from legislating in respect of situations containing a "foreign element" (in this case an event taking place outside its own territory either on the high seas or on the territory of another State)[19] if its courts are competent and/or its own nationals (operators) are involved? Under general international law there is no such rule. On the contrary, conflict of law rules on the national plane and a number of international conventions in the field of private law provide numerous examples of this being done. Such international conventions have become necessary, not because international law prohibits States from legislating for certain matters but, on the contrary, because too many States legislate differently for one and the same situation which has adjective (procedural) or substantive connection (place of tort, nationality (domicile) of claimant (defendant)) to more than one national law.

VI.—*Nuclear Installations*

20. It has already been pointed out that the Convention does not apply to nuclear incidents occurring within a nuclear installation situated in the territory of a non-contracting State, but that it applies to incidents occurring in an installation situated on the high seas if the installation is operated under the authority of a Contracting Party. However, the Convention does not appear to contain any provision which would determine the question of its applicability to *damage suffered* on the high seas or in the territory of a non-contracting State, if the incident is covered by the Convention.

[19] A "foreign element" may also be foreign nationality or domicile of claimants or defendant, cf. para. 10 above.

(*b*) NUCLEAR INSTALLATIONS OPERATED BY AN INTERNATIONAL ORGANIZATION —PROVISIONAL NOTE BY THE SECRETARIAT [20]

(Original text: English)—(8 April 1964)

I.—*Introduction*

1. At the International Conference on Civil Liability for Nuclear Damage, the Philippine Government submitted a proposal covering international organizations operating nuclear installations (CN-12/CW/1, No. 24). The proposal was withdrawn in order to permit international organizations to study the problem and make proposals, and the Conference accordingly did not discuss the substance (CW/OR. 5, paras. 51-53). Instead, the Conference, in its Resolution of 19 May 1963, requested the Standing Committee

> "To study any problems arising in connection with the application of the Convention to a nuclear installation operated by or under the auspices of an intergovernmental organization, particularly in respect of the "Installation State" as defined in Article I."

2. It is also recalled that the subject of international organizations acting as licensing authorities in respect of nuclear ships under the Brussels Convention was referred by the Diplomatic Conference on Maritime Law to the Brussels Standing Committee. Accordingly, the problem was considered at the first meeting of that Committee in October 1963. Reference is made to document CN-6/SC/1, Annexes III, IV and XVII - XX, document CN-6/SC/2, part III, and to part IV of the Report of the President of the Committee on its First Meeting (CN-6/SC/7).

II.—*General*

3. It is quite clear that intergovernmental organizations, like any other public or private body, can act under the Convention as operators of nuclear installations, if they have been designated or recognized as such by an Installation State. This is confirmed by an express mention of international organizations in the definition of "person" in Article I(1) (*a*) of the Convention. This mention adds the condition that the Organization enjoys "legal personality under the law of the Installation State"; however, this restriction probably has no practical significance, *inter alia* because presumably all intergovernmental organizations have legal personality under the law of the Installation State.

4. On the other hand, it is equally clear from the definition in Article I (*i*) (*d*) that an intergovernmental organization cannot be an "Installation State" under the Convention, unless it accedes to the Convention, which it cannot do under the present wording of Article XXIV, and unless it either has a territory of its own or otherwise operates the installation outside the territory of any State.

5. The relationship between the Organization and its officials as such is governed by the internal law of the Organization and not by the law of the Host State. Thus, unless otherwise agreed between the Organization and the Host State, the extent of the compensation due to the officials is determined by the relevant provisions of the Staff Regulations and Rules and by the Social Security Regulations of the Organization. Article IX of the Convention recognizes the right of intergovernmental organizations to determine the rights of their officials to obtain compensation under the Convention in those cases where they are beneficiaries of a social security system established by that Organization. In such cases, therefore, no difficulties appear to arise. In other cases, the Organization will have to accept the law of the Installation State in this respect.

[20] Document CN-12/SC/3.

6. Liability in respect of third parties, on the other hand, with which the Convention is concerned, is under the Convention governed partly by the law of the competent court and partly by the law of the Installation State. If suit is brought in a national court, the law of the State to which the court belongs will be the law of the competent court, irrespective of whether the operation has been authorized by a State as "Installation State", or merely by the Organization itself. If the installation is situated in the territory of, or has been authorized by, a Contracting State, that State will be the Installation State and its law will be the law of the Installation State. Otherwise there will be no Installation State and no law of the Installation State.

III.—*Intergovernmental Organizations Operating a Nuclear Installation on the Territory of a Contracting State*

7. If an intergovernmental organization operates a nuclear installation within the territory of a Contracting State and has been recognized by the latter as the operator of that installation, the Organization will be operator for all purposes of the Convention (*cf.* the definition of "person" and "operator" in Article I(1) (*a*) and (*c*)). That Contracting State will be the "Installation State" and its law will govern any limit of liability. That State will also have to ensure payment of claims for compensation in accordance with Article VII(1).

8. Intergovernmental organizations enjoy immunity from jurisdiction, unless they have waived their immunity. Such jurisdictional immunity does not mean lack of law, and therefore the application of the law of the Installation State and of the law of the competent court is not affected. The Vienna Convention on Civil Liability for Nuclear Damage provides in Article XIV:

> "Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article XI."

This provision is not *ipso facto* binding upon an intergovernmental organization which is not a Party to the Convention. If it is not a Party, provision would therefore have to be made between the Organization and the Host State for a waiver of such immunity if any claims cannot be settled out of court. In order to satisfy the terms of the Convention, the waiver would have to extend not only to the courts of the Installation State, but also to those of any other Contracting Party in so far as they may be competent under Article XI. The Host State is under the Convention obliged to see to it that such waiver is effected before or by its designation or recognition of the Organization as an operator.

9. If the Organization acts as an operator of a nuclear installation in the territory of a Contracting State it must, in addition to waiving its immunity, submit to the substantive law of the Host State in all matters relating to the Convention. In addition, the Host State must assume full responsibility for payment of claims against the Organization in accordance with Article VII(1) as for any other installation situated within its territory. If an Organization enjoys exterritoriality or other exemption from part or all of the relevant law of the Host State, or if the Host State is not willing to assume full responsibility for payment of claims against the Organization, special provisions would have to be included in the Convention, and it might even be necessary for the Organization to accede to the Convention and itself to act as a licensing authority in all or certain respects.

10. At present there are few or no nuclear installations which are actually operated by an intergovernmental organization. At any rate, as far as is known, there is no such installation where the operator is not fully subject to the substantive law of the Installation State in respect of liability arising out of the operation, except possibly in so far as the em-

ployees are concerned (*cf.* para. 5 above). The legislative power (in a territorial sense) of intergovernmental organizations within their headquarters districts or in the area where their installations are located depends upon any provisions contained in their headquarters agreements or other relevant agreements.

11. Even if the Organization is subject to the law of the Installation State in respect of liability, the latter does not have the same control over the Organization and its installations as it has over national installations, because of the internal autonomy of the Organization, because of its immunity from measures of execution (assuming that the immunity from suit has been waived) and because of the inviolability of its premises. For these reasons, and because the installation is international, the Installation State may not be willing to assume in respect of that installation the same responsibility for payment of claims under Article VII(1) of the Convention as it does for national installations, and the other Member States may not even wish it to assume such obligations and any accessorial special rights in respect of an installation which is a joint enterprise. In such cases, the situation may be relieved by adequate financial coverage, for example by insurance or by an internal agreement between the Member States of the Organization under which they undertake to reimburse the Installation State for any compensation which it may have been required to pay under the Convention. The latter may not be fully satisfactory from the point of view of the Installation State, since it does not protect it in case any Member State is unable or unwilling to fulfil its obligations. However, as long as the limit of liability under the Convention is not higher than US $ 5 million per incident, the burden upon it might not be excessive.

IV.—*Intergovernmental Organizations Operating a Nuclear Installation Outside the Territory of Any Contracting State*

12. Nuclear installations may be operated outside the territory of any Contracting State in the following five cases:

(*a*) On the high seas;

(*b*) In outer space;

(*c*) In stateless territory;

(*d*) In territory administered by an intergovernmental organization;

(*e*) In the territory of a non-Contracting State.

13. As for the high seas and outer space, it should be noted that the Convention does not comprise means of transport, since the definition of "nuclear installation" in Article 1 (1) (*j*) (*i*) excludes reactors "with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose". Nuclear ships are covered by the Brussels Convention on the Liability of Operators of Nuclear Ships, in respect of which the question of intergovernmental organizations acting as licensing authorities is being studied (*cf.* para. 2 above). Space vehicles may be covered by a Convention Concerning Liability for Damage Caused by the Launching of Objects into Outer Space, now under discussion in the Legal Sub-Committee of the United Nations Committee on the Peaceful Uses of Outer Space. This Committee is presently actively engaged in a discussion of liability in respect of space vehicles launched by intergovernmental organizations, on the basis of the United Nations General Assembly's resolution 1962 (XVIII) which laid down the principle that liability for damage caused by space vehicles launched by an international organization "shall be borne by the international organization and by the States participating in it".

14. As for stateless territory, reference is made to Article IX(1) (*e*) and (4) of the Treaty on Antarctica of 1 December 1959 (UNTS, vol. 402, p. 71).

15. There are at present no cases of territories administered by an intergovernmental organization. The most important example in the past was the Saar, which was governed by the League of Nations from 1920 to 1935. A more recent but transient example was West New Guinea (West Irian), which was administered by the United Nations during a brief period in 1963.

16. Fixed nuclear installations on the high seas and in outer space, as well as any nuclear installation in stateless territory or in territory administered by an intergovernmental organization, are subject to the Convention if a Contracting Party operates that installation or has authorized its operation (Article I(1) (*d*) of the Convention). If an intergovernmental organization operates such nuclear installations, no State authorization (such as that of the Host State of the Organization) is required. If thus no authorization has been sought and obtained from a *State*, there is no "Installation State", and the present text of the Convention would not cover such type installation. If it were found desirable to cover such an installation, the concept of an Installation State would have to be broadened to include also intergovernmental organizations.

17. Similarly, under the present text of the Convention, a nuclear installation on the territory of a non-Contracting State could not be covered, unless the Organization itself were to accede to the Convention and to be considered as an "Installation State" thereunder. However, this the Organization may not be in a position to do, because it would presuppose that the Host State grants it such exemption from the territorial law on liability as is necessary to enable it to enact its own law conforming to the minimum standards laid down in the Convention.

V.—*Broadening of the Convention?*

18. If in one or more of the cases discussed in Part IV above it is considered desirable to have the nuclear installation covered by the Convention, it will, as already indicated, be necessary to enlarge the definition of "Installation State" to allow also intergovernmental organizations to act as such. This may also become necessary, fully or in certain respects, if in the cases discussed in paras. 9-11 above it should be considered desirable to enable the Host State to grant the Organization full or partial exemption from its law in respect of liability, or to avoid sole external liability under Article VII(1) of the Convention.

19. In such cases the Standing Committee may wish to draw upon the results of the discussion in the Standing Committee of the Brussels Convention with regard to the partly comparable situation of an intergovernmental organization acting as licensing authority under the Brussels Convention (*see* the documents cited in para. 2 above).

20. Thus the Organization would have to establish the necessary law and courts wherever the Convention refers to the law and courts of the Installation State or the courts of a contracting party (Article XI(2)). This the Organization could do either by establishing its own regulations and/or courts, or by designating the law of a Member State which is a Contracting Party to the Convention and/or by conferring competence upon the courts of that State, with its concurrence (*cf.* the conclusions in this sense reached by the majority of the Standing Committee of the Brussels Convention, doc. CN-6/SC/7, para. 57).

VI.—*Conclusions*

21. It appears that any nuclear installations operated by intergovernmental organizations can be covered by the Convention as presently worded if the State in which the installation is situated accedes to the Convention and designates or recognizes the Organization as an operator, and if the Organization waives its immunity in the courts of all Contracting Parties.

22. The Convention, as presently worded, would not enable a Contracting Party to grant an intergovernmental organization exemption from its legislative power in any matter relevant to the Convention. Nor would it enable such State to avoid full external responsibility for payment of compensation by the Organization as required under the Convention.

23. The Convention does not, in its present form, cover nuclear installations operated by an intergovernmental organization outside the territory of any Contracting Party, including the high seas, outer space, stateless territory, territory administered by the Organization and territory of a non-Contracting State. However, there are no such cases at present. If it should be considered desirable to cover any of these cases in future, it would be necessary to extend the definition of Installation State to cover intergovernmental organizations and to enable such organizations to accede to the Convention. This may also be necessary if, in future, it is considered desirable to enable the Installation State to avoid full external financial responsibility or to grant the Organization legislative autonomy in matters related to liability.

VII.—*Further Action*

24. In the light of the above conclusions, it does not seem necessary for the Standing Committee to take any steps at the present stage for the implementation of the present Convention in respect of intergovernmental organizations, unless any Organization or Host State should encounter unforeseen difficulties which they would wish to draw to the attention of the Committee.

25. On the other hand, it may be necessary prior to the Revision Conference to give consideration to the need for any amendments to take care of the situations referred to in paras. 9-17, which are not covered by the Convention in its present form. However, it is difficult at the present stage to predict whether further developments will make such a revision necessary. The Committee may therefore wish to postpone a decision on these points until well after the Convention has entered into force, unless any intergovernmental organization or State should face such problems at an earlier stage and should therefore wish to raise the matter. In the meantime it would be sufficient to initiate general studies in order to see precisely what amendments would be required and what consequences it would have, if it should be decided in one or more of the cases referred to, to propose to the Revision Conference that the Convention be amended with a view to enabling intergovernmental organizations to act as "Installation States", fully or in certain respects. However, this may profitably be postponed until the Brussels Standing Committee, and if possible also the UN Legal Sub-Committee on Outer Space, have completed their relevant studies, and until the present provisional note has been studied by other interested international organizations and has been revised and supplemented in the light of their comments. The Secretariat would then propose to present a complete and final version of the present memorandum at a subsequent series of meetings of the Standing Committee.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

1. Universal Postal Union

CONSTITUTION OF THE UNIVERSAL POSTAL UNION

[The Universal Postal Union revised all its Acts at the Vienna Congress of 1964. This revision was particularly important since the juridical structure of the Union's Acts was radically changed. The former Universal Postal Convention and its Detailed Regulations, which included the constitutional provisions of the Union, the common rules applicable to the international postal service and the provisions concerning the letter post service, have been divided into four Acts:

1. *The Constitution of the Universal Postal Union:* This Act contains the Union's essential organic rules; it is of a permanent and stable nature, and is not designed—as are the other Acts of the Union, and as were hitherto the Acts of the Congresses—to be renewed at each Congress. It therefore ensures to some extent the permanency of the Union beyond each Congress.

2. *The General Regulations of the Universal Postal Union:* These provide for the implementation of the Constitution and the functioning of the various organs of the Union. They contain detailed provisions corresponding to the principles enunciated in the Constitution. Unlike the Constitution, the General Regulations are renewed by each Congress.

3. *The Universal Postal Convention:* Under this heading have been grouped the general provisions for the international postal service and those for the letter post which were included in the former Convention.

4. *The Detailed Regulations of the Universal Postal Convention:* This Act contains detailed provisions corresponding to those of the Universal Postal Convention.

The text of the UPU's new Constitution follows.]

CONSTITUTION OF THE UNIVERSAL POSTAL UNION

PREAMBLE

With a view to developing communications between peoples by the efficient operation of postal services, and to contributing to the attainment of the noble aims of international collaboration in the cultural, social and economic fields,

The Plenipotentiaries of the Governments of the Contracting Countries have, subject to ratification, adopted this Constitution.

Section I.—Organic Provisions

Chapter I.—General

Article 1

Scope and objectives of the Union

1. The Countries adopting this Constitution form, under the title of the Universal Postal Union, a single postal territory for the reciprocal exchange of letter post items. Freedom of transit is guaranteed throughout the entire territory of the Union.

2. The aim of the Union is to secure the organisation and improvement of the postal services and to promote in this sphere the development of international collaboration.

3. The Union takes part, as far as possible, in postal technical assistance sought by its Member Countries.

Article 2

Members of the Union

Member Countries of the Union are:

(*a*) Countries which have membership status at the date on which this Constitution comes into force;

(*b*) Countries admitted to membership in accordance with Article 11.

Article 3

Jurisdiction of the Union

The Union has within its jurisdiction:

(*a*) the territories of Member Countries;

(*b*) post offices set up by Member Countries in territories not included in the Union;

(*c*) territories which, without being members of the Union, are included in it because from the postal point of view they are dependent on Member Countries.

Article 4

Exceptional relations

Postal Administrations which provide a service with territories not included in the Union are bound to act as intermediaries for other Administrations. The provisions of the Convention and its Detailed Regulations are applicable to such exceptional relations.

Article 5

Seat of the Union

The seat of the Union and of its permanent organs shall be at Berne.

Article 6

Official language of the Union

The official language of the Union is French.

Article 7

Monetary standard

The franc adopted as the monetary unit in the Acts of the Union is the gold franc of 100 centimes weighing 10/31 of a gramme and of a fineness of 0.900.

Article 8

Restricted Unions—Special Agreements

1. Member Countries, or their Postal Administrations if the legislation of those Countries so permits, may establish Restricted Unions and make Special Agreements concerning the international postal service, provided always that they do not introduce provisions less favourable to the public than those provided for by the Acts to which the Member Countries concerned are parties.

2. Restricted Unions may send observers to Congresses, Conferences and meetings of the Union, to the Executive Council and to the Consultative Committee for Postal Studies.

3. The Union may send observers to Congresses, Conferences and meetings of Restricted Unions.

Article 9

Relations with the United Nations

The relations between the Union and the United Nations are governed by the Agreements whose texts are annexed to this Constitution.

Article 10

Relations with international organisations

In order to secure close co-operation in the international postal sphere, the Union may collaborate with international organisations having related interests and activities.

CHAPTER II.—ACCESSION OR ADMISSION TO THE UNION — WITHDRAWAL FROM THE UNION

Article 11

Accession or admission to the Union—Procedure

1. Any member of the United Nations may accede to the Union.

2. Any sovereign Country which is not a member of the United Nations may apply for admission as a Member Country of the Union.

3. Accession or application for admission to the Union entails a formal declaration of accession to the Constitution and to the obligatory Acts of the Union. It shall be addressed through diplomatic channels to the Government of the Swiss Confederation and by that Government to Member Countries.

4. A Country which is not a member of the United Nations is considered to be admitted as a Member Country if its application is approved by at least two-thirds of the Member Countries of the Union. Member Countries which have not replied within a period of four months are considered as having abstained.

5. Accession or admission to membership shall be notified by the Government of the Swiss Confederation to the Governments of Member Countries. It shall take effect from the date of such notification.

Article 12

Withdrawal from the Union—Procedure

1. Each Member Country may withdraw from the Union by notice of denunciation of the Constitution given through diplomatic channels to the Government of the Swiss Confederation and by that Government to the Governments of Member Countries.

2. Withdrawal from the Union shall become effective one year after the day on which the notice of denunciation provided for in § 1 is received by the Government of the Swiss Confederation.

CHAPTER III.—ORGANISATION OF THE UNION

Article 13

Organs of the Union

1. The organs of the Union are Congress, Administrative Conferences, the Executive Council, the Consultative Committee for Postal Studies, Special Committees and the International Bureau.

2. The permanent organs of the Union are the Executive Council, the Consultative Committee for Postal Studies and the International Bureau.

Article 14

Congress

1. Congress is the supreme organ of the Union.

2. Congress consists of the representatives of Member Countries.

Article 15

Extraordinary Congresses

An Extraordinary Congress may be convened at the request or with the consent of at least two-thirds of the Member Countries of the Union.

Article 16

Administrative Conferences

Conferences entrusted with the examination of questions of an administrative nature may be convened at the request or with the consent of at least two-thirds of the Postal Administrations of Member Countries.

Article 17

Executive Council

1. Between Congresses the Executive Council (EC) ensures the continuity of the work of the Union in accordance with the provisions of the Acts of the Union.

2. Members of the Executive Council carry out their functions in the name and in the interests of the Union.

Article 18

Consultative Committee for Postal Studies

The Consultative Committee for Postal Studies (CCPS) is entrusted with carrying out studies and giving opinions on technical, operational and economic questions concerning the postal service.

Article 19

Special Committees

Special Committees may be entrusted by a Congress or by an Administrative Conference with the study of one or more specific questions.

Article 20

International Bureau

A central office operating at the seat of the Union under the title of the International Bureau of the Universal Postal Union, directed by a Director-General under the general supervision of the Government of the Swiss Confederation, serves as an organ of liaison, information and consultation for Postal Administrations.

Chapter IV.—Finances of the Union

Article 21

Expenditure of the Union—Contributions of Member Countries

1. Each Congress shall fix the maximum amount which the ordinary expenditure of the Union may reach annually.

2. The maximum amount for ordinary expenditure referred to in § 1 may be exceeded if circumstances so require, provided that the relevant provisions of the General Regulations are observed.

3. The extraordinary expenses of the Union are those occasioned by the convening of a Congress, an Administrative Conference or a Special Committee as well as special tasks entrusted to the International Bureau.

4. The ordinary expenses of the Union, including where applicable the expenditure envisaged in § 2, together with the extraordinary expenses of the Union, shall be borne in common by Member Countries, which shall be divided by Congress for this purpose into a specific number of contribution classes.

5. In the case of accession or admission to the Union under Article 11, the Government of the Swiss Confederation shall fix, by agreement with the Government of the Country concerned, the contribution class into which the latter Country is to be placed for the purpose of apportioning the expenses of the Union.

Section II.—Acts of the Union

Chapter I.—General

Article 22

Acts of the Union

1. The Constitution is the basic Act of the Union. It contains the organic rules of the Union.

2. The General Regulations embody those provisions which ensure the application of the Constitution and the working of the Union. They shall be binding on all Member Countries.

3. The Universal Postal Convention and its Detailed Regulations embody the rules applicable throughout the international postal service and the provisions concerning the letter post services. These Acts shall be binding on all Member Countries.

4. The Agreements of the Union, and their Detailed Regulations, regulate the services other than those of the letter post between those Member Countries which are parties to them. They shall be binding on those Countries only.

5. The Detailed Regulations, which contain the rules of application necessary for the implementation of the Convention and of the Agreements, shall be drawn up by the Postal Administrations of the Member Countries concerned.

6. The Final Protocols annexed to the Acts of the Union referred to in §§ 3, 4 and 5 contain the reservations to those Acts.

Article 23

Application of the Acts of the Union to Territories for whose international relations a Member Country is responsible

1. Any Country may declare at any time that its acceptance of the Acts of the Union includes all the Territories for whose international relations it is responsible, or certain of them only.

2. The declaration provided for in § 1 must be addressed to the Government:

(*a*) of the Country where Congress is held, if made at the time of signature of the Act or Acts in question;

(*b*) of the Swiss Confederation in all other cases.

3. Any Member Country may at any time address to the Government of the Swiss Confederation a notification of its intention to denounce the application of these Acts of the Union in respect of which it has made the declaration provided for in § 1. Such notification shall take effect one year after the date of its receipt by the Government of the Swiss Confederation.

4. The declarations and notifications provided for in §§ 1 and 3 shall be communicated to Member Countries by the Government of the Country which has received them.

5. §§ 1 to 4 shall not apply to Territories having the status of a member of the Union and for whose international relations a Member Country is responsible.

Article 24

National legislation

The provisions of the Acts of the Union do not derogate from the legislation of any Member Country in respect of anything which is not expressly provided for by those Acts.

Chapter II.—Acceptance and denunciation of the Acts of the Union

Article 25

Signature, ratification and other forms of approval of the Acts of the Union

1. Signature of the Acts of the Union by Plenipotentiaries shall take place at the end of Congress.

2. The Constitution shall be ratified as soon as possible by the signatory Countries.

3. Approval of the Acts of the Union other than the Constitution is governed by the constitutional requirements of each signatory Country.

4. When a Country does not ratify the Constitution or does not approve the other Acts which it has signed, the Constitution and the other Acts shall be no less valid for the other Countries that have ratified or approved them.

Article 26

Notification of ratifications and other forms of approval of the Acts of the Union

The instruments of ratification of the Constitution and, where appropriate, of approval of the other Acts of the Union shall be addressed as soon as possible to the Government of the Swiss Confederation and by that Government to the Governments of Member Countries.

Article 27

Accession to the Agreements

1. Member Countries may, at any time, accede to one or more of the Agreements provided for in Article 22 § 4.

2. Accession of Member Countries to the Agreements shall be notified in accordance with Article 11 § 3.

Article 28

Denunciation of an Agreement

Each Member Country may cease being a party to one or more of the Agreements, under the conditions laid down in Article 12.

Chapter III.—Amendment of the Acts of the Union

Article 29

Presentation of proposals

1. The Postal Administration of a Member Country has the right to present, either to Congress or between Congresses, proposals concerning the Acts of the Union to which its Country is a party.

2. However, proposals concerning the Constitution and the General Regulations may be submitted only to Congress.

Article 30

Amendment of the Constitution

1. To be adopted, proposals submitted to Congress and relating to this Constitution must be approved by at least two-thirds of the Member Countries of the Union.

2. Amendments adopted by a Congress shall form the subject of an additional protocol and, unless that Congress decides otherwise, shall enter into force at the same time as the Acts renewed in the course of the same Congress. They shall be ratified as soon as possible by Member Countries and the instruments of such ratification shall be dealt with in accordance with the procedure laid down in Article 26.

Article 31

Amendment of the Convention, the General Regulations and the Agreements

1. The Convention, the General Regulations and the Agreements define the conditions to be fulfilled for the approval of proposals which concern them.

2. The Acts referred to in § 1 shall enter into force simultaneously and shall have the same duration. As from the day fixed by Congress for the entry into force of these Acts, the corresponding Acts of the preceding Congress shall be abrogated.

CHAPTER IV.—SETTLEMENT OF DISPUTES

Article 32

Arbitration

In the event of a dispute between two or more Postal Administrations of Member Countries concerning the interpretation of the Acts of the Union or the responsibility imposed on a Postal Administration by the application of those Acts, the question at issue shall be settled by arbitration.

Section III.—FINAL PROVISIONS

Article 33

Coming into operation and duration of the Constitution

This Constitution shall come into operation on 1st January, 1966 and shall remain in force for an indefinite period.

In witness whereof, the Plenipotentiaries of the Governments of the Contracting Countries have signed this Constitution in a single original which shall be deposited in the Archives of the Government of the Country in which the seat of the Union is situated. A copy thereof shall be delivered to each Party by the Government of the Country in which Congress is held.

Done at Vienna, the 10th of July, 1964.

FINAL PROTOCOL TO THE CONSTITUTION OF THE UNIVERSAL POSTAL UNION

At the moment of proceeding to signature of the Constitution of the Universal Postal Union concluded this day, the undersigned Plenipotentiaries have agreed the following:

Sole Article

Accession to the Constitution

Member Countries of the Union which have not signed the Constitution may accede to it at any time. Instruments of accession shall be addressed through diplomatic channels to the Government of the Country in which the seat of the Union is situated, and by that Government to the Governments of the Member Countries of the Union.

In witness whereof, the undermentioned Plenipotentiaries have drawn up this Protocol, which shall have the same force and the same validity as if its provisions were inserted in the text of the Constitution itself, and they have signed it in a single original which shall be deposited in the Archives of the Government of the Country in which the seat of the Union is situated. A copy thereof shall be delivered to each Party by the Government of the Country in which Congress is held.

Done at Vienna, the 10th of July, 1964.

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2. Inter-Governmental Maritime Consultative Organization

CONSIDERATION OF PROPOSED AMENDMENTS TO ARTICLES 17, 18 AND 28 OF THE IMCO CONVENTION: RESOLUTION A. 69 (ES.II) ADOPTED ON 15 SEPTEMBER 1964 AT THE SECOND EXTRAORDINARY SESSION OF THE ASSEMBLY

(Original text: English)

THE ASSEMBLY,

RECOGNIZING the need

(*i*) to increase the number of members on the Council,

(*ii*) to have all members of the Council elected by the Assembly,

(*iii*) to have equitable geographic representation of Member States on the Council, and

CONSEQUENTLY HAVING ADOPTED, at the second extraordinary session of the Assembly held in London on 10-15 September 1964, the amendments, the texts of which are contained in the Annex to this Resolution, to Articles 17 and 18 of the Convention on the Inter-Governmental Maritime Consultative Organization,

DECIDES to postpone consideration of the proposed amendment to Article 28 of the Convention on the Inter-Governmental Maritime Consultative Organization to the next session of the Assembly in 1965,

DETERMINES, in accordance with the provisions of Article 52 of the Convention, that each amendment adopted hereunder is of such a nature that any Member which hereafter declares that it does not accept such amendment and which does not accept the amendment within a period of twelve months after the amendment comes into force shall, upon the expiration of this period, cease to be a Party to the Convention,

REQUESTS the Secretary-General of the Organization to effect the deposit with the Secretary-General of the United Nations of the adopted amendments in conformity with Article 53 of the Convention and to receive declarations and instruments of acceptance as provided for in Article 54, and

INVITES the Member Governments to accept each adopted amendment at the earliest possible date after receiving a copy thereof from the Secretary-General of the United Nations, by communicating an instrument of acceptance to the Secretary-General for deposit with the Secretary-General of the United Nations.

Annex

1. The existing text of Article 17 of the Convention is replaced by the following:

The Council shall be composed of eighteen members elected by the Assembly.

2. The existing text of Article 18 of the Convention is replaced by the following:

In electing the members of the Council, the Assembly shall observe the following principles:

(*a*) Six shall be governments of States with the largest interest in providing international shipping services;

(*b*) Six shall be governments of other States with the largest interest in international seaborne trade;

(*c*) Six shall be governments of States not elected under (*a*) or (*b*) above, which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographic areas of the world.

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. 91 (8 MAY 1964)[2]: MISS Y. v. SECRETARY-GENERAL OF THE UNITED NATIONS

Termination of a permanent appointment for reasons of health—Staff Regulation 9.1 (a)

On 29 September 1961, the applicant requested the Administrative Tribunal to rescind the decision dated 8 November 1960 by which the Secretary-General had terminated her permanent appointment for reasons of health. By Judgement No. 83 delivered on 8 December 1961, the Tribunal, without deciding the merits of the case, remanded it under article 9. 2 of the Statute for correction of the procedure used by the respondent in arriving at the decision that the applicant was incapacitated for further service for reasons of health under Staff Regulation 9.1 (*a*).

Pursuant to Judgement No. 83, a medical procedure was adopted in which the applicant and the respondent each appointed a doctor and these two doctors in turn appointed a third doctor to constitute a panel to consider the present case of termination for reasons of health. By a letter dated 23 December 1963, the applicant transmitted to the President of the Tribunal the written conclusions of the three doctors and requested the Tribunal to resume consideration of the case on its merits. The applicant subsequently filed pleas requesting the Tribunal, *inter alia*, (*a*) to rescind the decision of the Secretary-General to terminate her permanent appointment; (*b*) to order her reinstatement, in an appropriate post, in the United Nations Secretariat; (*c*) in the event that the respondent exercises the option given under

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[1] Under article 2 of its Statute, the Administrative Tribunal of the United Nations 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 1964, 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.

article 9.1 of the Statute of the Tribunal, to order the payment of compensation in an amount equal to two years' net base salary and the payment of the applicant's full salary from 8 November 1960 to the date of reinstatement or refusal to reinstate, less the amount paid in lieu of notice and the amount paid as termination indemnity. On the other hand, the Director of Personnel informed the applicant in writing on 19 February 1964 of the Secretary-General's intention to maintain the decision terminating her permanent appointment, specifying that his intention to maintain the termination had been formed in the light of all of the basic information contained in the medical opinions rendered subsequent to Judgement No. 83 and of the applicant's record of service, and that the ground for termination, *i. e.* incapacity for reasons of health, should be maintained as the primary ground inasmuch as the applicant's unsatisfactory performance of her work for some time prior to her termination appeared to have been attributable to health reasons.

The Tribunal, in its Judgement No. 91, formulated the point for determination as follows:

> "Could the respondent have terminated legally the appointment of the applicant for reasons of health, had the respondent possessed such medical reports on the date of the issue of the notice of termination, namely 8 November 1960?"

The Tribunal then pointed out that the three doctors agreed that the applicant had "a character disorder" or "personality disorder", which had been with the applicant from childhood and would persist all through her life. The Tribunal went on to observe that, while the doctors disagreed on the question whether the applicant was incapacitated for further service, their reports contained indications that, at the relevant period, the applicant had not been in normal conditions of health for work. The Tribunal therefore concluded as follows:

> "If, on a review of these medical opinions, the respondent decided to maintain the termination, the Tribunal considers that the information at his disposal was such as might cause him to reach the opinion that the services of the applicant should be terminated on grounds of health."

As to the applicant's allegation that the decision of 8 November 1960 was arbitrary and constituted a misuse of power and a violation of Staff Regulation 9.1 (*a*), the Tribunal found that there had been no prejudice or improper motivation; and it held therefore that the contested decision could not be rescinded.

Finally, with regard to the respondent's contention that the termination of the appointment of the applicant was justified on the ground of unsatisfactory services (the consideration of which as a new ground for the termination was resisted by the applicant), the Tribunal observed that in the light of the decision reached by the Tribunal that the applicant's health conditions had been such as might have led the respondent to the conclusion that her appointment could be terminated for reasons of health, the question of unsatisfactory services did not arise for determination in this case.

Accordingly the Tribunal rejected the application.

In view of the circumstances of the case, the Tribunal ordered that the name of the applicant should be omitted from the published versions of the Judgement.

2. JUDGEMENT NO. 92 (16 NOVEMBER 1964)[1]: HIGGINS v. SECRETARY-GENERAL OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Legal elements of secondment—Modification of the terms of secondment is not within the sole discretion of the organizations concerned—Despite the absence of a letter of appoint-

[1] Mme P. Bastid, President; R. Venkataraman, Vice-President; James W. Barco, Member.

ment, the seconded official's position in the receiving organization is analogous to that of a staff member with a fixed-term appointment—Staff Rule 104.3 (b)*—Procedure for a valid termination of secondment—Staff Regulation 9—Denial of due process—Compensation in lieu of specific performance.*

The applicant, a United Nations staff member seconded to IMCO for a fixed term, requested the Tribunal (*a*) to rescind the decision of 1 June 1963 by which the Secretary-General of IMCO had terminated the secondment before the expiry of the term, *i. e.* 30 June 1964; (*b*) to direct the respondent to reassign the applicant for a period of 13 months to a post equivalent to the one he had held before the contested decision; (*c*) should the respondent refuse such reassignment, to order the payment of compensation; and (*d*) to order certain additional measures of relief.

The respondent contended, *inter alia*, that, since the applicant had received no letter of appointment from IMCO, there was no fixed-term contract berween IMCO and the applicant, and that, therefore, the duration of the secondment could be modified by a unilateral decision of the releasing organization (*i. e.* the United Nations) or the receiving organization (*i. e.* IMCO) or by an agreement between the two organizations, without the consent of the applicant.

In its Judgement No. 92, the Tribunal observed that the transaction of secondment involved three parties, namely, the releasing organization, the receiving organization and the staff member concerned, whose consent to the period of secondment, as well as to the terms and conditions of employment in the receiving organization was a condition precedent for such a secondment. The Tribunal found, therefore, that the consent of the staff member was necessary for varying the terms and conditions of secondment. The Tribunal pointed out, in this connexion, that the respondent's contention that the duration of secondment could be modified without the consent of the official concerned appeared to be based on a misreading of Staff Regulation 1.2 of the United Nations, which pertained only to the Secretary-General's authority to assign a staff member to any office within the United Nations without his consent and did not apply to assignment of a staff member transferred or seconded to another organization or specialized agency. The Tribunal held, therefore, that the termination of secondment did not lie within the sole discretion of the organizations concerned, and that, if the consent of the staff member was not given, appropriate procedures for a valid termination of secondment should be applied.

The Tribunal then went on to deny the respondent's claim that the absence of a letter of appointment from IMCO to the applicant implied the absence of a contract of service and precluded the application of Staff Regulations of IMCO to the applicant. Recalling its earlier Judgement No. 68 (Bulsara) in which the Tribunal held that the existence of a contract may be established on the basis of correspondence and conduct of parties, and considering that, in cases of secondment, letters of appointment are not always issued, and considering further that the applicant had been working within the administrative discipline of IMCO, the Tribunal stated: "It would be idle to deny that there was a contract of employment between the applicant and the respondent".

The Tribunal next noted that the applicant's position in IMCO had been "analogous to that of a staff member with a fixed-term appointment under Staff Rule 104.3 (*b*) of IMCO." The Tribunal observed, therefore, that the provisions of Staff Regulation 9 of IMCO applicable to the termination of a fixed-term appointment prior to the expiration date should have been applied in this case. Moreover, contrary to the respondent's submission, the Tribunal found that, inasmuch as the respondent had terminated the secondment before the expiry of the due date without the knowledge of the applicant and without giving him the opportunity to offer his explanations, the applicant had been denied due process of law to which he was entitled.

As a result of the foregoing findings, the Tribunal ruled that the contested decision could not be sustained. Observing that, since the period of the secondment originally envisaged had already expired on the date of the judgement, the applicant could not be restored to the service of IMCO by rescinding the contested decision, the Tribunal ordered the payment of compensation in lieu of specific performance, while rejecting the applicant's claim for damages which the Tribunal found were remote and contingent.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[1] [2]

1. JUDGEMENT NO. 68 (11 SEPTEMBER 1964): PELLETIER v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Access to the Tribunal by an employee of a non-governmental organization which maintains service contracts with UNESCO—Article II, paragraphs 5 and 6, of the Statute of the Tribunal

The complainant stated that he was in the paid employment of the Co-ordination Committee for International Voluntary Work Camps in August 1959; that, having fallen ill in the conduct of his duties, he requested sick leave on 28 August 1959; and then, following a deterioration in the state of his health, he was placed on extended sick leave from 1 March 1960 to 28 August 1962 and found himself deprived of all care and allowances.

The complainant requested the Tribunal to rescind the implicit rejection, resulting from the prolonged silence of UNESCO, of an appeal submitted on 28 August 1962 the acceptance of which would have had the effect of recognition of the existence of a verbal contract for hire of services between the complainant and UNESCO for the period 16 August 1959 to 28 August 1962, and he claimed, as a result of such rescission, the payment by UNESCO of the social security contributions due from it to the Paris Primary Social Security Fund, his reintegration and classification in the international civil service in accordance with his diminished capacity for work and the assistance which was due to him in the light of services rendered, and compensation for damages suffered on various counts.

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[1] 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, 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 Atomic Energy Agency, the United International Bureaux for the Protection of Intellectual Property and the European Organization for the Safety of Air Navigation. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Office and disputes relating to the application 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.

[2] M. Letourneur, President; A. Grisel, Vice-President; H. Armbruster, Deputy Judge.

In its Judgement No. 68, the Tribunal noted that paragraph 6 of article II of the Statute of the Tribunal reserves access to the Tribunal to officials of the organizations defined in paragraph 5 of the same article; to any person on whom an official's rights have devolved on his death; and to any other person who can show that he is entitled to some right of a deceased official. However, the Tribunal observed:

> "The complainant does not supply any shred of proof of the existence of the contract of employment which he alleges was concluded verbally between him and UNESCO. The Co-ordination Committee for International Voluntary Work Camps—a non-governmental organization freely constituted, administered by its own organs, with its own financial resources obtained from contributions of member organizations and subventions which it administers independently—is not a service of UNESCO. Moreover, neither the fact of maintaining consultative relations with UNESCO as a Category A non-governmental organization, nor the fact of executing specified tasks and of submitting reports on their execution in return for a fee paid by UNESCO, on the basis of contracts for the execution of material work or hire of services, has the effect of conferring on the agents of the Committee the status of employees of UNESCO".

The Tribunal then concluded that the complainant was not among the persons entitled, under the above-mentioned provisions, to refer a complaint to the Tribunal, irrespective of the real nature of relationship between him and the Co-ordination Committee. Accordingly, the Tribunal dismissed the complaint as irreceivable.

2. Judgement No. 69 (11 September 1964): Kissaun v. World Health Organization

Quashing of a decision not to confirm an appointment at the end of the probationary period —Official's right to be heard before a decision to his detriment is taken—Articles 430.2, 430.3, 430.4 and 440 of the Staff Rules

The complainant had been appointed as a medical officer by WHO on 14 May 1961 for a period of 2 years, including a probationary period of 12 months, and assigned as team leader of a medical project in Liberia under the authority of the Organizations's Regional Office for Africa, in Brazzaville, and of the North Western Area Representative, stationed in Dakar. When the Regional Director of WHO terminated his appointment by a letter dated 27 April 1962 (*i. e.* during the initial probationary period), the complainant appealed to the Director-General of the Organization against this decision. The decision having been confirmed by the Director-General on 9 August 1962, the complainant prayed the Tribunal to quash the Director-General's decision and to recommend his reinstatement. He charged the Regional Director with having violated the Staff Rules, taken his decision with undue haste and based that decision on incorrect or non-proven facts. He also complained that he had not been made aware of all the documents placed before the Director-General and challenged the competency of the Regional Director to terminate the contract of an official whom he did not appoint.

In its Judgement No. 69, the Tribunal invoked the principle that, before a decision to his detriment is taken, every official should have the opportunity of acquainting himself with the elements taken as the basis for such decision and of explaining himself with regard to them. In particular, the Tribunal noted that, according to the Staff Rules of WHO, not only must the periodic evaluation reports be discussed with the official concerned, who must sign them and who may contest their correctness (articles 430. 2 and 430. 3), but these reports shall be the basis for decisions concerning the staff member's status and the confirmation of his appointment at the end of his probationary period (article 430. 4 and 440). The Tribunal held that the right of an official to be heard, thus understood, had been doubly ignored in the present case. The Tribunal stated:

"First, the Regional Director terminated the appointment of the complainant without previously submitting to him a periodic evaluation report or affording him the opportunity of justifying himself. Then, in connection with the appeal proceedings before the Director-General,... [the Regional Director of WHO, the Director of Health Services of the Brazzaville Regional Office, and the complainant's immediate supervisor] produced reports, of the existence of which the complainant only became aware during the proceedings before the Tribunal... Since these reports were placed in the dossier and could influence the Director-General's decision, they should have been brought to the knowledge of the complainant and he should have been afforded the opportunity of submitting his observations."

In stating that the infringement of the right to be heard entailed the quashing of the decision complained of, the Tribunal said:

"It is incorrect to maintain that, though the complainant was deprived of the possibility of a hearing by the Regional Director, he was nevertheless given the possibility of stating his case to the Director-General and that the failure to comply with recognised procedure in respect of the first decision was thus subsequently rectified. In reality, far from having been able normally to defend his interests before the Director-General, the complainant, as has been stated above, was not invited to comment on the documents which were submitted without his knowledge. Moreover, even if the appeals procedure was properly complied with, the previous infringement of the right to be heard was not thereby corrected, since the officer who took the first decision had based himself to a considerable extent on evaluations which the higher authority apparently accepted without checking them all personally..."

Infringement of the right to be heard having been sufficient to entail the quashing of the decision complained of, the Tribunal did not consider it necessary to examine whether the Regional Director had been competent to terminate the appointment of the complainant, whether he had acted with undue haste, or whether he had based himself on the relevant facts. The Tribunal held that it was incumbent upon the Organization to reopen the case, to enable the complainant to exercise all his rights and to consider whether he should be reinstated.

Finally, as to the indemnity which the complainant might possibly claim, the Tribunal added:

"The quashing of the decision impugned not being impossible or not seeming inappropriate, the Tribunal could not base itself on article VIII of its Statute in order to grant an indemnity to the complainant, who, moreover, has not claimed any indemnity. Certainly, there is nothing to prevent the complainant from submitting a request for an indemnity to the Organization, whether he is reinstated or not. In any case, he could, at the most, only claim to any effective purpose compensation for the prejudice effectively suffered from the time of the coming into force of the decision complained of up until the date of notification of the decision to be taken, or eventually, if this day is sooner, until the day when his appointment would normally have ended."

3. JUDGEMENT NO. 70 (11 SEPTEMBER 1964): JURADO V. INTERNATIONAL LABOUR ORGANISATION

Competence of the Tribunal—Article II of the Statute—Official's rights to immunity from jurisdiction in Switzerland and to "diplomatic protection" in the matter of his private affairs—Claims against alleged infringement of articles 1.2, 1.7, 7.5 and 7.6 of the Staff Regulations dismissed

The complainant, who is of Spanish nationality, had been a permanent staff member of ILO since 30 June 1960. Following an appeal by the complainant, the Court of Justice of Geneva reversed, on 14 May 1963, a judgement previously rendered by the Court of First Instance whereby divorce against the complainant had been granted and the custody of his child had been given to the mother. Appeals by the complainant's wife were subsequently dismissed by the Federal Court on 20 September 1963, and the ruling of the Court of Justice

was upheld. In connection with these divorce proceedings, the waiving of the complainant's immunity from jurisdiction in Switzerland had been authorized on 6 October 1960 by the Director-General, with the prior knowledge of the complainant.

After various unsuccessful attempts to obtain the custody of his child, which continued to live with its mother, the complainant submitted, on 12 October 1963, two requests to the Director-General of the ILO, asking him, first, to be good enough to lay the matter before the competent Swiss authorities in order that the complainant's son might be restored to him, and secondly to grant him leave with salary in order to enable him to look for his child. Following these requests, the Legal Adviser of the International Labour Office indicated to the complainant that the Director-General did not consider himself able to offer more than his good offices, as a result of which many steps had been taken and followed up with a view to achieving a reasonable arrangement between the parties which would enable the complainant to see his child. The tenor of these discussions was confirmed in a letter from the Chief of Personnel to the complainant dated 5 November 1963.

By a letter of 4 November 1963, the complainant informed the Director-General that, in view of the failure of new approaches to the Genevese and federal authorities, he was preferring a penal charge with the Public Prosecutor of Geneva for the abduction of the child, while on 6 November 1963 the Department of Justice and Police again requested the waiving of the complainant's immunity in connection with a new divorce action instituted against him by his wife and based on new facts. On 7 November 1963, the waiving of the complainant's immunity, which he should have asked for before instituting penal proceedings, was authorized by the Director-General in connection with these proceedings, and his immunity was also waived in connection with the new divorce proceedings, as requested by the Department of Justice and Police, after the complainant had been advised that this action would be taken.

Meanwhile, by various communications, the complainant repeated his request of 12 October 1963 indicating that what he wanted was not the Director-General's good offices, but his intervention with the Swiss authorities with a view to impressing on them the principle of respect of his diplomatic immunity which, in his view, had been impeached by the application to his case of Swiss law, whereas he should only have been subject to Spanish law, under which he would have been given the custody of, and parental authority over, his child. The refusal to grant him "diplomatic protection" by such an intervention was made worse by the waiving of his immunity in connection with a divorce action that was contrary to Spanish law. On 13 November 1963, the Chief of Personnel informed the complainant that the Director-General did not consider that the purpose of the immunities granted by the Swiss Confederation to the International Labour Organisation was affected by the facts stated by the complainant.

The complainant prayed that the Tribunal should:

(1) find that the ILO Administration offended his religious convictions and infringed article 1.2 of the Staff Regulations;

(2) find that the waiving of the complainant's immunity the first time was illegal and infringed article 1.7 of the Staff Regulations;

(3) find that the decision of the ILO Administration dated 7 November 1963, and confirmed on 13 November, waiving the complainant's diplomatic immunity and refusing him diplomatic protection was contrary to article 1.7 of the Staff Regulations and was tainted with illegality and arbitrary action;

(4) find that the ILO Administration infringed articles 7.5 and 7.6 of the Staff Regulations;

(5) order the Director-General of the ILO to pay the complainant compensation in an amount to be fixed *ex æquo et bono* for damages and prejudice suffered;

(6) order the Director-General of the ILO to take the necessary measures for the diplomatic protection of the complainant so as to enable him to recover his child and obtain the custody of it;

(7) fix the sum of 10,000 Swiss francs as being payable to the complainant for every day's delay in recovering his son, starting from the date of the judgement;

(8) subsidiarily, in the event that the Director-General did not wish to reverse his decision, order him to pay the complainant compensation of 5 million Swiss francs for the loss of his child, not reimbursable in any circumstances;

(9) fix an amount of compensation *ex æquo et bono* to be paid to the complainant for his work in connection with the preparation and drafting of the present complaint;

(10) order the Director-General to pay the expenditure incurred by the complainant since 12 October 1963 in connection with the recovery of his child and the present complaint;

(11) order the Director-General to pay all the costs.

The Organisation prayed that the Tribunal was not competent to hear Mr. Jurado's complaints; subsidiarily, that the complaints were not receivable; and, very subsidiarily, that the complaints should be dismissed because they were unfounded.

Contrary to the Organisation's submission, the Tribunal held, in its Judgement No. 70, that it was competent to hear the complaints, according to article II, paragraph 1, of its Statute, in so far as the complainant submitted that the Director-General had infringed by the decisions impugned various provisions of the Staff Regulations, and in so far as he prayed for the quashing of these decisions and for the Organisation to be ordered to pay him compensation. However, the Tribunal did not find itself competent to give a ruling in respect of point (6) of the complainant's submissions concerning his "diplomatic protection."

The Tribunal then went on to find that the Director-General's decision of clearly-defined and limited scope to waive an official's immunity from jurisdiction could not be considered as offending the religious convictions of the person concerned, and that, therefore, point (1) of the complainant's submissions was unfounded. As to his point (2) the Tribunal, after referring to article 40 of the ILO Constitution and article 21, paragraph 2, of the Agreement between the Swiss Federal Council and the ILO, as well as to article 1.7 of the Staff Regulations, stated *inter alia:*

> "...not only have officials no right to the maintenance thereof [*i. e.* of the privileges and immunities], but, moreover, the Director-General is obliged to waive an official's immunity if such immunity impedes the normal course of justice and if waiving it does not prejudice the interests of the Organisation.
>
> The Director-General's power to decide in any case submitted to him whether or not these two conditions apply, is... completely beyond the control of the Administrative Tribunal.
>
> The above-mentioned submission cannot therefore be accepted."

As to point (3) of the complainant's submissions, the Tribunal pointed out that ILO officials' right to "diplomatic protection" is nowhere mentioned in the relevant international agreements or the Staff Regulations, and concluded as follows:

> "While by virtue of a general principle concerning the rights of the international civil service (cf. International Court of Justice: Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, *I.C.J. Reports*, 1949, p. 174) it is the duty of the ILO to protect and assist its officials in the performance of their functions or in connection therewith, the case of Mr. Jurado, against whom divorce proceedings were in progress before the regular Swiss legal authorities, was not one where such protection could or should be provided.

While, in fact, the competent authorities of the Organisation took measures to advise Mr. Jurado and to facilitate his action, and intervened on his behalf, they acted purely voluntarily, without being legally obliged to do so; and the complainant has no right to complain of the effective assistance which was unsparingly given to him."

With regard to point (4), the Tribunal held that the letter of 5 November 1963, which was confined to recalling the complainant's rights in respect of leave, did not involve an infringement of the regulations concerned.

Finally, in dismissing the complaint, including all the financial claims (mentioned in points (5), (7), (8), (10) and (11) of the complainant's submissions), the Tribunal stated:

"On the one hand, it results from the foregoing that the decisions impugned are not tainted by illegality; consequently, the claims in question, in so far as they relate to these decisions, are unfounded.

On the other hand, compensation for the preparation and drafting of the complaint and the subsequent statements could not, in any case, be granted.

The other financial claims, relating to matters which are totally extraneous to the Organisation, must also be dismissed."

4. JUDGEMENT NO. 71 (11 SEPTEMBER 1964): SILENZI DE STAGNI V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Access to the Tribunal—Article II, paragraphs 5 and 6, of the Statute—Letters sent to a candidate for a vacant post prior to the receipt of his personal history do not constitute a firm offer

Following a letter dated 6 August 1962, in which the complainant informed the Director-General of FAO that he wished to submit an application for a post, the Chief of the Recruitment Section requested him, by a letter of 20 September 1962, to complete a personal history form. In response to a letter of 21 September in which the Chief of the Recruitment Section advised the complainant that there was a vacant post (information on which was given in the letter), asked him whether he would be interested in it, and again requested him to send his personal history, the complainant, on 3 October, cabled to say that he accepted the post on the conditions set forth in the said letter of 21 September. On 4 October the Chief of the Recruitment Section wrote to the complainant that he was pleased that the complainant accepted and that, as soon as he had received his personal history, he would make him a firm offer. But on 25 October he advised the complainant that, owing to his inadequate knowledge of English and French, he could not offer him the post.

The complainant maintained that the above-mentioned letter of 21 September constituted an unreserved offer and that his acceptance of it gave rise to a contract which the Organization subsequently broke improperly. In view of the impossibility of imposing upon the Organization the fulfilment of the obligations resulting from the contract, the complainant prayed for the granting of compensation for damages suffered.

In praying for the complaint to be dismissed, the Organization maintained that, in the absence of an act of appointment, the complainant had not acquired the status of an official of FAO and that, consequently, the Tribunal was not competent to hear his complaint.

In its Judgement No. 71, the Tribunal found that the sole intent of the letter of 21 September was to inform a person seeking employment with FAO that a post described in the letter was vacant and to request him to forward a personal history so as to enable the competent authorities of FAO to evaluate his qualifications for the post.

As regards the significance of the letter of 4 October sent as a result of the complainant's telegram, the Tribunal held:

"...its author took note of Mr. Silenzi de Stagni's application and confined himself to reminding the applicant that, before the discussions embarked upon could reach a definite conclusion, he should send his personal history. The firm offer of a contract was therefore made subject to the receipt of this personal history, which was required in order to enable the Organization to determine finally whether to make such an offer. The actual wording of this letter clearly implied, therefore, that no contractual relationship yet existed between the Organization and Mr. Silenzi de Stagni and further that no promise of a contract had been made since the outcome of the matter was entirely dependent upon the furnishing of the personal history of the applicant."

The Tribunal then concluded that no legal relationship whatsoever had ever been established between the complainant and FAO; and that, consequently, the complainant was not among the persons entitled to refer a complaint to the Tribunal, under the provisions of article II, paragraphs 5 and 6, of its Statute. Accordingly, the complaint was dismissed as irreceivable.

5. JUDGEMENT NO. 72 (11 SEPTEMBER 1964): DE BEITIA AND CHADBURN V. WORLD HEALTH ORGANIZATION

Reclassification of posts—Claim for the back pay for the intervening period

The complainants moved to rescind the implicit rejection, resulting from the silence maintained by the WHO Administration, of an appeal submitted on 21 February 1963 and, consequently, to order WHO to implement in the Region of the Americas the standards for posts of translators introduced on 15 September 1958, to apply these standards to the posts held by the complainants and to assign them the grade P. 4 at the step which they would have had on the date of submission of the complaint if the standards had been implemented in 1958, and to grant them the back pay due for the intervening period.

However, by an instrument of 21 January 1964 filed with the Registrar prior to the filing of the Organization's reply, the complainants stated that they withdrew any claim whatsoever with respect to the relief prayed for in their complaints in view of their promotion meanwhile to the grade P. 4 and of the assurance that, the reconsideration of the cases of the persons concerned having been undertaken in the interests of sound administration and, in particular, in order that, prior to the hearings of these cases before the Tribunal, the internal proceedings would have been concluded, the awarding of the promotions prior to the filing of the Organization's reply implied the acceptance by the Administration of the fact that, at the date when the classification decisions concerning the posts of the persons concerned were made, the duties actually being carried out were such as to justify the assignment of these posts to the higher grade.

After noting that, by an instrument of 31 January 1964, the Organization did not contest the above-mentioned conclusions, the Tribunal notified the parties that the complainants had withdrawn suit.

6. JUDGEMENT NO. 73 (11 SEPTEMBER 1964): PALMER AND D'ALCÁNTARA V. WORLD HEALTH ORGANIZATION

Reclassification of posts—Claim for the back pay for the intervening period

By instruments of 12 November and 27 December 1963, filed with the Registrar prior to the filing of the Organizations's reply, the complainants stated that they withdrew any claim whatsoever with respect to the relief prayed for in their complaints, in view of their promotion meanwhile to the grade immediately above their previous level. The Tribunal, therefore, notified the parties that the complainants had withdrawn suit.

7. JUDGEMENT NO. 74 (11 SEPTEMBER 1964): ROVIRA ARMENGOL v. WORLD HEALTH ORGANIZATION

Reclassification of post—Relief claimed by a former official

By an instrument of 11 March 1964 filed with the Registrar, the complainant stated that he withdrew any claim whatsoever with respect to the relief prayed for in his complaint. In view of the above the Tribunal notified the parties that the complainant had withdrawn suit.

8. JUDGEMENT NO. 75 (11 SEPTEMBER 1964): PRIVITERA v. WORLD HEALTH ORGANIZATION

Competence of the Tribunal—Article II, paragraph 5, of the Statute—Legal status of a "medical officer" holding a contract for a temporary and exceptional mission in the Congo (Leopoldville)

WHO appointed the complainant for a period of one year (from 28 February 1961 to 28 February 1962), as a medical officer (grade P. 4/1) seconded, on mission, to the Government of the Congo (Leopoldville) in accordance with a contract governed by the Staff Rules of the Organization. This contract was subsequently replaced by a one-year contract of different type for the appointment of persons assigned to the Congo, which was signed by the complainant on 27 December 1961. By a letter of 21 November 1962, the Chief of Personnel informed the complainant that the Organization did not intend to offer him a third contract on the expiry of the second one, whereupon the complainant requested the Director-General, by a letter of 6 December 1962, to withdraw the decision taken on 21 November 1962. The decision, however, was confirmed by the Director-General's reply dated 19 December 1962. On 10 August 1963, the complainant, in writing, requested the Director-General to restore his rights as a staff member and to pay him adequate compensation; by a statement dated 10 October 1963, he laid the matter before the WHO Board of Inquiry and Appeal, which concluded on 19 November 1963 that it was not competent to hear his appeal in view of the fact that he was not a member of the staff of the Organization. The complainant thereupon requested the Tribunal to quash the decision of the Director-General, to recommend his reinstatement and that he be granted damages of $1,000; and subsidiarily he requested payment of compensation. The Organization moved to dismiss the complaint on the ground of the incompetence of the Tribunal.

In its Judgement No. 75, the Tribunal held that, in view of the legal nature of the relations between the complainant and the Organization, the complaint did not fall within the category of those which the Tribunal was competent to hear in pursuance of article II, paragraph 5, of its Statute. In determining the legal nature of the relations between the complainant and WHO, the Tribunal observed that the complainant had signed the second contract voluntarily and with full knowledge of its terms before the expiry of the first contract governed by the Staff Rules of WHO, and that this second contract constituted the sole legal basis of the relations between the parties. The Tribunal went on to say:

> "It is of little account that the first article of the contract describes the complainant as a medical officer. This title relates solely to the nature of the work to be performed by the complainant, but does not affect his legal status. On the contrary, his legal status is defined by article II, paragraph 14, which stipulates that 'the present contract does not confer upon the holder the title of official of the World Health Organization'.
>
> Not only is the legal status of the complainant of an exclusively contractual nature, but the contract concluded by him is of a very special character. In fact, the tasks entrusted to the complainant were outside the scope of the normal functions of the Organization and were connected with an exceptional, as well as a temporary, mission. In addition, whatever his obligations may have been towards the Organization, the complainant was expressly stated to be responsible to the Government of the Congo (Leopoldville) (Article III, paragraph 1)....

Moreover, the contract provides that any disputes between the parties shall be settled in accordance with arbitration proceedings to be instituted by the Organization (Article VI)."

9. ORDER NO. 76 (11 SEPTEMBER 1964): L'EVÊQUE v. INTERNATIONAL TELECOMMUNICATION UNION

Decision to order measures of investigation—Article 11 of the Rules of Court of the Tribunal

In support of his complaint against ITU, the complainant maintained that the decision of the Secretary-General, dated 7 August 1962, terminating his appointment was motivated exclusively by reasons extraneous to the interests of the service, and in particular, to his professional qualifications. On the other hand, ITU affirmed that this measure was taken in application of article 9.1, paragraph (*a*) (3), of the Staff Regulations exclusively on account of the professional incompetence of the complainant. The parties having been thus opposed with regard to the facts, the Tribunal considered it necessary, in order to be able to give a ruling on the complaint with full knowledge of the case, to resort to various measures of investigation authorized under article 11 of its Rules of Court.

10. JUDGEMENT NO. 77 (1 DECEMBER 1964): REBECK v. WORLD HEALTH ORGANIZATION

Arbitration of a dispute between WHO and a physician recruited for service in the Congo (Leopoldville)—Interpretation of contracts of international organizations—Alleged violations and non-renewal of a one-year contract—Compensation for extra-contractual duties

The complainant offered his services to the Organization in reply to an advertisement it had placed in the press with a view to recruiting medical staff for the Congo (Leopoldville). On acknowledging his application, the Organization informed the complainant of the contemplated terms of employment; in particular, by letter of 29 January 1962, it informed him that he would not be authorized to practice as a private physician and that, along with surgical work, he would be entrusted with related tasks if necessary. By a contract signed on 2 and 7 March 1962, the Organization engaged the complainant as a surgeon for one year, and towards the end of the period the Organization notified him, by a letter of 15 March 1963, that it was not in a position to renew his contract.

Since the complainant advanced various claims against the Organization, the parties agreed to submit these claims to the arbitration of the Tribunal, which accepted this commission. In support of his claims, the complainant alleged, on the one hand, that he had sustained damages owing to various violations committed by WHO during the fulfilment of his contract and, on the other, that he had sustained serious injury owing to the Organization's refusal to offer him a new contract. The Organization prayed that the complaint be dismissed, on the grounds that none of its contractual obligations had been violated and that the complainant was not entitled to damages because his contract had not been renewed.

In its Judgement No. 77, the Tribunal first observed that, in order to carry out the commission to arbitrate the present dispute, it must "base its decision on the clauses of the contract which constituted [the complainant's] sole tie with WHO [and] adopt generally accepted rules of interpretation on the subject of contracts," and that, moreover, it "must consider the particular duties incumbent on an international organization, especially those which bind it to refrain from taking any decision of an arbitrary nature."

The Tribunal then found that the claim based on the alleged violations of the contract due to the Organization's entrusting him with obstetric service was groundless. The Tribunal pointed out, *inter alia:*

"By a letter of 29 January 1962, *i. e.* before the contract had been signed, the Organization reserved the right to entrust him with related tasks, among which it would not be out of the question to include obstetrics and certain duties relating to general medical care. Moreover, in his monthly report of 1 July 1962 the complainant himself stated that he had accepted, in agreement with a colleague, to perform the duties of both surgeon and gynæcologist. Consequently, even though the complainant was not able to devote himself exclusively to the speciality for which he had been recruited, this fact cannot be regarded as contrary to the clauses of the contract... Lastly, even if it were contrary to the clauses of the contract, the additional duties required of the complainant did not manifestly cause him any damage."

As to the complainant's allegation that he was prevented from resting on holidays and obliged day and night to be on permanent duty, which he stated was not provided for in the contract, the Tribunal held:

"In each if his monthly reports Mr. Rebeck claims to have been on duty every day, and the Organization, although it denies the extra-contractual nature of such work, does not dispute the truth of these statements. Even considering the complainant's special situation, it must be acknowledged that he was subject to ward duties which were out of the ordinary and went beyond his contractual obligations. Under these circumstances, and not having obtained leave by way of compensation, the complainant is entitled to an indemnification, which the Tribunal fixes *ex æquo et bono* at $500."

In concluding that the complainant's other submissions alleging violations of the contract could not be entertained, the Tribunal stated *inter alia:*

"Although he complains of having been described as 'all-round physician' by the Organization's mission in the Congo, he does not base any claim for damages on that fact... Furthermore, when he complains that he was unable to practise medecine as a private physician, the complainant is criticizing to no purpose a stipulation of which he was notified by letter of 29 January 1962,... and which is not invalidated by any provision of the contract. Moreover, he is not justified in ascribing a slanderous character to the charges made by one of his superiors in discharging his duties and which, whether founded or not, cast no aspersions either on his honour or his reputation. Lastly, needless to say the Organization did not violate any obligation by offering to provide the complainant with a certificate stating that the professional services performed by him were entirely satisfactory."

The Tribunal then went on to examine the claims arising from the non-renewal of the contract, which did not provide, either expressly or implicitly, for its renewal. In the light of the advertisement for the recruitment of physicians in the Congo and the correspondence exchanged between WHO and the complainant, as well as on the basis of the oral proceedings, the Tribunal observed that the complainant neither "could reasonably consider that he was entitled to demand that the Organization renew his contract", nor could he "allege any express or tacit promise by the Organization to conclude a new contract." Furthermore. the Tribunal did not find that the Organization had made arbitrary use of the broad powers of appraisal at its disposal when it decided to refuse to offer the complainant a new contract.

Accordingly, the Tribunal ordered the payment of an indemnification for extra-contractual duties and dismissed all other claims of the complainant.

11. JUDGEMENT NO. 78 (1 DECEMBER 1964): PILLEBOUE v. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Competence of the Tribunal—Article II of the Statute—Alleged irregularity of the elections held by the Staff Association—Director-General's refusal to invalidate the elections

By a communication dated 29 March 1963, the complainant requested the Director-General of UNESCO to declare void the election (held on 28 March 1963) of a staff member to the vice-chairmanship of the Executive Committee of the Staff Association and, consequently, the election of the said committee as a whole, on the ground that at the time of

presenting himself as a candidate and his candidature being brought to the notice of the electors, the staff member did not possess the status of member of the Association, because he had paid his contribution only at the moment of the ballot, whereas under the Staff Regulations and Rules membership was subject to payment of contributions.

By a note dated 10 April 1963, the Organization informed the complainant that the Director-General was not competent to deal with his request. By a resolution of 9 April 1963, the Council of the Association decided that the elections called into question were to be considered fully valid in view of the fact that any member of the Association retains full membership rights so long as he does not expressly refuse to renew his contributions. The complainant then lodged an appeal against the Director-General's decision of 10 April 1963 with the UNESCO Appeals Board, which on 15 July 1963 expressed the view that his complaint should be dismissed. On 6 August 1963 the Director-General accepted this view and informed the complainant accordingly.

In form, the complaint before the Tribunal referred to the aforementioned decisions of the Director-General dated 10 April and 6 August 1963, and the memorandum specified that "the complaint is directed against the Director-General" whereas the conclusions submitted that the Tribunal should rule that disputed elections were invalid and that new elections should be held according to a regular procedure. The Organization submitted that the Tribunal lacked jurisdiction to entertain the complaint.

In its Judgement No. 78, the Tribunal dismissed the submission that the elections of 28 March 1963 should be rendered void, for the reason that "no provision of its Statute, and in particular article II, empowers the Administrative Tribunal to adjudicate on such a submission." The submission that the Director-General's decisions of 10 April and 6 August should be rescinded was also dismissed. The Tribunal stated:

> "The Staff Association of UNESCO is a body governed by its own organs under the terms laid down in its constitution.
>
> With respect to the Association, its members or its acts, the Director-General of UNESCO may exercise only those powers granted to him by the Organization's regulations.
>
> None of these regulations empowers the Director-General to invalidate elections held by the Association to form its Executive Committee on the ground that such elections were irregular; in particular, neither the sentence in the Preamble of the Staff Regulations according to which the Director-General shall enforce the Regulations and Rules nor rule 108.1 of the latter, according to which the constitution of the Association shall be submitted to the Director-General for approval, can be regarded in any light as granting such a power to the Director-General.
>
> Hence, by refusing to invalidate the elections held on 28 March 1963, the Director-General, far from violating the Staff Regulations and Rules, applied them correctly.
>
> In the light of the foregoing—there being no need to order production of the document requested by Mr. Pilleboue, as this would have no bearing on the case—the aforementioned submission must fail."

12. Judgement No. 79 (1 December 1964): Giannini v. Food and Agriculture Organization of the United Nations

Summary dismissal for serious misconduct alleged to be ascribable to the complainant's mental condition—Article 10, paragraph 2, of the Staff Regulations

By a letter of 4 November 1961, the complainant was informed of the Director-General's decision that he was summarily dismissed for serious misconduct on the grounds that he had received from a colleague the sums of 1 million liras and $644 for the purpose of transferring them abroad and had failed to do so; that he had received from another colleague 100,000 liras for the purpose of converting them into dollars and had neither effected that

conversion nor reimbursed the sum; that he had misappropriated petrol coupons; that he had induced a colleague to lend him a considerable sum without disclosing his true financial situation; and that, by his own admission, he had managed his personal affairs in a manner unworthy of an international civil servant.

Following unofficial action taken at the Organization in March 1962 by the counsel for the complainant, who argued that, when he had been notified of his summary dismissal, the complainant, then being treated for mental disorders, had not been either physically or mentally fit to grasp its significance, the Organization, by letter dated 25 April 1962, requested the complainant to supply directly such medical certificates as would facilitate an examination of the situation. After being sent a reminder, the complainant produced on 24 July 1962 various medical certificates concerning his hospitalization which, in the opinion of the medical adviser of the Organization, failed to establish that the complainant had, during the period of hospitalization, been unfit to look after his interests. The complainant was notified accordingly by letter of 27 December 1962 that with respect to the information supplied concerning his state of health, new representations relating to his dismissal could not be entertained. On 31 July 1963 the complainant wrote again to the Director-General, protesting against the measures taken against him and appended additional medical certificates. The Director-General's reply, dated 25 October 1963, confined itself to confirming the terms of the letter of 27 December 1962 and to drawing the complainant's attention to provision 303.131 of the Staff Rules which allows a maximum period of a fortnight in which appeals against administrative decisions must be made.

The complainant alleged that his dismissal was illegal on the ground that, since he could not be blamed for any misconduct in the performance of his duties, it was based on actions in his private life, moreover without regard to the fact that these actions were to be ascribed to his mental condition; he also argued that summary dismissal was unjustified since he had neither caused injury to the Organization nor had abused his position as an official and that in any case summary dismissal could not be notified during sick leave. In form, the complaint referred to the decision of 25 October 1963, which confirmed the decision of 27 December 1962, refusing to re-open examination of his case in the absence of evidence of a mental condition preventing the complainant from making his appeal within the prescribed time limit, whereas the conclusions submitted not only that the complaint should be declared receivable in view of the complainant's state of health during the period of time allowed for appeal but also that the dismissal should be quashed and the complainant reinstated, or else that he should be discharged and receive severance pay and, as from the end of the period of illness, both back salary and compensation for injury sustained. The Organization submitted that the complaint was not receivable on the grounds that, in so far as it referred to the decision of 27 December 1962, it was not filed within the stipulated period of time and that, in so far as it referred to the communication of 25 October 1963, assuming that this was of the nature of a decision, internal appeals were not first exhausted.

In its Judgement No. 79 whereby the complaint was dismissed, the Tribunal found that under article 10, paragraph 2, of the Staff Regulations (relative to 'disciplinary measures') the acts criticized in the Director-General's letter of 4 November 1961, the factual accuracy of which had not been called into question and which had not been proved ascribable to the complainant's state of health, showed that the complainant had been guilty of serious misconduct. The Tribunal went on to say:

> "...even if they had concerned only his private life—which is not the case—these acts were of a nature to compromise the Organization's reputation and thus legally to warrant summary dismissal of the complainant under the terms laid down in the above-mentioned article. The fact that Mr. Giannini was ill at the time and that special sick leave for officials is normally provided for by the Regulations constitutes no obstacle to the enforcement of the said provision by the Director-General."

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. TRANSIT, TO AND FROM THE UNITED NATIONS HEADQUARTERS OR MAJOR OFFICES, OF PERSONS INVITED BY THE UNITED NATIONS—EFFECT OF EXTRADITION TREATIES BETWEEN HOST STATES AND OTHER STATES

Note verbale to the Permanent Representatives of all Member States and to the Permanent Observer of Switzerland

1. The Secretary-General of the United Nations presents his compliments to the Permanent Representative [the Permanent Observer]... and has the honour to refer to the general question of transit of petitioners to and from the United Nations Headquarters which was raised during the consideration, on 13 and 14 November 1963, of the request for a hearing by Mr. Henrique Galvão [1]. In particular, attention was drawn to the problems which might arise in this respect by the invoking of treaties of extradition which the United States has concluded with other States. The Secretary-General was requested by the Fourth Committee of the General Assembly to take the necessary action with the United States Government with a view to ensuring that petitioners coming to the United States for the purpose of testifying before a United Nations Committee should enjoy the necessary protection during their transit to and from the United Nations Headquarters district and also during their stay in New York for the purpose of appearing before the United Nations.

2. Consultations between the United States Government and the Secretary-General were initiated on 21 November 1963 and have been proceeding with the full collaboration of the Government. The Secretary-General will inform the Permanent Representative [the Permanent Observer] of the progress of these consultations.

3. In connexion with these discussions, the idea has occurred that problems resulting from the existence of extradition treaties may arise in any State in which the United Nations has a major office or regional headquarters. It might be considered whether the States in which such headquarters are located should write to all States with which they have extradition treaties pointing out their obligations, as a host to the United Nations, to facilitate the effective functioning of the Organization. Since the possibility of the initiation of extradition proceedings would be a factor in the willingness of persons to respond to invitations of the United Nations, such possibility might operate to impede the United Nations in the performance of its functions. The host State might therefore wish to ask the States with which it has extradition treaties for assurances that they will not request or take steps to effect the

[1] See *Juridical Yearbook*, 1963, p. 164.

extradition of persons who are in the host State in response to a United Nations invitation, during a period of time reasonably related to the invitation. The Secretary-General understands that the United States is already seeking such assurances from States with which it has extradition treaties. In due course the Secretary-General would be pleased to be informed of the attitude and measures which host States and States having extradition treaties with host States would be prepared to take in this regard.[2]

27 February 1964

2. EXEMPTION OF THE UNITED NATIONS FROM STAMP TAXES—INTERPRETATION OF ARTICLE 105 OF THE CHARTER AND OF SECTIONS 7 AND 8 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS[3]

Memorandum to the Acting Chief of the Field Operations Service, Office of General Services

1. ...The question of stamp taxes has in fact been a controversial one. The Legal Counsel pointed out this problem to the Fifth Committee in a statement made at the 982nd meeting on 19 December 1962 as follows:

> "On occasion, there might arise a difference of opinion as to the meaning of scope of the Convention. For instance, the United Nations had been required in a certain State to pay for and affix documentary stamps on such documents as bills of lading in respect of goods shipped by it for its official use. The Secretariat has felt that such documentary stamp tax partakes of the nature of a direct tax from which the Organization should be exempt; but the Government which imposed the tax maintained a contrary view.[4]"

2. In the legislation of certain States it is true that stamp taxes are classified as indirect taxes. However, the interpretation of the term "direct taxes" in the Convention on the Privileges and Immunities of the United Nations cannot depend on the terminology used in the various national, legal or fiscal systems, but should be given a uniform interpretation for all Member States. It is our understanding that direct taxes are those paid directly by the United Nations and under this definition stamp taxes are direct taxes. This conclusion is based in part on the fact that the records of the San Francisco Conference indicate that Article 105 of the Charter was intended to preclude any Member State from increasing the financial burdens of the Organization. In implementation of this Article, the Convention on the Privileges and Immunities of the United Nations excluded by section 7 those taxes paid directly by the United Nations and provided in section 8 for the refund or remission of indirect taxes included in the price of goods. Thus, sections 7 and 8 taken together were intended to cover the entire field of taxes to which the United Nations might otherwise have been subjected.

3. Where the amount involved in stamp taxes has been small, we have not considered it administratively feasible to press for recognition of the exemption, However, in the present case the amount involved would appear to be important enough to warrant a re-examination of the question.

2 April 1964

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[2] It is expected that information summarizing the replies of the States concerned will be available for publication in a future issue of the *Juridical Yearbook*.

[3] United Nations, *Treaty Series*, vol. 1, p. 15.

[4] Document A/C.5/972. The Legal Counsel's statement is summarized in *Official Records of the General Assembly, Seventeenth Session, Fifth Committee*, 982nd meeting.

3. EXEMPTION OF UNITED NATIONS OFFICIAL VEHICLES FROM A TAX ON CIRCULATION—QUESTION WHETHER THIS TAX IS A DIRECT OR AN INDIRECT TAX FOR THE PURPOSES OF SECTION 7 (*a*) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS[5]

Letter to the Permanent Representative of a Member State

1. We have the honour to bring to your urgent attention a question concerning the exemption of the United Nations from the tax on circulation with respect to the official vehicles operated by the United Nations, in connexion with operations of a United Nations organ in your country.

2. Under section 7 of the Convention on the Privileges and Immunities of the United Nations, it is provided that "The United Nations, its assets, income and other property shall be: (*a*) exempt from all direct taxes". The afore-mentioned tax on circulation, in so far at it is directly imposed on the United Nations, is, within the meaning of the above-quoted provision of the Convention, a direct tax. This view, we are gratified to learn, has also been supported by your Ministry of Foreign Affairs.

3. The United Nations organ has, however, been advised by the Customs District Office that the Head Office of Taxes and Indirect Taxation maintains that the tax on circulation (which applies to the circulation of vehicles on roads and public areas) was an indirect tax and that the United Nations could not therefore be exempt from it. In view of this, the Customs Office has informed the United Nations organ that it should make payment of the tax as soon as possible and should notify customs of the details of payment, and has indicated that the import licenses would not be renewed and the vehicles would be considered as operating illegally until the taxes are paid.

4. We are deeply grateful for the intervention of the Ministry of Foreign Affairs in behalf of the United Nations in this matter. We should like to take this opportunity to present in more detail the view of the Organization and to request your assistance in obtaining a further consideration of the question by all competent authorities of your Government so as to accord exemption to the United Nations from the tax on circulation with respect to the official vehicles of the United Nations.

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., 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.

[5] United Nations, *Treaty Series*, vol. 1, p. 15.

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 fulfillment 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*" [6] (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.

7. Apart from the application of the Convention, we should like to refer to the fact that a specialized agency is granted exemption by your Government from the same tax on circulation with respect to that agency's official automobiles. This exemption is expressly provided for in an agreement between your Government and the specialized agency. As this was an agreement with your Government alone, it was of course possible to take notice of the particular terminology of the tax system employed in your country. Obviously this was not possible in the general Convention applicable to all Member States.

8. Since a United Nations specialized agency has been granted exemption from the tax on circulation, it is hoped that your Government will also find it possible to accord a similar exemption to the United Nations itself.

9. We shall therefore be very grateful if you would be good enough to request the Ministry of Foreign Affairs to intercede again with the competent authorities to authorize the exemption of United Nations official vehicles operating in your country from the tax on circulation.

10. Should there be any delay involved in obtaining the agreement of the tax authorities, we are confident that no unilateral steps will be taken by any Government authority which would in any way impede or interfere with the operation of the United Nations vehicles and we are certain that the Ministry of Foreign Affairs will, if it deems it necessary, call this to the attention of the appropriate officials concerned. May we again express our appreciation for your assistance and that of the Ministry of Foreign Affairs in this matter.

5 February 1964

4. Legal capacity of the United Nations and authority for purchase of premises in New York City

Letter to a savings and loan association of New York City

1. ...You have requested our opinion, first, with respect to the legal capacity of the United Nations to purchase the above lease and leasehold estate and to execute the various papers incidental to the purchase, and secondly, with respect to the United Nations officials authorized to execute on behalf of the United Nations the assumption of the lease and the other papers.

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[6] Documents of the United Nations Conference on International Organization, San Francisco, 1945, vol. XIII, p. 780.

2. The United Nations, under Article 104 of its Charter, enjoys in the territory of each of its Member States "such legal capacity as may be necessary for the exercise of its functions...". This provision has in the United States been implemented through the International Organizations Immunities Act, which provides that "International organizations shall, to the extent consistent with the instrument creating them, possess the capacity—(*i*) to contract; (*ii*) to acquire and dispose of real and personal property; ....." (22 USCA, section 288a, (*a*)); and the United Nations has been designated in Executive Order No. 8698 as a public international organization for the purpose of this Act. New York State Legislation provides that the United Nations may acquire by gift, devise or purchase any land or interest in land within the State useful in carrying on the functions of the Organization (McKinney's New York *States Law*, section 59—*i* and *j*).

3. The property in question is to be used for office space for the United Nations Training and Research Institute which the United Nations General Assembly has, by resolution 1934 (XVIII) of 11 December 1963, requested the Secretary-General to establish. The purchase of the lease and leasehold estate and the execution of the papers required for that purpose are, therefore, valid exercises of the Organization's powers under the Charter and within its legal capacity recognized under United States Federal and New York State Legislation.

4. The Secretary-General of the United Nations is, under Article 97 of the Charter, the chief administrative officer of the Organization. Unless the Secretary-General directs otherwise, the Under-Secretary, Director of General Services, or his authorized delegate is the contracting officer; this is provided in the United Nations Financial Rules which were formulated by the Secretary-General pursuant to the Financial Regulations adopted by the General Assembly at its fifth session (General Assembly resolution 456 (V) as amended by resolutions 950 (X) and 973 B (X)). With respect to the acquisition of the leasehold, the Under-Secretary, Director of General Services, is, *ex officio*, the official authorized to execute all the necessary papers.

5. It is, therefore, our opinion that all action required under the United Nations Charter, the applicable General Assembly resolutions, and the Regulations and Rules of the Organization in order to authorize the Organization's purchase of the lease and leasehold estate and the execution of the various papers required in that connection will have been taken by virtue of the execution by the Under-Secretary, Director of General Services, of the assumption of lease and leasehold and other agreements.

23 October 1964

5. Place of arbitration of disputes arising out of United Nations contracts

Memorandum to the Chief of the Purchase and Standards Section, Office of General Services

1. This is in reply to your memorandum of 24 September 1964 on the question whether the United Nations standard bid form and United Nations contracts should specify that the place of arbitration would be New York.

2. As you are aware the clause on arbitration included in the standard bid form and in United Nations contracts as presently worded provides for arbitration in accordance with the rules of the American Arbitration Association (AAA) where the other party is resident within the United States, and in other cases for arbitration in accordance with the rules of the International Chamber of Commerce (ICC) or, where appropriate, the rules of the Inter-American Commercial Arbitration Commission. In terms of these provisions, should the parties be unable to agree on the place of arbitration once a dispute has arisen, the place would be determined by the AAA or the ICC or the Inter-American Commercial Arbitration Commission, as the case may be.

3. There would naturally be practical advantages from our point of view should arbitrations be held in New York. On the other hand, there is the consideration that a requirement to this effect might dissuade parties either not resident or not represented in New York from bidding for United Nations contracts, and such a possibility should be avoided. To provide therefore in the standard bid form that arbitration should be in New York would not seem to us to be entirely advisable.

4. On the other hand, when it is apparent at the time of contracting that a strong conflict of interest would exist between the United Nations and the contracting party in respect to the place of arbitration, it would be advisable to include agreement on the place of arbitration in the disputes clause. In such cases, should the United Nations consider it advisable that arbitration in the particular case should be in New York, it would be advisable to try to reach agreement on the inclusion of the words "Any arbitration hereunder shall take place in New York unless otherwise agreed by the parties" in the arbitration clause of the contract.

9 October 1964

6. PROTECTION OF UNITED NATIONS CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT—APPLICABILITY TO THE UNITED NATIONS OF THE CONVENTION OF 14 MAY 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT[7]

Memorandum to the Under-Secretary for Conference Services

1. You asked for our comments and advice on the subject of protection of United Nations cultural property in the event of armed conflict, in particular as it related to the United Nations Office at Geneva.

The question of the applicability to the United Nations of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict appeared, upon examination, to be one of considerable complexity.

In order to clarify the various matters involved, we decided to seek the advice of UNESCO, under whose auspices the 1954 Convention was concluded and which under the Convention has certain special responsibilities in regard to its application.

2. Our observations would be as follows:

(*i*) Because under the Convention "cultural property" covers property "irrespective of origin or ownership", United Nations cultural property is already protected, under Chapter I of the Convention, in those States which are parties to the Convention. In particular, United Nations cultural property is covered by the provisions concerning protection, safeguarding and respect; it can bear the distinctive emblem provided by the Convention, etc.

(*ii*) Article 3 of the Convention states that "The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate". There may be advantage for the United Nations Office at Geneva to retain contacts in this connexion with the Swiss authorities, in order to be informed of the measures of protection envisaged or adopted by Switzerland.

It would appear however to us that the United Nations itself should take the precautionary measures which it may deem fit while keeping the Swiss authorities informed in appropriate circumstances.

[7] United Nations, *Treaty Series*, vol. 249, p. 215.

(*iii*) The question then arises whether the United Nations should also seek the "special protection" which may be provided by the Convention as regards "refuges intended to shelter movable cultural property in the event of armed conflict, ...centres containing monuments and other immovable cultural property of very great importance" referred to in article 8, paragraph 1, of the Convention (see also article 1 thereof).

Not only special collections of documents and archives, but certain United Nations buildings as a whole, such as those in Geneva, could legitimately be considered as of "historical or artistic interest" or as "centres containing a large amount of cultural property" and presumably qualify for the "special protection" envisaged in chapter II of the Convention. You will have noticed that the Holy See has requested "special protection" for the whole of the Vatican City and obtained assurances from the Government of Italy as to the use of certain areas surrounding the City.

However, in the case of the United Nations, the special protection envisaged by the Convention could only be obtained through the intermediary of the host State party to the Convention. Conditions are attached under article 8 of the Convention to obtaining such protection with which the United Nations may not at all times be able to comply and, under article 16, paragraph 1 (*a*), of the Regulations for the execution of the Convention, host States would be entitled to cancel the registration for special protection which they previously effected.

3. In the light of all relevant factors, our opinion would be that while we should remain in contact with Switzerland and possibly other host States parties to the Convention as to the measures they are taking under the Convention and make them aware, at appropriate times, of the problem which the utilization for military purposes of areas surrounding United Nations buildings may present for the Organization, we should not, in the present circumstances, seek "special protection" under the Convention.

Our position in this respect is motivated by the general attitude the United Nations has to preserve as regards the admissibility of armed conflicts, the responsibilities it has with respect to the maintenance of international peace and security, and the fact that we may assume that the Organization's buildings and belongings would presumably be respected to the extent possible in case of armed conflict, because of their very nature and purposes.

It may also be recalled that article 11 of the Regulations for the execution of the Convention provides for the establishment of "improvised refuges" *during* an armed conflict. In all likelihood, we could resort to that provision, should the need arise.

27 May 1964

7. Question of issuance of credentials by Permanent Representatives to the United Nations—Rule 27 of the rules of procedure of the General Assembly

Memorandum to the Assistant Director in charge of the International Trade Relations Branch, Department of Economic and Social Affairs

1. A few days ago you mentioned to us that some members of the Preparatory Committee of the United Nations Conference on Trade and Development thought that the United Nations had in practice permitted the Permanent Representative of a Member State to issue credentials to the delegates of his country to attend the General Assembly or a conference convened by the United Nations. We have looked into the matter and found that it has always been the policy of the Credentials Committee of the General Assembly to observe strictly the provisions of rule 27 under which the credentials can only be issued by the Head of the State or Government or by the Minister for Foreign Affairs. Consequently

the Credentials Committee considers that any credentials issued in the form of a letter signed by the Permanent Representative are not in order. The only exception was made at the fifteenth session of the General Assembly when, in accordance with a proposal by the Chairman, the Credentials Committee decided, as an exceptional measure, to find certain credentials signed by the Permanent Representatives of the Member States concerned to be in order. At the same time, however, the Committee recommended that the General Assembly should call the attention of the Member States to the necessity of complying with the requirement of rule 27 to ensure orderly procedure in the future. This recommendation was endorsed by the General Assembly in its resolution 1618 (XV) of 21 April 1961.

2. In so fas as we can ascertain, international conferences convened under the auspices of the United Nations which have adopted in their rules of procedure a provision on credentials equivalent to rule 27 of the rules of procedure of the General Assembly have also limited the authority to issue credentials to the Head of the State or Government or the Minister for Foreign Affairs. Exceptions to this rule were made only in cases of absolute necessity.

25 February 1964

8. Members of a Permanent Mission to an international organization not having the nationality of the sending State and practising a commercial activity—Nature of credentials of Permanent Missions

Letter to the Legal Counsel of an inter-governmental organization related to the United Nations

1. We wish to refer to your letter of 26 May 1964 in which you inform us concerning a problem which has recently arisen in your Organization as to whether you could or should refuse to accept as "resident representatives" to the Organization persons who are neither nationals, nor officials, of the State they are intended to represent, and who do not reside in the host country. We have read with interest your detailed account of this problem, and fully share your concern for the reasons which you have enumerated in your letter.

2. The practice of the United Nations has not developed to the point where we can offer you definitive answers to your questions. With reference to the first question, there are in fact no statutory limitations laid down in any document such as a resolution of the General Assembly or an agreement concerning Permanent Missions. In the interest of the Organization, however, one must conclude that there should be certain limitations which would protect the prestige of the Organization and of the Permanent Missions as a whole. It is not easy to define what these limitations are. At this stage, the most that can be said is that the appointment should have a genuine character and not be merely a complimentary title. In other words the appointee must be a *bona fide* member of the Mission able to perform his functions and not someone whose activities continue to be unrelated to the work of the Mission. The appointment also should not be prejudicial to the Organization in the sense that it should not be of a person who is in difficulties with the justice of the host country and may be seeking a diplomatic cover. On the other hand we would not consider the fact that the representative did not have the nationality of the State appointing him to be in itself a factor which would preclude acceptance. On this point the provisions of the Vienna Convention on Diplomatic Relations[8] are not in our view relevant. On the contrary, as far as the United Nations is concerned, we have argued that a host country is required to afford diplomatic privileges and immunities to a representative possessing the nationality of a third State.

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

3. With respect to your second question, there is of course no *agrément* which the Secretary-General can give or deny. On the other hand, we believe that there is an inherent right of the Secretary-General to approach a government and make representations against an appointment which would be seriously prejudicial to the interests of the Organization. Should persuasion fail to induce a government to withdraw an unsuitable appointment, the question remains as to what the Secretary-General could do. In less serious cases he may have to accept the decision of the government. An alternative might be for him to refer the matter to the General Assembly. While it would seem difficult to take a specific case to the General Assembly, the Secretary-General might consider presenting the problem to the Assembly as a question of principle and requesting its guidance. He could do this in the spirit of the Assembly's request in resolution 257 B (III) of 3 December 1948 that he study "all questions which may arise from the institution of permanent missions". If the Assembly should establish principles, it might be possible for the Secretary-General to refuse to accept credentials. While credentials of Permanent Missions have primary informative value and are presently examined only from the point of view of formal requirements, they might furnish an appropriate avenue for a refusal on substantive grounds should the General Assembly establish the principles on which such refusal might be given. If on the other hand the Assembly did not respond, the matter would be out of the hands of the Secretary-General.

4. We might also point out that the United States Government has circulated to the Permanent Missions in New York a note in which it has pointed out that "the acceptance of regular employment in the United States by a resident member of a Permanent Mission to the United Nations, or his spouse, entitled to diplomatic privileges and immunities pursuant to section 15 of the Headquarters Agreement between the United States and the United Nations, [9] is considered generally incompatible with the diplomatic status of such persons in this country". It does not appear that this position was contested, and in fact it seems consistent with article 42 of the Vienna Convention on Diplomatic Relations to which you refer.

5. We would also agree with you that while article 42 refers only to commercial activity in a receiving State, from the point of view of the international organization concerned, the principle may be equally applicable to a person who is a full-time business man, no matter where that commercial activity takes place, if the genuineness of his appointment is thereby brought into question.

9. EXEMPTION FROM TAXATION OF REAL PROPERTY LEASED BY A PERMANENT MISSION TO THE UNITED NATIONS—EFFECT OF A PROVISION IN THE LEASE BY WHICH THE TENANT UNDERTAKES TO PAY PART OF THE TAX ASSESSED AGAINST THE OWNER—ARTICLE 23, PARAGRAPH 2, OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS [10]

Letter to the Permanent Representative of a Member State

1. ...As you may be aware, New York State has provided by law, which we consider to be in implementation of section 15 of the Headquarters Agreement, [11] for the exemption from taxation of real property of Members of the United Nations when it is owned by the Governments or the Resident Representatives and is used exclusively for the purposes of maintaining offices or quarters for such representatives, or offices for the staff of such representatives (Section 418 of the New York Real Property Tax Law). The Secretary-General has supported claims for exemption of premises owned by Members of the United Nations.

[9] United Nations, *Treaty Series*, vol. 11, p. 11.

[10] *Ibid.*, vol. 500, p. 95.

[11] *Ibid.*, vol. 11, p. 11.

2. We would understand from your letter, however, that in the case of your office the building is privately owned and the tax assessed against the owner. Your Mission, like other tenants in the building, has assumed under the terms of its lease the obligation to pay a portion of any increase in the New York City real estate tax which may be assessed against the owner. In these circumstances the tax exemption to which the Mission would be entitled as an owner under New York law would not appear to be relevant. There is, we understand, no tax assessed directly against the tenant. It would appear that a provision in the lease for the tenant to pay the tax for the landlord would not change the taxable status of the property under New York law.

3. The problem raised in this situation, so far as international law is concerned, was considered by the International Law Commission during its preparation of the text which became article 23 of the Vienna Convention on Diplomatic Relations. The International Law Commission recognized an exemption from "...national, regional or municipal dues or taxes in respect of the premises of the mission, whether owned or leased...". However, in its commentary to the article, the Commission stated:

> "The provision does not apply to the case where the owner of leased premises specifies in the lease that such taxes are to be defrayed by the mission. This liability becomes part of the consideration given for the use of the premises and usually involves, in effect, not the payment of taxes as such, but an increase in the rental payable." [12]

4. This question was again considered at the Vienna Conference on Diplomatic Relations in 1961. While there was some difference of opinion on this point, the Conference added a second paragraph to article 23 as follows:

> "2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission."

5. We regret that in the light of the foregoing considerations we are not in a position to make representations with respect to taxes assessed against the lessor and not directly against the Mission.

11 August 1964

10. Practice of the United Nations as regards the consideration of the same questions by the Security Council and the General Assembly

Note to the Deputy Chef de Cabinet

(A) Relevant provisions of the Charter

1. The following provisions of the Charter are relevant to the question of simultaneous consideration by the General Assembly and the Security Council of the same agenda item:

"Article 12

"1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

"2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters."

[12] *Yearbook of the International Law Commission*, 1958, vol. II, p. 96 (article 21).

"Article 10

"The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

"Article 11

"2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

"Article 35

"1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

...

"3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12."

(B) Practice of the United Nations

2. Since the inception of the United Nations, there have been many occasions on which a question was considered both by the General Assembly and by the Security Council. These instances may be grouped for the purpose of presentation into two general categories: questions which were first considered by the Security Council and then by the General Assembly and questions which were first considered by the General Assembly and then by the Security Council.

(*i*) *Items originally submitted to the Security Council and later considered by the General Assembly*

(1) *Consideration by the General Assembly at the request of the Security Council*

3. The Security Council had requested the convening of *emergency special sessions* of the General Assembly in accordance with rule 8 (*b*) of the rules of procedure of the Assembly pursuant to Assembly resolution 377 A (V) ("Uniting for Peace") in the following cases: (1) the question of the invasion of Egypt; (2) the question of Hungary; (3) the question of Lebanon and Jordan and (4) the situation in the Congo. In each of these cases, the request was made in the form of a resolution adopted by the Security Council on the ground that the Security Council was unable to exercise its primary responsibility for the maintenance of international peace and security because of the lack of unanimity among its permanent members.

4. The Security Council has also requested the convening of a *special session* of the General Assembly in accordance with rule 8 (*a*) of the Assembly's rules of procedure. Thus, on 1 April 1948, the Council adopted a resolution requesting the Secretary-General to con-

voke a special session of the General Assembly "to consider further the question of the future government of Palestine ". [13]

5. The Security Council had also sent to the General Assembly questions which were considered at *regular sessions* of the Assembly. This was done by removal of the question from the list of matters of which the Security Council was seized. For example, on 4 November 1946, the Security Council resolved "that the situation in Spain is to be taken off the list of matters of which the Council is seized, and that all records and documents of the case be put at the disposal of the General Assembly". The Council requested "the Secretary-General to notify the General Assembly of this decision." In the case of the Greek frontier incidents question, the Security Council, on 15 September 1947, "(*a*) [*resolved*] that the dispute between Greece, on the one hand, and Albania, Yugoslavia and Bulgaria, on the other, be taken off the list of matters of which the Council is seized; and (*b*) [*requested*] that the Secretary-General be instructed to place all records and documents in the case at the disposal of the Assembly General." In another case, a proposal to defer consideration of an item (Complaint of armed invasion of Taiwan (Formosa), 1950) before the Council when a similar item was to be discussed by the General Assembly was adopted by the Council.

6. Although no decision had been taken by the Security Council to request the General Assembly to make recommendations in respect of a matter of which the Council remained seized, the possibility for the Council to make such a request is clearly set forth in Article 12, paragraph 1, of the Charter. On several occasions, a request of this nature had been formulated in draft resolutions submitted to the Security Council. Thus, in connection with the Greek frontier incidents question considered by the Council in September 1947, a draft resolution was proposed by the United States which read as follows:

> "*The Security Council*, pursuant to Article 12 of the Charter,
>
> "(*a*) *Requests* the General Assembly to consider the dispute between Greece on the one hand and Albania, Yugoslavia and Bulgaria on the other, and to make any recommendations with regard to that dispute which it deems appropriate under the circumstances;
>
> "(*b*) *Instructs* the Secretary-General to place all records and documents in the case at the disposal of the General Assembly."

In connexion with the question of Southern Rhodesia, considered by the Council in September 1963, a three-power draft resolution was submitted which, after inviting the United Kingdom Government to take certain actions, would request "the General Assembly to continue its examination of the question... with a view to securing a just and lasting settlement." Both draft resolutions referred to above failed of adoption owing to the negative vote of a permanent member. In the first case, the objection was made on the ground that a request to the Assembly for recommendation would mean an abdication by the Council of its primary responsibility for the maintenance of international peace and security under the Charter. In the second case, the objection was made to the effect that the question was one of domestic jurisdiction and neither the Security Council nor the General Assembly was competent to deal with it. The rejection of the draft resolutions is, therefore, not to be construed as a denial of the power of the Security Council to request the General Assembly for recommendations as provided for in Article 12, paragraph 1, of the Charter.

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[13] It may be noted that the Palestine question was first submitted to the General Assembly which referred certain aspects falling within the scope of Chapter VII of the Charter to the Security Council for consideration. It may also be noted that in the course of the discussion which led to the adoption of the above-mentioned resolution, the representative of Belgium expressed the following opinion: "...the convoking of the General Assembly would not prevent the Council from considering, in the meantime, any substantive proposals which it might be in a position to submit to the General Assembly."

(2) *Consideration by the General Assembly at the request of Member States*

The Indonesian question

7. The Indonesian question as submitted by Australia in July 1947 was considered by the Security Council in the years 1947, 1948 and 1949. By a letter dated 30 and 31 March 1949, the delegations of India and Australia requested that the Indonesian question be placed on the agenda of the second part of the third regular session of the General Assembly. On 12 April, during the consideration by the General Assembly of adoption of this agenda item, the representative of the Netherlands, supported by the representatives of Norway and Belgium, invoked Article 12, paragraph 1 of the Charter as a ground for objecting to the inclusion of the item in the agenda. They stated that the General Assembly could not make recommendations on the subject unless it was so requested by the Security Council and that a discussion in the General Assembly could in no way lead to any conclusion. On the other hand, the representative of Iraq, while recognizing the existence of procedural difficulties, considered that as long as paragraph 2 of Article 11 of the Charter remained in effect, the General Assembly had a right to discuss any question and any dispute which was before the Security Council. [14] After the General Assembly had voted in favour of inclusion of the item on its agenda, a resolution was adopted to defer further consideration of the item to the fourth regular session of the Assembly (resolution 274 (III)).

8. At the Assembly's fourth session, two draft resolutions were submitted in the *ad hoc* Political Committee. The first draft resolution provided that the General Assembly should "welcome" the announcement that an agreement had been reached at the Round-Table Conference, "commend" the parties concerned and the United Nations Commission for Indonesia for their contributions thereto and "welcome" the forthcoming establishment of the Republic of the United States of Indonesia as an independent sovereign State. The second draft resolution contained provisions for the withdrawal of the Netherlands forces, the establishment of a United Nations commission to observe the implementation of such measures and to investigate the activities of the Netherlands authorities, as well as instructions to the commission regarding its work. During the discussion, the Chairman drew the attention of the Committee to the provisions of Article 12, paragraph 1, of the Charter. Pointing out that the Security Council was still seized of the question, he stated that, before putting each of the draft resolutions to the vote, he would ask the Committee to pronounce itself on whether its terms constituted a recommandation within the meaning of Article 12, paragraph 1. The *ad hoc* Political Committee decided by 42 votes to one with 6 abstentions, that the first draft resolution did not constitute a recommendation within the meaning of Article 12, paragraph 1, and by 42 votes to 5 with 4 abstentions, that the second draft resolution did constitute a recommendation. The first draft resolution was then adopted and the second rejected. [15]

[14] In this connexion, the representative of Iraq stated at the 190th plenary meeting that "The right of the General Assembly to discuss any situation or dispute already before the Security Council had been thoroughly considered at the San Francisco Conference. Some delegations had thought that the General Assembly should have the right to discuss questions of any kind, even if they were before the Security Council, and to make recommendations with regard to them. Other delegations had opposed the granting of such a right to the General Assembly. A compromise had finally been reached whereby the General Assembly could consider a question which was on the agenda of the Security Council but could not make recommendations upon it".

[15] A similar situation arose at the first emergency special session of the General Assembly in connexion with two draft resolutions submitted by the United States. Objection to those draft resolutions were raised on the ground that the first draft resolution which dealt with the Palestine question in general and the second which dealt with the Suez Canal question were matters of which the Security Council was actually seized. The emergency session had been convened to consider the situation arisen from the invasion of Egypt and not another question. The two draft resolutions were subsequently withdrawn.

The Tunisian question

9. On 20 July 1961, Tunisia requested a meeting of the Security Council as a matter of extreme urgency to consider its complaint against France "for acts of aggression infringing the sovereignty and security of Tunisia and threatening international peace and security." On 22 July, the Council adopted a resolution which (1) called for an immediate cease-fire and a return of all armed forces to their original position and (2) decided to continue the debate. On 29 July, three draft resolutions dealing with implementation of the earlier resolution were rejected by the Council.

10. On 7 August, a number of delegations requested the convening of a special session of the General Assembly "to consider the grave situation in Tunisia obtaining since 19 July 1961, in view of the failure of the Security Council to take appropriate action". On the receipt of the concurrence of a majority of the Members on 10 August, the Secretary-General summoned, in accordance with rule 8 (*a*) of the Assembly's rules of procedure, the third special session of the General Assembly to meet on 21 August. In its resolution 1622 (S-III) adopted on 25 August, the Assembly, while noting that the Security Council had failed to take further appropriate action, re-affirmed the Security Council's interim resolution, urged the Government of France to implement fully the provisions of the operative paragraph 1 of that resolution, recognized the sovereign right of Tunisia to call for the withdrawal of all French armed forces present on its territory without its consent, and called upon the Governments of France and Tunisia to enter into immediate negotiations to devise peaceful and agreed measures for the withdrawal of French armed forces from Tunisian territory.

The situation in Angola

11. The question of Angola was first submitted to the Security Council in February 1961. On 15 March, the Council failed to adopt a draft resolution which would call upon Portugal to implement General Assembly resolution 1514 (XV) (containing the declaration on ending colonialism) and propose to establish a sub-committee to examine the question and report to the Council. On 20 March, 39 delegations requested the inclusion of the question in the Assembly's agenda. Opposition to consideration of the question by the Assembly was based on Article 2, paragraph 7, of the Charter. During the discussion, a number of delegations proposing the item stated that because of the failure of the Security Council to take action, it had become necessary to refer the question to the General Assembly, which should take immediate measures to bring about a solution of the problem. A draft resolution identical in terms with that submitted to the Security Council, except that the proposed sub-committee would examine statements before the Assembly (rather than the Council) and report to the Assembly, was adopted as resolution 1603 (XV) on 20 April 1961.

(ii) Items submitted to the General Assembly and later also considered by the Security Council

(1) *By decision of the General Assembly*

12. The Palestine question was originally submitted to the General Assembly. In its resolution 181 (II), the Assembly recommended to Members the adoption and implementation of a plan of partition with economic union and *requested the Security Council* to take the necessary measures provided for in the plan and to consider, if circumstances during the transitional period required such consideration, whether the situation in Palestine constituted a threat to the peace. Since then the Palestine question had continued to be on the agenda of both the General Assembly and the Security Council, with the latter dealing generally with security and military aspects of the question and the former with political, economic and social aspects.

(2) *At the request of Member States*

13. Only in one case had the Security Council rejected the request by a Member State for inclusion in its agenda of an item which was before the General Assembly and in respect of which arguments based on Article 12, paragraph 1, of the Charter were advanced. This was the case of a USSR request dated 5 November 1956 for consideration by the Council of an item entitled "Non-compliance by the United Kingdom, France and Israel with the decision of the emergency special session of the General Assembly of the United Nations of 2 November 1956 and immediate steps to halt the aggression of the aforesaid States against Egypt." On the one hand it was argued that just as the General Assembly could not consider a question of which the Security Council was seized, so the Security Council could not logically consider a question pending before the General Assembly, particularly one referred to the Assembly by the Council itself. On the other hand it was contended that the fact that the General Assembly was taking action on a question did not relieve the Security Council of the obligation to act if the circumstances demanded it. The USSR request was rejected by 3 votes in favour, 4 against with 4 abstentions.

14. In the more recent cases dealt with below, whether the questions were originally submitted to the General Assembly or the Security Council, concurrent consideration by the two organs of those questions took place and in most cases both organs adopted substantive resolutions without reference to Article 12, paragraph 1, of the Charter.

The situation in the Congo, 1960-1961

15. At its fourth emergency special session convened at the request of the Security Council (resolution adopted on 16/17 September 1960) to consider the situation in the Congo, the General Assembly adopted, on 20 September 1960, resolution 1474 (ES-IV) which took note of the resolutions previously adopted by the Security Council and requested Member States to take certain actions. By a letter dated 16 September 1960, the USSR requested the inclusion of the Congo question as an additional item in the agenda of the fifteenth regular session of the General Assembly. On 28 September, the General Committee decided to include the item in the agenda of the Assembly. On 6 December 1960, the USSR proposed that the question of the situation in the Congo and the steps to be taken on the matter should be examined at the earliest possible date by the Security Council and the General Assembly. The Council met from 7 to 14 December but failed to adopt three draft resolutions before it. On 16 December, the General Assembly resumed consideration of the situation in the Congo and had before it two draft resolutions (one submitted by 7 Afro-Asian States and Yugoslavia, and the other by the United States and the United Kingdom), both containing provisions requiring specific action. The two draft resolutions were rejected by vote, but Article 12, paragraph 1, of the Charter was not referred to during the discussion. On 20 December, the Assembly adopted resolution 1592 (XV) to keep the item on the agenda of its resumed fifteenth session.

16. The Security Council met again from 12 to 14 January and from 1 to 21 February 1961 to consider the Congo question at the request of the USSR. These meetings resulted in the adoption by the Council, on 21 February, of a resolution dealing with the situation. Consideration of the Congo question by the General Assembly at its resumed fifteenth session resulted in the adoption, on 15 April 1961, of resolutions 1599 (XV) calling upon States to take certain action and "deciding" on the complete withdrawal and evacuation of military personnel and political advisers not under the United Nations Command, 1600 (XV) establishing a Commission of Conciliation and 1601 (XV) establishing a Commission of Investigation. At no time was Article 12, paragraph 1, of the Charter invoked as a limitation of the competence of the Assembly to make recommendations.

The situation in Angola, 1961-1962

17. After the General Assembly adopted on 20 April 1961 resolution 1603 (XV) to establish a sub-committee (*see* paragraph 11 above), a group of States, by a letter dated 26 May 1961, requested consideration by the Security Council of the Angolan question. On 9 June, the Council adopted a resolution reaffirming the Assembly resolution, calling upon Portugal to desist from repressive measures and requesting the sub-committee to report both to the Security Council and to the Assembly.

18. By a letter dated 19 July 1961 addressed to the Secretary-General, a group of States considered the situation in Angola as endangering international peace and security and reserved the right to ask for "effective remedial action to be taken either by the Security Council or by the General Assembly." The item entitled "The situation in Angola: report of the Sub-committee established by General Assembly resolution 1603 (XV)" was placed on the provisional agenda of the sixteenth session of the Assembly. Portugal objected to the inclusion of this agenda item on ground of Article 2, paragraph 7, of the Charter. On 30 January 1962, the Assembly adopted resolution 1742 (XVI) by which it decided to continue the Sub-Committee, requested Member States to take certain actions and recommended "the Security Council, in the light of the Council's resolution of 9 June 1961 and of the present resolution, to keep the matter under constant review."

The apartheid *question, 1960-1963*

19. Beginning with its twelfth session, the General Assembly has adopted at each regular session a resolution on the question of race conflict in South Africa resulting from the policies of *apartheid* of the Government of South Africa. Resolution 1375 (XIV) on this question was adopted by the Assembly on 17 November 1959. On 25 March 1960, 29 Asian-African States requested an urgent meeting of the Security Council to consider the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa. They considered that the situation endangered international peace and security. The question was taken up by the Council on 30 March. On 1 April, the Council adopted a resolution calling upon the Union Government to initiate measures to bring about racial harmony and to abandon its policies of *apartheid* and racial discrimination. Subsequently, the Assembly adopted the following resolutions on the *apartheid* question: 1598 (XV) of 13 April 1961, 1663 (XVI) of 28 November 1961, and 1761 (XVII) of 6 November 1962. In the last-mentioned resolution, the Assembly decided to establish a Special Committee on *apartheid*, invited Member States to inform the General Assembly at its eighteenth session regarding actions taken, separately or collectively, in dissuading the Government of South Africa from pursuing its policies of *apartheid*, and requested "the Security Council to take appropriate measures, including sanctions, to secure South Africa's compliance with the resolutions of the General Assembly and of the Security Council on this subject and, if necessary, to consider action under Article 6 of the Charter."

20. On 11 July 1963, 32 African States requested a meeting of the Security Council to consider the explosive situation in South Africa which constitued a serious threat to international peace and security. Meanwhile, the Special Committee on *apartheid* had submitted its reports both to the General Assembly and to the Security Council. On 7 August, the Council adopted a resolution calling upon the Government of South Africa to abandon its policies of *apartheid* and to liberate prisoners, calling upon all States to cease forthwith the sale and shipment of arms and ammunition of all types and requesting the Secretary-General to keep the situation in South Africa under observation and to report to the Security Council by 30 October 1963.

21. In accordance with Assembly resolution 1761 (XVII) (*see* paragraph 19 above), the item "The policies of *apartheid* of the Government of the Republic of South Africa: reports of the Special Committee... and replies by Member States under General Assembly resolution 1761 (XVII)" was included in the agenda of the Assembly's eighteenth session. On 11 October 1963, the Assembly adopted resolution 1881 (XVIII) requesting once more the Government of South Africa to release political prisoners, requesting all Member States to make all necessary efforts to ensure compliance by the Government of South Africa with the Assembly's request, and requesting the Secretary-General "to report to the General Assembly and the Security Council, as soon as possible during the eighteenth session", on the implementation of the resolution.

22. On 23 October, 32 States requested a meeting of the Security Council to consider the report submitted by the Secretary-General pursuant to Council resolution of 7 August. On 4 December, the Council adopted a resolution which reaffirmed in essence the provisions of its previous resolution and requested the Secretary-General to establish a group of experts to examine methods of resolving the situation.

23. Meanwhile, a report of the Secretary-General pursuant to Assembly resolution 1881 (XVIII) of 11 October (*see* paragraph 21 above) was circulated to the General Assembly on 19 November. After consideration, the Assembly adopted, on 16 December 1963, resolution 1978 (XVIII) appealing again to all States to take appropriate measures and requesting the Special Committee to continue its work and submit reports to the General Assembly and to the Security Council whenever appropriate. In the same resolution the Assembly further requested the Secretary-General to provide relief and assistance, through appropriate international agencies, to the families of all persons persecuted by the Government of South Africa and to report thereon to the Assembly at its nineteenth session.

24. In the course of the practically simultaneous consideration of the *apartheid* question in the Security Council and in the General Assembly, no reference was made to Article 12, paragraph 1 of the Charter.

The question relating to Territories under Portuguese Administration, 1962-1963

25. By resolution 1699 (XVI) of 19 December 1961, the General Assembly established a Special Committee on Territories under Portuguese Administration to report on the question. In its resolution 1807 (XVII) of 14 December 1962, the Assembly, noting the opinion of the Special Committee concerning the implications of the supply of military equipment to the Portuguese Government, urged Portugal to give effect to the recommendations of the Special Committee, requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to examine the situation, called upon Member States to use their influence to induce Portugal to carry out its obligations under Chapter XI of the Charter, requested all States to refrain from offering Portugal assistance and to prevent the sale and supply of arms and military equipment to the Portuguese Government, and requested "the Security Council, in case the Portuguese Government should refuse to comply with the present resolution and previous General Assembly resolutions on this question, to take all appropriate measures to secure the compliance of Portugal with its obligations as a Member State."

26. On 4 April 1963, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted a resolution drawing the immediate attention of the Security Council to the situation in the Territories under Portuguese administration, with a view to the Council taking appropriate measures, including sanctions, to secure the compliance by Portugal of the relevant resolutions of the General Assembly and of the Security Council. The text of this resolution and the report of the Special Committee were transmitted to the Council.

27. On 11 July 1963, the President of the Security Council received a request from 32 African States to convene a meeting of the Council. On 31 July, the Council adopted a resolution by which it called upon Portugal to take certain action, requested all States to prevent sale and supply of arms and military equipment to the Portuguese Government and requested the Secretary-Genrael to report to the Council by 31 October 1963.

28. On 3 December, the General Assembly adopted resolution 1913 (XVIII) by which the Assembly, recalling the resolutions previously adopted by the Assembly and the Council on the question and in particular the provisions of Council resolution of 31 July, and noting with regret and concern the continued refusal of the Portuguese Government to implement those resolutions, requested "the Security Council to consider immediately the question of Territories under Portuguese administration and to adopt necessary measures to give effect to its own decisions, particularly those contained in the resolution of 31 July 1963" and decided to maintain the question on the agenda of its eighteenth session.

29. Prior to the adoption by the General Assembly of resolution 1913 (XVIII), 29 African States requested the convening of the Security Council to consider the report of the Secretary-General submitted in pursuance of Council resolution of 31 July 1963. The Council began consideration of the question on 6 December. On 11 December, the Council adopted a resolution which, *inter alia*, called upon all States to comply with Council resolution of 31 July and requested the Secretary-General to continue his efforts and report to the Council not later than 1 June 1964.

30. During the discussion of the question in the Assembly and the Council, the provisions of Article 12, paragraph 1, of the Charter were not mentioned. Objection to the competence of the two organs to deal with the question was raised by Portugal on ground of Article 2, paragraph 7.

The question of Southern Rhodesia, 1962-1963

31. By resolution 1755 (XVII) of 12 October 1962, the General Assembly urged the Government of the United Kingdom to take measures to secure the release of political prisoners and to lift the ban on the Zimbabwe African Peoples Union. In its resolution 1760 (XVII) of 31 October, the Assembly, *inter alia*, requested the Government of the United Kingdom to take certain measures including the convening of a constitutional conference on Southern Rhodesia, requested the Acting Secretary-General to lend his good offices to promote conciliation and decided to keep the question on the agenda of its seventeenth session.

32. On 2 and 30 August 1963, requests were made by a number of African States for a meeting of the Security Council to consider the question of Southern Rhodesia. The Council met from 9 to 13 September but failed to adopt a draft resolution submitted by Ghana, Morocco and the Philippines, owing to the negative vote of a permanent member.

33. On 18 July 1963, a group of States requested the inclusion of the question of Southern Rhodesia in the agenda of the eighteenth session of the General Assembly. After consideration of the question, the Assembly adopted two resolutions. By resolution 1883 (XVIII) of 14 October, the Assembly invited the Government of the United Kingdom not to take certain actions relating to the status of Southern Rhodesia, on the one hand, and to put into effect the previous Assembly resolutions concerning the question, on the other. By resolution 1889 (XVIII) of 6 November, the Assembly, *inter alia*, invited once more the United Kingdom to hold a constitutional conference, urged all Member States to use their influence with a view to ensuring the realization of the legitimate aspirations of the people of Southern Rhodesia, requested the Secretary-General to continue to use his good offices and decided to keep the question on the agenda of its eighteenth session.

(C) Conclusions

34. Without a detailed legal analysis being undertaken, the following brief observations may be made on the basis of the text of the Charter provisions and of the survey of the past practice of the General Assembly and the Security Council as summarized in this note.

(*i*) A request by the Government of a Member State to have a question of which the Security Council is seized placed on the provisional agenda or the supplementary list of items for a regular session of the General Assembly would have to be complied with by the Secretary-General. The General Assembly itself, acting on the basis of a recommendation by the General Committee, would decide whether it wishes to include the item in the agenda of the session.

(*ii*) In the event the Security Council removes the question from the list of matters of which it is seized or in the event the Security Council specifically requests the General Assembly to consider the question, the Assembly could perform in regard to that question its functions under the Charter without any special limitations as to the nature and scope of its recommendations.

(*iii*) Even if the Security Council remains seized of the question, Article 12 of the Charter would not bar the General Assembly from considering and discussing the question as it is only "recommendations" which are prohibited by the Article.

(*iv*) The above summary of the practice contains instances in which the General Assembly recognized the distinction for purposes of Article 12 between "recommendations" and resolutions which were not recommendatory. In the latter category, for example, were resolutions welcoming steps taken by the parties to the dispute and commending Member States or United Nations organs for their contributions to the settlement.

(*v*) The most interesting feature of the practice is that the General Assembly, beginning in 1960, adopted several resolutions clearly containing recommendations in cases of which the Security Council was then seized and could reasonably be regarded as exercising its functions in regard to that question. Six such cases have been found in which the General Assembly appears to have departed from the actual text of Article 12. In none of these cases, however, did a Member object to the recommendation on the ground of Article 12.

(*vi*) Although Article 12 has not been invoked in these cases, it would be difficult to maintain that it is legally no longer in effect. A Member may therefore argue in the General Assembly that Article 12 forbids the adoption of a recommendation in the case, and the point, if pressed, may have to be decided by the General Assembly.

(*vii*) Finally, it is to be noted that Governments may argue that the phrase "recommendation with regard to that dispute or situation", used in Article 12, is not applicable to certain types of resolutions, such as a confirmation by the General Assembly of a Security Council resolution, or a resolution reminding Member States to comply with certain Charter principles. There may, of course, be disagreement as to whether such resolutions contain implied recommendations and, if raised, this issue would have to be determined by the General Assembly, either by explicit decision or implicity in its action on the proposed resolution.

10 September 1964

11. United Nations Conference on Trade and Development—Question of participation by States which are not Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency

Note to the Deputy Chef de Cabinet

1. In its resolution 1785 (XVII) of 8 December 1962, the General Assembly endorsed the decision of the Economic and Social Council to convene a United Nations Conference

on Trade and Development and requested the Secretary-General "to invite all States Members of the United Nations and members of the specialized agencies and of the International Atomic Energy Agency to take part in the Conference". This means, of course, that only those States designated in the resolution can be invited as participants to the Conference. Neither the Conference itself nor the Secretariat is in a position to change the composition of the Conference which has been decided upon by the General Assembly. This is a point which has been well settled in practice.

2. The question then appears to be whether "States" other than those designated in the resolution may be invited or permitted to take part in the Conference in some other capacity. The practice shows that specialized agencies and non-governmental organizations have been invited to send observers to attend international conferences convened by the United Nations. The status of observers in the official sense is governed by the rules of procedure of the conference concerned. The draft rules of procedure of the United Nations Conference on Trade and Development provide for the participation of observers for specialized agencies, inter-governmental bodies and non-governmental organizations. These rules, like the rules of other international conferences under the auspices of the United Nations, have not accorded observer status to non-invited "States", countries or territories.

3. There are, of course, facilities for the public to attend open meetings of the Conference and representatives of non-invited "States" can no doubt avail themselves of such facilities. In the absence of a clear designation by the competent organ of the United Nations as to which non-invited "States" may participate in some capacity in the work of the Conference, the Secretary-General cannot make a decision to that effect without being involved in a political controversy. Such controversy arises from the fact that there exists sharp differences of opinion on whether or not some entities are sovereign States. Thus, when the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations was discussed at the eighteenth session of the General Assembly, an amendment submitted by Czechoslovakia would request the Secretary-General to invite "any State" to become a party to the treaties in question. In reply to an inquiry from the representative of Guatemala, the Secretary-General made the following statement:

> "...There are certain areas in the world the status of which is not clear. If I were to invite or to receive an instrument of accession from any such area, I would be in a position of considerable difficulty, unless the Assembly gave me explicit directives on the areas coming within the "any State" formula. I would not wish to determine on my own initiative the highly political and controversial question whether or not the areas, the status of which was unclear, were States within the meaning of the amendment to the draft resolution now being considered. Such a determination, I believe, falls outside my competence.
>
> "101. In conclusion, I must therefore state that if the 'any State' formula were to be adopted, I would be able to implement it only if the General Assembly provided me with the complete list of the States coming within that formula, other than those which are Members of the United Nations or the specialized agencies, or parties to the Statute of the International Court of Justice." [16]

4. In view of the foregoing analysis, the Secretariat of the Conference should be informed that it is not in a position to invite "States" not designated in General Assembly resolution 1785 (XVII) to attend the Conference. Nor should the Secretariat arrange for their participation in some limited capacity or enter into consultation with them for this purpose.

4 February 1964

[16] *Official Records of the General Assembly, Eighteenth Session, Plenary Meetings*, 1258th meeting, paras. 100-101.

12. United Nations Conference on Trade and Development—Question whether the Conference would be competent to invite an inter-governmental organization not invited by the Economic and Social Council

Memorandum to the Secretary of the United Nations Conference on Trade and Development

1. This is with reference to the question whether the United Nations Conference on Trade and Development would be competent to invite to the Conference an inter-governmental organization not invited by the Economic and Social Council.

2. The Conference was called by the Council and would thus derive its competence from the Council. Whether therefore the Conference would have the competence to issue an invitation of this kind would depend on whether the Council had in fact conferred such a competence upon the Conference.

3. In its resolution calling the Conference, resolution 963 (XXXVI) of 18 July 1963, the Council referred to the subject of invitations to inter-governmental economic organizations. Paragraphs 8 and 9 of Part I of its resolution are in these terms:

> "8. *Further approves* the recommendation of the Preparatory Committee contained in paragraph 208 of its report [17] as regards the invitation to the inter-governmental economic organizations;
>
> "9. *Requests* the Secretary-General to submit to the Council at its resumed thirty-sixth session proposals regarding the inter-governmental economic organizations which would be chiefly interested in the work of the Conference, and regarding the practical rules to be observed for the participation of those organizations in the Conference as observers".

Paragraph 208 of the Preparatory Committee's report was as follows:

> "The Preparatory Committee discussed the question of participation of inter-governmental regional economic organizations in the work of the Conference. In this connexion it considered a submission of the delegation of Czechoslovakia (E/CONF.46/PC/L.26) on co-operation with the secretariat of the Council of Mutual Economic Assistance (CMEA). Some suggestions were made as to regional economic organizations which might be invited but it was agreed to leave the matter for consideration by the Economic and Social Council. The Preparatory Committee decided to recommend to the Economic and Social Council that inter-governmental regional economic organizations interested in the United Nations Conference on Trade and Development be invited to send observers to the third session of the Preparatory Committee as well as to the Conference itself."

4. As requested by the Council, the Secretary-General submitted to the Council at its resumed thirty-sixth session a note (E/3843 and Corr.1) containing a list of inter-governmental economic organizations which in his view should be invited to participate in the Conference.

5. The Council, at its resumed thirty-sixth session, considered, as item 39, the subject of the participation of inter-governmental economic organizations as observers at the United Nations Conference on Trade and Development and the Secretary-General's note, and adopted at its 1306th meeting, on 16 December 1963, the suggestion made by its President that the Council should approve the recommendations made by the Secretary-General regarding the list of inter-governmental organizations to be invited to participate in the Conference with the addition to that list of a further name that had been submitted in the course of the Council's discussions.

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[17] *Official Records of the Economic and Social Council, Thirty-sixth Session, Annexes*, agenda item 5, document E/3799.

6. These were the relevant decisions of the Council, and they do not in our view provide evidence of a grant by the Council to the Conference of the competence to invite an inter-governmental organization which was not included in the list adopted by the Council. The fact that the Council did not specifically declare that the list was exhaustive does not in our opinion constitute evidence of an intention on its part to confer on another body the competence to invite inter-governmental organizations not included in such a list.

7. We would add moreover that the draft rules of procedure proposed for the Conference by the Preparatory Committee and approved by the Council in its resolution convening the Conference do not reflect the possibility of inter-governmental organizations not invited by the Council being invited to the Conference. The relevant provisions of the draft rules of procedure are as follows:

"*Rule 59*

"1. Observers for specialized agencies and inter-governmental bodies invited to the Conference may participate, without the right to vote, in the deliberations of the Conference and its Main Committees and Sub-Committees, upon the invitation of the President or Chairman, as the case may be, on questions within the scope of their activities.

"2. Written statements of such specialized agencies and inter-governmental bodies shall be distributed by the secretariat to the delegations at the Conference." [18]

8. We would in conclusion draw attention to the fact that while inter-governmental organizations invited to the Conference by the Council would be entitled to participate in the Conference, the exercise of the right to participate is made dependent upon the invitation of the President of the Conference or of the Chairmen of the Committees and Sub-Committees.

13 February 1964

13. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT—QUESTION WHETHER THE CONFERENCE WOULD BE COMPETENT TO INVITE NON-GOVERNMENTAL ORGANIZATIONS NOT IN CONSULTATIVE STATUS WITH THE ECONOMIC AND SOCIAL COUNCIL

Memorandum to the Secretary of the United Nations Conference on Trade and Development

1. This is with reference to the question whether the United Nations Conference on Trade and Development would be competent to invite non-governmental organizations which are not in category A or B or on the register and thus not in consultative status with the Economic and Social Council to participate in the Conference.

2. The Economic and Social Council did not specifically refer in its resolution convening the Conference, resolution 963 (XXXVI) of 18 July 1963, to the participation of non-governmental organizations in the Conference.

3. There was, however, some discussions on the subject at the Council's resumed thirty-sixth session, [19] where the representative of the USSR, in the course of a discussion on the participation of inter-governmental economic organizations at the Conference, said that, in his view, an invitation should also be extended to the International Organization for Standardization and that the "Secretary-General would also be well advised to invite to the Conference observers from such non-governmental organizations as the World Federation of Trade Unions and the International Co-operative Alliance, which had consultative status with the Economic and Social Council". The representative of France stated that the "participation of non-governmental organizations seemed to him a matter which the Council should not take up at the present time, but which should be left to the Preparatory Com-

[18] *Ibid.*, para. 203.

[19] *Official Records of the Economic and Social Council, Resumed Thirty-sixth Session,* 1306th meeting, paras. 61-67.

mittee to decide". The representative of the USSR "wished to know, however, whether the Preparatory Committee's terms of reference authorized it to extend an invitation to participate in the Conference to any organization as it saw fit. If so, his delegation saw no objection to making the Preparatory Committee responsible for considering the question of non-governmental organizations". The United States representative pointed out "that item 39 of the Council's agenda covered only the participation of inter-governmental economic organizations. A decision had already been taken regarding non-governmental organizations in consultative status with the Economic and Social Council". The representative of Italy stated that "it was difficult for him to give an opinion on the USSR proposal straight away, but he considered that the United States representative had clearly stated the Council's position". The representative of the USSR said then "that he was satisfied with the United States representative's explanation. The International Organization for Standardization was, in fact, among the organizations in consultative status with the Council". There was no further discussion of the subject, and accordingly no decision was made on the invitation of non-governmental organizations not in consultative status, in particular as to whether any organization of this kind would be entitled to participate or as to whether only some would be so entitled and if so which or how they were to be selected for participation and invited. Nor did the Council reach any such decision at its thirty-sixth session, although the Council approved in its resolution convening the Conference, without discussion on the matter, the draft rules of procedure that had been proposed for the Conference by the Preparatory Committee, rule 60 of which was in these terms:

> "Non-governmental organizations in category A or B or on the register or who may be invited may designate authorized representatives to sit an observers at public meetings of the Conference and its Committees and Sub-Committees." [20]

4. While the draft rules of procedure thus provide for the procedure to be followed in the Conference by non-governmental organizations not in consultative status if they should be invited, the draft rules do not in our view purport to confer upon any such organization the right as such to participate in the Conference. The Council's approval of the draft rules of procedure for the Conference should not therefore be construed as involving a grant by the Council of the right to participate to any such organization or as enabling the Conference, which would have competence over its rules of procedure, to make such a grant.

5. In these circumstances, the Council should, in our opinion, be regarded as having neither invited a non-governmental organization not in consultative status to participate in the Conference nor as having delegated competence with respect to such invitations, in particular as not having delegated such competence to the Conference. Accordingly the Conference would not, in our opinion, be competent to invite a non-governmental organization not in consultative status to participate in the Conference.

13 February 1964

14. Position of Luxembourg in relation to the 1962 International Coffee Agreement [21] —Accession by Belgium extending to Luxembourg by virtue of article 5 of the Convention of 25 July 1921 for the Establishment of an Economic Union between Belgium and Luxembourg [22]

Letters to the Executive Director of the International Coffee Organization

I

1. We have received a letter dated 27 July 1964 from the Permanent Representative of Luxembourg to the United Nations declaring that the Grand Duchy of Luxembourg

[20] *Ibid, Thirty-sixth Session, Annexes*, agenda item 5, document E/3799, para. 203.

[21] United Nations, *Treaty Series*, vol. 469, p. 169.

[22] League of Nations, *Treaty Series*, vol. IX, p. 223.

considers itself bound by the accession of Belgium to the 1962 International Coffee Agreement by virtue of article 5 of the Convention between Belgium and Luxembourg for the establishment of an Economic Union, signed at Brussels on 25 July 1921. A copy of this letter [23] is enclosed for your information.

2. We have been in contact with the Belgium Mission in order to obtain confirmation that Belgium considers its accession to be binding on Luxembourg. We have also requested the Permanent Representative of Luxembourg to furnish us with his full powers for making the declaration. We understand that the Permanent Representatives of Belgium and Luxembourg are consulting together and hope to advise us very soon as to their position. Meanwhile, the question has been raised whether the date of Luxembourg's becoming a party to the Coffee Agreement should be (1) the date of Belgium's accession, (2) the date of the letter from the Permanent Representative of Luxembourg, or (3) the date that confirmation is received from Belgium that its accession extends to Luxembourg. We would have thought that the latter date would be the more appropriate but it may be that Luxembourg would desire one of the earlier dates. We would appreciate your views as to whether any problem would be created by accepting one of the earlier dates.

3. We had also suggested to the Permanent Representative of Luxembourg that since Luxembourg had signed the Agreement separately, it would be more satisfactory from the point of view of the depositary if they were to make a separate accession. This, however, appears to present some internal difficulties and we are of the opinion that, if Belgium confirms that its accession is extended to Luxembourg, this can be accepted.

26 August 1964

II

1. You will know by now from our cable that a letter was received on 28 September 1964 from the Permanent Representative of Belgium to the United Nations in which he notified the Secretary-General that the accession by Belgium to the above-mentioned Agreement equally binds Luxembourg by virtue of article 5 of the Convention between Belgium and Luxembourg for the establishment of an Economic Union, signed at Brussels on 25 July 1921. Attached to the letter was a cabled authorization from the Minister for Foreign Affairs for the Permanent Representative to make the notification, which we have provisionally accepted, requesting the Permanent Representative to furnish us formal full powers. A copy of this letter [24] is enclosed for your information.

2. A copy of a similar notification from the Permanent Representative of Luxembourg was sent to you in our letter of 26 August 1964. We have since received the requested full powers authorizing him to make the notification.

3. We are now proceeding to inform all interested States of the receipt of both communications. Neither one contains a direct reference to the effective date of Luxembourg's becoming a party to the Coffee Agreement, nor will our notification specify that date. However, the text of their communications implies that both Governments consider the date of Belgium's accession as equally effective for Luxembourg and we assume it will be up to the Coffee Council to deal with any question that may arise in this connexion under article 12, paragraph 4, and article 24, paragraph 2, of the Agreement.

29 September 1964

[23] Not reproduced.

[24] Not reproduced.

15. Position of Luxembourg in relation to the 1963 International Olive Oil Agreement [25] —Signature by Belgium on behalf of the Belgo-Luxembourg Economic Union

Memorandum to the Assistant Director in charge of the International Trade Relations Branch, Department of Economic and Social Affairs

1. It results from the documentation transmitted by the Director of the International Olive Oil Council and the text of the 1963 International Olive Oil Agreement that:

(*i*) The Government of Luxembourg has participated independently of the Government of Belgium in the Olive Oil Conference of 1963. You may recall that at that time the Government of Luxembourg wished at first to give credentials to the Belgian delegation to enable the latter to represent Luxembourg at the Conference. It was, however, our view based on United Nations practice that it would not be appropriate for one delegation to the Conference to represent more than one participating State.

(*ii*) Annex C to the Agreement refers to Luxembourg separately from Belgium and attributes to each of these two countries three votes in the Olive Oil Council (*see* article 28 of the Agreement). In accordance with article 33, paragraph 1, "The contribution of each Participating Government to the administrative budget, for each olive crop year, shall be proportionate to the number of votes it has when the budget for that year is adopted."

(*iii*) The Government of Luxembourg did not sign the 1963 International Olive Oil Agreement. The Agreement was signed, however, in the name of Belgium by the Belgian Ambassador in Madrid with the accompanying indication that the signature was given on behalf of the Belgo-Luxembourg Economic Union.

(*iv*) While neither Belgium nor Luxembourg have ratified, accepted, approved or acceded to the Agreement, a notification was made by the Belgian Embassy on behalf of the Governments of Belgium and Luxembourg, of the undertaking by these two Governments to seek ratification of the Agreement (under paragraph 6 of article 36) as well as of their undertaking to apply provisionally the Agreement pending such ratification (under paragraph 8 of article 36).

(*v*) In a memorandum transmitted through the Belgian Embassy in Madrid to the Director of the International Olive Oil Council, the Government of Luxembourg has stated that in accordance with article 5 of the Convention of 25 July 1921 for the establishment of an Economic Union between Belgium and Luxembourg, [26] "commercial treaties" are to "be concluded by Belgium on behalf of the customs union." Because of the existence of the Union, Luxembourg does not constitute a "separate market" for olive oil and could not comply as a separate entity with several of the provisions of the Agreement such as those relating to the furnishing of information or statistics on imports, consumption, etc. Belgium maintains such statistics and information for the whole of the Union.

2. An examination of the available data concerning other commodity agreements (wheat, tin, sugar, coffee) shows that while there is no complete consistency as to the manner in which these agreements have been signed on behalf of Belgium and Luxembourg respectively, Luxembourg has been normally considered as becoming a party by virtue of the Belgian signature and ratification. None of the agreements provides for separate participation by Luxembourg.

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[25] United Nations, *Treaty Series*, vol. 495, p. 3.

[26] League of Nations, *Treaty Series*, vol. IX, p. 223.

3. As to the 1963 International Olive Oil Agreement, it may be noted that in accordance with the provisions of the last sentence of paragraph 8 of article 36 a government which has undertaken provisionally to apply the Agreement but which does not deposit by 1 October 1964 an instrument of ratification, acceptance or approval ceases to be provisionally considered as a party to the Agreement "unless the [Olive Oil] Council decides to the contrary." This would be the situation of Belgium and Luxembourg if the relevant instruments are not deposited on their behalf before 1 October 1964.

4. In the light of the existing practice as regards other commodity agreements and the internationally recognized existence of the Belgo-Luxembourg Economic Union, there would be in our opinion no obstacle for Belgium to be accepted as a party to the 1963 International Olive Oil Agreement assuming the obligations under the Agreement on behalf of itself as well as of Luxembourg.

5. As to voting rights in the Olive Oil Council, the special reference to Luxembourg in annex C to the Agreement is of course embarrassing and not consistent with the international status of that country with regard to commercial agreements, as now signified by the Luxembourg Government. The question of the situation of Luxembourg might therefore appropriately be submitted to the Council under the provisions of paragraph 6 of article 23, in accordance with which "The Council shall exercise such... functions as are necessary for the execution of the provisions of this Agreement."

6. The deliberations of the Council on this matter might possibly lead to a solution under which Belgium would be allowed to exercise the voting rights now attributed separately to Belgium and Luxembourg, subject of course to Belgium paying the corresponding contributions to the administrative budget.

7. If such a solution meets with opposition, another way out of the present difficulty would be to resort to one of the procedures provided in article 38 for amending the Agreement on the initiative of the Council. Such an amendment could consist in deleting the reference to Luxembourg in annex C while possibly providing for a slight increase in the number of votes to be attributed to Belgium.

29 September 1964

16. Extension of the 1962 International Wheat Agreement [27]—Question whether the amending procedure or a separate protocol should be used

Letter to the Secretary of the United Nations Conference on Trade and Development

1. The present case of the contemplated renewal of the 1962 International Wheat Agreement is identical to that in 1956 when the renewal of the 1953 International Wheat Agreement [28] was contemplated. Our opinion on that occasion was that the amending procedure was intended for modifications rather than extension of the entire Agreement, and we think there are reasons to maintain this view.

2. The use of the amending procedure to effect an extension of the Agreement would have to be in accordance with the provisions of paragraphs (3) and (4) of article 36 and by the majorities required therein. A curious position is likely to arise here by the provision of paragraph (5) which permits a party not accepting the amendment to withdraw from the Agreement. Since such a party is not thereby released from its obligations for the current crop year, the result is that its obligations are not only carried over beyond the date of expiry but may possibly continue through the period of the extension, which seems incon-

[27] United Nations, *Treaty Series*, vol. 444, p. 3.

[28] *Ibid.*, vol. 203, p. 179.

sistent with the last clause of paragraph (5), which provides that a withdrawing country shall not be bound by the provisions of the amendment which occasioned its withdrawal. This is also contrary to the intention in relation to the duration of the Agreement. The use of a separate protocol for prolongation would avoid this problem since non-acceding States would not be bound.

3. For these reasons we feel that the most suitable course would be to conclude a protocol to be left open for signature for a specified period, which will be operative during the period from the expiry of the present Agreement to the adoption of a new Agreement. [29]

27 May 1964

17. QUESTION OF ACCESSION OF SOUTHERN RHODESIA TO THE 1963 PROTOCOL [30] FOR THE PROLONGATION OF THE INTERNATIONAL SUGAR AGREEMENT OF 1958 [31]

Memorandum to the Assistant Director in charge of the International Trade Relations Branch, Department of Economic and Social Affairs

1. We wish to refer to the request for advice from the Secretary to the International Sugar Council concerning certain questions raised in the Sugar Council in connexion with the application by the Government of Southern Rhodesia to accede to the 1963 Protocol for the Prolongation of the International Sugar Agreement of 1958.

2. Article 5, paragraph (4), of the 1963 Protocol states:

"This Protocol shall also be open for accession by the Government of any Member of the United Nations or any Government invited to the United Nations Sugar Conference, 1963, but not referred to in Article 33 or 34 of the Agreement, provided that the number of votes to be exercised in the Council by the Government desiring to accede shall first be agreed upon by the Council with that Government."

3. As Southern Rhodesia is not a Member of the United Nations, the question raised is whether Southern Rhodesia's application for accession may be accepted as emanating from a "Government invited to the United Nations Sugar Conference, 1963". The legality of such an acceptance was questioned at the seventeenth session of the International Sugar Council (1) on the ground that Southern Rhodesia is not an independent sovereign State and (2) because Southern Rhodesia's claim to be "a successor State" to the Federation of Rhodesia and Nyasaland (which had been invited to participate in the Sugar Conference of 1963) may not be a valid one.

4. As to the first of these contentions, there can be no doubt as to the fact that Southern Rhodesia is not an independent State. The international status of Southern Rhodesia, as a Non-Self-Governing Territory within the meaning of Chapter XI of the United Nations Charter, was specifically confirmed by the General Assembly at its last three sessions. [32]

However, in considering the question raised in the Sugar Council, account must also be taken of the fact that on several past occasions contracting States to commodity agree-

[29] In the course of its forty-first session, the International Wheat Council adopted, on 4 February 1965, the text of a Protocol for the Extension of the 1962 International Wheat Agreement. Article I of this Protocol provides that the Agreement shall continue in force between the parties to the Protocol until 31 July 1966.

[30] Document E/CONF. 48/2.

[31] United Nations, *Treaty Series*, vol. 385, p. 137.

[32] See resolutions 1747 (XVI) of 28 June 1962, 1760 (XVII) of 31 October 1962 and 1883 (XVIII) of 14 October 1963.

ments which were concluded under the auspices of the United Nations have accepted that governments of areas which were not fully independent sovereign States should be accepted as parties. Such was the case of the Federation of Rhodesia and Nyasaland, which was invited to several commodity conferences (e. g., the Olive Oil Conference of 1955, the Wheat Conference of 1956 and the Sugar Conference of 1956) and which was a party in its own name to the International Wheat Agreements of 1959 and 1962.

Prior to the establishment of the Federation of Rhodesia and Nyasaland, the then Southern Rhodesia had been invited to the Sugar Conference of 1953; this invitation had been extended to Southern Rhodesia in view of its membership in the Interim Commission for the International Trade Organization (ICITO) and because it was a contracting party to GATT.

5. The question as to whether Southern Rhodesia is to be considered as a successor to the Federation for the purpose of the 1963 Protocol appears to be one which can only be determined internationally on a governmental level.

The members of the Sugar Council will have noted that the Government of the United Kingdom, which had international responsibility for the conduct of the foreign relations of the Federation as well as the internal responsibility for the constitutional structure of the territories concerned, and which assumes the same responsibilities as regards the present Southern Rhodesia, has formally stated that it was its view that

> "vis-à-vis the International Sugar Agreement, the three territories of Southern Rhodesia, Northern Rhodesia and Nyasaland should be regarded as taking the place of the Federation and could accede individually to the Protocol",

and further that

> "on 1 January 1964 Southern Rhodesia resumed direct control on its external commercial relations and from that date resumed its former status as a contracting party to GATT. The responsible authority for Southern Rhodesia's rights and responsibilities under the Protocol for the prolongation of the International Sugar Agreement of 1958 would be the Government of Southern Rhodesia."

6. While it is not for the United Nations Office of Legal Affairs to express a definite point of view as to whether the parties to the 1963 Protocol should accept the international position of Southern Rhodesia as defined by the United Kingdom, it is the view of our Office that the Sugar Council would have the competence under the existing instruments to determine the manner in which the participation of Southern Rhodesia in the above-mentioned international arrangements concerning sugar might be appropriately ensured.

The 1963 Protocol extends the duration of the Agreement and specifically entrusts the Sugar Council with the responsibility of determining in agreement with the acceding "Governments" the number of the latter's votes in the Council. Under the Agreement itself the Council has received broad functions "as are necessary to carry out the terms of the Agreement" (Article 28, paragraph (7)).

In the light of these provisions, it would appear that the Sugar Council has sufficient authority to make the necessary determination as to whether a government belongs to one of the categories of governments which are entitled to accede to the 1963 Protocol under article 5, paragraph (4), of the latter.

1 October 1964

18. Replacement of the Convention of 27 November 1925 regarding the Measurement of Vessels employed in Inland Navigation [33] by a new Convention

Memorandum to the Director of the Transport Division, Economic Commission for Europe

1. This is in reply to your memorandum of 13 February 1964 informing me that the Inland Transport Committee of the Economic Commission for Europe has decided to prepare a new convention of the measurement of vessels employed in inland navigation with a view to replacing the League of Nations Convention on the same subject of 27 November 1925, the technical provisions of which have become obsolete and are no longer respected. We share your view that the alternative of modifying the latter Convention would pose a difficult problem inasmuch as the Convention contains no provisions for the amendment procedure and the agreement of all contracting parties would be needed for its modification. Nevertheless, as it is of importance to provide for the new Convention to supersede the old one, you consider, in your memorandum, three possible procedures in this regard.

2. You first mention the possibility of inserting in the new Convention a provision to the effect that, as between contracting parties thereto, it shall abrogate and replace the 1925 Convention, a procedure similar to that used in the Convention of 19 September 1949 on Road Traffic [34] vis-à-vis the League of Nations Conventions of 24 April 1926 relating to motor traffic [35] and to road traffic, [36] respectively, and the Convention of 15 December 1943 on the Regulation of Inter-American Automotive Traffic. Under this procedure, the old Conventions remain in force as between States parties to both the new and old Conventions and those States which are parties only to the old Conventions. It was used purposely in the 1949 Convention on Road Traffic, but we agree with you that it would not be suitable in the present case where the provisions of the old Convention have become obsolete.

3. You then mention in sub-paragraph (*b*) of your memorandum another possible procedure, under which the responsibility of denouncing the old Convention would rest with each State becoming a party to the new one and you refer in this connexion to the disappointing precedent of the European Conventions replacing the Agreement of 16 June 1949 [37] providing for the provisional application of the Draft International Customs Conventions, pointing out that although the obligation to denounce the 1949 Agreement is expressly provided in the new Conventions and in spite of numerous reminders, several States have still neglected to take action. It seems likely, however, that the delay or lack of action on the part of some States at least may have resulted from their reluctance to terminate their relationship under the 1949 Agreement with those States which have not yet become parties to the new Conventions. You will recall that some of the contracting parties even at the time of denunciation attached to their notification a statement to the effect that they would consider themselves no longer bound by the 1949 Agreement in their relations with only those parties for whom the corresponding new Conventions had already come into force. The situation appears to be different in so far as concerns the 1925 Convention in question. Since its provisions are obsolete and no longer observed, the contracting States becoming parties to the new Convention will have no interest in continuing their relationship under the old Convention. It may also be mentioned that a similar procedure was applied in the Protocol of 19 September 1949 on Road Signs and Signals [38] vis-à-vis the League of

[33] League of Nations, *Treaty Series*, vol. LXVII, p. 63.

[34] United Nations, *Treaty Series*, vol. 125, p. 22.

[35] League of Nations, *Treaty Series*, vol. CVIII, p. 123.

[36] *Ibid.*, vol. XCVII, p. 83.

[37] United Nations, *Treaty Series*, vol. 45, p. 149.

[38] *Ibid.*, vol. 182, p. 228.

Nations Convention of 30 March 1931 concerning the Unification of Road Signals,[39] and with one exception, the old Convention was denounced by all contracting parties which became parties to the 1949 Protocol. Although in several instances the notices of denunciation were not given within the prescribed period of three months after the deposit of the instrument of ratification or accession, nevertheless, as a result of successive denunciations the number of States bound by the Convention was finally reduced to less than five and the Convention ceased to be in force. However, to further ensure, under this procedure, compliance with the obligation to denounce the old Convention, a provision may be inserted in the new Convention specifying that the notification of denunciation must be communicated to the Secretary-General at the same time as the instrument of ratification or accession, thus offering the ground on which the Secretary-General could decline to accept in definitive deposit an instrument of ratification or accession which is not accompanied by a notification of denunciation of the old Convention. Such provision may read as follows:

> In ratifying this Convention or in acceding to it, each State Party to the Convention regarding the Measurement of Vessels employed in Inland Navigation signed at Paris on 27 November 1925 shall denounce that Convention. The notification of denunciation shall be communicated to the Secretary-General of the United Nations at the time of deposit of the instrument of ratification of or accession to this Convention.

This procedure, which we hope will bring about the desired effect, seems preferable to that described in sub-paragraph (*c*) of your memorandum, inasmuch as the inclusion in the new Convention of a provision under which the instrument of ratification or accession would be considered as the equivalent of a notification of denunciation, may give rise to a question as to whether, actually, an amendment of the 1925 Convention is not involved in so far as concerns the procedure for denunciation laid down in article 14 of that Convention.

4. You also refer to the question of the effective date of denunciation for those States on behalf of which the notification of denunciation will be communicated to the Secretary-General before the required number of ratifications or accessions to bring into force the Convention has been deposited. Since the 1925 Convention, as you say, is obsolete and its provisions no longer observed, there seems to be little purpose in making special arrangements for witholding the effect of such denunciations until the new Convention comes into force. In fact, for reasons given in the preceding paragraph, it would be preferable to leave the procedure of denunciation to be governed by the provisions of article 14 of the old Convention. It may be noted that under a similar procedure used in the 1949 Protocol on Road Signs and Signals no exception was made as to the effective date of denunciations notified by the ratifying or acceding States prior to the date on which the required number of instruments to bring into force the Protocol was deposited. However, should you think that it is of importance to make such exception, a provision could be made in the new Convention to the effect that the Secretary-General would proceed with the formal deposit of the denunciations concerned on the date of receipt of the last instrument of ratification or accession required to bring into force the Convention.

5. Finally, in so far as concerns the provisions of articles 11 and 14 of the 1925 Convention which allow States non-members of the League of Nations to address their instruments of ratification or accession as well as the notifications of denunciation to the French Government, we checked the list of States parties to the Convention and found that all had been members of the League at the time of deposit of their instruments of ratification or accession. Therefore, no problem can arise in this connexion, since all of them would have to give their notification of denunciation to the Secretary-General.

8 May 1964

[39] League of Nations, *Treaty Series*, vol. CL, p. 247.

19. QUESTION WHETHER THE INSTRUMENTS OF RATIFICATION OF THE AMENDMENTS TO THE CHARTER PROVIDED IN ARTICLES 108 AND 109 THEREOF SHOULD BE DEPOSITED WITH THE SECRETARY-GENERAL OR WITH THE GOVERNMENT OF THE UNITED STATES OF AMERICA AS THE DEPOSITORY OF THE ORIGINAL TEXT OF THE CHARTER [40]

Note verbale to the Ministers for Foreign Affairs of all Member States

1. The Secretary-General of the United Nations presents his compliments to the Minister for Foreign Affairs... and has the honour to refer to General Assembly resolutions 1991 A and B (XVIII) of 17 December 1963 on the question of equitable representation on the Security Council and the Economic and Social Council. In these resolutions, the General Assembly decided to adopt, in accordance with Article 108 of the Charter of the United Nations, amendments to Articles 23, 27 and 61 of the Charter and to submit them for ratification by the States Members of the United Nations. It also called upon all Member States to ratify the amendments in accordance with their respective constitutional processes by 1 September 1965.

2. Neither the above-mentioned resolutions nor the Charter of the United Nations designate the authority with which the instruments of ratification of the amendments should be deposited. The Charter in its Article 110, paragraph 2, provides that the ratifications of the Charter shall be deposited with the Government of the United States of America and that this Government shall notify all the signatory States and the Secretary-General of each deposit. But there is no analogous provision relating to the ratifications of the amendments.

3. As a general rule it can be said that, unless a treaty provides otherwise, it is the responsibility of the depositary of the authentic text of the treaty to receive and communicate all instruments and notifications relating to that treaty. However, in respect of the Charter of the United Nations, precedents have been established under which certain functions of a depositary nature, for which no express provision was made in the Charter, have been performed by the Secretary-General. In particular, the Secretary-General acts as depositary of the instruments by which new Members accept the obligations contained in the Charter under its Article 4. He also acts as depositary of the declarations by which non-member States accept under Article 93 of the Charter the conditions to become parties to the Statute of the International Court of Justice.

4. In the circumstances, the Secretary-General considered that it might be appropriate for him to undertake the depositary functions in respect of the instruments of ratification of the amendments to the Charter provided in Articles 108 and 109. The Government of the United States of America, whom the Secretary-General consulted in its capacity as depositary of the Charter of the United Nations, concurred with that view.

5. Accordingly, the Secretary-General invites Member States to transmit to him for deposit the instruments of ratification of the amendments adopted by General Assembly resolutions 1991 A and B (XVIII) of 17 December 1963. The Secretary-General will notify all Member States of the deposit of each instrument of ratification.

13 April 1964

20. CERTAIN ASPECTS OF THE DEPOSITARY PRACTICE OF THE SECRETARY-GENERAL IN RESPECT OF CONSTITUENT INSTRUMENTS OF INTERNATIONAL ORGANIZATIONS [41]

Letter to the Legal Adviser to the Ministry for Foreign Affairs of a Member State

1. We are replying to your letter of 22 December 1963 in which, in connexion with your studying of the problem of the application of the law of treaties to the constituent

[40] For a survey of the depositary functions of the Secretary-General, see *Summary of the practice of the Secretary-General as depositary of multilateral agreements* (ST/LEG/7).

[41] *See* footnote 40 above.

instruments of international organizations, you ask us for certain information on the depositary practice of the Secretariat in respect of such instruments.

2. As regards the form of the declarations accepting the obligations of the Charter of the United Nations, the requirements under the practice of the Secretary-General are the same as in regard to the instruments of ratification of or accession to multilateral treaties in respect of which he acts as depositary. They have to be made in the form of a written document executed directly by the Head of State or Government or by the Minister for Foreign Affairs and if, in some instances, their execution is entrusted to the Permanent Representative to the United Nations, he is required to produce full powers emanating from one of these authorities specifically authorizing him to draw up the instrument and deposit it with the Secretary-General. The fact that the dates of deposit and registration of the declarations of some new Members, as given in the publication ST/LEG/3, Rev. 1, are posterior to the dates of decisions on their admission by the General Assembly—seemingly inconsistent with rule 135 of the rules of procedure of the General Assembly— is due to the insistence on the part of the Secretary-General that the declarations be presented in the proper form. In most of those instances, the declarations, while emanating from the proper authority, were addressed to the Secretary-General by cable, together with the application for membership, and although the General Assembly acted on the cabled application, the Secretary-General considered it necessary to request the governments concerned to transmit the declaration in the form of a written document bearing the signature of the competent authority and did not proceed with the registration until the requested declaration had been received. In a few other instances, the delay in registration was caused by the fact that certain governments wished to have the declarations they had submitted several years before their admission replaced by new declarations. Nevertheless, the effective date of membership in all these instances is the date of the decision of the General Assembly, in accordance with rule 139 of its rules of procedure.

3. As for the constitutions of specialized agencies, we have not yet had occasion to develop any special procedures. Full powers are required in the same circumstances as with other treaties for the formal acts (signature, acceptance or accession) by which States become parties. No difference is made between States with permanent missions and States without them. Our practice in regard to State succession in respect of constitutions of organizations is described in paragraphs 145-149 of document A/CN.4/150; it may be added to what is stated there that inquiries about succession have been made in regard to the 1962 International Coffee Agreement, whose relevant clause is cited in that document.

4. We have not been confronted by any declarations constituting possible reservations to constitutions since the Indian declaration with regard to the IMCO Convention and the adoption of General Assembly resolution 1452 (XIV) of 7 December 1959 on reservations to multilateral conventions.

5. We cannot recall any United Nations materials relating to invalidity, termination, severability, or suspension of constitutions of international organizations. As for revision, you may recall that the Constitution of the World Health Organization, in respect of which the Secretary-General acts as depositary, was amended by the Twelfth World Health Assembly on 28 May 1959. [42] In the resolution adopting the amendments, the World Health Assembly decided that "acceptance of the amendments to the Constitution set forth in this Resolution under Article 73 of the Constitution, shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations". Acting under the said resolution, the Secretary-General has followed the same practice as in regard to other instruments of ratification or accession.

24 March 1964

[42] United Nations, *Treaty Series*, vol. 377, p. 380.

21. Procedure for the correction of errors in one of the authentic texts of the 1962 International Coffee Agreement [43, 44]

Aide-mémoire to the Permanent Representative of a Member State

1. By a communication of 14 August 1963, the Deputy Permanent Representative of the Union of Soviet Socialist Republics to the United Nations informed the Secretary-General that the Ministry of Foreign Trade of the USSR, having found a number of errors in the authentic Russian text of the 1962 International Coffee Agreement, considered it necessary that these errors be rectified. He requested that appropriate measures be taken to that effect, in accordance with an enclosed list of corrections, and added that it was indispensable that the Russian text of the Agreement, which was to be presented for ratification, conform to the authentic English text. The list of corrections was thoroughly examined by the competent services of the Secretariat and all requested corrections, most of which were stylistic, were found to be justified, with the exception of two corrections which were found to depart somewhat in meaning from the other authentic texts. As a result of further correspondence with the Permanent Mission of the USSR, those two corrections were withdrawn from the list of corrections requested by the Government of the USSR.

2. Following the established practice, a circular letter C.N.2.1964. TREATIES-1 was addressed on 31 January 1964 to all the Governments which were represented at the United Nations Coffee Conference of 1962 and to all other Governments which had signed the Agreement or acceded thereto, informing them of the errors found in the authentic Russian text and of the Secretary-General's proposal to correct that text in the original copy of the Agreement, at the same time specifying the usual ninety-day time limit for the States to inform him of their attitude towards the suggested procedure. This period expired on 30 April 1964, by which time replies had been received from seven Governments. The first five Governments informed the Secretary-General that they accepted the suggested procedure or that they had no objection thereto. The sixth Government informed the Secretary-General on 20 February 1964 that the matter had been referred for consideration to the Ministry of Economy. The seventh Government informed the Secretary-General that it had found the suggested procedure unacceptable. The latter information was conveyed to the Secretary-General by its Permanent Representative to the United Nations in a letter dated 23 April 1964 and received on 27 April 1964.

3. It is stated in the Permanent Representative's letter that his Government finds the suggested procedure unacceptable on the ground that a legal procedure for amendment already exists under article 73 of the Agreement itself. In his Government's view, the changes in wording requested by the Government of the USSR would, in fact, represent an amendment of the Agreement and since article 73 establishes the only procedure for approving any amendment to the Agreement, no other procedure, such as that requested by the Government of the USSR, is valid. It is further stated in the said letter: (*a*) that even if the correction procedure were legally possible, it would not be simply a question of bringing the Russian text into accord with the English but also with the Spanish and Portuguese texts which, under the provisions of the final paragraph of the Agreement, are equally authentic; (*b*) that the Government of the USSR deposited its instrument of ratification by 31 December 1963, the time-limit specified in the Agreement, which gave it sufficient time to examine its text carefully and that had it been dissatisfied with the Russian text after such examination it could have refrained from ratifying the Agreement or from depositing the instrument of ratification. Finally, reference is made to article 72 of the Agreement, providing for the review of the Agreement by the International Coffee Council at a special session to

[43] United Nations, *Treaty Series*, vol. 469, p. 169.

[44] See footnote 40 above.

be held during the last six months of the coffee year ending 30 September 1965, presumably as an alternative method for correcting the Russian text of the Agreement.

4. In proposing, at the request of the Government of the USSR, the correction of the authentic Russian text of the 1962 International Coffee Agreement, the Secretary-General was following the long-established depositary practice in the matter. The correction procedure suggested in the circular letter concerned has been employed in the past, without any objection, either on the Secretary-General's own initiative or at the request of the interested Governments, when errors or inconsistencies between the authentic texts were discovered in multilateral treaties in respect of which he acts as depositary. [45] It will be relevant to note in this connexion that the International Law Commission, basing itself on the evidence of the practice in the matter, considered it desirable to include in the draft articles on the law of treaties, adopted at its fourteenth session, [46] the provisions dealing with the correction of errors in the texts of treaties (articles 26 and 27). In particular, in so far as concerns the correction of errors in the texts of treaties for which there is a depositary, the procedure provided in article 27 follows closely the Secretary-General's practice in the matter. In the commentary to that article, it is stated that in formulating the provisions set out in the article, the Commission has based itself upon the information contained in the *Summary of the practice of the Secretary-General as depositary of multilateral agreements* (ST/LEG/7). Thus, paragraph 1 of article 27 reads as follows:

> "1. (*a*) Where an error is discovered in the text of a treaty for which there is a depositary, after the text has been authenticated, the depositary shall bring the error to the attention of all the States which participated in the adoption of the text and to the attention of any other States which may subsequently have signed or accepted the treaty, and shall inform them that it is proposed to correct the error if within a specified time limit no objection shall have been raised to the making of the correction.
>
> (*b*) If on the expiry of the specified time limit no objection has been raised to the correction of the text, the depositary shall make the correction in the text of the treaty, initialling the correction in the margin, and shall draw up and execute a *procès-verbal* of the rectification of the text and transmit a copy of the *procès-verbal* to each of the States which are or may become parties to the treaty."

It is further provided in paragraph 3 of article 27 that the provisions of paragraph 1 shall likewise apply where two or more authentic texts of a treaty are not concordant and a proposal is made that the wording of one of the texts should be corrected.

5. The position of the Government that the existing amendment procedure in article 73 of the Agreement in question is the only valid one for effecting any amendments to the Agreement is of course indisputable. The correction procedure described in the preceding paragraph obviously cannot be used for the purpose of amending a treaty. Its application is limited to a situation where merely the correction of an error or rectification of discordant texts are involved, without in any way altering the substance or the meaning of a treaty as already accepted by the contracting parties. Thus, when an error in the text of a treaty is brought to the attention of the Secretary-General, the relevant text is carefully examined, the records of the Conference, if required, are thoroughly checked, and the other authentic texts of the treaty are verified. Only when the Secretary-General, on the basis of such a study, is entirely satisfied that the matter is simply one of correction of errors falling under the said procedure does he notify all interested States of the errors and propose, subject to

[45] A recent example is the correction of the Portuguese and French authentic texts of the 1962 International Coffee Agreement, where the identical procedure was followed without any objection (circular letters C.N.250.1962.TREATIES-1 of 23 October 1962 and C.N.20.1963.TREATIES-1 of 28 January 1963).

[46] *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9* (A/5209 and Corr. 1 [English only]).

their consent, to make the necessary correction in the original copy of the treaty. The Government seems to take the view, however, that any change proposed in the text of a treaty, presumably after its entry into force, even a correction of an obvious typographical error, should be treated as an amendment which could only be made in accordance with the amendment procedure provided in the treaty. This view does not appear to find support either in practice or in the opinion of the International Law Commission. Neither of the two articles dealing with the correction of errors as formulated by the Commission contains any provisions to that effect. In fact, it appears from paragraph (4) of the commentary to article 26 of the said draft articles, which by reference applies also to article 27, that the use of the correction procedure after the entry into force of a treaty has been clearly envisaged by the Commission. The relevant comment reads as follows:

> "Since what is involved is merely the correction or rectification of an already accepted text, it seems clear that, unless the parties otherwise agree, the corrected or rectified text should be deemed to operate from the date when the original text came into force. Whether such a correction or rectification falls under the terms of article 2 of the General Assembly's regulations concerning the registration and publication of treaties and international agreements, when it takes the form merely of an alteration made to the text itself, is perhaps open to question. But it would clearly be in accordance with the spirit of that article that a correction to a treaty should be registered with the Secretary-General and this has therefore been provided for in paragraph 4 of the present article."

Article 2 of the regulations referred to in the above-mentioned comment provides for the registration of certified statements relating to a subsequent action in respect of a treaty already registered. It will be recalled in this connexion that under article 1 of the same regulations the registration of a treaty cannot be effected until it has come into force between two or more of the parties thereto.

6. In so far as the corrections themselves are concerned in the present instance, as mentioned earlier, before they were proposed by the Secretary-General they all had been found to be justified and by their nature falling under the correction procedure. Nevertheless, upon receipt of the communication from the Government, the competent services of the Secretariat were instructed to undertake once again the most careful study of the proposed corrections. Moreover, taking into consideration the well taken observation of the Permanent Representative referred to in paragraph 3 above under (*a*), the instructions were given that particular attention should be paid in that study to the verification of those corrections with all the authentic texts of the Agreement. [47] The outcome of this study has fully confirmed the previous finding. All the proposed corrections are stylistic changes, with one exception where the existing Russian text actually contains an error of substance altering the meaning of the relevant provision of the Agreement as adopted by the Conference and as expressed in all other authentic texts. It concerns paragraph (2) of article 38, which in the English and correspondingly in the French, Portuguese and Spanish versions reads as follows:

> "(2) The trade in coffee between a Member and any of its dependent territories which, in accordance with Article 4 or 5, is a separate Member of the Organization or a party to a Member group, shall however be treated, for the purposes of the Agreement, as the export of coffee",

[47] In referring to the necessity of bringing the Russian text fully into accord with the English text, the circular letter concerned merely followed the language used in the letter of the Government of the USSR requesting the correction. It may be noted that circular letter C.N.250.1962. TREATIES-1 of 23 October 1962 relating to the correction of the Portuguese text of the same Agreement requested by the Brazilian Government, similarly referred, in accordance with the request, to the necessity of bringing the Portuguese text fully into accord with the English, without mentioning other authentic texts.

whereas the existing Russian text of that paragraph in English translation reads as follows:

"(2) The trade in coffee between a Member and any of its dependent territories which, in accordance with Article 4 or 5, is a separate Member of the Organization or a party to a Member group, shall *not* however be treated, for the purposes of the Agreement, as the export of coffee."

7. As evidenced by the above-mentioned study, all changes proposed in the authentic Russian text are of the nature of corrections or rectifications, not in any sense altering the terms of the Agreement. Neither do they affect any of the other authentic texts. In fact, the correction of the Russian text is required in order exactly to bring it fully into accord with all the other authentic texts and thus with the terms of the Agreement itself, as adopted by the Conference. Consequently, bearing in mind the observations made in paragraphs 4 and 5 above, the correction procedure proposed in the present instance appears to be entirely justified. Although in view of the above, no further comment on the time element of proposing the correction appears to be necessary, it may be noted, with reference to the Permanent Representative's observation mentioned in paragraph 3 above under (*b*), that the USSR Government's request was made less than four months after the distribution of certified true copies of the Agreement incorporating extensive corrections made in the authentic Portuguese and French texts, a time limit that does not seem unreasonably long for examining the text of a document of this nature.

8. The requested corrections could equally be made, of course, through the use of the normal amendment procedure set forth in article 73 of the Agreement. It is also conceivable, as suggested in the Permanent Representative's letter, that article 72 providing for the review of the Agreement might serve this purpose. The choice of any of the available methods seems to be a matter mainly of practical convenience and in the present instance, the correction procedure already proposed would appear to be the most expeditious one. It seems doubtful whether the nature of the proposed corrections would justify the time and effort-consuming process involved in instituting the amendment procedure provided in the Agreement.

9. In conclusion, it is hoped that in the light of the considerations set out in this *aide-mémoire*, the Government may be agreeable to reconsider its position in the matter and wish to withdraw its objection to the procedure for the correction of the authentic Russian text of the 1962 International Coffee Agreement. [48]

3 July 1964

22. PLANT PROTECTION AGREEMENT OF 27 FEBRUARY 1956 FOR THE SOUTH EAST ASIA AND PACIFIC REGION [49]—PARTICIPATION OF THE NETHERLANDS WITH RESPECT TO WEST NEW GUINEA—PROCEDURE FOR THE TERMINATION OF THE AGREEMENT IN RESPECT OF THE NETHERLANDS [50]

Letter to the Legal Counsel of the Food and Agriculture Organization of the United Nations

1. We are writing in reply to your letter of 25 September 1964 relating to the position of the Netherlands in regard to the Plant Protection Agreement for the South East Asia and Pacific Region, done at Rome on 27 February 1956, to which the Netherlands became a party with respect to the Netherlands New Guinea (West New Guinea), in accordance with article X of the Agreement. We have noted that participation in the Agreement, in accord-

[48] By a letter of 29 October 1964, the Government informed the Secretary-General that it withdrew its objections to the procedure suggested by the Secretary-General for the correction of certain errors in the Russian text of the 1962 International Coffee Agreement.

[49] United Nations, *Treaty Series*, vol. 247, p. 400.

[50] See footnote 40 above.

ance with article II, carries with it membership in the Plant Protection Committee for the South East Asia and Pacific Region and that the Netherlands Government, having relinquished its rights to the Netherlands New Guinea and having thus ceased to be responsible for its international relations, does no longer fulfil the requirements for such membership. In the light of these developments you inquire what would be the proper procedure to follow in regard to the termination of the Agreement in respect of the Netherlands and, in particular, whether a formal denunciation or any other form of notification would be required on the part of the Government of the Netherlands.

2. Reference may be made in this regard to two precedents in our depositary practice, one relating to the 1956 International Agreement on Olive Oil, as amended, [51] where the change in the status of Algeria was involved, the other relating to the Convention of 6 March 1948 on the Inter-Governmental Maritime Consultative Organization, [52] where the associate membership of Sarawak and North Borneo in that Organization was involved after those territories had federated with the Federation of Malaya. In the first instance, the Government of France, by a communication of 16 January 1963, requested the Secretary-General to take note, in his capacity of depositary of the International Agreement on Olive Oil, of the fact that France had recognized the independence of Algeria by the declaration of 3 July 1962 and that the obligations which it assumed under the said Agreement were accordingly modified. In the second instance, the Government of the United Kingdom, in a communication of 6 August 1964, similarly requested the Secretary-General, in his capacity of depositary of the Convention concerned, to take note that, as a result of the Agreement relating to Malaysia signed at London on 9 July 1963, [53] and legislation enacted in accordance with that Agreement, Sarawak and North Borneo federated with the existing States of the Federation of Malaya, and that, therefore, the Government of the United Kingdom was no longer responsible for the international relations of Sarawak and North Borneo. Both communications were notified by the Secretary-General to all interested States and were registered *ex officio* by the Secretariat. Inasmuch as there are no provisions, either in the Agreement or in the Convention, applicable to communications of this nature, the Secretary-General refrained from specifying any effective date in his notifications.

3. It seems that the procedure described above could also be followed in the case referred to in your letter, considering that the circumstances in which a change occurred in the obligations assumed by the Governments concerned under the respective instruments appear to be essentially similar. The letter from the Netherlands Embassy, [54] a copy of which is enclosed in your letter, could be used for that purpose, though perhaps a more formal communication might be preferable, giving a specific reference to the agreements providing for the transfer of the administration of West New Guinea, namely, the Agreement between Indonesia and the Netherlands concerning West New Guinea [55] and the Understandings between the United Nations and Indonesia and the Netherlands relating to the said Agreement, [56] all signed at the Headquarters of the United Nations, New York, on 15 August 1962.

23 November 1964

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[51] United Nations, *Treaty Series*, vol. 336, p. 177.

[52] *Ibid.*, vol. 289, p. 3.

[53] Cmnd. 2094 (1963).

[54] Not reproduced.

[55] United Nations, *Treaty Series*, vol. 437, p. 273.

[56] *Ibid.*, p. 292.

23. Principles governing recruitment to the Secretariat of the United Nations—Interpretation of Article 100 and Article 101, paragraph 1, of the Charter

Note to the Director of Personnel
Articles 100 and 101(1) of the Charter

1. Articles 100 and 101(1) of the Charter are the primary texts which govern recruitment to the Secretariat of the United Nations. Article 101(1) provides that:

> "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly."

This Article thus vests the power of appointment to the Secretariat exclusively in the Secretary-General.

2. Article 100 establishes the independence of the Secretary-General and the staff, and the concomitant obligations this places upon Member Governments, in the following terms:

> "1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
>
> "2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities."

The provisions of this Article *inter alia* reinforce the Secretary-General's independence under Article 101(1) in appointing the staff. Were such appointments, for instance, to be necessarily subject to governmental approval, it could well be argued that provisions of Article 100 have been violated, in the sense that the Secretary-General has received instructions from authorities external to the Organization. Furthermore, by attempting to exercise a veto over the appointment of certain of its nationals to the Secretariat, a Member State might well be considered to be in violation of its duty not to influence the Secretary-General in the discharge of his responsibilities. There are many examples in practice, extending over the whole history of the Organization, which support, either directly or by strong implication, the exclusive responsibility of the Secretary-General in appointing the staff. Those that follow are only a selection of such examples, and should not be considered as exclusive.

Proceedings of the Preparatory Commission of the United Nations

3. The first full-scale discussion of Articles 100 and 101(1) of the Charter after their adoption, and with specific reference to recruitment to the Secretariat, took place in the Preparatory Commission of the United Nations. Yugoslavia proposed (PC/AB/54) to the Commission that the appointment of the members of the Secretariat should be subject to the consent of the government of the Member State of which the candidate was a national.

4. The representative of Yugoslavia explained that his amendment was designed to assist the Secretary-General in building up a staff which was "adequately representative" of all the governments comprising the United Nations and, at the same time, acceptable to them. However, he supported his proposal by the argument that the governments, in many cases, were in the best position to assess the qualifications and capacities of prospective candidates. The United Nations, he said, was an inter-governmental organization and the persons appointed to the Secretariat must command the confidence of their governments if they were to be of real value. Once the officials were appointed, the exclusively international character of their responsibilities would naturally be respected and no government would seek to influence them in the discharge of those responsibilities.

5. A majority of the members of the Preparatory Commission considered that the Yugoslav proposal would threaten the independence of the Secretariat. While recognizing that the Secretary-General would often require information regarding candidates from government or private bodies, they believed that "it would be extremely undesirable to write into the text anything which would give national governments particular rights in this respect, or permit political pressure on the Secretary-General." The proposal was opposed on the grounds "that it impinged on the exclusive responsibility of the Secretary-General under Article 101 of the Charter for the appointment of his staff, that it would threaten the freedom, independence and truly international character of the Secretariat and that it would defeat the spirit as well as infringe the letter of Article 100 of the Charter." The proposal by Yugoslavia was defeated by a large majority. [57]

6. The recommendation of the Preparatory Commission affirming the exclusive responsibility of the Secretary-General for appointment and removal of staff members was later adopted by the General Assembly at the first part of its first session in resolution 13(1) of 13 February 1946.

Proceedings of the seventh session of the General Assembly

7. The question of the exclusive responsibility of the Secretary-General for the appointment of staff appears to have next arisen, in a crucial form, in connexion with charges and investigations by United States authorities relating to the loyalty of United Nations staff members in the early part of the last decade. To advise him on the action he should take to meet the situation, the Secretary-General, on 22 October 1952, appointed an international commission of jurists. The Commission handed down an opinion on 29 November 1952, which deals *inter alia* with responsibility for the appointment of the staff. In section III of the opinion, the Commission referred to Article 100, paragraphs 1 and 2, of the Charter, and expressed the view that:

> "it would be contrary to the spirit, and indeed the letter, of these two Articles if the Secretary-General were to abrogate his responsibility in the selection or retention of staff by submitting to the dictation or pressure of any individual Member State or any outside body."

On this particular point the Commission formulated the following conclusion:

> "The independence of the Secretary-General and his sole responsibility to the General Assembly of the United Nations for the selection and retention of staff should be recognized by all Member nations and if necessary asserted, should it ever be challenged. If the position of the Secretary-General in this respect were to be weakened, the whole conception of the responsibility of the staff of the United Nations would be impaired and the essential task of building up and maintaining an international civil service frustrated to the lasting detriment of the work of the United Nations." [58]

8. That the Secretary-General shared the opinion of the Commission of Jurists on the point just outlined is clear from a report of 30 January 1953, on personnel policy, which he submitted to the General Assembly at its seventh session. [59] The opinion of the Commission is annexed to this report. In his report the Secretary-General outlined the decision of the Preparatory Commission, mentioned in paragraph 5 above, as regards his exclusive responsibility for the appointment of the staff. He continued:

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[57] United Nations Preparatory Commission, Committee 6: Administrative and Budgetary, 22nd and 23rd meetings, 19 and 20 December 1945, Summary Record of Meetings, pp. 50-51.

[58] *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 75, document A/2364, Annex III, p. 27.

[59] *Ibid.*, document A/2364.

"6. The principle then approved has been followed from the beginning amid growing tensions which have arisen between Members of the United Nations —tensions which have resulted in increasing concern for security on the part of the Member States. This concern has been particularly manifest in the United States of America, the principal host country. In these circumstances, the Secretary-General has endeavoured to provide reasonable assurance with regard to the security of host countries and other Members of the United Nations, while safeguarding the basic requirements of an independent international secretariat pursuant to Articles 100 and 101 of the Charter.

"7. Accordingly, it has always been the policy of the Secretary-General to uphold the international character of the Secretariat, and to resist all pressures from whatever source which could have the effect of undermining its independence as defined in the Charter...

"8. The United Nations does not—and obviously cannot—have an investigation agency comparable to those at the disposal of national governments. Therefore, the United Nations must depend upon the governments of members for assistance in checking the character and record of staff members. The Secretary-General has had this assistance from many governments, but he has always reserved, and must always reserve, to himself the final decision on the basis of all the facts."

9. In paragraph 20 of the same report, the Secretary-General declared that:

"...Within the guiding lines fixed by the General Assembly, the Secretary-General alone selects Secretariat staff... This principle of independent authority and responsibility was recommended after extended debate in the Preparatory Commission, was reaffirmed by the General Assembly during the first session and has been repeatedly recognized in later discussions of the Fifth Committee."

10. By its resolution 708(VII) of 1 April 1953, the General Assembly endorsed the views of the Secretary-General as set out above. The preamble to the resolution recalls Article 100, paragraphs 1 and 2, and Article 101, paragraphs 1 and 3, of the Charter, and refers to the Secretary-General's report. Operative paragraph 1 provides that the Assembly:

"*Expresses its confidence* that the Secretary-General will conduct personnel policy with these considerations in mind."

Proceedings of the eighth session of the General Assembly

11. Operative paragraph 2 of the General Assembly resolution 708(VII) requested the Secretary-General to report to the eighth session on the progress made in the conduct and development of personnel policy. In this report, the Secretary-General once more affirmed his independence of governments in matters relating to the administration of the staff. He stated that:

"The principles of the Charter relating to the Secretariat form the foundation for personnel policy... these principles require recognition of the independent authority and responsibility of the Secretary-General for the administration of the staff, in accordance with the Charter and the Regulations adopted by the General Assembly." [60]

Proceedings of the twelfth session of the General Assembly

12. A further example of a reaffirmation by the Secretary-General of his right to appoint staff members free of dictation by governments appears in a report he submitted to the General Assembly at its twelfth session containing a review of the Staff Regulations and of the principles and standards progressively applied thereto. In this report he enunciates the following two principles:

[60] *Official Records of the General Assembly, Eighth Session, Annexes*, agenda item 51, documen A/2533, para. 15.

"(*a*) The Secretary-General, in deciding whether to employ or terminate a staff member, must have sufficient information on which to make an independent decision; he cannot act on charges unsupported by satisfactory evidence. This principle derives directly from the Secretary-General's responsibilities and prerogatives under the Charter with respect to the appointment and termination of the staff, and has been recognized by the General Assembly;

"(*b*) The standards to be applied by the United Nations are those of the Charter, and the tests to be applied in regard to these standards are not necessarily the same as those which might be applied by a Member State in passing on questions of suitability for government employment. This principle is also based on the Charter and decisions of the General Assembly." [61]

Proceedings of the sixteenth session of the General Assembly

13. The consistent policy outlined in the foregoing sections of this note regarding the Secretary-General's independence in the matter of recruitment and administration of the staff received further confirmation, at least by strong implication, at the sixteenth session of the General Assembly. At that session the Assembly had before it the report of the Committee of Experts on the Review of the Activities and Organization of the Secretariat. This Committee had been appointed by the Secretary-General pursuant to General Assembly resolution 1446 (XIV). In its report, the Committee reaffirmed the Charter principles regarding the independence of the Secretariat, a necessary pre-condition of which is the right of the Secretary-General to appoint the staff independently of governments. In chapter I of the report, for example, the Committee states that it has:

"proceeded throughout on the assumption that its recommendations must be in harmony with the provisions of the Charter which envisage a Secretariat organized and employed in such a way as to achieve independence, efficiency and wide geographical distribution." [62]

In chapter II of its report, the Committee refers to Article 101(1) of the Charter and further states that:

"The Charter provides for an international Secretariat. Article 100 explicitly states that 'in the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization' and that they 'shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.' Their obligations are reaffirmed in the Staff Rules and Regulations. The Charter, the report of the Preparatory Commission and the Staff Rules and Regulations emphasize the principle that for the duration of their appointments, the Secretary-General and his staff are not the servants of the States of which they are nationals, but the servants only of the United Nations." [63]

14. In his observations on the above report and various proposals for the reorganization of the Secretariat, the Secretary-General stated as follows:

"7. These comments are made on the basis of the present Charter provisions governing the Secretariat. It may be recalled that Article 100 of the Charter provide, for an international civil service with one chief administrative officer (Article 97). Thus, the Secretary-General does not take up for consideration proposals which would eithers

[61] *Ibid., Twelfth Session, Annexes*, agenda item 51, document A/C.5/726, para. 15.

[62] *Ibid., Sixteenth Session, Annexes*, agenda item 61, document A/4776, para. 6.

[63] *Ibid.*, para. 15.

directly or indirectly, infringe upon the responsibilities of the Secretary-General, as established in the Charter, or, contrary to the Charter, introduce the notion that members of the Secretariat are representatives, in the work of the Organization, of the Governments of their home countries or of the ideologies or policies to which these countries may be considered to adhere. Such proposals would assume a fundamental change in the character of the Organization, requiring a Charter revision." [64]

Summary of conclusions regarding the principles governing recruitment to the United Nations

15. From the foregoing account of Articles 100 and 101(1) of the Charter, and their application in practice, it clearly emerges that the right of appointment to the Secretariat rests exclusively in the Secretary-General and that governments may not exercise a veto over employment by the Organization of candidates of their nationality. This, however, does not preclude governments from submitting information on candidates of their nationality to the Secretary-General, provided that it is clearly understood that it is left to the Secretary-General to assess the weight to be attached to such information and to arrive at an independent decision on whether or not to appoint the candidate concerned. Furthermore, the Secretary-General is under no legal obligation to seek information from governments on candidates, and it is a matter purely for his discretion to determine when such information should be requested as a matter of policy.

13 January 1964

24. Oath of secrecy required from United Nations technical assistance experts by the Government of a Member State

Note verbale to the Permanent Representative of a Member State

1. ...The Permanent Representative intimates in his note that his Government was contemplating to request, in the near future, that all technical assistance personnel in the country whose duties involve access to classified materials subscribe to an oath of secrecy along the lines currently taken by national and foreign officials occupying senior positions in the Government service. According to a specimen transmitted with the note, each technical assistance expert would undertake not to communicate or reveal, either directly or indirectly, except to a person to whom he is authorized in the course of his duties to communicate it, any code word, sketch, plan, model, article, note, document, or information which has been entrusted to him in the course of his assignment under a technical assistance programme or which he may obtain by virtue of his assignment. The expert would also undertake to comply with the provisions of the Official Secrets Act.

2. The Secretary-General of the United Nations appreciates the courtesy of the Permanent Representative in asking for his comments on the matter and should like to avail himself of the opportunity to present certain observations for the consideration of the Permanent Representative and his Government. After careful study, the Secretary-General has come to the conclusion that, in view of their international status under Article 100 of the Charter of the United Nations and similar provisions in the constitutional instruments of the specialized agencies, the oath is unsuitable for officials, including technical assistance experts, of the United Nations or of the specialized agencies. The oath would intrude on the relationship between the expert and his organization which must direct and supervise his work as an international official.

[64] *Ibid.*, document A/4794, para. 7.

3. Moreover, the reference to the Official Secrets Act might be treated as an advance waiver of the privileges and immunities accorded by the Convention on the Privileges and Immunities of the United Nations,[65] particularly the immunity from legal process under section 18 (*a*) thereof. While the Convention, to which the Permanent Representative's country is a party, envisages in its section 20 that the Secretary-General would waive the immunity of any official "in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations", there is no legal basis to make such a waiver in advance. The Secretary-General would no more wish to do so than a Minister of Foreign Affairs would wish to waive immunities in advance with respect to his diplomatic officers stationed broad.

4. The Secretary-General wishes, however, to assure the Permanent Representative that the technical assistance experts, as staff members of the Organization, are already under an obligation not to divulge information known to them by reason of their official position, except in the course of their duties or by authorization of the Secretary-General. The Staff Regulations of the United Nations provide in regulation 1.5 as follows:

> "Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Secretary-General. Nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Secretariat." (The specialized agencies have a similar regulation.)

If the Government desires, the Secretary-General will draw the special attention of the United Nations technical assistance experts serving in the Permanent Representative's country to this regulation with particular reference to the subject matter of the Official Secrets Act.

5. In the light of the foregoing, the Secretary-General feels bound to maintain the position that the technical assistance experts of the United Nations and of the specialized agencies working in the Permanent Representative's country be not required to sign an oath of secrecy such as that under reference. The Secretary-General trusts that the Government will find that the existing obligations of officials under the Charter and the Staff Regulations satisfactorily meet the situation with which the Government is concerned.

30 December 1964

25. Status of military observers serving with a United Nations mission

I

Aide-Mémoire to the Permanent Representatives of various Member States

1. ...the Secretary-General considers that it may be useful to take this opportunity briefly to review the status of United Nations military observers and the principles which must guide his conduct.

2. The principle of *persona non grata* which applies with respect to diplomats accredited to a government has no application with respect to United Nations staff or military observers who are not accredited to a government but must serve as independent and impartial international officials responsible to the United Nations. The United Nations military observers are recruited by the Secretary-General from member countries of the United Nations. They

[65] United Nations, *Treaty Series*, vol. 1, p. 15.

are officers who are seconded by their governments for service with the United Nations. They are responsible directly to the Head of the United Nations mission and through him to the Secretary-General, who is in turn responsible to their governments for them.

3. These observers are carefully selected. At times their work is hazardous; indeed, some have given their lives in this service. As military men they would expect to be held strictly to account for any disobedience, disloyalty or dereliction of duty, and the Secretary-General would certainly insist that any observer guilty of such action should be severely dealt with. However, if some States were in a position to bring about the automatic recall of a military observer, the other governments concerned would be placed in an invidious position and the functioning of the mission would be rendered ineffectual. Therefore, in order to fulfil the obligations and responsibilities of the Secretary-General in such matters, and particularly to ensure the independence of action of United Nations military observers, the Head of the mission and the Secretary-General must have the right of decision in these cases following careful investigation of all relevant facts. Since they must themselves make the decision, any information which is supplied to them by governments must be in sufficient detail to enable them to make their own judgement in the matter. Any other course would be contrary to the principles of the Charter of the United Nations and would seriously interfere with the performance of the functions of the Organization. The Secretary-General is certain that the governments repose confidence in the Head of the mission and in himself to act impartially in this regard. He would appreciate assurances that procedures consistent with the foregoing principles will be followed and that the competence of the Head of the mission and of himself in matters of this kind will be respected.

23 January 1964

II

Letter to the Permanent Representative of a Member State

1. We have the honour to refer to your letter of 10 June 1964 to the Secretary-General and to the attached aide-mémoire from your Government concerning the status of United Nations observers.

2. In the light of your Government's aide-mémoire we would like to present further comments in addition to those contained in the Secretary-General's aide-mémoire of 23 January 1964.[66] The Government refers to the right of a State to expel aliens from its territory. Without entering into a discussion of the principles of international law generally applicable to aliens having a private status, it is necessary to point out that United Nations officials and military observers serving on a United Nations mission are not in a position comparable to that of such private individuals. Your country, by becoming a Member of the United Nations, assumed certain obligations under the Charter vis-à-vis the Organization. Among these is the undertaking to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and the obligation to accord to the Organization such privileges and immunities as are necessary for the fulfilment of its purposes and to officials such privileges and immunities as are necessary for the independent exercise of their functions.

3. It of course is not denied that a United Nations official or military observer, by abusing his privileges, may place himself in a position where a government may demand his withdrawal. But such demand can only be made for sufficient cause and the facts must be placed at the disposal of the Secretary-General and of the Head of the mission, in order that an independent decision can be made by the Organization.

[66] See I above.

4. We must therefore reiterate the principles set forth in the Secretary-General's aide-mémoire of 23 January 1964. We are certain that you will appreciate that any other course would impair the international status of the military observers which is essential for the independent exercise of their functions in connexion with the Organization.

We would appreciate your bringing these comments to the attention of your Government.

21 October 1964

26. IMMUNITY FROM LEGAL PROCESS OF UNITED NATIONS OFFICIALS ACTING IN THEIR OFFICIAL CAPACITY—SECTIONS 18 (*a*), 20 AND 29 (*b*) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS [67]

Internal memorandum

With reference to the inquiry concerning section 18 (*a*) of the Convention of the Privileges and Immunities of the United Nations, we should like to make the following comment:

1. The immunity from legal process in respect to official acts provided under section 18 (*a*) of the Convention applies vis-à-vis the home country of an official as well as vis-à-vis the country in which he is serving. Therefore, a question prior to the determination of what jurisdiction may try the case is whether the Secretary-General should waive the immunity of an official in a particular case.

2. Section 20 of the Convention provides that privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General has the right and duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. If the Secretary-General, in a particular case, decides that immunity would impede the course of justice and could be waived without prejudice to the interests of the Organization, then he will waive under this section.

3. Normally, in the case of automobile accidents, where a satisfactory settlement is not negotiated, a waiver will be made with respect to the civil claim and a civil action can be tried in the country where the accident occurred or where the staff member may be located. As an alternative, arrangements could be made for arbitration under section 29 (*b*). Such arrangements under section 29 (*b*) are usually made on an *ad hoc* basis permitting the choice of the most appropriate method for each case. In the past, there have been few criminal cases in which the question of waiver arose and the Secretary-General's decision under section 20 has been taken in each case in the light of the particular circumstances.

4. Generally speaking, the same provisions apply to the specialized agencies, but we are not in a position to furnish detailed information with respect to their practice.

3 November 1964

[67] United Nations, *Treaty Series*, vol. 1, p. 15.

27. PRIVILEGES AND IMMUNITIES OF UNITED NATIONS OFFICIALS WHO ARE NATIONALS OR RESIDENTS OF THE LOCAL STATE—PRIVILEGES AND IMMUNITIES OF CLERICAL STAFF—INTERPRETATION OF SECTION 17 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS [68]

Letter to the Permanent Representative of a Member State

1. We have the honour to refer to the status of certain staff members of the United Nations serving in the office of the Representative of the United Nations Technical Assistance Board in your country and to request your assistance in the matter.

2. According to information from the Representative of the United Nations Technical Assistance Board, the tax authorities of your country have taken the position that members of the staff in the office of the Representative who are nationals or residents of your country are not entitled to exemption from taxation in your country on their United Nations salaries. They have also taken the position that the immunity does not extend to clerical staff, regardless of nationality. The tax authorities recognize that under section 18 (*b*) of the Convention on the Privileges and Immunities of the United Nations, officials of the United Nations shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations". They, however, expressed doubts that nationals and residents of the country, or clerical staff, could be considered as "officials of the United Nations".

3. The Convention on the Privileges and Immunities of the United Nations provides for a procedure for the definition of the term "officials of the United Nations", and, by the definition established by that procedure, no distinction is maintained among the staff members of the United Nations as to nationality or residence. All members of the staff of the United Nations, with the exception of those who are recruited locally *and* are assigned to hourly rates, are officials of the United Nations and enjoy the same privileges and immunities provided in the Convention, including the right to exemption from income taxation. We shall explain the genesis of this legal position in greater detail as follows:

(*i*) The Convention, in section 17 (article V), provides:

> "The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members."

(*ii*) In accordance with this provision, the Secretary-General submitted a proposal to the General Assembly, at its first session in 1946, that

> "In accordance with section 17 of article V of the Convention on the Privileges and Immunities of the United Nations, ...the categories of officials to which the provisions of articles V and VII shall apply should include all members of the staff with the exception of those who are recruited locally and who are assigned to hourly rates." [69]

(*iii*) After consideration of this proposal of the Secretary-General, the General Assembly adopted resolution 76 (I) of 7 December 1946. Entitled "Privileges and Immunities of the Staff of the Secretariat of the United Nations", the resolution

> "Approves the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates."

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[68] United Nations, *Treaty Series*, vol. 1, p. 15.

[69] Documents A/116 and A/116/Add. 1.

(*iv*) In pursuance of the provision in section 17 of the Convention that "The names of the officials included in these categories shall from time to time be made known to the Governments of Members", the Secretary-General transmits once a year a "List of Officials of the United Nations" to all Member Governments through their permanent representative at the United Nations. While omissions may on occasion be found in these annual lists, they are intended to include all staff members who fall within the purview of the definition established by the General Assembly.

4. From the above, it will be seen that, under the decision of the General Assembly taken in pursuance of the Convention on the Privileges and Immunities of the United Nations, all staff members in the office of the Representative of the United Nations Technical Assistance Board in your country, irrespective of nationality or residence, are in the status of "officials of the United Nations" and, as such, are entitled to all privileges and immunities appertaining to such officials. The only exception to this rule is in the case of staff members "who are recruited locally and are assigned to hourly rates." None of the staff members in the said office of the Representative fulfil these conditions, the clerical staff not being assigned to hourly rates. All of them, therefore, are entitled to income tax exemption, including those who are nationals or residents of your country.

5. We hope that the foregoing clearly explains the legal position and that you might be good enough to urge your Government to accord all staff members of the office of the Representative of the United Nations Technical Assistance Board, including those who are nationals or residents of your country, exemption from income taxation on the salaries and emoluments paid to them by the United Nations, in accordance with the terms of the Convention and the resolution of the General Assembly referred to above.

3 July 1964

28. Sale on the local market of goods originally imported duty-free by United Nations officials

Letter to the Legal Adviser of a United Nations mission

1. We refer to your detailed letter of 1 October 1964 concerning the duty-free importation and sale on the local market of personal effects belonging to international staff members.

2. Questions involving the sale of goods originally imported duty-free have always presented one of the more difficult problems, since, even for property of the United Nations itself, the Convention on the Privileges and Immunities of the United Nations [70] gives no special privilege in this connexion. Sale of such goods can only be made under conditions agreed with the Government of the country concerned.

3. However, it can never have been the intention of the Convention on the Privileges and Immunities of the United Nations or of the Status Agreement with the host country that conditions should be more severe than those for a private person in the country. Of course, a staff member should not place himself in a position of appearing to deal in imported articles even where he pays the customs, but where as in the present case there was a legitimate explanation for the importation of the article, it seems to us that you were perfectly correct in supporting the staff member's case with the host Government.

4. The new procedure requested by the host Government, under which individual authorization of each sale would be required without reference to any objective standards,

[70] United Nations, *Treaty Series*, vol. 1, p. 15.

is not the type of condition which was envisaged. Such condition has not been imposed in any other country. The conditions which have been agreed are those necessary to ensure that taxes are paid and otherwise that relevant laws and regulations are applied. Such conditions should not put the staff member in a position less favourable than that of a private person, nor should they be such as to negate the privilege of importing personal effects which is accorded by the Convention on the Privileges and Immunities of the United Nations and by the Status Agreement.

5. While conditions for sale must be agreed with the host country, it was not intended that such conditions should be unilaterally and arbitrarily established but that they should be negotiated with the purpose of protecting the legitimate interests of both parties, that is, to ensure the host country against the abuse of import privileges and to ensure the United Nations and its staff effective use of such privileges for the purposes that they were intended.

4 November 1964

29. JURIDICAL STANDING OF THE SPECIALIZED AGENCIES WITH REGARD TO RESERVATIONS TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES [71]—REQUIREMENT OF THEIR CONSENT TO SUCH RESERVATIONS

Aide-Mémoire to the Permanent Representative of a Member State

1. A brief survey of the form and structure of the Convention on the Privileges and Immunities of the Specialized Agencies leaves little doubt that (*i*) the specialized agencies themselves have the necessary juridical standing to object to reservations, (*ii*) their consent is necessary before a reservation altering their own privileges and immunities under the Convention could become effective, and (*iii*) it has been the policy of the agencies not to accept reservations which would have the effect of introducing elements of difference in the treatment accorded by States to the specialized agencies under the Convention in matters of general concern.

2. The Convention on the Privileges and Immunities of the Specialized Agencies combines the characteristics both of a multilateral as well as a bilateral convention. It is multilateral as the States in acceding to the Convention exchange with each other their undertakings to accord specific privileges and immunities to the specialized agencies in return for each other party's having accepted a similar obligation. At the same time, the legal relationships set up by the Convention also comprise sets of bilateral undertakings exchanged between States and specialized agencies. This is evident from the methods by which (*a*) States accede to the Convention, and (*b*) agencies accept the Convention's provisions.

3. To illustrate, accession by a State is effected by deposit with the Secretary-General of the United Nations of an instrument of accession (section 41). Furthermore, to create the link between the two sets of parties—member States and specialized agencies—each State party to the Convention indicates in its instrument of accession "the ... agencies in respect of which it undertakes to apply the provisions of this Convention" (section 43).

4. In connexion with the point (*b*), it is worth noting that specialized agencies are by no means the mere passive beneficiaries of the Convention. It was precisely to further their functions that this Convention was adopted. Firstly, by its resolution 179 (II) of 21 November 1947 the General Assembly of the United Nations submitted the text of the Convention "to the specialized agencies for acceptance and to every Member of the United Nations and to every other State member of one or more of the specialized agencies for ac-

[71] United Nations, *Treaty Series*, vol. 33, p. 261.

cession". Second, to accomplish this acceptance by the agencies, the Convention provided that its terms could be adapted to the requirements of each individual agency by means of an annex, the final text of which was left to each agency to approve, in accordance with its constitutional procedure (sections 1 (*iii*), 36). Third, each specialized agency was, in addition, required to transmit to the Secretary-General of the United Nations a notification accepting the standard clauses as modified by its annex and expressly undertaking to give effect to all those sections placing obligations on the agencies (section 37).

5. The legal effect of this procedure is evident from the Convention itself. It states, in section 44, that it enters into force in respect of each State party thereto and any given agency when the dual undertakings have been submitted by each side. (It might be noted, in this connexion, that the French text states: "La présente Convention entrera en vigueur *entre* tout Etat partie... et une institution spécialisée..."). Accordingly, each specialized agency enjoys the same degree of legal interest in the terms and operation of the Convention as does a State party thereto, irrespective of the question whether or not each agency may be described as a "party" to the Convention in the strict legal sense.

6. It follows that each specialized agency has a direct interest in any proposal by an acceding State to alter in any way the terms of the Convention. Practice, as outlined in the remainder of this aide-mémoire, has established that States parties have recognized that this interest gives rise to the right of each agency to require that a reservation conflicting with the purposes of the Convention and which can result in unilaterally modifying that agency's own privileges and immunities, be not made effective unless and until it consents thereto.

7. The general policy of the agencies towards reservations to the Convention has been dictated by their understanding of the basic purposes of the Convention. In view of the nature and relationships of the specialized agencies as part of the United Nations family, the General Assembly of the United Nations recognized at an early stage the need for the unification of their privileges and immunities (*see* General Assembly resolution 22 D (I) of 13 February 1946) and instructed the Secretary-General to open negotiations for this purpose. Subsequently, on 21 November 1947 the General Assembly adopted the Convention on the Privileges and Immunities of the Specialized Agencies (*see* resolution 179 (II)). This latter resolution explicitly stated the dual purpose for the adoption of this Convention, on the one hand of effecting the "unification as far as possible of the privileges and immunities enjoyed by the United Nations and by the specialized agencies" and on the other hand of establishing in a single instrument the privileges and immunities which had been recognized as "essential for an efficient exercise of their respective functions".

8. Based on this premise, it is not surprising to note that the history of the Convention has consistently demonstrated a strong opposition of the specialized agencies to reservations in general. As a consequence of this attitude, the first World Meteorological Congress (Paris, 1951) provided in the General Regulations of WMO that:

Regulation 15

"Whenever a proposal is made for holding a session of any constituent body elsewhere than at the location of the Secretariat, such proposal shall be considered only if the member on whose territory it is proposed to hold such session:

(*a*) Has ratified *without reservation* the Convention on the Privileges and Immunities of the Specialized Agencies including the annex relating to the Organization; ..." (Italics added)

9. A brief review of the prior cases wherein member States' instruments of accession to the Convention in question contained reservations would be helpful in understanding the position taken by specialized agencies in this matter so far. The cases in point are those concerning Egypt, Austria, Belgium and the Federal Republic of Germany. In each case, on the representation made by the Secretery-General of the United Nations, the member State concerned withdrew the reservation.

10. On 7 December 1951, Egypt's instrument of accession was accompanied by reservations to section 7 concerning the transfer of gold and section 12 concerning the use of code and diplomatic pouches. Following notification of these reservations by the Secretary-General of the United Nations to the Executive Heads of the specialized agencies and to all interested States, several specialized agencies objected to the reservation and the question was examined by the Preparatory Committee of the Administrative Committee on Co-ordination, which requested the Secretary-General, in his role of co-ordinator of the activities of the United Nations and of the specialized agencies, to communicate with the Government of Egypt for the purpose of arriving at a position mutually agreeable and acceptable to both the Government concerned and the specialized agencies with regard to the reservations. Consequently, a joint representation on behalf of the specialized agencies was made to the Egyptian Government. Following the aide-mémoire sent to the Egyptian Government and the consultations between the Secretary-General and the Government concerned, the reservations were withdrawn on 27 September 1954.

11. The same procedure was followed in respect of Austria which, at the time of the deposit of its instrument of accession to the Convention on 20 July 1950, made a reservation to the effect that :

> "The Austrian Government declares that the privileges and immunities envisaged in the Convention of November 21st, 1947, will be accorded in Austria to the extent to which privileges and immunities are granted in Austria to members of diplomatc missions in conformity with general principles of international law."

This reservation was withdrawn on 21 January 1955.

12. Objections to the statement made by the Government of Belgium on 1 May 1953 that its instrument of accession applied solely to the metropolitan territory of Belgium were raised by several specialized agencies. A joint representation was made to the Belgian Government requesting it to withdraw the reservation, and consultations were held between the Secretary-General and the Belgian Government. This reservation was withdrawn on 14 March 1962.

13. The same procedure was adopted in the case of the Federal Republic of Germany which at the time of its deposit of its instrument of accession on 17 November 1954 made a reservation excluding section 7 (*b*) of the Convention concerning the free transference of funds, gold or currency. This reservation was withdrawn on 10 October 1957.

10 July 1964

B. Legal opinions of the secretariat of inter-governmental organizations related to the United Nations

1. *International Labour Office*

The following memoranda concerning the interpretation of international labour Conventions were prepared by the International Labour Office at the request of Governments:

(*a*) *Memorandum concerning the Discrimination (Employment and Occupation) Convention*, 1958 (No. 111), prepared at the request of the Government of the Republic of Cyprus, 23 March 1964. *Official Bulletin*, vol. XLVII, No. 4, October 1964, pp. 391-393. English, French, Spanish.

(*b*) *Memorandum concerning the Equality of Treatment (Social Security) Convention*, 1962 (No. 118), prepared at the request of the Government of the Republic of Ghana, 29 October 1963. *Official Bulletin*, vol. XLVII, No. 4, October 1964, pp. 394-395. English, French, Spanish.

2. *International Bureau of the Universal Postal Union*

Legal aspects of the Acts of the XVth Universal Postal Congress (Vienna, 1964)—Reservations to the Acts—Form of powers of representatives to Congresses

(A) Reservations to the Acts of the Universal Postal Union

1. Doctrine defines a reservation as a unilateral act by a State at the time of signature, ratification or adherence to a treaty with a view to excluding or altering the effect of certain provisions of this treaty in regard to the said State.

2. Doctrine is divided on the question of the legal significance of reservations, and more especially on their acceptance by the other States who are parties to a treaty, in cases where the treaty is itself silent on the matter.

3. These theories are not of great interest to the UPU, precisely because the Vienna Constitution [72] settles the problem, by providing, in article 22, paragraph 6, that any Final Protocols annexed to the Acts of the Union shall contain the reservations to these Acts.

4. This provision will make it necessary for countries that wish to avail themselves of a reservation to submit it in the form of a proposal and have it confirmed by Congress for insertion in the Final Protocol of the Act to which it relates. The Constitution thus officially confirms the practice that has been in force since the London Congress in 1929 and arose out of a resolution of that Congress (*Documents of the London Congress*, Tome II, p. 155).

5. This being so, it must be admitted that it is not possible for a Member country to make new reservations after signature of the Acts of Congress, unless it subjects the reservation to the procedure for amendment of the Acts in the interval between Congresses, to complete the Final Protocol of the Act concerned.

6. We are inclined to believe, however, that at the time of admission of a new Member country, or of adherence to an unsigned Act, the Member country concerned may avail itself of an *existing* reservation. It would, in fact, be an arbitrary act to refuse a country the benefit of a reservation enjoyed by some other Member country, although the grounds may be different. Let us say rather that the approval of a reservation by Congress is aimed more at the admissibility of the text of the reservation than the beneficiary country.

7. The unilateral declaration by which a Member country renounces the benefit of an existing reservation in its favour does not need to be submitted to the Union for approval (see *Annotated Code*, Part 1, 1959, p. 216, note 2).

8. With regard to the unilateral declarations by which Member countries react to a given political situation or handle their relations with some other State, they are not, properly speaking, reservations. They do not relate to the application of a provision of our Acts, and arise out of political considerations which fall outside the scope of the UPU. Consequently, they are not subject to any particular procedure, and may be submitted at any time.

9. In Vienna, several countries submitted declarations of a political nature at the time of signature of the Acts. Congress decided that these would be published at the same time as the Acts of the Vienna Congress and notified to the Member countries of the Union through diplomatic channels.

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[72] Text reproduced in this *Yearbook*, p. 195.

(B) Effects of the condition of approval of the acts of the UPU on the powers of the representatives of Member countries

10. The new provisions allow Member countries several possibilities of commitment in relation to the Acts concluded by a Congress.

11. It would therefore be useful if the powers accorded to the plenipotentiaries attending future Congresses specified the precise significance of the signature (definitive, subject to ratification, etc.), in order to avoid misunderstandings. If the necessary specifications are not made, the Acts will be assumed to be subject to ratification, because this form of approval is still the conventional method of approval of treaties.

12. Finally, it should also be pointed out that the Vienna Congress took certain decisions regarding the admissibility of the powers of plenipotentiaries. In spite of the formalities that usually go with the verification of powers, Congress thought that their interpretation should be very flexible, and that one should adhere more to the spirit than the letter of these powers. According to Congress, powers will in future be considered in due form if they are only signed by the Head of State, Head of Government or Minister for Foreign Affairs, even if authority to sign is lacking. In order to avoid any difficulty in the future, the Vienna Congress charged the International Bureau to prepare a formula showing the conditions which full powers must satisfy in order to be considered in due form.

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 1964.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Austria

HIGHEST COURT, AUSTRIA

EVANGELICAL CHURCH (AUGSBURG AND HELVETIC CONFESSIONS) v. OFFICIAL OF THE IAEA: JUDGEMENT OF 27 FEBRUARY 1964 [1]

Church dues are not taxes, but obligations under civil law—Article XV, section 38, of the Agreement regarding the Headquarters of the IAEA [2] therefore does not grant exemption from the payment of church dues

Plaintiff, the Evangelical Church (Augsburg and Helvetic Confessions) in Austria, sued the defendant for arrears of church dues for the period 1959-1962. The Lower Court had rejected the defendant's plea of lack of jurisdiction, ordered the defendant to pay the arrears and rejected both his interim petition for a declaration that he was not liable to the plaintiff for payment of church dues in respect of income derived by him from the IAEA and his alternative prayer for a declaration that sums derived by him from the IAEA should not be included in the calculation base for the assessment of church dues to be paid by him to the plaintiff. This was subsequently confirmed by the Appellate Court.

In upholding the judgement of the Appellate Court, the Highest Court (Civil Chamber) first observed that under article XV, section 38, paragraph (*d*), of the Agreement between Austria and the IAEA regarding the Headquarters of the IAEA, the defendant enjoyed exemption from taxation in respect of the salary, emoluments and indemnities paid to him by the IAEA for services past or present or in connexion with his service with the IAEA; therefore, the point for determination in the present case was whether the church dues claimed by the plaintiff fell within the category of taxation from which the defendant was exempt. With regard to the defendant's attempt to derive a favourable interpretation from the English text of the Headquarters Agreement which did not emerge from the German text, the Court held that the defendant could not be allowed to single out the English text inasmuch as the Agreement had been drawn up in German and English and in four other languages, all of which were equally authentic.

The Court then pointed out that, under the Act concerning the imposition of church dues in the Austrian Province [of the German Reich] (GBlÖ No. 543 of 1939), churches were not granted the right to levy taxes but, rather, the right simply to impose church dues to be collected in the same way as subscriptions to associations. Furthermore, the Court observed that churches could not make orders establishing liability for the payment of dues and having the force of law; the fact that disputes over church dues were to be decided by the courts

[1] *Oberstergerichtshof*, 27.2.64, 6 Ob 302/63; *Landesgericht für Zivilrechtliche Sachen, Wien*, 42 R 287/63; *Bundesgericht Innere Stadt Wien*, 32 C 216/63.

[2] United Nations, *Treaty Series*, vol. 339, p. 110.

meant that church dues were deemed to be obligations under civil law. The Court went on to observe that the defendant could not maintain that the Headquarters Agreement granted him exemption from fulfilling obligations under civil law; therefore, all the remaining points of the appeal became futile and, in particular, the defendant's reference to the Evangelical Church's regulations relating to church dues was of no avail.

The Court concluded that no grounds existed for granting the defendant's interim petition or his alternative prayer. The defendant's reference to the judgement of the Court of Justice of the European Communities in the case of Jean E. Humblet also failed, since the circumstances of that case had been quite different in that the Belgian State had sought to claim the income for purposes of taxation, even though only of the wife of the plaintiff.

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2. United States of America

WESTCHESTER COUNTY COURT

MATTER OF FORECLOSURE OF TAX LIENS BY CITY OF NEW ROCHELLE V. REPUBLICS OF GHANA, INDONESIA AND LIBERIA: JUDGEMENT OF 16 DECEMBER 1964 [1]

Jurisdiction over proceedings to foreclose tax liens on residences of foreign representatives to the United Nations—Court declined to exercise jurisdiction

Petitioner, City of New Rochelle, instituted *in rem* proceedings to foreclose tax liens on three separate parcels of real property owned, respectively, by the Governments of Ghana, Indonesia and Liberia and used by them for the purposes of maintaining quarters for their principal resident representatives to the United Nations.

Each government moved to dismiss the proceeding on the ground that the Court had no jurisdiction over it or over the real property in issue. The United States Government moved to appear *amicus curiæ* and, thereupon, for summary judgement dismissing the proceedings.

The Court held that it had jurisdiction over the real property and that the question it was considering was whether it would "exercise its jurisdiction in these particular proceedings under all the circumstances". In dismissing the proceedings, the Court stated, *inter alia:*

"All three of the foreign governments involved maintain, first, that United States courts (state or federal) have no jurisdiction to entertain a proceeding to foreclose a lien on real property owned by a foreign government and used exclusively for diplomatic purposes and, second, that where the executive branch of the United States government has recognized a claim of immunity, the courts, uniformly will respect the claim and will refuse to entertain jurisdiction. The second point urged would seem to admit that jurisdiction exists but that it should not be exercised, and this seems to be implicit in Justice Eager's language in Weilamann *v.* Chase Manhattan Bank, ...192 N.Y.S. 2d 469, 471, where he said:

'The guiding principle to be followed, in determining whether a court should exercise or surrender its jurisdiction over a foreign nation or its property, is that the courts should not so act as to embarrass the executive arm in its conduct of foreign affairs.'

"This court finds that the overwhelming weight of opinion holds that jurisdiction over proceedings such as these should not be exercised...

"In view of the unquestionable weight of authority the court, most reluctantly, grants the motions of Republic of Ghana, Republic of Liberia and Republic of Indonesia, and dismisses the tax lien foreclosure actions against their respective real properties."

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[1] 255 N. Y. Supp. 2d 178.

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. United Nations Conciliation Commission for Palestine
3. Executive Committee of the Programme of the United Nations High Commissioner for Refugees
4. Committee on the Peaceful Uses of Outer Space
5. Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples
6. Committee for the International Co-operation Year
7. Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States
8. International Law Commission
9. United Nations Conference on Consular Relations (Vienna, 1963)

II. Security Council and Subsidiary Organs

Security Council

III. 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. Economic Commission for Africa

[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.

7. United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs (New York, 1961)
8. United Nations Conference on Olive Oil (Geneva, 1963)
9. United Nations Conference on Trade and Development (Geneva, 1964)
10. United Nations Conference on International Travel and Tourism (Rome, 1963)

IV. SECRETARIAT

1. Committee on the International Year for Human Rights
2. Bureau of Technical Assistance Operations
3. Bureau of Social Affairs
4. Economic Commission for Europe

V. UNITED NATIONS ADMINISTRATIVE TRIBUNAL

VI. INTERNATIONAL COURT OF JUSTICE

I. GENERAL ASSEMBLY AND SUBSIDIARY ORGANS

1. PLENARY GENERAL ASSEMBLY AND MAIN COMMITTEES

Documents of legal interest

(1) *Disarmament*

Report of the Conference of the Eighteen-Nation Committee on Disarmament (A/5731-DC 209): see G.A. (XIX), Annex No. 9.

(2) *The policies of* apartheid *of the Government of the Republic of South Africa*

Reports of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa (A/5692-S/5621, A/5707-S/5717, A/5825-S/6073 and A/5825/Add.1-S/6073/Add.1): see G.A. (XIX), Annex No. 12.

(3) *Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*[3]

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: Southern Rhodesia (A/5800/Add.1).

(4) *Question of South West Africa*

Report of the Secretary-General (A/5781): see G.A.(XIX), Annex No. 15.

(5) *United Nations Conference on Trade and Development*[4]

Proposals designed to establish a process of conciliation within the United Nations Conference on Trade and Development. Report of the Special Committee (A/5749): see G.A. (XIX), Annex No. 13.

Report of the United Nations Conference on Trade and Development. Establishment of the United Nations Conference on Trade and Development as an organ of the General Assembly: draft resolution submitted by the President of the General Assembly (A/L.449 and Corr.1 [English, Russian and Spanish only]): *ibid.*

(6) *Refugees*[5]

Report of the United Nations High Commissioner for Refugees: G.A (XIX), Suppl. No. 11 (A/5811/Rev.1) (Chapter II: International protection).

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[3] See also section 5 below.

[4] See also section III 9 below.

[5] See also section 3 below.

(7) *Human rights*[6]

Draft International Covenants on Human Rights. Observations from Governments of Member States. Note by the Secretary-General (A/5702 and Add.1).

—. Note by the Secretary-General (A/5705) (annex contains text of articles adopted by the Third Committee at the tenth to eighteenth sessions of the General Assembly).

Draft International Convention on the Elimination of All Forms of Racial Discrimination. Note by the Secretary-General (A/5706) (annex contains provisions adopted by the Commission on Human Rights at its twentieth session).

Manifestations of racial prejudice and national and religious intolerance. Note by the Secretary-General (A/5703 and Add.1-2) (contains summaries of action taken by Governments, specialized agencies and non-governmental organizations).

Draft Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples. Report of the Secretary-General (A/5738 and Add.1).

—. Report of the Secretary-General on his study of the desirability of establishing regional documentation and study institutions (A/5789).

(8) *Status of women*[7]

Constitutions, electorals laws and other legal instruments relating to the political rights of women. Memorandum by the Secretary-General (A/5735).

(9) *Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law*

Comments received from Governments of Member States and from international organizations and institutions (A/5744 and Add.1-2).

Note by the Secretary-General (A/5791) (reproduces relevant paragraphs of report of Technical Assistance Committee).

(10) *International rivers*

Legal problems relating to the utilization and use of international rivers. Report of the Secretary-General (A/5409) (3 vol.).

(11) *Reservations to multilateral conventions*[8]

Depositary practice in relation to reservations. Report of the Secretary-General submitted in accordance with General Assembly resolution 1452 B (XIV) (A/5687).

(12) *Rules of procedure*

Rules of procedure of the General Assembly (embodying amendments and additions adopted by the General Assembly up to 31 December 1963) (A/520/Rev.7).

(13) *Administrative Tribunal*[9]

Note by the Secretary-General (A/INF/107) (transmits annual note by the Administrative 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/5717): see G.A. (XIX), Annex No. 17.

2. UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

Document of legal interest

Working paper prepared by the Commission's land expert on the methods and techniques of identification and valuation of Arab refugee immovable property holdings in Israel (A/AC.25/W.84).

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[6] See also section III 2 below.

[7] See also section III 3 below.

[8] See also section 8 (A) (1) below.

[9] See also section V below.

3. EXECUTIVE COMMITTEE OF THE PROGRAMME OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES[10]

Documents of legal interest

Report on international protection. Submitted by the High Commissioner (A/AC.96/227 and Add.1).

International protection. Introductory statement made on 22 October 1964 by Dr. P. Weis, Director of the Legal Division of the Office of the High Commissioner (A/AC.96/269).

Note on the implementation of the indemnification agreement concluded between the United Nations High Commissioner for Refugees and the Federal Republic of Germany. Submitted by the High Commissioner for information (A/AC.96/INF.30).

4. COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

Documents relating to agenda items of legal interest (sixth session)

General debate (agenda item 2) and *report of the Legal Sub-Committee on the work of its third session* (agenda item 5)

(*a*) Basic document: Report of the Legal Sub-Committee on the work of its third session (A/AC.105/19 and Corr.1 [first part of third session], A/AC.105/21 and Add.1 [second part of third session]).

(*b*) General debate in the Legal Sub-Committee and consideration by the Sub-Committee of draft international agreements on assistance to and return of astronauts and space vehicles and on liability for damage caused by objects launched into outer space (first part of third session of the Sub-Committee):

(*i*) *proposals* (A/AC.105/C.2/L.2/Rev.1 and L.9 and Corr.1 [English only]; WG.I/17/Rev.1), *amendments* (WG.I/1-14 and 18-23) and Secretariat *note* (WG.I/15), on assistance to and return of astronauts and space vehicles: see Annex I of Sub-Committee's report; *proposals* (A/AC.105/C.2/L.7, L.8 and Corr.1 [English only] and 2 [Russian only], L.10 and Corr.1 and 2 [Russian only]; WG.II/2,4 and 9), *amendments* (WG.II/1, 3, 5-8 and 12-17) and Secretariat *note* (WG.II/10 and Add.1-2), on liability for damage caused by objects launched into outer space: see Annex II of Sub-Committee's report; Secretariat *memorandum* (A/AC.105/C.2/5) (on international conventions relating to liability for damage); and *report* of the Sub-Committee (A/AC.105/19 and Corr.1).

(*ii*) *debates:* A/AC.105/C.2/SR.30-35.

(*c*) Consideration by the Legal Sub-Committee of draft international agreements on assistance to and return of astronauts and space vehicles and on liability for damage caused by objects launched into outer space (second part of third session of the Sub-Committee):

(*i*) *proposals* (A/AC.105/C.2/L.2/Rev.2 and Corr.1 and 2 [English only]; WG.I/30) and *amendments* (WG.I/21/Rev.1, 24/Rev.1, 26-29 and 31-32), on assistance to and return of astronauts and space vehicles: see Annex I of Sub-Committee's report; *proposals* (A/AC.105/C.2/L.7/Rev.1 and Rev.2 and Corr.1 and 2-3 [English only], L.8/Rev.1 and Corr.1 [English only] and Rev.2, L.10; WG.II/20) and *amendments* (WG.II/18-19, 21 and 23-29), on liability for damage caused by objects launched into outer space: see Annex II of Sub-Committee's report; and *report* of the Sub-Committee (A/AC.105/21 and Add.1).

(*ii*) *debates:* see summary of views in Annex IV of Sub-Committee's report.

(*d*) General debate in the Committee and consideration by the Committee of the Legal Sub-Committee's report:

(*i*) *report* of the Committee (A/5785): see G.A. (XIX), Annex No. 10.

(*ii*) *debates:* A/AC.105/PV.26-30 and 34.

[10] See also section 1 (6) above.

5. SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES[11]

Documents of legal interest

Information on the implementation of the Declaration (A/AC.109/71 and Corr.1 [English and French only] and Add.1-4).

Question of South West Africa. Resolution adopted by the Special Committee at its 262nd meeting on 21 May 1964 (A/AC.109/77 and Corr.1 [English only]).

6. COMMITTEE FOR THE INTERNATIONAL CO-OPERATION YEAR

Document of legal interest

Letter dated 2 March 1964 from the Secretary-General to Permanent Representatives concerning adherence to multilateral instruments (A/AC.118/L.2).

7. SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

Documents relating to an agenda item of legal interest

Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations:

I. *Consideration of the four principles referred to the Special Committee in accordance with General Assembly resolution 1966 (XVIII) of 16 December 1963, 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;

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

II. *Consideration of the question of methods of fact-finding in accordance with General Assembly resolution 1967 (XVIII) of 16 December 1963*

(agenda item 6)

(*a*) Basic documents: Systematic summary by the Secretariat of comments, statements, proposals and suggestions of Member States (A/AC.119/L.1 and Corr.1 [English only]), summary by the Secretariat of the practice of the United Nations and of views expressed in the United Nations by Member States (A/AC.119/L.2 and Corr.1 [English only]), comments by Governments (A/5725 and Add.1-7), selected background documentation prepared by the Secretariat (A/C.6/L.537/Rev.1 and Corr.1 [English only]) and report of the Secretary-General on methods of fact-finding (A/5694).

(*b*) Consideration by the Special Committee:

(*i*) *proposals* and *amendments* (A/AC.119/L.6, L.7, L.8, L.14, L.15 [on threat or use of force], L.6, L.7, L.8, L.17, L.18 and Corr.1 (Spanish only), L.19 and Corr.1 (Spanish only), L.20 and Corr.1 (Spanish only), L.21, L.22 [on peaceful settlement of disputes], L.6, L.7, L.8, L.24, L.25, L.26, L.27 [on non-intervention], L.6, L.7, L.8, L.28 and Add.1 [on sovereign equality of States]); *working paper* (A/AC.119/L.9) and *draft resolutions* (A/AC.119/L.29, L.30 and L.33) [on methods of fact finding]; Drafting Committee *papers* (Nos. 1 and 2 [on threat or use of force], No. 13 [on peaceful settlement of disputes],

[11] See also section 1 (3) above.

No. 9 [on non-intervention], No. 7/Rev.1 [on sovereign equality of States]); and *resolution adopted* [on methods of fact-finding]: see *report* of the Special Committee (A/5746).[12]

(*ii*) *debates:* A/AC.119/SR.3-10, 14-26, 28-37 and 39-43.

8. INTERNATIONAL LAW COMMISSION[13]

(A) *Documents relating to agenda items of legal interest* (sixteenth session)

(1) *Law of treaties* (agenda item 3)[14]

(*a*) Basic document: Third report on the law of treaties by Sir Humphrey Waldock, Special Rapporteur (A/CN.4/167 and Add.1-3 and Add.3/Corr.1 [French only]).

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: G.A. (XIX), Suppl. No. 9 (A/5809) (contains draft articles on the application, effects, modification and interpretation of treaties).

(*ii*) *debates:* International Law Commission, 726th to 755th, 759th, 760th, 764th to 767th and 770th mtgs.

(2) *Special missions* (agenda item 4)

(*a*) Basic document: Report on special missions by Mr. M. Bartoš, Special Rapporteur (A/CN.4/166).

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission (contains part I of draft articles): see section (1) (*b*) (*i*) above.

(*ii*) *debates:* International Law Commission, 723rd to 725th, 757th, 758th, 760th to 763rd and 768th to 770th mtgs.

(3) *Relations between States and inter-governmental organizations* (agenda item 5)

(*a*) Basic document: First report on relations between States and inter-governmental organizations (A/CN.4/161 and Add.1) and working paper (A/CN.4/L.104), by Mr. A. El-Erian, Special Rapporteur.

(*b*) Consideration by the Commission:

(*i*) *report* of the Commission: see section (1) (*b*) (*i*) above.

(*ii*) *debates:* International Law Commission, 755th to 757th mtgs.

(B) *Other documents of legal interest*

General

Yearbook of the International Law Commission, 1962, vol. I: Summary records of the fourteenth session (A/CN.4/SER.A/1962-Sales No.: 62.V.4) and vol. II: Documents of the fourteenth session, including report to General Assembly (A/CN.4/SER.A/1962/Add.1-Sales No.:62.V.5).

Yearbook of the International Law Commission, 1963, vol. I: Summary records of the fifteenth session (A/CN.4/SER.A/1963—Sales No.: 63.V.1).

State responsibility

Summary of the discussions in various United Nations organs and the resulting decisions. Working paper prepared by the Secretariat (A/CN.4/165 and Corr.1 [French only]).

Digest of the decisions of international tribunals relating to State responsibility. Prepared by the Secretariat (A/CN.4/169).

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[12] Text reproduced in this *Yearbook*, p. 65.

[13] For detailed information, see *Yearbook of the International Law Commission*, 1964 (United Nations publication, Sales Nos.: 65.V.1 and 65.V.2).

[14] See also section 1 (11) above.

9. UNITED NATIONS CONFERENCE ON CONSULAR RELATIONS (VIENNA, 1963)

Documents of legal interest

Official records, vol. I: Summary records of plenary meetings and of the meetings of the First and Second Committees (A/CONF.25/16-Sales No.: 63.X.2) and vol. II: Annexes, Vienna Convention on Consular Relations, Final Act, Optional Protocols, Resolutions (A/CONF.25/16/Add.1—Sales No.: 64.X.1).

II. SECURITY COUNCIL AND SUBSIDIARY ORGANS

SECURITY COUNCIL[15]

Documents of legal interest

The situation in the Republic of Cyprus

Report by the Secretary-General on the organization and operation of the United Nations Peace-Keeping Force in Cyprus (S/5634 and Corr.1 [English only])[16] (contains exchange of letters constituting an agreement between the United Nations and the Government of the Republic of Cyprus concerning the status of the United Nations Peace-Keeping Force in Cyprus).

Note by the Secretary-General (S/5653) (contains aide-mémoire concerning some questions relating to the function and operation of the United Nations Peace-Keeping Force in Cyprus).[17]

Note by the Secretary-General concerning the privileges and immunities of the United Nations Cyprus mediator and his staff (S/5662).[18]

III. ECONOMIC AND SOCIAL COUNCIL AND SUBSIDIARY ORGANS

1. ECONOMIC AND SOCIAL COUNCIL AND SESSIONAL COMMITTEES

(A) *Documents relating to agenda items of legal interest* (thirty-seventh session)

(1) *The role of patents in the transfer of technology to underdeveloped countries* (agenda item 13)

(*a*) Basic documents: Report of the Secretary-General (E/3861/Rev.1.—Sales No.: 65.II.B.1) and note by the Secretary-General (E/3861/Add.1).

(*b*) Consideration by the Economic Committee:

(*i*) *draft resolutions* (E/AC.6/L.295 and Rev.1 and Rev.1/Add.1, L.296) and *report* of the Economic Committee (E/3936): see E.S.C. (XXXVII), Annexes, a.i. 13.

(*ii*) *debates:* E/AC.6/SR.341-344.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (XXXVII), 1334th mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1013 (XXXVII) of 27 July 1964.

(2) *Question of procedures for the revision of the Convention on Road Traffic and of the Protocol on Road Signs and Signals, done at Geneva, 19 September 1949* (agenda item 25)

(*a*) Basic document: Report by the Secretary-General on the desirability of further action to revise or replace the Convention on Road Traffic and the Protocol on Road Signs and Signals (E/3883): see E.S.C. (XXXVII), Annexes, a. i. 25.

[15] See also section I 1 (2) above.

[16] Text reproduced in this *Yearbook*, p. 40.

[17] *Ibid.*, p. 174.

[18] See p. 51 of this *Yearbook*.

(*b*) Consideration by the Economic Committee:

(*i*) *draft resolutions* (E/AC.6/L.306 and L. 307), *communication* (E/L.1058) and *report* of the Economic Committee (E/3977): see E.S.C. (XXXVII), Annexes, a. i. 25.

(*ii*) *debates:* E/AC.6/SR.355-356.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (XXXVII), 1350th mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1034 (XXXVII) of 14 August 1964.

(3) *Report of the Commission on Human Rights* (agenda item 27)[19]

(*a*) Basic documents: Report of the Commission on Human Rights (twentieth session): E.S.C. (XXXVII), Suppl. No. 8 (E/3873).—Note by the Secretary-General on the draft declaration on the elimination of all forms of religious intolerance (E/3925 and Corr.1 [English only] and Add.1-2) (transmits comments from Governments).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolutions* (E/AC.7/L.437 and L.438) and *report* of the Social Committee (E/3952): see E.S.C. (XXXVII), Annexes, a. i. 27.

(*ii*) *debates:* E/AC.7/SR.490-498.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (XXXVII), 1338th mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1015 (XXXVII) of 30 July 1964.

(4) *Measures to implement the United Nations Declaration on the Elimination of All Forms of Racial Discrimination* (agenda item 28)[20]

(*a*) Basic documents: Progress report by the Secretary-General (E/3916): see E.S.C. (XXXVII), Annexes, a. i. 28.—Report of the Secretary-General (A/5698 and Corr.1, Add.1 and Corr.1 [English only] and 2 [French only], Add.2, Add.3).

(*b*) Consideration by the Social Committee:

(*i*) *draft resolution* (E/AC.7/L.439) and *report* of the Social Committee (E/3953): see E.S.C. (XXXVII), Annexes, a. i. 28.

(*ii*) *debates:* E/AC.7/SR.497 and 499-500.

(*c*) Consideration by the Council:

(*i*) *debate:* E.S.C. (XXXVII), 1338th mtg.

(*ii*) *resolution adopted:* Economic and Social Council resolution 1016 (XXXVII) of 30 July 1964.

(B) *Other documents of legal interest*

(1) *Commodity agreements*

Interim Co-ordinating Committee for International Commodity Arrangements—1964 review of international commodity problems (E/3856): see E.S.C. (XXXVII), Annexes, a. i. 4.

(2) *Economic Commission for Africa*[21]

The question of participation of Angola, Mozambique and South West Africa in the work of the Economic Commission for Africa. Note by the Secretariat on certain legal aspects (E/3963): see E.S.C. (XXXVII), Annexes, a. i. 17.

See also Economic and Social Council resolution 1027 (XXXVII) of 13 August 1964.

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[19] See also section 2 below.

[20] See also section 2 below.

[21] See also section 6 below.

(3) *Narcotic drugs*[22]

Commission on Narcotic Drugs. Report of the nineteenth session: E.S.C. (XXXVII), Suppl. No. 9 (E/3893).

Chapter II. Implementation of the treaties and international control
Chapter IX. The Single Convention on Narcotic Drugs, 1961
Chapter X. United Nations Opium Protocol, 1953

(4) *Participation in general multilateral treaties concluded under the auspices of the League of Nations*

Note by the Secretary-General (E/3853): see E.S.C. (XXXVII), Annexes, a. i. 43.

See also decision taken by Economic and Social Council at its 1342nd meeting, on 4 August 1964.

(5) *Slavery*

Note by the Secretary-General (E/3897).

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/3885).

Report of the Social Committee (E/3955): see E.S.C. (XXXVII), Annexes, a. i. 30.

See also decision taken by Economic and Social Council at its 1338th meeting, on 30 July 1964.

2. COMMISSION ON HUMAN RIGHTS[23]

(A) *Documents relating to agenda items of legal interest* (twentieth session)

(1) *Draft international convention on the elimination of all forms of racial discrimination* (agenda item 3)

(*a*) Basic documents: Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (sixteenth session) (E/CN.4/873) (para. 119 contains text of draft international convention; para. 123 contains text of preliminary draft on additional measure of implementation), working paper by the Secretary-General on final clauses (E/CN.4/L.679), note by the Secretary-General (E/CN.4/Sub.2/234 and Add.1-3) (Annexes I, II, III and IV contain respectively text of ILO Convention of 1958 concerning Discrimination in respect of Employment and Occupation, text of UNESCO Convention against Discrimination in Education of 1960, text of UNESCO Protocol of 1962 instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education, and comments or proposals by Governments) and note by the Secretary-General (E/CN.4/865).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.680, L.681, L. 682, L.683 and Corr. 1[Russian only] and Rev.1, L.684 and Rev.1, L.685 and Rev.1, L.686 and Rev.1, L.687, L.688, L.689, L.690, L.691, L.692, L.694, L.695, L.696, L.697 and Rev.1, L.698, L.699 and Rev.1, L.700, L.701 and Rev.1-2, L.702, L.703, L.704, L.705, L.706, L.707, L.708, L.710 and Rev.1, L.711, L.712, L.715, L.719) and *resolution adopted* (1(XX)): see *report* of the Commission: E.S.C. (XXXVII), Suppl. No. 8 (E/3873).

(*ii*) *debates:* E/CN.4/SR.775-810.

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[22] See also sections 4 and 7 below.

[23] See also sections I 1 (7) and III 1 (A) (3) and (4) above, and sections IV 1 and 2 below.

(2) *Draft declaration and draft convention on the elimination of all forms of religious intolerance* (agenda item 4)

(*a*) Basic documents: Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (sixteenth session) (E/CN.4/873) (para. 142 contains text of preliminary draft of declaration), note by the Secretary-General (E/CN.4/866) and comments by Governments (E/CN.4/Sub.2/235 and Rev.1, E/CN.4/Sub.2/235/Add.1/Rev.1 and Add.2-5).

(*b*) Consideration by the Commission:

(*i*) *report* of the Working Group (E/CN.4/L.713/Rev.1), *draft resolution* (E/CN.4/L.720) and *resolution adopted* (2(XX)): see *report* of the Commission: E.S.C. (XXXVII), Suppl. No. 8 (E/3873).

(*ii*) *debate:* E/CN.4/SR.810.

(3) *Designation of 1968 as International Year for Human Rights* (agenda item 12)

(*a*) Basic document: General Assembly resolution 1961 (XVIII) of 12 December 1963 and note by the Secretary-General (E/CN.4/867).

(*b*) Consideration by the Commission:

(*i*) *draft resolutions* (E/CN.4/L.717 and Rev.1 and L.721) and *resolution adopted* (6 (XX)): see *report* of the Commission: E.S.C (XXXVII), Suppl. No. 8 (E/3873).

(*ii*) *debate:* E/CN.4/SR.812.

(B) *Other documents of legal interest*

(1) *Advisory services in the field of human rights*

Report by the Secretary-General (E/CN.4/863).

(2) *Draft principles on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country*

Note by the Secretary-General (E/CN.4/869 and Corr.1 and Add.1-4) (contains comments by Governments and non-governmental organizations).

Study of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country, by the Special Rapporteur, Mr. José D. Ingles (E/CN.4/Sub.2/220/Rev.1 and Corr.1 [English only], Corr.2 [French only] and Corr.3 [English only]—Sales No.: 64.XIV.2).

(3) *Freedom of information*

Annual report by the Secretary-General (E/CN.4/862 and Add.1-3).

(4) *Periodic reports on human rights* (1960-1962)

Summary prepared by the Secretary-General (E/CN.4/860 and Add.1-7).

Reports by the specialized agencies (E/CN.4/861 and Add.1-3).

Working paper prepared by the Secretary-General (E/CN.4/AC.18/L.4) (annex deals with developments in human rights, 1960-1962).

(5) *Study of discrimination against persons born out of wedlock*

Progress report submitted by the Special Rapporteur, Mr. V. V. Saario (E/CN.4/Sub.2/236 and Corr.1 and Add.1).

(6) *Study of equality in the administration of justice*

Preliminary report and progress report submitted by the Special Rapporteur, Mr. Mohammed Ahmed Abu Rannat (E/CN.4/Sub.2/237 and Corr.1 [English only], E/CN.4/Sub.2/246).

(7) *Study of the right of everyone to be free from arbitrary arrest, detention and exile and draft principles on freedom from arbitrary arrest and detention*

Comments of Governments. Note by the Secretary-General (E/CN.4/835/Add.8-10).

3. COMMISSION ON THE STATUS OF WOMEN [24]

Documents of legal interest

(1) *Convention on the Political Rights of Women*

Implementation of the Convention by the States parties thereto. Supplementary report by the Secretary-General (E/CN.6/360/Add.3).

(2) *Dissolution of marriage, annulment of marriage and judicial separation*

Report by the Secretary-General (E/CN.6/415/Add.1).

(3) *Draft declaration on the elimination of discrimination against women*

Memorandum by the Secretary-General (E/CN.6/426).

(4) *Nationality of married women*

Report submitted by the Secretary-General (E/CN.6/254/Rev.1—Sales No.: 64.IV.1) (contains analysis of legal systems and of conflicts of laws in the field of nationality of married women, and texts of constitutions, laws and other legal instruments relating to the nationality of married women).

(5) *Status of women in family law and property rights*

Legislation and practice relating to the status of women in family law and property rights. Supplementary report by the Secretary-General (E/CN.6/425).

4. COMMISSION ON NARCOTIC DRUGS [25]

Documents of legal interest

Report of the Division of Narcotic Drugs: 16 March-31 December 1963 (E/CN.7/457 and Corr.1 [English only]).

—: 1 January-15 March 1964 (E/CN.7/457/Add.1).

—: Status of multilateral narcotics treaties (E/CN.7/457/Add.3 and Corr.1 [English and French only]).

Preparations for the coming into force of the 1961 Convention. Note by the Secretary-General (E/CN.7/463 and Add.1-2 and Add.2/Corr.1 [English only] and 2 [Spanish only]).

Preparations for the implementation of the 1953 Protocol. Note by the Secretary-General (E/CN.7/465 and Add.1).

5. ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST

Document of legal interest

Transit trade of land-locked countries (E/CN.11/657) (contains text of ECAFE resolution 51 (XX)).

6. ECONOMIC COMMISSION FOR AFRICA [26]

Documents of legal interest

African Development Bank

Agreement establishing the African Development Bank (E/CN.14/ADB/36—Sales No.: 64.II.K.5).

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[24] See also section I 1 (8) above.

[25] See also sections 1 (B) (3) above and 7 below.

[26] See also section 1 (B) (2) above.

The Headquarters Agreement of the African Development Bank: an outline of its guiding principles and main contents. Discussion paper (E/CN.14–ADB/29).

—: an outline of its guiding principles and an annotated preliminary draft (E/CN.14/ADB/38).

Report of the Committee of Nine on the Headquarters Agreement of the African Development Bank: an outline of its guiding principles and an annotated draft agreement (E/CN.14/ADB/54).

Adjudication of staff disputes of the African Development Bank. Note prepared by the Executive Secretary (E/CN.14/ADB/47/Add.1).

Standing Committee on Industry. Natural Resources and Transport

Investment laws and regulations in Africa (E/CN.14/INR/28/Rev.1).

Transit problems of Eastern African landlocked States. By the Secretariat (E/CN.14/INR/44 and Corr.1).

Miscellaneous

Machinery to service African States in the legal field: a proposal (E/CN.14/263).

7. UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A SINGLE CONVENTION ON NARCOTIC DRUGS (NEW YORK, 1961)[27]

Documents of legal interest

Official records, vol. I: Summary records of plenary meetings (E/CONF.34/24—Sales No.: 63.XI.4) and vol. II: Preparatory documents, amendments and miscellaneous papers, proceedings of Committees, Final Act, Single Convention and Schedules, Resolutions (E/CONF.34/24/Add.1—Sales No.: 63.XI.5).

8. UNITED NATIONS CONFERENCE ON OLIVE OIL (GENEVA, 1963)

Document of legal interest

Summary of proceedings (E/CONF.45/6 and Corr.—Sales No.: 64.II.D.1).

9. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (GENEVA, 1964)[28]

Documents of legal interest

Rules of procedure of the Conference (E/CONF.46/90 and Corr.1 [French only]).

Final Act (E/CONF.46/L.28).

Transit trade of land-locked countries of the ECAFE region. Note by the Secretary-General (E/CONF.46/AC.2/5 and Add.1).

10. UNITED NATIONS CONFERENCE ON INTERNATIONAL TRAVEL AND TOURISM (ROME, 1963)

Document of legal interest

Recommendations on international travel and tourism (E/CONF.47/18—Sales No.: 64.I.6).

IV. SECRETARIAT[29]

1. COMMITTEE ON THE INTERNATIONAL YEAR FOR HUMAN RIGHTS[30]

Programme of measures and activities to be undertaken in connexion with the International Year for Human Rights. Note by the Secretary-General (ST/SG/AC.5/2).

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[27] See also sections 1 (B) (3) and 4 above.

[28] See also section I 1 (5) above.

[29] 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.

[30] See also section III 2 above.

—. Working paper submitted by the Chairman in collaboration with the officers of the Committee (ST–SG/AC.5/3 and Corr.1 [English and French only]).

—. Observations received from Governments, specialized agencies and non-governmental organizations. Memorandum by the Secretary-General (ST/SG/AC.5/4 and Add.1-7).

2. BUREAU OF TECHNICAL ASSISTANCE OPERATIONS

Human rights series[31]

1963 Seminar on the rights of the child. Warsaw, 6-19 August 1963. Organized by the United Nations in co-operation with the Government of Poland (ST/TAO/HR/17).

1963 Seminar on the status of women in family law. Bogotá, 3-16 December 1963. Organized by the United Nations in collaboration with the Government of Colombia (ST/TAO/HR/18).

Remedies against the abuse of administrative authority. Selected studies (ST/TAO/HR/19).

1964 Seminar on freedom of information. Rome, 7-20 April 1964. Organized by the United Nations in co-operation with the Government of Italy (ST/TAO/HR/20).

1964 Seminar on human rights in developing countries. Kabul, 12-25 May 1964. Organized by the United Nations in co-operation with the Government of Afghanistan (ST/TAO/HR/21).

Conference and seminar series

United Nations Foreign Service Training Course. Pine, Barbados, 4 November-12 December 1963 (ST/TAO/SER.C/69).

3. BUREAU OF SOCIAL AFFAIRS

Study on legislative and administrative aspects of rehabilitation of the disabled in selected countries (ST/SOA/51—Sales No.: 65.IV.2).

4. ECONOMIC COMMISSION FOR EUROPE

Model index and revision clause in international contracts for the supply of electric power. Note by the Secretariat (ST/ECE/EP/25).

V. UNITED NATIONS ADMINISTRATIVE TRIBUNAL[32]

Judgements of the United Nations Administrative Tribunal, Nos. 71 to 86, 1958-1962 (AT/DEC/71 to 86 and Corr.1 [English only]—Sales No.: 63.X.1).

VI. INTERNATIONAL COURT OF JUSTICE[33]

1. GENERAL

Annuaire, 1963-1964. [1964]. V,326 pp. Printed. Sales No. 287. Bibliography, pp. 133-210.

Yearbook, 1963-1964. [1964]. V, 321 pp. Printed. Sales No. 288. Bibliography, pp. 133-211.

2. REPORTS OF JUDGEMENTS, ADVISORY OPINIONS AND ORDERS

Reports of Judgements, Advisory Opinions and Orders, 1964. South West Africa Cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa). Order of 20 January 1964. [1964]. [3-4], 2, 2 pp. Printed. Sales No. 281.

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[31] See also section III 2 above.

[32] See also section I 1 (13) above.

[33] For detailed information, see *Yearbook* of the International Court of Justice, 1962-1963 and 1963-1964.

—. Case concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium *v.* Spain). Preliminary objections. Judgement of 24 July 1964. [1964]. [6-166], 161, 161 pp. Printed. Sales No. 284.

—. Case concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium *v.* Spain). Order of 28 July 1964. [1964]. [168-169], 2, 2 pp. Printed. Sales No. 285.

—. South West Africa Cases (Ethiopia *v.* South Africa; Liberia *v.* South Africa). Order of 20 October 1964. [1964]. [171-172], 2, 2 pp. Printed. Sales No. 289.

—. Index. [1965]. 18 pp. Printed. Sales No. 290.

Reports of Judgements, Advisory Opinions and Orders, 1964. [1965]. 172, 172 pp.+ 18 pp. Printed. Sales Nos. 281, 284, 285, 289 and 290. Bound volume containing all decisions rendered in 1964, with index.

3. PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

(1) *Case concerning Right of Passage over Indian Territory*

Pleadings, Oral Arguments, Documents, 1960. Case concerning Right of Passage over Indian Territory (Portugal *v.* India). Vol. V. Oral Arguments (Merits) (concl.). Correspondence. Index. [1964]. VIII, 430 pp. Printed. Sales No. 276.

(2) *Case concerning the Temple of Preah Vihear*

Pleadings, Oral Arguments, Documents, 1962. Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand). Vol. I. Application. Pleadings. [1964]. XXIV, 15, 15, 687 pp. Printed. Sales No. 283.

—. Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand). Vol. II. Oral Arguments. Documents. Correspondence. [1964]. XIII, 8, 8, 797 pp. Printed. Sales No. 286.

B. Legal Documents Index of Inter-Governmental Organizations Related to the United Nations

I. INTERNATIONAL LABOUR ORGANISATION

(A) REPRESENTATIVE ORGANS

(1) AMENDMENTS TO THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION ADOPTED IN 1964

(a) Substitution for article 35 of the Constitution of the International Labour Organisation of the proposals referred to the Conference by the Governing Body at its 157th session

(*i*) Resolution inviting the Governing Body of the International Labour Office to ask the Director-General to prepare for its consideration and for transmission to an early session of the Conference a report containing an analysis of the influence of article 35 of the Constitution in the application of Conventions in non-metropolitan territories. International Labour Conference, fortieth session, Geneva, 1957, Record of proceedings, pp. 551-552, 605, 785. English, French, Spanish.

(*ii*) Resolution concerning the application of International Labour Conventions in non-metropolitan territories. Minutes of the 137th session of the Governing Body, Geneva, October-November 1957, pp. 53, 146. English, French, Spanish.

(*iii*) Influence of article 35 of the Constitution of the International Labour Organisation in the application of Conventions in non-metropolitan territories. Geneva, 1959. Document G.B.141/S.C./D.4/3 (mimeographed), 240 pp. English, French, Spanish.

(*iv*) Influence of article 35 of the Constitution of the International Labour Organisation in the application of Conventions in non-metropolitan territories. Minutes of the 141st session of the Governing Body, Geneva, March 1959, pp. 25, 86-87. English, French, Spanish.

(*v*) Influence of article 35 of the Constitution of the International Labour Organisation in the application of Conventions in non-metropolitan territories. Minutes of the 142nd session of the Governing Body, Geneva, June 1959, pp. 36, 92. English, French, Spanish.

(*vi*) Influence of article 35 of the Constitution of the International Labour Organisation in the application of Conventions in non-metropolitan territories. International Labour Conference, forty-third session, Geneva, 1959, Record of proceedings, pp. 543-544, 671-673. English, French, Spanish.

(*vii*) Influence of article 35 of the Constitution of the International Labour Organisation in the application of Conventions in non-metropolitan territories. International Labour Conference, forty-fifth session, Geneva, 1961, Record of proceedings, pp. 487, 494, 496, 501-503, 537-539, 734-738. English, French, Spanish.

(*viii*) Resolution concerning the activities of the ILO to contribute to the eradication of the consequences of colonialism in the fields of the conditions of work and standards of living of the workers. International Labour Conference, forty-fifth session, Geneva, 1961, Record of proceedings, pp. 629-630, 682-683, 709-710. English, French, Spanish.

(*ix*) Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, forty-sixth session, Geneva, 1962, Record of proceedings, pp. 414-416, 419-420, 682-683. English, French, Spanish.

(*x*) Resolution concerning the activities of the ILO to contribute to the eradication of the adverse consequences of colonialism in the fields of the conditions of work and standards of living of the workers, presented by the Resolutions Committee. International Labour Conference, forty-sixth session, Geneva, 1962, Record of proceedings, pp. 508-524, 638-641, 829-830. English, French, Spanish.

(*xi*) Resolution of the Governing Body authorizing the Director-General to submit to an early session of the Governing Body the question of the revision of article 35 of the Constitution. Minutes of the 152nd session of the Governing Body, Geneva, June 1962, pp. 38, 95-96. English, French, Spanish.

a. Minutes of the 153rd session of the Governing Body, Geneva, November 1962, pp. 20, 76. English, French, Spanish.

b. Minutes of the 154th session of the Governing Body, Geneva, March 1963, pp. 65, 140. English, French, Spanish.

(*xii*) Creation of a Committee of the Governing Body to study the question. Minutes of the 155th session of the Governing Body, Geneva, May-June 1963, pp. 28, 94-97.

(*xiii*) Inclusion in the agenda of the forty-eighth session of the Conference (1964) of the following item: "Substitution for article 35 of the Constitution of the International Labour Organisation of the proposals referred to the Conference by the Governing Body at its 157th session". Minutes of the 157th session of the Governing Body, Geneva, November 1963, pp. 42, 47-48, 68-69, 111, 113. English, French, Spanish.

(*xiv*) Substitution for article 35 of the Constitution of the International Labour Organisation of the proposals referred to the Conference by the Governing Body at its 157th session. International Labour Conference, forty-eighth session, Geneva, 1964, Report IX, 19 pp. English, French, Spanish, German, Russian.

(*xv*) Substitution for article 35 of the Constitution of the International Labour Organisation of the proposals referred to the Conference by the Governing Body at its 157th session. International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 13, 353-358, 402, 571, 574, 788-790, 830-833. English, French, Spanish.

(*xvi*) Instrument for the Amendment of the Constitution of the International Labour Organisation (No. 1), 1964. (Substitution for article 35 of the Constitution of the International Labour Organisation of the proposals referred to the Conference by the Governing Body at its 157th session). *Official Bulletin*, vol. XLVII, No. 3, Supplement I, July 1964, pp. 5-7. English, French, Spanish.

(*b*) *Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as "apartheid".*

(*c*) *Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations.*[1]

(*i*) Resolution calling for the withdrawal of the Republic of South Africa from membership of the International Labour Organisation, on the grounds of the *apartheid* (racial discrimination) policy practised by the Government of the Republic. International Labour Conference, forty-fifth session, Geneva, 1961, Record of proceedings, pp. 575-577, 580-584, 588-595, 599-616, 683, 692-697. English, French, Spanish.

(*ii*) Resolution calling for the withdrawal of the Republic of South Africa from membership of the International Labour Organisation, on the grounds of the *apartheid* (racial discrimination) policy practised by the Government of the Republic. Minutes of the 150th session of the Governing Body, Geneva, November 1961, pp. 15-16, 79-85. English, French, Spanish.

(*iii*) Participation of the delegation of the Republic of South Africa in the Conference. International Labour Conference, forty-seventh session, Geneva, 1963, Record of proceedings, pp. 135-141, 143-145, 165-190, 248-249, 257-272, 340-341, 474-475. English, French, Spanish.

(*iv*) Resolutions adopted by the Governing Body at its 156th session, Geneva, 1963, concerning the question of South Africa:

a. Exclusion of the Republic of South Africa from meetings of the ILO the membership of which is dertemined by the Governing Body;

b. Co-operation of the ILO in United Nations action relating to the Republic of South Africa and in the proceedings pending before the International Court of Justice relating to South West Africa;

c. Representation by a tripartite delegation of the Governing Body to meet the Secretary-General of the United Nations to acquaint him of the grave concern expressed in the Conference and Governing Body on the subject of *apartheid*, and to emphasize the problems posed by the membership of the Republic of South Africa;

d. Consideration, as an urgent matter, of such amendments to the Constitution and/or Standing Orders as might be necessary in order to achieve the objectives of the 1961 resolution on the *apartheid* policy of the Republic of South Africa.

Minutes of the 156th session of the Governing Body, Geneva, June 1963, pp. 13-29, 40-43. English, French, Spanish.

(*v*) Questions arising from the resolutions adopted by the Governing Body at its 156th session concerning South Africa:

a. Creation of a Governing Body Committee to consider the question and to present proposals at the forthcoming session of the Governing Body;

b. Resolution to bring forward the date of the 158th session of the Governing Body.

Minutes of the 157th session of the Governing Body, Geneva, November 1963, pp. 10-11, 13-14, 23-34, 70-80. English, French, Spanish.

[1] These two amendments of the Constitution had their common origin in the examination of the problems arising from the policy of *apartheid* practised by the Government of the Republic of South Africa.

(*vi*) Inclusion in the agenda of the forty-eighth session of the International Labour Conference (1964) of the following item:

"Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as *apartheid*", and submission of a draft amendment. Minutes of the 158th session of the Governing Body, Geneva, February 1964, pp. 10-27, 55-66. English, French, Spanish.

(*vii*) Inclusion in the agenda of the forty-eighth session of the International Labour Conference (1964) of the following item:

"Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations", and submission of a draft amendment. Minutes of the 158th session of the Governing Body, Geneva, February 1964, pp. 10-25, 55-66. English, French, Spanish.

(*viii*) Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as *apartheid.* International Labour Conference, forty-eighth session, Geneva, 1964, Report XII, 15 pp. English, French, Spanish, German, Russian.

(*ix*) Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations. International Labour Conference, forty-eighth session, Geneva, 1964, Report XI, 11 pp. English, French, Spanish, German, Russian.

(*x*) Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference tot suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as *apartheid.* International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 14-16, 430-438, 540, 572-573, 799-802, 834-836. English, French, Spanish.

(*xi*) Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations. International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 14-16, 430-438, 541, 572-573, 799-802, 838-840. English, French, Spanish.

(*xii*) Instrument for the amendment of the Constitution of the International Labour Organisation (No. 2), 1964. (Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as *apartheid*). *Official Bulletin*, vol. XLVII, No. 3, Supplement I, July 1964, pp. 8-10. English, French, Spanish.

(*xiii*) Instrument for the amendment of the Constitution of the International Labour Organisation (No. 3), 1964. (Inclusion in the Constitution of the International Labour Organisation of a provision empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations). *Official Bulletin*, vol. XLVII, No. 3, Supplement I, July 1964, pp. 10-12. English, French, Spanish.

(2) CONVENTIONS AND RECOMMENDATIONS ADOPTED IN 1964[2]

(*a*) *Convention and Recommendation concerning benefits in the case of employment injury*

(*i*) Agenda of the forty-seventh session (1963) of the International Labour Conference. Minutes of the 150th session of the Governing Body, Geneva, November 1961, pp. 23-28, 63-69. English, French, Spanish.

(*ii*) Benefits in the case of industrial accidents and occupational diseases. International Labour Conference, forty-seventh session, Geneva, 1963, Report VII (1) and Report VII (2), 172 and 235 pp. English, French, Spanish, German, Russian.

(*iii*) Benefits in the case of industrial accidents and occupational diseases. International Labour Conference, forty-seventh session, Geneva, 1963, Record of proceedings, pp. 399-407, 412-417, 613-629. English, French, Spanish.

(*iv*) Agenda of the forty-eighth session (1964) of the International Labour Conference; forty-seventh session of the International Labour Conference, Geneva, 1963, Record of proceedings, pp. 417, 628, 638. English, French, Spanish.

(*v*) Benefits in the case of industrial accidents and occupational diseases. International Labour Conference, forty-eighth session, Geneva, 1964, Report V (1) and Report V (2), 58 and 135 pp. English, French, Spanish, German, Russian.

(*vi*) Benefits in the case of industrial accidents and occupational diseases. International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 13, 400-402, 412-421, 474-475, 560, 566-567, 712-738, 818, 872-900. English, French, Spanish.

(*vii*) Convention concerning benefits in the case of employment injury. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, pp. 31-46. English, French, Spanish.

(*viii*) Recommendation concerning benefits in the case of employment injury. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, pp. 46-49. English, French, Spanish.

(*b*) *Convention and Recommendation concerning hygiene in commerce and offices*

(*i*) Agenda of the forty-seventh session (1963) of the International Labour Conference. Minutes of the 150th session of the Governing Body, Geneva, November 1961, pp. 23-28, 63-65. English, French, Spanish.

(*ii*) Hygiene in shops and offices. International Labour Conference, forty-seventh session, Geneva, 1963, Report VI (1) and Report VI (2), 89 and 243 pp. English, French, Spanish, German, Russian.

(*iii*) Hygiene in shops and offices. International Labour Conference, forty-seventh session, Geneva 1963, Record of proceedings, pp. 393-398, 592-612. English, French, Spanish.

(*iv*) Agenda of the forty-eighth session (1964) of the International Labour Conference; International Labour Conference, forty-seventh session, Geneva, 1963, Record of proceedings, pp. 398, 612, 638. English, French, Spanish.

(*v*) Hygiene in commerce and offices. International Labour Conference, forty-eighth session, Geneva, 1964, Report IV (1) and Report IV (2), 68 and 117 pp. English, French, Spanish, German, Russian.

(*vi*) Hygiene in commerce and offices. International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 13, 395-400, 474, 560, 565-566, 573, 704-711, 842-870. English, French, Spanish.

(*vii*) Convention concerning hygiene in commerce and offices. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, pp. 13-17. English, French, Spanish.

(*viii*) Recommendation concerning hygiene in commerce and offices. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, pp. 18-30. English, French, Spanish.

[2] 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 is adopted.

(c) *Convention and Recommendation concerning employment policy*

(*i*) Agenda of the forty-fifth session (1961) of the International Labour Conference. Minutes of the 143rd session of the Governing Body, Geneva, November 1959, pp. 11-16, 67-73. English, French, Spanish.

(*ii*) Employment problems and policies. International Labour Conference, forty-fifth session, Geneva, 1961, Report VI, 83 pp. English, French, Spanish, German, Russian.

(*iii*) Employment problems and policies. International Labour Conference, forty-fifth session, Geneva, 1961, Record of proceedings, pp. 548-555, 558-561, 823-834, 900-904. English, French, Spanish.

(*iv*) Resolution concerning employment policy. *Official Bulletin*, vol. XLIV, No. 1, 1961, pp. 29-34. English, French, Spanish.

(*v*) Agenda of the forty-eighth session (1964) of the International Labour Conference. Minutes of the 157th session of the Governing Body, Geneva, November 1963, pp. 15-19, 64. English, French, Spanish.

(*vi*) Employment policy, with particular reference to the employment problems of developing countries. International Labour Conference, forty-eighth session, Geneva, 1964, Report VIII (1) and VIII (2), 11 pp. and annexes and 109 pp. respectively. English, French, Spanish, German, Russian.

(*vii*) Employment policy. International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 13, 439-456, 515, 561, 569-571, 772-787, 818-819, 902-928. English, French, Spanish.

(*viii*) Convention concerning employment policy. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, pp. 50-53. English, French, Spanish.

(*ix*) Recommendation concerning employment policy. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, pp. 54-66. English, French, Spanish.

(3) STANDING ORDERS QUESTIONS

(*a*) *Amendments to the Standing Orders of the Conference consequential on the coming into force of the Constitution of the International Labour Organisation Instrument of Amendment, 1962, which altered the composition of the Governing Body*

(*i*) Minutes of the 157th session of the Governing Body, November 1963, pp. 22, 83. English, French, Spanish.

(*ii*) International Labour Conference, forty-eighth session, Geneva, 1964, Record of proceedings, pp. 13, 118, 588, 810. English, French, Spanish.

(*iii*) Amendments to articles 48, 49, 50, 53 and 54 of the Standing Orders of the Conference. *Official Bulletin*, vol. XLVII, No. 3, July 1964, Supplement I, p. 82. English, French, Spanish.

(*b*) *Amendment to the Standing Orders of the Governing Body consequential on the coming into force of the Constitution of the International Labour Organisation Instrument of Amendment, 1962, which altered the composition of the Governing Body*

Minutes of the 157th session of the Governing Body, November 1963, pp. 22, 83. English, French, Spanish.

(B) QUASI-JUDICIAL BODIES AND COMMITTEES OF EXPERTS

(1) Reports of the Governing Body Committee on Freedom of Association:

(*a*) 73rd, 74th, 75th, 76th and 77th Reports, 7 November 1963, 21 February 1964, 21 February 1964, 4 June 1964, 4 June 1964.
Official Bulletin, vol. XLVII, No. 3, July 1964, Supplement II, 177 pp. English, French, Spanish.

(*b*) 78th Report, 12 November 1964. *Official Bulletin*, vol. XLVIII, No. 1, Supplement, 61 pp. English, French, Spanish.

(2) Report of the Committee of Experts on the Application of Conventions and Recommendations. International Labour Conference, forty-eighth session, Geneva, 1964, Report III (Part IV), 398 pp. English, French, Spanish.

II. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS[3]

(A) AGREEMENTS AND ARRANGEMENTS WITH INTER-GOVERNMENTAL ORGANIZATIONS

Agreement	*Documents*
(1) Agreement between FAO and IMCO[4]	CL 43/6, CL Rep., para. 73, resolution 2/43
(2) Agreement between FAO and IBRD[5]	CL 43/13, CL Rep., paras. 66-72, resolution 1/43
(3) Arrangement on co-operation between FAO and IAEA in activities relating to the peaceful uses of atomic energy in agriculture	CL 43/25, CL Rep., paras. 127-130

(B) DOCUMENTS CONCERNING PROPOSED OR EXISTING AGREEMENTS UNDER THE AUSPICES OF FAO

Agreement	*Documents*
(1) Agreement for the Establishment of the Desert Locust Control Organization for Eastern Africa within the Framework of FAO[6]	CL 43/42, paras. 13-17, Annex A; CL 43/29 (passim); CL 43/LIM 9; CL Rep., paras. 205-214
(2) Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South West Asia[7]	

(C) STATUTES AND RULES OF PROCEDURE OF BODIES ESTABLISHED UNDER ARTICLE VI OF THE FAO CONSTITUTION

Body	*Documents*
(1) FAO Committee on Wood Based Panel Products: Establishment	CL 43/22; CL Rep., paras. 119-120

[3] "CL Rep." refers to the Report of the forty-third session of the FAO Council.

[4] Approved by FOA Council on 16 October 1964; will come into force upon approval by the Assembly of IMCO and is subject to confirmation by the FAO Conference.

[5] Provisionally in force as of 2 April 1964, definitively in force as of 15 October 1964, date of approval by the FAO Council. This Agreement is subject to confirmation by the FAO Conference.

[6] Agreement under article XV of the FAO Constitution. See *Juridical Yearbook*, 1963, p. 227. Approval withheld by FAO Council and draft agreement referred back to Council of DLCO-EA for reconsideration. Has since been reconsidered by the DLCO-EA Council and approved on 2 July 1965 by FAO Council, now open for signature.

[7] See *Juridical Yearbook*, 1963, p. 228. Came into force on 14 December 1964, date of deposit of the third instrument of acceptance.

(2) Joint FAO/WHO Codex Alimentarius Commission

(*a*) Amendment to Statutes	CL 43/31; CL Rep., para. 224
(*b*) Amendments to Rules of procedure	CL 43/42, paras. 5-12; ALINORM 64/30,[8] pp. 44-45, 72-81
(*c*) Procedure for the elaboration of world-wide and regional standards	ALINORM 64/30, pp. 56-60, 64-71, 84-85

(D) CONSTITUTIONAL QUESTIONS

Subject	*Documents*
(1) Increase in the number of Council seats	CL 43/42, paras. 22-26; CL 43/LIM 5, 6, 11, 13, Rev. 1; CL Rep., paras. 169-178
(2) Functions and methods of work of the Council	CL 43/42, paras. 18-21, Appendix II; CL 43/2; CL 43/LIM 1; CL 43/INF.2; CL Rep., paras. 142-168
(3) Committees, working parties and panels of experts	CL 43/21; CL Rep., paras. 113-118

(E) LEGISLATION AND COMPARATIVE STUDIES

(1) *Periodicals*

(*a*) Quarterly "Food and Agriculture Legislation" (Four issues 1964). Printed.

(*b*) Monthly Legislative Report (January-December 1964). Mimeographed. English; titles in French and Spanish.

(*c*) Current Food Additives Legislation Bulletin (Ten issues 1964). Offset.

(2) *Others*

(*a*) Groundwater legislation in Europe, by FAO Legislation Research Branch in collaboration with Land and Water Development Division. *FAO Legislative Series*, No. 5, 175 pp., 1964.

(*b*) General food labelling provisions, by FAO Legislation Research Branch. *Joint FAO/WHO Program on Food Standards*, ALINORM 64/6 (1), 54 pp., 1964.

(*c*) Principles of legislation for the improvement of agrarian structures, by P. Moral López, FAO Legislation Research Branch. *Information on Land Reform. Land Settlement and Co-operatives*, July 1964, pp. 24-33.

(*d*) Legislative and administrative aspects of water pollution control, by J. E. Carroz, FAO Legislation Research Branch. *Indo-Pacific Fisheries Council*/64/TECH 22, 15 pp., 1964.

(*e*) Implications of land settlement and land reform for Latin American forestry law, by FAO Forestry and Forest Products Division in collaboration with Legislation Research Branch. *Latin American Forestry Commission*, FAO/LAFC-64/5,2, 11 pp., 1964.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(A) CONSTITUTIONAL QUESTIONS

(1) "*Ad hoc* Committee on the functions and responsibilities of the organs of UNESCO. Second report". *Document 67 EX/9*, 27 April 1964, 23 pp., English, French, Russian, Spanish.

[8] Report of the second session of the Joint FAO/WHO Codex Alimentarius Commission (Geneva, 28 September-7 October 1964).

(B) AGREEMENTS WITH OTHER ORGANIZATIONS

(1) "Co-operation with the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) and liaison with the Inter-American Development Bank (IADB)". *Document 67 EX/15*, 16 April 1964, 7 pp. English, French, Russian, Spanish.

(2) "Co-operation with the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) and liaison with the Inter-American Development Bank". *67 EX/Decision 6.4*, May-June 1964. English, French, Russian, Spanish.

(3) "Draft Agreement with the Commission of the European Economic Community". *Document 67 EX/29*, 20 April 1964, 5 pp. English, French, Russian, Spanish.

(4) "Draft Agreement with the Commission of the European Economic Community (EEC)". *67 EX/Decision 6.9*, May-June 1964. English, French, Russian, Spanish.

(5) "Relations with the Organization of African Unity (OAU)". *Document 67 EX/30*, 11 May 1964, 11 pp. English, French, Russian, Spanish.

(6) "Relations with the Organization of African Unity (OAU)". *67 EX/Decision 6.10*, May-June 1964. English, French, Russian, Spanish.

(7) "Draft Agreement with the International Computation Centre". *Document 68 EX/31*, 4 November 1964, 5 pp. English, French, Russian, Spanish.

(8) "Draft Agreement with the International Computation Centre". *68 EX/Decision 7.3*, November 1964. English, French, Russian, Spanish.

(C) PROCEDURAL QUESTIONS

(1) "Increase in the membership of the Legal Committee". *Document 13C/20*, 26 June 1964, 11 pp. English, French, Russian, Spanish.

(2) "First report of the Legal Committee". *Document 13C/33*, 22 October 1964, 3 pp. English, French, Russian, Spanish.

(Increase in the membership of the Legal Committee)

(3) "Amendments to rule 31 of the Rules of procedure" (increase in the membership of the Legal Committee). *13C/Resolution 13.2*, October 1964. English, French, Russian, Spanish.

(4) "Sixth report of the Legal Committee". *Document 13C/47*, 17 November 1964, 2 pp. English, French, Russian, Spanish.

(Responsibilities devolving upon the Legal Committee and upon the States represented on it)

(5) "Draft amendments to the rules on elections by secret ballot in regard to the provisions concerning the election of members of the Executive Board". *68 EX/Decision 6.7*, October-November 1964. English, French, Russian, Spanish.

(6) "Proposed amendments to the summary table of a general classification of the various categories of meetings convened by UNESCO". *Document 13C/17*, 21 August 1964, 7 pp. English, French, Russian, Spanish.

(7) "Eighth report of the Legal Committee". *Document 13C/49*, 17 November 1964, 3 pp. English, French, Russian, Spanish.

(Proposed amendments to the summary table of a general classification of the various categories of meetings convened by UNESCO)

(8) "Amendment to the summary table of a general classification of the various categories of meetings convened by UNESCO". *13C/Resolution 15.1*, November 1964. English, French, Russian, Spanish.

(9) "Majority required for the adoption of draft resolutions of a budgetary or financial nature which are of special importance". *Document 13C/19*, 26 June 1964, 12 pp. English, French, Russian, Spanish.

(10) "Fifth report of the Legal Committee". *Document 13C/45*, 13 November 1964, 3 pp. English, French, Russian, Spanish.

(Rule 81 of the Rules of procedure. Majority required for the adoption of draft resolutions of a budgetary or financial nature which are of special importance)

(11) "Amendments to rule 81 of the Rules of procedure (majority required for the adoption of draft resolutions of a budgetary or financial nature which are of special importance)". *13C/Resolution 13.4*, November 1964. English, French, Russian, Spanish.

(12) "Notification of sessions of the General Conference. Note by the Government of the United Arab Republic". *Document 13C/26*, 21 August 1964, 2 pp. English, French, Russian, Spanish.

(13) "Third report of the Legal Committee". *Document 13C/42*, 13 November 1964, 4 pp. English, French, Russian, Spanish.

(Rule 6 of the Rules of procedure. Notification of sessions of the General Conference. Item included at the request of the Government of the United Arab Republic)

(14) "Amendments to rule 6 of the Rules of procedure" (notification of sessions of the General Conference). *13C/Resolution 13.1*, November 1964. English, French, Russian, Spanish.

(15) "Draft amendments to the rules on elections by secret ballot in regard to the provisions concerning the election of members of the Executive Board". *Document 13C/27*, 21 August 1964, 3 pp., and *Document 13C/27 Add.*, 21 October 1964, 9 pp. English, French, Russian, Spanish.

(16) "Second report of the Legal Committee". *Document 13C/35*, 26 October 1964, 3 pp. English, French, Russian, Spanish.

(Draft amendments to the rules on elections by secret ballot in regard to the provisions concerning the election of members of the Executive Board)

(17) "Amendments to the rules for the conduct of elections by secret ballot (provisions concerning the election of members of the Executive Board)". *13C/Resolution 14.1*, October 1964. English, French, Russian, Spanish.

(18) "Fourth report of the Legal Committee". *Document 13C/44*, 16 November 1964, 3 pp. English, French, Russian, Spanish.

(Rule 78 of the Rules of procedure. Final date for the submission of proposals for the adoption of amendments to the draft programme which involve the undertaking of new activities or a substantial increase in budgetary expenditures)

(19) "Amendments to rule 78 of the Rules of procedure (final date for the submission of proposals for the adoption of amendments to the draft programme which involve the undertaking of new activities or a substantial increase in budgetary expenditures)". *13C/Resolution 13.3*, November 1964. English, French, Russian, Spanish.

(D) CONVENTIONS AND RECOMMENDATIONS

(1) "Draft recommendation on the means of prohibiting and preventing the illicit export, import and transfer of cultural property". *Document 13C/PRG/17*, 29 June 1964, 10 pp. English, French, Russian, Spanish.

(Draft text of the recommendation and report of the Special Inter-governmental Committee of Experts)

(2) "Report of the Working Party on the draft recommendation on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property". *Document 13C/PRG/35*, 5 November 1964, 5 pp. English, French, Russian, Spanish.

(3) "Recommendation on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property, adopted by the General Conference at its thirteenth session, Paris, 19 November 1964". (No symbol). English, French, Russian, Spanish.

(Final text of the recommendation)

(4) "Draft recommendation concerning the international standardization of statistics relating to book production and periodicals". *Document 13C/PRG/11*, 26 June 1964, 18 pp. English, French, Russian, Spanish.

(Draft text of the recommendation and report of the Special Inter-governmental Committee of Experts)

(5) "Report of the Working Party on the draft recommendation concerning the international standardization of statistics relating to book production and periodicals". *Document 13C/PRG/34*, 30 October 1964, 4 pp. English, French, Russian, Spanish.

(6) "Recommendation concerning the international standardization of statistics relating to book production and periodicals, adopted by the General Conference at its 13th session, Paris, 19 November 1964". (No symbol). English, French, Russian, Spanish.

(Final text of the recommendation)

(7) "Report on possible international regulations concerning the preservation of cultural property endangered by public or private works". *Document 67 EX/7*, 16 April 1964, 19 pp. English, French, Russian, Spanish.

(8) "Report on possible international regulations concerning the preservation of cultural property endangered by public or private works". *67 EX/Decision 3.4.1*, May-June 1964. English, French, Russian, Spanish.

(9) "Report on the advisability of drawing up international regulations concerning the preservation of cultural property endangered by public and private works". *Document 13C/PRG/16*, 24 July 1964, 16 pp. English, French, Russian, Spanish.

(10) "Report of the Working Party on the advisability of drawing up international regulations concerning the preservation of cultural property endangered by public and private works". *Document 13C/PRG/37*, 9 November 1964, 3 pp. English, French, Russian, Spanish.

(11) "Safeguarding of cultural property endangered by public and private works". *13C/Resolution 3.334*, November 1964. English, French, Russian, Spanish.

(12) "Preparation, in co-operation with the International Labour Organisation, of an international instrument on the status of the teaching profession". *Document 67 EX/5*, 18 March 1964, 3 pp. English, French, Russian, Spanish.

(13) "Preparation, in co-operation with the International Labour Organisation, of an international instrument on the status of the teaching profession". *67 EX/Decision 3.3.4*, May-June 1964. English, French, Russian, Spanish.

(14) "Draft international recommendations concerning the professional, social and economic status of teachers". *13C/Resolution 1.23*, November 1964. English, French, Russian, Spanish.

(15) "Periodic reports by Member States on the implementation of the Convention and Recommendation against Discrimination in Education". *Document 13C/12*, 21 August 1964, 21 pp. English, French, Russian, Spanish.

(16) "Seventh report of the Legal Committee". *Document 13C/48*, 17 November 1964, 5 pp. English, French, Russian, Spanish.

(Plan for periodic reports by Member States on the implementation of the Convention and Recommendation against Discrimination in Education)

(17) "Plan for periodic reports by Member States on the implementation of the Convention and Recommendation against Discrimination in Education". *13C/Resolution 16.1*, November 1964. English, French, Russian, Spanish.

(18) "Initial special reports of Member States on action taken by them upon the Protocol and Recommendations adopted by the General Conference at its twelfth session". *Documents 13C/11* and *13C/11 Add. 1*, 18 September and 30 September 1964, 163 pp. English, French, Russian, Spanish.

(19) "Report of the Reports Committee, section II, initial special reports of Member States on action taken by them upon the Protocol and Recommendations adopted by the General Conference at its twelfth session". *Document 13C/13 Rev.*, p. 3, and Annexes II and III, 19 November 1964. English, French, Russian, Spanish.

(20) "Initial special reports of Member States on action taken by them upon the Protocol and the Recommendations adopted by the General Conference at its twelfth session". *13C/Resolution 36*, November 1964. English, French, Russian, Spanish.

(21) "General report on the initial special reports of Member States on action taken by them upon the Protocol and the Recommendations adopted by the General Conference at its twelfth session". (No symbol). November 1964, 4 pp. English, French, Russian, Spanish.

(22) "Initial special reports to be submitted to the General Conference at its fourteenth session on the action taken by Member States on the Recommendations adopted by the General Conference at its thirteenth session". *13C/Resolution 37*, November 1964. English, French, Russian, Spanish.

(E) INSTITUTES, CENTRES AND OTHER BODIES

(1) "International Hydrological Decade. Proposal to establish a Co-ordinating Council of the Decade". *Document 13C/PRG/9*, 21 August 1964, 8 pp. English, French, Russian, Spanish.

(2) "Statutes of the Co-ordinating Council of the International Hydrological Decade". *13C/Resolution 2.2222*, November 1964. English, French, Russian, Spanish.

(3) "Amendment to the Statutes of the Inter-governmental Oceanographic Commission". *Document 13C/PRG/8*, 21 August 1964, 5 pp. English, French, Russian, Spanish.

(4) "Amendments to the Statutes of the Inter-governmental Oceanographic Commission". *13C/Resolution 2.2233*, November 1964. English, French, Russian, Spanish.

(5) "Proposal to modify the Statutes of the International Committee of Experts on Literacy". *Document 68 EX/25*, 28 August 1964, 2 pp. English, French, Russian, Spanish.

(6) "Proposed amendment to the Statutes on the International Committee of Experts on Literacy". *68 EX/Decision 4. 3*, October-November 1964. English, French, Russian, Spanish.

(7) "Draft Statutes of the International Committee on Youth". *Document 69 EX/7*, 20 November 1964, 3 pp. English, French, Russian, Spanish.

(8) "Draft Statutes of the International Committee on Youth". *69 EX/Decision 12*, November 1964. English, French, Russian, Spanish.

(9) "Agreement between UNESCO and the Government of Morocco concerning the African Training and Administrative Research Centre for Development". 13 May 1964. (No symbol). French only.

(10) "Agreement between UNESCO and the Government of Mexico concerning the establishment and maintenance in Mexico of a Latin American Chemistry Centre." 28 November 1964. (No symbol). Spanish and French.

(F) OTHERS

(1) "Periodic reports concerning articles 19, 26 and 27 of the Universal Declaration of Human Rights". *13C/Resolution 38*, November 1964. English, French, Russian, Spanish.

(2) "International Conference on Public Education. Terms of reference, membership and rules of procedure of the Conference". *Document 67 EX/2*, 3 April 1964, 3 pp., and *Document 67 EX/2 Add.*, 14 May 1964, 7 pp. English, French, Russian, Spanish.

(3) "International Conference on Public Education. Joint IBE-UNESCO proposals regarding the terms of reference of the Conference, its membership and its rules of procedure". *67 EX/Decisions 3.3.1* and *3.3.1.1*, May-June 1964. English, French, Russian, Spanish.

(4) "Report of the Director-General on the XXVIIth International Conference on Public Education". *Document 68 EX/23*, 20 August 1964, 12 pp., and *Document 68 EX/23 Add.*, 25 September 1964, 3 pp. English, French, Russian, Spanish.

(5) "Report of the Director-General on the XXVIIth International Conference on Public Education". *68 EX/Decision 4.2*, October-November 1964. English, French, Russian, Spanish.

(6) "Status and organization of the International Conference on Public Education". *Document 13C/PRG/28*, 21 September 1964, 10 pp. *Document 13C/PRG/28 Add. 1*, 19 October 1964, 2 pp., and *Document 13C/PRG/28 Add. 2*, 2 November 1964, 4 pp. English, French, Russian, Spanish.

(7) "International Conference of Public Education. Status and organization". *Document 69 EX/3*, 18 November 1964, 6 pp. English, French, Russian, Spanish.

(8) "International Conference on Public Education". *69 EX/Decision 7*, November 1964. English, French, Russian, Spanish.

IV. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(1) *Trilingual text of the Convention on International Civil Aviation*

[The text of the Convention on International Civil Aviation, as signed at Chicago on 7 December 1944, was in the English language. The final provisions of the Convention contemplate the preparation of a further text "drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity". Such a text has never been drawn up. At the request of the ICAO Assembly, the Council is studying this matter.]

C-WP/3907, 29/11/63, English, French, Spanish—Subject No. 27.2: Preparation of authentic trilingual text of the Chicago Convention. Second Working Group on the Trilingual Text of the Chicago Convention. First report (20 pp.).

Doc. 8413-2, C/950-2, 26/5/64, English—Council, fifty-first session, Minutes of the second meeting, 26 February 1964, pp. 19-22 (paras. 1, 2-10).

Doc. 8413-6, C/950-6, 25/8/64, English—Council, fifty-first session, Minutes of the sixth meeting, 11 March 1964, pp. 67-82 (paras. 1-2, 4-82).

Doc. 8413-7, C/950-7, 25/8/64, English—Council, fifty-first session, Minutes of the seventh meeting, 16 March 1964, pp. 85, 96-99 (paras. 5, 64-81).

Doc. 8413-9, C/950-9, 25/8/64, English—Council, fifty-first session, Minutes of the ninth meeting, 20 March 1964, pp. 121-132 (paras. 1, 7-66).

Doc. 8438-C/952—Action of the Council, fifty-first session, Montreal, 24 February-26 March 1964, English, French, Spanish, pp. 25-27.

C-WP/4024, 11/6/64, English, French, Spanish—Subject No. 27.2: Preparation of authentic trilingual text of the Chicago Convention. Second Working Group on the Trilingual Text of the Chicago Convention (2 pp.).

Doc. 8423-12, C/951-12, 28/8/64, English—Council, fifty-second session, Minutes of the twelfth meeting, 23 June 1964, pp. 178, 188-191 (paras. 8, 63-79).

Doc. 8439-C/953—Action of the Council, fifty-second session, Montreal, 25 May-26 June 1964, English, French, Spanish, p. 21.

C-WP/4069, 1/10/64. English—Subject No. 27.2: Preparation of authentic trilingual text of the Chicago Convention. Convening of Diplomatic Conference (1 p.).

Doc. 8446-9, C/954-9, 20/1/65, English—Council, fifty-third session, Minutes of the ninth meeting, 10 November 1964, pp. 126-131 (paras. 1, 4-26).

(2) *Proposed preparation of a Repertory of Practice of the Assembly, the Council and other organs in relation to the Convention on International Civil Aviation*

[During its fourteenth session in 1962, the Assembly noted the interim report submitted to it by the Council concerning the proposal for a Repertory of Practice of the Assembly, the Council and other organs in relation to the Convention on International Civil Aviation. During 1964, the Council decided that the Secretary-General should, instead of compiling a full Repertory of Practice, compile and maintain up to date a "Repertory-Guide" on ICAO's practice in relation to articles of the Convention.]

C-WP/3924, 28/1/64, English—Subject No. 27: Chicago Convention. Proposed preparation of a Repertory of Practice of the Assembly, the Council and other organs in relation to the Convention on International Civil Aviation (27 pp.).

C-WP/4010, 26/5/64, English, French, Spanish—Subject No. 27: Chicago Convention. Proposed preparation of Repertory of Practice (ANC item No. 447.1/64) (3 pp.).

C-WP/3996, 14/5/64, English—Subject No. 27: Chicago Convention. Repertory of Practice (1 p.).

C-WP/4009, 19/5/64, English, French, Spanish—Subject No. 27: Chicago Convention. Repertory of Practice (2 pp.).

C-WP/4008, 19/5/64, English, French, Spanish—Subject No. 27: Chicago Convention. Repertory of Practice (1 p.).

C-WP/4011, 22/5/64, English, French, Spanish—Subject No. 27: Chicago Convention. Proposed preparation of a Repertory of Practice of the Assembly, the Council and other organs in relation to the Convention on International Civil Aviation (5 pp.).

Doc. 8423-7, C/951-7, 22/7/64, English—Council, fifty-second session, Minutes of the seventh meeting, 8 June 1964, pp. 120, 121-124 (paras. 1, 2-21).

Doc. 8439-C/953—Action of the Council, fifty-second session, Montreal, 25 May-26 June 1964, English, French, Spanish, pp. 20-21.

C-WP/4095, 5/11/64, English, French, Spanish—Subject No. 27: Chicago Convention. Proposed preparation of a Repertory of Practice of the Assembly, the Council and other organs in relation to the Convention on International Civil Aviation (13 pp.).

Doc. 8446-19, C/954-19, 22/2/65, English—Council, fifty-third session, Minutes of the nineteenth meeting, 14 December 1964, pp. 284, 286-289 (paras. 1, 10-26).

(3) *Membership in ICAO of the United Republic of Tanganyika and Zanzibar*

[On 26 June 1964, the Council noted that the Organization had received from the Secretary-General of the United Nations a note, dated 6 May 1964, of the Ministry of External Affairs of the United Republic of Tanganyika and Zanzibar concerning the formation of that Republic. All Contracting States were notified that, with effect from 26 April 1964, the United Republic was a Contracting State—in other words, a party to the Convention on International Civil Aviation and a member of ICAO—in place of the former Republic of Tanganyika. Later in the year the name of the new Republic was changed to Tanzania.]

C-WP/4023, 10/6/64, English, French, Spanish—Subject No. 38: External relations policy. United Republic of Tanganyika and Zanzibar (5 pp.).

Doc. 8423-18, C/951-13, 28/8/64, English—Council, fifty-second session, Minutes of the thirteenth meeting, 26 June 1964, pp. 195, 200 (paras. 6, 30-33).

Doc. 8439-C/953—Action of the Council, fifty-second session, Montreal, 25 May-26 June 1964, English, French, Spanish, p. 24.

(4) *Proposed revision of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 7 October 1952)*

[In 1964, the Council, after examining an analysis of the replies to questionnaires addressed to States on the subject of a possible revision of the Rome Convention, decided to propose to the Legal Committee that this subject be included with a reasonable priority in the current part of the Committee's work programme. The Committee took action accordingly and a sub-committee established to consider the subject was scheduled to meet during the first half of 1965.]

C-WP/3991, 15/5/64, English, French, Spanish—Subject No. 16: Legal Work of the Organization. Examination of the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface. Answer to the letter to States of 15 January 1964 (7 pp.).

C-WP/3991, 15/5/64, ADDENDUM, 3/6/64, English, French, Spanish—Subject No. 16: Legal work of the Organization (1 p.).

Doc. 8446-8, C/954-8, 20/1/65, English—Council, fifty-third session, Minutes of the eighth meeting, 9 November 1964, pp. 107, 113-115 (paras. 4, 35-48).

(5) *Legal Committee—Fifteenth session, 1-19 September 1964*

[The Legal Committee held its fifteenth session at Montreal from 1 to 19 September 1964. Among the items discussed by the Committee were the liability of air traffic control agencies, aerial collisions, and certain problems arising out of the hire, charter and interchange of aircraft.]

Doc. 8444, LC/151, 19/9/64, English, French, Spanish—Legal Committee, fifteenth session, Montreal, 1-19 September 1964. Summary of the work of the Legal Committee during its fifteenth session (28 pp.).

C-WP/4070, 8/10/64, English, French, Spanish—Subject No. 16.1: Report of the Legal Committee (3 pp.).

Doc. 8446-8, C/954-8, 20/1/65, English—Council, fifty-third session, Minutes of the eighth meeting, 9 November 1964, pp. 106, 108-113 (paras. 3, 9-34).

(6) *Draft Convention on Aerial Collisions*

[The Legal Committee devoted most of its fifteenth session (Montreal, 1-19 September 1964) to the preparation of a draft convention on aerial collisions, although the text prepared was not considered to be a definitive one.]

Doc. 8444, LC/151, 19/9/64, English, French, Spanish—Legal Committee, fifteenth session, Montreal, 1-19 September 1964. Summary of the work of the Legal Committee during its fifteenth session (28 pp.), pp. 13-17 (Annex C—Report on the Draft Convention on Aerial Collisions), pp. 19-25 (Attachment to Annex C—Draft Convention on Aerial Collisions).

(7) *Liability of Air Traffic Control Agencies*

[A Subcommittee on the Liability of Air Traffic Control Agencies, established by the Legal Committee, met in April 1964. The report of this Subcommittee was considered by the Legal Committee in September 1964.]

LC/SC/LATC No. 19, 30/4/64, English, French, Spanish—Report of the Subcommittee on the Liability of Air Traffic Control Agencies (24 pp.).

LC/Working Draft No. 701, 7/5/64, English, French, Spanish—Legal Committee, fifteenth session. Agenda item No. 4: Report of the Subcommittee on the Liability of Air Traffic Control Agencies (123 pp.).

Doc. 8444, LC/151, 19/9/64, English, French, Spanish—Legal Committee, fifteenth session, Montreal, 1-19 September 1964. Summary of the work of the Legal Committee during its fifteenth session (28 pp.), para. 6 (p. 2), para. 12 (p. 4).

C-WP/4070, 8/10/64, English, French, Spanish—Subject No. 16.1: Report of the Legal Committee (3 pp.).

Doc. 8446-8, C/954, 20/1/65, English—Council, fifty-third session, Minutes of the eighth meeting, 9 November 1964, pp. 106, 108-113 (paras. 3, 9-34).

C-WP/4071, 13/10/64, English—Subject No. 12.5: Plans for legal meetings 1965, 1966, 1967 and 1968 (4 pp.).

(8) *Resolution B of the Guadalajara Conference (Problems affecting the regulation and enforcement of air safety experienced by certain States when an aircraft registered in one State is operated by an operator belonging to another State)*

[A report of a Subcommittee on this subject was considered by the Legal Committee at its fifteenth session at which time the Committee adopted a plan for further study of the subject.]

LC/Working Draft No. 702, 7/5/64, English, French, Spanish—Legal Committee, fifteenth session. Agenda item No. 5(a): Report of the Subcommittee on the subject matter of Resolution B of the Guadalajara Conference (13 pp.).

Doc. 8444, LC/151, 19/9/64, English, French, Spanish—Legal Committee, fifteenth session, Montreal, 1-19 September 1964. Summary of the work of the Legal Committee during its fifteenth session (28 pp.), (para. 8, p. 3).

(9) *Problems concerning charter on a barehull basis*

[The report of the Subcommittee which met in April 1963 to consider this subject was noted by the Legal Committee at its fifteenth session.]

LC/Working Draft No. 703, 7/5/64, English, French, Spanish—Legal Committee, fifteenth session. Agenda item No. 5(b): Report of the Subcommittee on Resolution B of the Guadalajara Conference. Report on the problems concerning charter on a barehull basis (11 pp.).

Doc. 8444, LC/151, 19/9/64, English, French, Spanish—Legal Committee, fifteenth session, Montreal, 1-19 September 1964. Summary of the work of the Legal Committee during its fifteenth session (28 pp.), para. 9 (p. 3).

(10) *Nationality and registration of aircraft operated by international agencies*

[In 1964, the Council received requests from the *Union Africaine et Malgache de Coopération Économique* and from the Government of the United Arab Republic for a study of the legal problems in connexion with the nationality and registration of aircraft operated by international agencies. (*See* article 77 of the Convention on International Civil Aviation which is concerned with this subject.) It was anticipated that, in 1965, a subcommittee of the Legal Committee would meet to discuss this subject.]

Doc. 8446-10, C/954-10, 22/1/65, English—Council, fifty-third session, Minutes of the tenth meeting, 25 November 1964, pp. 144 and 153 (paras. 5, 40-43).

C-WP/4115, 1/12/64, English, French, Spanish—Subject No. 15.11: Joint ownership and operation of international air services. Problems of nationality and registration. Requests of *L'Union Africaine et Malgache de Coopération Économique* and the United Arab Republic (8 pp.).

Doc. 8446-18 (Closed), C/954-18, 22/2/65, English—Council, fifty-third session, Minutes of the eighteenth meeting, 11 December 1964, pp. 277, 278-282 (paras. 1, 2-23).

(11) *Organization and working methods of the Legal Committee*

[In November 1964, the Council decided to establish a Working Group to examine the organization and working methods of the Legal Committee, and this Group began to meet before the year's end.]

Doc. 8446-8, C/954-8, 20/1/65, English—Council, fifty-third session, Minutes of the eighth meeting, 9 November 1964, pp. 106, 108-113 (paras. 3, 10-33).

Doc. 8446-10, C/954-10, 22/1/65, English—Council, fifty-third session, Minutes of the tenth meeting, 25 November 1964, pp. 144, 153-154 (paras. 5, 44, 46-48).

Doc. 8446-11, C/954-11, 27/1/65, English—Council, fifty-third session, Minutes of the eleventh meeting, 27 November 1964, pp. 157, 159 (paras. 1, 4).

(12) *Rules of procedure*

(*a*) *Status of observers at ICAO meetings*

[In 1964, the Council having examined the question of the status of observers at ICAO meetings decided to make no change in the existing policy since it had been informed that no serious problem had arisen in regard to observers. The Legal Committee was, however, asked by the Council to examine this question in relation to its own Rules of procedure, which provide for the conditional right of an observer to introduce motions or amendments to motions. The Legal Committee held no substantive discussion on this matter during 1964. It was understood by the Council that a similar rule in the Rules of procedure for the conduct of air navigation meetings would be re-examined by the Air Navigation Commission when it had occasion to review these rules.]

Doc. 8418-1, C/950-1, 22/5/64, English—Council, fifty-first session, Minutes of the first meeting, 24 February 1964, pp. 2, 7-8 (paras. 4, 27-30).

Doc. 8438-C/952—Action of the Council, fifty-first session, Montreal, 24 February-26 March 1964, English, French, Spanish, p. 4.

C-WP/4002, 18/5/64, English, French, Spanish—Subject No. 10: Relations with the United Nations, the specialized agencies and other international organizations.—Subject No. 41: Rules of procedure of the various representative bodies of ICAO. Status of observers (26 pp.).

Doc. 8423-9 (Closed), C/951-9 (Closed), 21/8/64, English—Council, fifty-second session, Minutes of the ninth meeting, 12 June 1964, pp. 142, 144-147 (paras. 2, 10-25).

Doc. 8439-C/953—Action of the Council, fifty-second session, Montreal, 25 May-26 June 1964, English, French, Spanish, pp. 4 and 5.

LC/Working Draft No. 704, 7/5/64, English, French, Spanish—Legal Committee, fifteenth session. Agenda item No. 6: Amendments to the Rules of procedure of the Committee (10 pp.).

Doc. 8444, LC/151, 19/9/64, English, French, Spanish—Legal Committee, fifteenth session, Montreal, 1-19 September 1964. Summary of the work of the Legal Committee during its fifteenth session (28 pp.), paras. 10 and 11 (p. 3).

(*b*) *Participation of the International Air Transport Association and the Fédération Aéronautique Internationale in meeting of subsidiary bodies of the Council*

[After discussing the conditions under which the International Air Transport Association and the *Fédération Aéronautique Internationale* participated in meetings of subsidiary bodies of the Council, the Council decided, in 1964, that the standing invitation extended to these organizations in September 1947 to "participate in meetings of the Air Navigation and Air Transport Committees" should be governed by the Rules of procedure for Standing Committees (Doc. 8146).]

C-WP/4003, 19/5/64, English, French, Spanish—Subject No. 10: Relations with the United Nations, the specialized agencies, and other international organizations. Attendance by the International Air Transport Association and the *Fédération Aéronautique Internationale* at meetings of subsidiary bodies of the Council (3 pp.).

Doc. 8423-9 (Closed), C/951-9, 21/8/64, English—Council, fifty-second session, Minutes of the ninth meeting, 12 June 1964, pp. 141, 143 (paras. 1, 4-9).

Doc. 8439—C/953—Action of the Council, fifty-second session, Montreal, 25 May—26 June 1964, English, French, Spanish, p. 5.

(13) *Privileges, immunities and facilities*

[The Province of Quebec Order-in-Council No. 2330, of 2 December 1964, concerning certain fiscal concessions to non-Canadian representatives to the International Civil Aviation Organization and to non-Canadian officials of the Organization, replaced Province of Quebec Order-in-Council No. 492 of 23 March 1962. Order-in-Council No. 2330 of 2 December 1964 was, in turn, replaced by a further Order-in-Council No. 172 of 26 January 1965.[9]]

V. INTERNATIONAL ATOMIC ENERGY AGENCY

(1) *Statute and membership of the Agency*

(*a*) Action taken by States in connexion with the Statute (INFCIRC/42/Rev.1).

(*b*) Membership of:

Cyprus	(GC(VIII)/267, GC(VIII)/RES/162)
Kuwait	(GC(VIII)/267, GC(VIII)/RES/163)
Kenya	(GC(VIII)/282, GC(VIII)/RES/164)
Madagascar	(GC(VIII)/282, GC(VIII)/RES/165)

(2) *Internal regulations on procedural and administrative questions*

Modifications to the Provisional Staff Regulations of the Agency (INFCIRC/6/Rev.1).

[9] Text reproduced in this *Yearbook*, p. 3.

(3) *International conventions* [10]

(*a*) Vienna Convention on Civil Liability for Nuclear Damage:

(*i*) Official Records of the International Conference on Civil Liability for Nuclear Damage, Vienna, 29 April-19 May 1963 (IAEA *Legal Series*, No. 2).

(*ii*) Standing Committee on Civil Liability, Report on first series of meetings (CN-12/SC/9).

(*iii*) The establishment of maximum limits for the exclusion of small quantities of nuclear material from the application of the Vienna Convention on Civil Liability for Nuclear Damage (IAEA *Legal Series*, No. 4).

(*b*) International Convention on the Liability of Operators of Nuclear Ships, Standing Committee of the Diplomatic Conference on Maritime Law, Report of the Chairman on the meetings held in Monaco from 24 to 31 October 1963 and from 24 June to 1 July 1964 (CN-6/SC/13).

(*c*) Agreement between the International Atomic Energy Agency and the Governments of Norway, Poland and Yugoslavia concerning Research in Reactor Physics (INFCIRC/55). [11]

(*d*) Agreement between the International Atomic Energy Agency and the Government of the United States of America for the Application of Safeguards to US Reactor Facilities (INFCIRC/57). [12]

(*e*) Agreement for Conducting under the Auspices of the International Atomic Energy Agency a Regional Joint Training and Research Programme Using a Neutron Crystal Spectrometer (INFCIRC/56). [13]

(*f*) Agreement between the International Atomic Energy Agency and the Government of the United Arab Republic for Assistance by the Agency in furthering a Research Project. [14]

(*g*) Agreement between the *Oesterreichische Studiengesellschaft für Atomenergie G.m.b.H.*, the Organization for Economic Co-operation and Development and the International Atomic Energy Agency for collaboration in an International Programme on Irradiation of Fruit and Fruit Juices (INFCIRC/64). [15]

(4) *Other decisions and documents*

(*a*) Extension of the Agency's safeguards system to large reactor facilities (INFCIRC/26/Add.1).

(*b*) International Co-operation Year (GC(VIII)/290, GC(VIII)/RES/175).

(*c*) Emergency assistance in the event of radiation accidents (GC(VIII)/290, GC(VIII)/RES/177).

(*d*) Co-operation between the Agency and the Scientific, Technical and Research Commission of the Organization for African Unity (GC(VIII)/292, GC(VIII)/RES/179).

(*e*) Agreements registered with the International Atomic Energy Agency (up to 31 December 1964) (IAEA *Legal Series*, No. 3).

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[10] Including important treaties concluded in 1964 to which the Agency is a party.

[11] Came into force on 10 April 1964. United Nations, *Treaty Series*, vol. 501.

[12] Came into force on 1 August 1964. United Nations, *Treaty Series*, vol. 525, p. 111.

[13] Came into force between the Agency, India and the Philippines on 31 August 1964. United Nations, *Treaty Series*, vol. 525.

[14] Came into force on 17 September 1964. United Nations, *Treaty Series*, vol. 525.

[15] Came into force on 1 January 1965.

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
   1. General
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A. INTERNATIONAL ORGANIZATIONS IN GENERAL

1. *General*

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