I. SESSIONS

REGULAR SESSIONS

Opening date

Rule 1[1]

The General Assembly shall meet every year in regular session commencing on the Tuesday of the third week in September, counting from the first week that contains at least one working day.

[1] Rule based directly on a provision of the Charter (Art. 20); see introduction paras. 46 and 48.

Closing date

Rule 2[1]

On the recommendation of the General Committee, the General Assembly shall, at the beginning of each session, fix a closing date for the session.

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[1] See introduction, paras. 7 and 14; see also annex IV, para. 4.

Place of meeting

Rule 3

The General Assembly shall meet at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision taken at a previous session or at the request of a majority of the Members of the United Nations.

COMMENTS ON SOME PROCEDURAL QUESTIONS IN CONNEXION WITH THE PROPOSAL THAT THE THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY BE HELD AWAY FROM UNITED NATIONS HEADQUARTERS

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This memorandum responds to several procedural questions that have been raised in connexion with the proposal that the thirty-third session of the General Assembly meet in [name of the capital of a Member State].

I. *Majority required for a decision by the General Assembly to meet away from Headquarters*

2. It has been suggested that a decision by the General Assembly to hold a session away from Headquarters requires an absolute majority, i.e. the affirmative vote of a majority (75)[1] of all the Members of the United Nations, as provided in the final clause of rule 3 and in rule 4 of the Assembly's rules of procedure. These rules state:

> *"Place of meeting*
>
> "Rule 3
>
> "The General Assembly shall meet at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision taken at a previous session or at the request of a majority of the Members of the United Nations.
>
> "Rule 4
>
> "Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly."

3. These rules clearly distinguish between a decision to hold a session away from Headquarters made by the Assembly during a session and a determination to hold a session away from Headquarters made outside the Assembly in accordance with the procedure specified in rule 4. The latter, for which an absolute majority is required, is not a decision of the General Assembly but a determination made by the membership of the United Nations.

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[1] At the date of drafting of the above opinion, the membership of the United Nations stood at 150.

4. The majority required for decisions of the General Assembly is specified in paragraphs 2 and 3 of Article 18 of the Charter (which are reflected in rules 83-86 of the rules of procedure): a two-thirds majority of the members present and voting for decisions on important questions and on those additional categories decided by the Assembly, and a simple majority of the members present and voting for other questions. As these are Charter provisions, the Assembly itself cannot vary them, either by adopting particular rules of procedure or on an *ad hoc* basis, so as to provide that certain decisions be taken by majorities different from those specified in the Charter.

5. Under the Charter and the rules of procedure, absolute majorities of the membership are only required for decisions when these are not taken in and by the Assembly itself: the convening of special sessions pursuant to Article 20 of the Charter, in accordance with rules 8 and 9 of the rules of procedure, and the determination of the place of meeting in accordance with rules 3 and 4. Absolute majorities are required in those cases because, in the absence of a meeting at which a quorum can be determined, the only standard by which approval can be measured is that of the total membership of the Organization. On the other hand, when these same decisions are taken by the Assembly itself, as is possible under rule 7 for the convening of a special session or under the first part of rule 3 for establishing a different place of meeting, the majorities indicated in paragraph 4 above must be used.

6. Finally, it should be noted that a decision on the place of meeting does not appear to be an "important question" within the meaning of paragraph 2 of Article 18 of the Charter. This is so whether or not there are any financial implications to the proposed choice of the place of meeting, since it has been held several times that the mere existence of financial implications does not make a decision a "budgetary question" within the meaning of that paragraph. Consequently, the decision on the place of meeting can be taken by a simple majority under paragraph 3 of Article 18 of the Charter and rule 85 of the rules of procedure, unless the Assembly should decide, by a simple majority under the same provisions, that this question be decided by a two-thirds majority.

II. *May a secret ballot be taken in connexion with this question*

7. The question has been raised whether the General Assembly or its General Committee can take a decision by secret ballot with regard to issues relating to the holding of a regular Assembly session away from Headquarters. In the General Committee this would apply to the decision whether to recommend the inclusion of the additional item in the agenda of the Assembly. In the plenary of the Assembly the question could be raised with regard to the decision on the adoption of the recommendation of the General Committee (i.e. inclusion or not in the agenda) and/or eventually with regard to a vote on the actual proposal to hold a session of the Assembly away from Headquarters.

8. The only case where an absolute majority of votes is required in the General Assembly is for elections of the members of the International Court of Justice.

This majority is specified in Article 10 of the Statute of the Court, which is an integral part of the Charter, and is restated in rule 151 of the rules of procedure of the Assembly.

9. Rules 87 and 127 of the rules of procedure specify the methods of voting, respectively in the plenary and in committees; they have identical contents and provide that the Assembly or a committee shall normally vote by show of hands or by standing, but that any representative may request a roll-call. The only references to secret ballot are contained in rules 92 and 103, which govern elections. The rules of procedure of the Assembly thus do not provide for a secret ballot other than for elections.

10. The absence of a provision for secret ballots for other matters does not, however, absolutely prevent the General Assembly from resorting to such a procedure. In fact, there are precedents for doing so, in the practice of the Assembly as well as of subsidiary organs and conferences with rules of procedure similar to those of the Assembly. For example, at the twenty-first session of the Assembly, the Second Committee decided without objection that the site of the future headquarters of UNIDO should be decided by secret ballot. At its second session in October 1965, the Trade and Development Board voted by secret ballot on the location of the site for the Secretariat of UNCTAD. During the sixth session of the Third United Nations Conference on the Law of the Sea in July 1977, the venue of the seventh session of the Conference was decided upon by secret ballot. It may be relevant to note that in all these cases the choice of a site or venue was involved.

11. On all these occasions the secret ballot procedure was resorted to by general agreement of all members of the body concerned. This accords with the principle that the strict observance of rules of procedure can be avoided by virtue of a general agreement among the members of the body concerned, since the essential purposes of rules of procedure — orderly proceedings and protection of the .interests of the minority — are thus not endangered. It is on the basis of the same principle that in the practice of the General Assembly the application of certain rules of procedure has frequently been suspended by common accord: for example, many elections have not taken place by secret ballot as provided in rule 92.

12. The question arises, however, whether in the absence of a common agreement among the membership, the General Assembly may decide by a majority vote to resort to a secret ballot. When this question was put to the Legal Counsel by the Second Committee during the debate on the choice of the UNIDO Headquarters site referred to above, he advised that the Committee could not decide, on the basis of a vote, to suspend the application of any rule of procedure, or to take a secret ballot. While this opinion of the Legal Counsel applies to the proceedings of any sessional organ, including the General Committee, it does not exclude the authority of the General Assembly itself to decide by a majority vote to resort to secret ballot, since even if this is considered as amounting to a suspension or amendment of the rules of procedure, such power is vested in the Assembly by Article 21 of the Charter.

13. While it would therefore not be possible for the General Committee to decide, except in the absence of any objection, to resort to a secret ballot on its recommendation concerning the inclusion of an additional item in the agenda of the General Assembly, the latter could decide by a majority vote to take a secret ballot on deciding on the recommendation of the General Committee or on the substance of a proposal to hold a session away from Headquarters. If the question is referred to a committee (see Part IV below), then that body would be under the same constraints as the General Committee, unless the plenary decided, by a majority vote, to authorize the committee to decide on its substantive recommendation to the plenary by secret ballot.

III. *Procedure for placing an additional item on the agenda of the Assembly in spite of a negative recommendation of the General Committee*

14. The procedure for placing "additional items" on the agenda of a regular session of the Assembly is governed by rules 15 and 40 (second sentence) of the rules of procedure.

15. If the General Committee should decide to recommend against placing an additional item on the agenda, that recommendation would be communicated to the Assembly in the report of the Committee.

16. The normal course for the General Assembly would be to vote on the recommendation of the General Committee contained in its report. Several alternative procedural situations may be foreseen:

(a) *Rejection of the Committee's recommendation*

If the plenary should reject a negative recommendation of the Committee on the inclusion of the item on the agenda, this would not by itself result in that item being so included. This is so because the rejection of a proposal, which could occur by two successive tie votes under rule 95 or by the failure to obtain a two-thirds majority where that is required, can therefore not be interpreted as a positive decision in the opposite sense. However, it would then be in order to take action on and to adopt a separate proposal for the inclusion of the item on the agenda.

(b) *Proposed amendment of the Committee's recommendation*

A proposal to amend a negative recommendation of the Committee so as to reverse its sense, i.e., to include the agenda item in question, would be out of order since rule 90 provides that "A motion is considered an amendment if it *merely* adds to, deletes from or revises part of the proposal" (emphasis added). It has repeatedly been held that a motion that would completely change the sense of a previous proposal cannot be considered as an amendment to it, but has to be treated as a separate proposal.[2]

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[2] The Legal Counsel so advised the plenary at the twenty-seventh session of the General Assembly, when a proposal was made that a recommendation of the General Committee to include an item be "amended" so that the item would instead have been included in the provisional agenda of the next session. *(Official*

(c) *Submission of a separate proposal to include the item on the agenda*

A proposal to include an additional item on the agenda in spite of a negative recommendation of the General Committee would be in order, as there is no requirement that the Assembly act only on a favourable recommendation of the Committee. Such a proposal would, however, under rule 91, be voted on only after a decision is taken on the recommendation of the Committee — unless, under the same rule, the Assembly decides to vote first on the separate proposed to include.

(i) If the motion to vote first on the separate proposal prevails, then a vote would be taken on that proposal. If it is accepted, the item is thereby placed on the agenda, and no vote would be taken on the Committee's negative recommendation; if the separate proposal fails, then the item is not placed on the agenda and there would be no need to vote on the Committee's recommendation, though that could be done.

(ii) If the motion to vote first on the separate proposal fails, then a vote would first be taken on the Committee's recommendation. If that recommendation is not adopted, then the situation is as described in subparagraph *(a)* above. If the recommendation of the Committee is approved, then a vote on a separate proposal to include the item on the agenda would constitute a reconsideration which, under rule 81, would require a prior decision taken by a two-thirds vote — which, if successful, would be followed by a vote on the proposal to include the item; however, more likely, after the Committee's negative recommendation has been approved, the separate proposal would be withdrawn by its sponsor(s) under rule 80, or a decision not to vote on it would be taken under the second sentence of rule 91.

IV. *Further proceedings if an additional item is placed on the agenda*

17. If it is decided to place on the agenda of the current session an additional item relating to the place of the thirty-third session, then the second sentence of rule 15 requires that:

(a) Consideration of the item in the plenary be postponed:

(i) for 7 days, and
(ii) until a committee has reported thereon; unless

(b) The plenary decides otherwise by a two-thirds majority.

Records of the General Assembly, Twenty-seventh Session, Plenary Meetings, 2037th meeting, paras. 221-223).

18. The requirement of a committee report could be satisfied by submission of the item to and a report from a Main Committee (in particular the Fifth), the General Committee (though the latter probably has no substantive competence under rules 41-42), or an *ad hoc* body. In this connexion, the history of previous considerations of the question of relocating sessions of the General Assembly may be of interest:

(a) At the first session of the Assembly a proposal to relocate the second session was considered only in plenary, and defeated. (The requirement of consideration by a committee did not arise because the item was not an "additional" one.)

(b) At the second session of the Assembly a proposal for relocating the third session was first considered in the plenary from the point of view of principle, and thereafter its administrative and budgetary implications were submitted to the Fifth Committee. After the plenary had thereupon decided on a session in Europe, the choice of site was left to an *ad hoc* committee of 9 members, designated by the President.

(c) At the fifth session of the Assembly the proposed relocation of the sixth session was first considered by the Fifth Committee (though objection was raised against its competence to consider16 the substance of the item), and then was adopted by the plenary.

19. These precedents indicate that submission of the question to the Fifth Committee would be the most normal course to follow, though the establishment of an *ad hoc* committee is not to be excluded. The report of the Committee could:

(a) restrict itself entirely to a discussion of financial, administrative and other implications;

(b) also include some procedural suggestions for the method whereby the plenary would conduct its own consideration (e.g., that a secret ballot be taken);

(c) include, as is customary, a substantive recommendation on the proposal.

2 December 1977

Rule 4

Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly.

COMMENTS ON SOME PROCEDURAL QUESTIONS IN CONNEXION WITH THE PROPOSAL THAT THE THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY BE HELD AWAY FROM UNITED NATIONS HEADQUARTERS

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This memorandum responds to several procedural questions that have been raised in connexion with the proposal that the thirty-third session of the General Assembly meet in [name of the capital of a Member State].

I. *Majority required for a decision by the General Assembly to meet away from Headquarters*

2. It has been suggested that a decision by the General Assembly to hold a session away from Headquarters requires an absolute majority, i.e. the affirmative vote of a majority (75)[1] of all the Members of the United Nations, as provided in the final clause of rule 3 and in rule 4 of the Assembly's rules of procedure. These rules state:

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3. These rules clearly distinguish between a decision to hold a session away from Headquarters made by the Assembly during a session and a determination to hold a session away from Headquarters made outside the Assembly in accordance with the procedure specified in rule 4. The latter, for which an absolute majority is required, is not a decision of the General Assembly but a determination made by the membership of the United Nations.

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[1] At the date of drafting of the above opinion, the membership of the United Nations stood at 150.

4. The majority required for decisions of the General Assembly is specified in paragraphs 2 and 3 of Article 18 of the Charter (which are reflected in rules 83-86 of the rules of procedure): a two-thirds majority of the members present and voting for decisions on important questions and on those additional categories decided by the Assembly, and a simple majority of the members present and voting for other questions. As these are Charter provisions, the Assembly itself cannot vary them, either by adopting particular rules of procedure or on an *ad hoc* basis, so as to provide that certain decisions be taken by majorities different from those specified in the Charter.

5. Under the Charter and the rules of procedure, absolute majorities of the membership are only required for decisions when these are not taken in and by the Assembly itself: the convening of special sessions pursuant to Article 20 of the Charter, in accordance with rules 8 and 9 of the rules of procedure, and the determination of the place of meeting in accordance with rules 3 and 4. Absolute majorities are required in those cases because, in the absence of a meeting at which a quorum can be determined, the only standard by which approval can be measured is that of the total membership of the Organization. On the other hand, when these same decisions are taken by the Assembly itself, as is possible under rule 7 for the convening of a special session or under the first part of rule 3 for establishing a different place of meeting, the majorities indicated in paragraph 4 above must be used.

6. Finally, it should be noted that a decision on the place of meeting does not appear to be an "important question" within the meaning of paragraph 2 of Article 18 of the Charter. This is so whether or not there are any financial implications to the proposed choice of the place of meeting, since it has been held several times that the mere existence of financial implications does not make a decision a "budgetary question" within the meaning of that paragraph. Consequently, the decision on the place of meeting can be taken by a simple majority under paragraph 3 of Article 18 of the Charter and rule 85 of the rules of procedure, unless the Assembly should decide, by a simple majority under the same provisions, that this question be decided by a two-thirds majority.

II. *May a secret ballot be taken in connexion with this question*

7. The question has been raised whether the General Assembly or its General Committee can take a decision by secret ballot with regard to issues relating to the holding of a regular Assembly session away from Headquarters. In the General Committee this would apply to the decision whether to recommend the inclusion of the additional item in the agenda of the Assembly. In the plenary of the Assembly the question could be raised with regard to the decision on the adoption of the recommendation of the General Committee (i.e. inclusion or not in the agenda) and/or eventually with regard to a vote on the actual proposal to hold a session of the Assembly away from Headquarters.

8. The only case where an absolute majority of votes is required in the General Assembly is for elections of the members of the International Court of Justice.

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10. The absence of a provision for secret ballots for other matters does not, however, absolutely prevent the General Assembly from resorting to such a procedure. In fact, there are precedents for doing so, in the practice of the Assembly as well as of subsidiary organs and conferences with rules of procedure similar to those of the Assembly. For example, at the twenty-first session of the Assembly, the Second Committee decided without objection that the site of the future headquarters of UNIDO should be decided by secret ballot. At its second session in October 1965, the Trade and Development Board voted by secret ballot on the location of the site for the Secretariat of UNCTAD. During the sixth session of the Third United Nations Conference on the Law of the Sea in July 1977, the venue of the seventh session of the Conference was decided upon by secret ballot. It may be relevant to note that in all these cases the choice of a site or venue was involved.

11. On all these occasions the secret ballot procedure was resorted to by general agreement of all members of the body concerned. This accords with the principle that the strict observance of rules of procedure can be avoided by virtue of a general agreement among the members of the body concerned, since the essential purposes of rules of procedure — orderly proceedings and protection of the .interests of the minority — are thus not endangered. It is on the basis of the same principle that in the practice of the General Assembly the application of certain rules of procedure has frequently been suspended by common accord: for example, many elections have not taken place by secret ballot as provided in rule 92.

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13. While it would therefore not be possible for the General Committee to decide, except in the absence of any objection, to resort to a secret ballot on its recommendation concerning the inclusion of an additional item in the agenda of the General Assembly, the latter could decide by a majority vote to take a secret ballot on deciding on the recommendation of the General Committee or on the substance of a proposal to hold a session away from Headquarters. If the question is referred to a committee (see Part IV below), then that body would be under the same constraints as the General Committee, unless the plenary decided, by a majority vote, to authorize the committee to decide on its substantive recommendation to the plenary by secret ballot.

III. *Procedure for placing an additional item on the agenda of the Assembly in spite of a negative recommendation of the General Committee*

14. The procedure for placing "additional items" on the agenda of a regular session of the Assembly is governed by rules 15 and 40 (second sentence) of the rules of procedure.

15. If the General Committee should decide to recommend against placing an additional item on the agenda, that recommendation would be communicated to the Assembly in the report of the Committee.

16. The normal course for the General Assembly would be to vote on the recommendation of the General Committee contained in its report. Several alternative procedural situations may be foreseen:

(a) *Rejection of the Committee's recommendation*

If the plenary should reject a negative recommendation of the Committee on the inclusion of the item on the agenda, this would not by itself result in that item being so included. This is so because the rejection of a proposal, which could occur by two successive tie votes under rule 95 or by the failure to obtain a two-thirds majority where that is required, can therefore not be interpreted as a positive decision in the opposite sense. However, it would then be in order to take action on and to adopt a separate proposal for the inclusion of the item on the agenda.

(b) *Proposed amendment of the Committee's recommendation*

A proposal to amend a negative recommendation of the Committee so as to reverse its sense, i.e., to include the agenda item in question, would be out of order since rule 90 provides that "A motion is considered an amendment if it *merely* adds to, deletes from or revises part of the proposal" (emphasis added). It has repeatedly been held that a motion that would completely change the sense of a previous proposal cannot be considered as an amendment to it, but has to be treated as a separate proposal.[2]

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[2] The Legal Counsel so advised the plenary at the twenty-seventh session of the General Assembly, when a proposal was made that a recommendation of the General Committee to include an item be "amended" so that the item would instead have been included in the provisional agenda of the next session. *(Official*

(c) *Submission of a separate proposal to include the item on the agenda*

A proposal to include an additional item on the agenda in spite of a negative recommendation of the General Committee would be in order, as there is no requirement that the Assembly act only on a favourable recommendation of the Committee. Such a proposal would, however, under rule 91, be voted on only after a decision is taken on the recommendation of the Committee — unless, under the same rule, the Assembly decides to vote first on the separate proposed to include.

(i) If the motion to vote first on the separate proposal prevails, then a vote would be taken on that proposal. If it is accepted, the item is thereby placed on the agenda, and no vote would be taken on the Committee's negative recommendation; if the separate proposal fails, then the item is not placed on the agenda and there would be no need to vote on the Committee's recommendation, though that could be done.

(ii) If the motion to vote first on the separate proposal fails, then a vote would first be taken on the Committee's recommendation. If that recommendation is not adopted, then the situation is as described in subparagraph *(a)* above. If the recommendation of the Committee is approved, then a vote on a separate proposal to include the item on the agenda would constitute a reconsideration which, under rule 81, would require a prior decision taken by a two-thirds vote — which, if successful, would be followed by a vote on the proposal to include the item; however, more likely, after the Committee's negative recommendation has been approved, the separate proposal would be withdrawn by its sponsor(s) under rule 80, or a decision not to vote on it would be taken under the second sentence of rule 91.

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17. If it is decided to place on the agenda of the current session an additional item relating to the place of the thirty-third session, then the second sentence of rule 15 requires that:

(a) Consideration of the item in the plenary be postponed:

(i) for 7 days, and
(ii) until a committee has reported thereon; unless

(b) The plenary decides otherwise by a two-thirds majority.

Records of the General Assembly, Twenty-seventh Session, Plenary Meetings, 2037th meeting, paras. 221-223).

18. The requirement of a committee report could be satisfied by submission of the item to and a report from a Main Committee (in particular the Fifth), the General Committee (though the latter probably has no substantive competence under rules 41-42), or an *ad hoc* body. In this connexion, the history of previous considerations of the question of relocating sessions of the General Assembly may be of interest:

(a) At the first session of the Assembly a proposal to relocate the second session was considered only in plenary, and defeated. (The requirement of consideration by a committee did not arise because the item was not an "additional" one.)

(b) At the second session of the Assembly a proposal for relocating the third session was first considered in the plenary from the point of view of principle, and thereafter its administrative and budgetary implications were submitted to the Fifth Committee. After the plenary had thereupon decided on a session in Europe, the choice of site was left to an *ad hoc* committee of 9 members, designated by the President.

(c) At the fifth session of the Assembly the proposed relocation of the sixth session was first considered by the Fifth Committee (though objection was raised against its competence to consider16 the substance of the item), and then was adopted by the plenary.

19. These precedents indicate that submission of the question to the Fifth Committee would be the most normal course to follow, though the establishment of an *ad hoc* committee is not to be excluded. The report of the Committee could:

(a) restrict itself entirely to a discussion of financial, administrative and other implications;

(b) also include some procedural suggestions for the method whereby the plenary would conduct its own consideration (e.g., that a secret ballot be taken);

(c) include, as is customary, a substantive recommendation on the proposal.

2 December 1977

Notification of session

Rule 5

The Secretary-General shall notify the Members of the United Nations, at least sixty days in advance, of the opening of a regular session.

Temporary adjournment of session

Rule 6

The General Assembly may decide at any session to adjourn temporarily and resume its meetings at a later date.

SPECIAL SESSIONS

Summoning by the General Assembly

Rule 7[1]

The General Assembly may fix a date for a special session.

[1] Rule based directly on a provision of the Charter (Art. 20).

Summoning at the request of the Security Council or Members

Rule 8[1]

(a) Special sessions of the General Assembly shall be convened within fifteen days of the receipt by the Secretary-General of a request for such a session from the Security Council or from a majority of the Members of the United Nations or of the concurrence of a majority of Members as provided in rule 9.

(b) Emergency special sessions pursuant to General Assembly resolution 377 A (V) shall be convened within twenty-four hours of the receipt by the Secretary-General of a request for such a session from the Security Council, on the vote of any nine members thereof, or of a request from a majority of the Members of the United Nations expressed by vote in the Interim Committee or otherwise, or of the concurrence of a majority of Members as provided in rule 9.

[1] See introduction, paras. 9 and 23.

Request by Members

Rule 9[1]

(a) Any Member of the United Nations may request the Secretary-General to convene a special session of the General Assembly. The Secretary-General shall immediately inform the other Members of the request and inquire whether they concur in it. If within thirty days of the date of the communication of the Secretary-General a majority of the Members concur in the request, a special session of the General Assembly shall be convened in accordance with rule 8.

(b) This rule shall apply also to a request by any Member of the United Nations for an emergency special session pursuant to resolution 377 A (V). In such a case, the Secretary-General shall communicate with the other Members by the most expeditious means of communication available.

[1] See introduction, para. 9.

Notification of session

Rule 10[1]

The Secretary-General shall notify the Members of the United Nations, at least fourteen days in advance, of the opening of a special session convened at the request of the Security Council, and at least ten days in advance in the case of a session convened at the request of a majority of the Members or upon the concurrence of a majority in the request of any Member. In the case of an emergency special session convened pursuant to rule 8 (b), the Secretary-General shall notify Members at least twelve hours before the opening of the session.

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[1] See introduction, para. 9.

REGULAR AND SPECIAL SESSIONS

Notification to other bodies

Rule 11

Copies of the notice convening each session of the General Assembly shall be addressed to all other principal organs of the United Nations and to the specialized agencies referred to in Article 57, paragraph 2, of the Charter.

II. AGENDA

REGULAR SESSIONS

Provisional agenda

Rule 12

The provisional agenda for a regular session shall be drawn up by the Secretary-General and communicated to the Members of the United Nations at least sixty days before the opening of the session.

Rule 13

The provisional agenda of a regular session shall include:

(a) The report of the Secretary-General on the work of the Organization;

(b) Reports from the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, the subsidiary organs of the General Assembly and the specialized agencies (where such reports are called for under agreements entered into);

(c) All items the inclusion of which has been ordered by the General Assembly at a previous session;

(d) All items proposed by the other principal organs of the United Nations;

(e) All items proposed by any Member of the United Nations;[1]

(f) All items pertaining to the budget for the next financial year and the report on the accounts for the last financial year;

(g) All items which the Secretary-General deems it necessary to put before the General Assembly;

(h) All items proposed under Article 35, paragraph 2, of the Charter by States not Members of the United Nations.

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[1] See annex IV, para. 18, and annex VI, para. 2.

STATUS OF A DRAFT RESOLUTION SUBMITTED AT A PREVIOUS SESSION OF THE GENERAL ASSEMBLY

Memorandum to the Secretary of the Economic and Social Council

1. Concerning the status of draft resolutions submitted at a previous session of the General Assembly and relating to an agenda item which had been postponed from that previous session to the succeeding one, we have reviewed recent practice of the main committees of the General Assembly. We have not, however, been able to find a definitive decision on the point in question.

2. In the cases examined, draft resolutions have normally been resubmitted in slightly altered form at the later session of the Assembly. When so resubmitted they have been issued under a new symbol number and not as a revision of the previous document. The following examples may be noted:

(i) At its fifteenth session the General Assembly included on its agenda the item "Question of Oman" (agenda item S9). During the consideration of the item in the Special Political Committee the representatives of Afghanistan, Guinea, Indonesia, Iraq, Jordan, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Tunisia, the United Arab Republic, Yemen and Yugoslavia submitted a draft resolution (A/SPC/L.67). No action was taken on this draft resolution and the Committee decided to recommend to the General Assembly that further consideration of the item be deferred until its sixteenth session. At its 995th plenary meeting, on 21 April 1961, the Assembly took note of the report of the Committee.

In accordance with the General Assembly's decision of 21 April 1961, the item entitled "Question of Oman" was included in the agenda of the sixteenth session of the Assembly (agenda item 23). A group of States composed of the sponsors of the draft resolution in document A/SPC/L.67 and of Syria submitted a draft resolution (A/SPC/L.78) similar (but not identical) in substance with that in document A/SPC/L.67. This draft resolution was adopted by the Special Political Committee. However, the General Assembly failed to adopt it.

(ii) At its fifteenth session, the General Assembly included in the agenda the item entitled "The Korean question: report of the United Nations Commission for the Unification and Rehabilitation of Korea" (agenda item 21). During the consideration of this item in the First Committee the representatives of Australia, Belgium, Colombia, France, Greece, Luxembourg, the Netherlands, the Philippines, Thailand, Turkey, South Africa, the United Kingdom and the United States submitted a draft resolution (A/C.1/L.269). No action was taken on this

draft resolution, and the Committee decided to recommend to the General Assembly that consideration of the item should be adjourned until the sixteenth session.

At the sixteenth session of the Assembly, where the Korean question was discussed (agenda item 20), the representatives of the States which have sponsored the draft resolution in document A/C.1/L.269 and of Canada and New Zealand submitted a draft resolution (A/C.1/L.3O5) resembling in many aspects the draft in document A/C.1/L.269. The fifteen-power draft resolution was adopted by the Committee and by the General Assembly at its 1087th meeting, on 20 December 1961.

(iii) At the request of Honduras (A/5022) the General Assembly included in the agenda of its sixteenth session the item entitled "Organization of peace" (agenda item 96). An explanatory memorandum on the question submitted by Honduras contained a draft resolution. The question was not discussed at the sixteenth session. At its 1083rd plenary meeting, on 19 December 1961, the General Assembly decided to include this item in the agenda of the sixteenth session but to place it on the provisional agenda of the seventeenth session.

The item "Organization of peace" was included in the agenda of the Assembly's seventeenth session (agenda item 23). Honduras submitted a draft resolution (A/L.403) which repeated verbatim the provisions of the draft resolution in document A/5022with the only exception that a committee to be established by the General Assembly was to submit its report to the eighteenth session of the General Assembly while, according to the previous text, this report was to be submitted to the Assembly's seventeenth session.

The General Assembly decided, at the request of Honduras, to postpone until its eighteenth session the consideration of the item. However the item was not included in the agenda of the eighteenth session.

3. A special case which may be noted concerns the draft declaration on the right of asylum, consideration of which was begun in the Third Committee at the seventeenth session of the General Assembly in 1962. The Assembly did not complete its work on this item at its seventeenth session and successively postponed it to the eighteenth, nineteenth and twentieth sessions, at which latter session it was allotted to the Sixth Committee.

4. During the seventeenth session several amendments to the draft declaration were proposed in the Third Committee and issued as documents at that Committee. These were listed in notes by the Secretary-General at subsequent sessions (see A/5461, para. 3 (18th session) and A/5926, para. 4 (20th session)).

5. The Sixth Committee, to which the item was referred at the twentieth session, established a Working Group to examine procedural questions arising in

connexion with this item. One of these procedural items was "whether the amendments to the draft declaration submitted to the Third Committee are to be considered as still subsisting, or whether they should be resubmitted". The report of the Working Group (A/C.6/L.581) contains the following conclusion:

> "12. In discussing the above question, attention was drawn to the fact that the amendments previously submitted took the form of Third Committee documents. It was agreed that the Secretary-General should consult with the sponsors of amendments previously submitted and ascertain whether they wished those amendments to be presented, with or without modification, to the Sixth Committee. In all cases where the sponsors indicated that they maintained their amendments, they would be issued as Sixth Committee documents."

6. The foregoing conclusion was incorporated in the report of the Sixth Committee (A/6163, para. 13).

7. While no records of the discussion in the Working Group have been published, it is understood that the members chose a pragmatic solution to the particular problem before them and specifically avoided any decision of principle on the question whether the amendments were still subsisting. It seems preferable to continue to deal with issues of this kind on a practical basis by ascertaining, to the extent that this is possible, the wish of the sponsors. There is no rule of procedure, dealing specifically with this issue. Likewise, United Nations practice does not furnish a basis for a definitive conclusion, nor does parliamentary practice appear to provide a consistent or appropriate analogy.

8. If, however, it becomes necessary to formulate an opinion, the following is suggested as a basis for decision.

9. The provisional agenda of a regular session under rule 13 (c) of the rules of procedure of the General Assembly will include "all items the inclusion of which has been ordered by the General Assembly at a previous session." However, the provisional agenda, under rules 21 and 22, must be submitted to the General Assembly for approval and items may be amended or deleted by the Assembly by a majority vote of the members present and voting. As the carry-over of an agenda item from one session to the next is not automatic but must be approved at the latter session, it may be argued that the presumption should be against a draft resolution submitted at one session automatically carrying over to the next.

10. It would, therefore, appear that generally a draft resolution submitted at one session will not be before the subsequent session unless (1) it is resubmitted, (2) there is an express desire on the part of the sponsors to maintain it, or (3) the General Assembly in recommending postponement and/or in placing the item on the agenda has expressly transmitted all documents relating thereto. This conclusion seems to be borne out by the recent consideration of the item on permanent sovereignty over natural resources in the Second Committee. Under this item a draft resolution submitted by

Ceylon and Ecuador (A/C.2/L.8O6/Rev.l) at the previous session was not taken up at the current session although the co-sponsors had not expressly withdrawn it.

11. There are, however, special cases such as the draft International Covenants on Human Rights and similar texts before the Third Committee in which these texts and related *prop*osals of governments have continued before successive sessions of the General Assembly (document A/6342, particularly paragraph 2.)

14 November 1966

Supplementary items

Rule 14

Any Member or principal organ of the United Nations or the Secretary-General may, at least thirty days before the date fixed for the opening of a regular session, request the inclusion of supplementary items in the agenda.[1] Such items shall be placed on a supplementary list, which shall be communicated to Members at least twenty days before the opening of the session.

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[1] See annex IV, para. 18, and annex VI, para. 2.

REQUEST OF MEMBER STATE FOR INCLUSION OF ITEM IN THE AGENDA OF THE GENERAL ASSEMBLY PURSUANT TO RULE 14 OF RULES OF PROCEDURE—THE SECRETARIAT DOES NOT INTERFERE WITH A MEMBER STATE'S SOVEREIGN RIGHT TO CIRCULATE DOCUMENT PROVIDED THAT IT IS NOT BLATANTLY INFLAMMATORY OR POTENTIALLY LIBELOUS—STRONG CRITICISM OF ANOTHER MEMBER STATE OR UNITED NATIONS STAFF MEMBER DOES NOT JUSTIFY REFUSAL TO CIRCULATE DOCUMENT—CALL FOR ANOTHER MEMBER STATE'S DISSOLUTION CONSTITUTES DIRECT ATTACH AGAINST ITS SOVEREIGNTY AND TERRITORIAL INTEGRITY IN VIOLATION OF THE PRINCIPLES OF THE CHARTER—SECRETARIAT SHOULD NOT CIRCULATE DOCUMENT CONTAINING BLATANTLY INFLAMMATORY AND DEFAMATORY LANGUAGE AGAINST ANOTHER MEMBER STATE

Note to the Under-Secretary-General, Department of General Assembly Affairs and Conference Management concerning the request by [State] for a supplementary item to be included in the agenda of the sixty-fourth session of the General Assembly

1. This is in reference to your note dated 14 August 2009 to the Chef de Cabinet, copied to the Legal Counsel, to which a letter dated 4 August 2009 from the Permanent Representative of [State 1] to the United Nations and addressed to the Secretary-General was attached. In his letter, the Permanent Representative requests that a supplementary item be included in the agenda of the sixty-fourth session of the General Assembly and that his letter and its explanatory memorandum be circulated as documents of the General Assembly.

2. Pursuant to rule 14 of the Rules of Procedure of the General Assembly, "Any Member or principal organ of the United Nations or the Secretary-General may, at least thirty days before the date fixed for the opening of a regular session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to Members at least twenty days before the opening of the session."

3. The letter from the Permanent Representative of [State 1] by which his Government requests a supplementary agenda item states, *inter alia*, that, "The [State 2] entity is essentially a mafia for money-laundering and the financing of wars and terrorism that is exempt from international law." Furthermore, the letter calls for the dissolution of [State 2] by stating that, "The … part [of State 2] should join [State 3], the … part should join [State 4] and the … and … parts should join [State 5]."

4. As far as this request is concerned, this Office has consistently maintained that Member States have the right to circulate any document they deem appropriate, including when requesting a supplementary agenda item. The Secretariat does not interfere with this sovereign right provided that the document is submitted by a duly accredited representative, that it does not exceed the page limitations established by the General Assembly and that it is not blatantly inflammatory or potentially libelous. The fact that a document contains a strong criticism of another Member State or a United Nations staff member does not justify the Secretariat's refusal to circulate the document. However, should a document contain potentially libelous, protected or confidential

material or language, then this would provide a legitimate basis to approach the Member State that has sought the circulation of the document with a request that it be withdrawn or revised in order to omit such material/language.

5. Thus, we recommended in the attached note[*] dated 27 March 2000, when advising on a request by the Permanent Mission of [State 6] for circulation of an official document at the fifty-sixth session of the Commission on Human Rights, that the Permanent Mission should be requested to re-submit its document without reference to confidential and internal OHCHR communications and should also be asked to remove references to the name of a particular OHCHR staff member in order to avoid a potentially libelous situation. We also advised that should the Permanent Mission refuse, the document could be circulated as requested but that OHCHR would be entitled to circulate its own document that presented its comments on the [State 6] document.

6. In the case of the [State 1] request, however, the content and defamatory language of the letter and its explanatory memorandum make it impossible for the Secretariat to circulate it as submitted.

7. Thus, the Permanent Representative should be informed that his letter and its explanatory memorandum contain blatantly inflammatory and defamatory language against another Member State. Furthermore, by calling for [State 2]'s dissolution, [State 1] is directly attacking that Member State's sovereignty and territorial integrity in violation of the principles of the Charter. Consequently, the Secretariat should not circulate the letter and explanatory memorandum as an official document of the 64th session for purposes of requesting a supplementary agenda item.

8. In a meeting which took place yesterday between the Chef de Cabinet and the Permanent Representative [of State 1] …, the Chef de Cabinet informed the Permanent Representative of the Secretariat's position along the lines of this note, and offered him the option of withdrawing the letter or drastically revising it in both content and style. The Permanent Representative agreed to relay the Secretariat's concerns to [his capital] and revert, and suggested that the problem between [State 1] and [State 2] might eventually be resolved bilaterally between the two States. It was agreed in the meeting that, in the meantime, no further action would be required.

21 August 2009

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[*] Not reproduced herein.

Additional items

Rule 15[1]

Additional items of an important and urgent character, proposed for inclusion in the agenda less than thirty days before the opening of a regular session or during a regular session, may be placed on the agenda if the General Assembly so decides by a majority of the members present and voting. No additional item may, unless the General Assembly decides otherwise by a two-thirds majority of the members present and voting, be considered until seven days have elapsed since it was placed on the agenda and until a committee has reported upon the question concerned.

[1] See introduction paras. 7 and 25; see also annex IV, paras. 18 and 24.

SPECIAL SESSIONS

Provisional agenda

Rule 16[1]

The provisional agenda of a special session convened at the request of the Security Council shall be communicated to the Members of the United Nations at least fourteen days before the opening of the session. The provisional agenda of a special session convened at the request of a majority of the Members, or upon the concurrence of a majority in the request of any Member, shall be communicated at least ten days before the opening of the session. The provisional agenda of an emergency special session shall be communicated to Members simultaneously with the communication convening the session.

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[1] See introduction, para. 9.

Rule 17

The provisional agenda for a special session shall consist only of those items proposed for consideration in the request for the holding of the session.

Supplementary items

Rule 18

Any Member or principal organ of the United Nations or the Secretary-General may, at least four days before the date fixed for the opening of a special session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to Members as soon as possible.

Additional items

Rule 19[1]

During a special session, items on the supplementary list and additional items may be added to the agenda by a two-thirds majority of the members present and voting. During an emergency special session, additional items concerning the matters dealt with in resolution 377 A (V) may be added to the agenda by a two-thirds majority of the members present and voting.

[1] See introduction, para. 7; see also annex IV, para. 18.

Explanatory memorandum

Rule 20[1]

Any item proposed for inclusion in the agenda shall be accompanied by an explanatory memorandum and, if possible, by basic documents or by a draft resolution.

[1] See introduction, para. 7; see also annex IV, para. 18.

Adoption of the agenda

Rule 21[1]

At each session the provisional agenda and the supplementary list, together with the report of the General Committee thereon, shall be submitted to the General Assembly for approval as soon as possible after the opening of the session.

[1] See annex IV, paras. 19-23 and annex VI, paras. 1 and 2.

Amendment and deletion of items

Rule 22[1]

Items on the agenda may be amended or deleted by the General Assembly by a majority of the members present and voting.

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[1] See introduction, para. 7.

Debate on inclusion of items

Rule 23[1]

Debate on the inclusion of an item in the agenda, when that item has been recommended for inclusion by the General Committee, shall be limited to three speakers in favour of, and three against, the inclusion. The President may limit the time to be allowed to speakers under this rule.

[1] See introduction, para. 7.

Modification of the allocation of expenses

Rule 24

No proposal for a modification of the allocation of expenses for the time being in force shall be placed on the agenda unless it has been communicated to the Members of the United Nations at least ninety days before the opening of the session.

III. DELEGATIONS

Composition

Rule 25[1]

The delegation of a Member shall consist of not more than five representatives and five alternate representatives and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation.

[1] Rule based directly on a provision of the Charter (Art. 9, para. 2). See annex IV, para. 44.

QUESTION OF DUAL OR MULTIPLE REPRESENTATION IN UNITED NATIONS ORGANS

Memorandum to the Secretary-General, United Nations Conference on Trade and Development

1. It is the purpose of the present memorandum to review the question of dual and multiple representation, both in its aspect of representation of a State and of an intergovernmental organization by one person and of representation of two or more States by a single individual. These two aspects, while superficially similar, also involve important differing considerations, in that the latter, unlike the former, may raise the question of multiple voting.

2. After summarizing some past instances in which the question of dual or multiple representation has arisen, this memorandum analyses the various issues involved and concludes with some suggested future courses of action.

Some past instances involving the question of dual or multiple representation

3. The following are some previous cases in which the question of dual or multiple representation has been raised:

(a) In August 1945, at the third session of the UNRRA Council, Haiti was represented by the United States delegate. The Committee on Credentials, according to its report:

> "gave careful attention to the credentials of Haiti. . . [In response to the request received from the Republic of Haiti that the United States delegate should be their representative] the Committee resolved that this request be accepted, but hoped that such procedure would not be accepted as a precedent for future meetings. . . The Committee understood that this form of representation would not give the United States a dual vote."

(b) In 1954, advice was given by the Office of Legal Affairs that there was no objection to Luxembourg being represented by the Belgian Government provided that the representation of Belgium and Luxembourg was exercised by two different individuals.

(c) In 1960, the French delegation was advised by the Legal Counsel to avoid a situation in which the French delegate would be appointed to represent the Cameroons in addition to France.

(d) In 1961, the Executive Secretary of the Economic Commission for Africa in Addis Ababa was advised by the Office of Legal Affairs, with reference to an inquiry made by the Government of Malagasy, that in United Nations practice representation of two or more governments by a single delegate was not permitted but that there was no objection to a State being represented by a

national of another State or by a member of another delegation, provided he did not simultaneously serve as representative of another State.

(e) In 1962, at the United Nations Coffee Conference, one individual was accredited as a member of three different delegations—Madagascar, United Kingdom Exporting Territories, and Tanganyika. On being informed by the Legal Adviser to the Conference that it was contrary to long-standing United Nations practice for one person to serve on more than one delegation to a conference, Madagascar and Tanganyika withdrew their accreditation of the individual concerned. The accreditation of the chief delegate of Guatemala as alternate delegate of Peru to Committee II of the Conference was also withdrawn.

(f) At the Olive Oil Conference in 1963, the Office of Legal Affairs advised against the representation of Belgium and Luxembourg by a single person.

(g) In April 1965, in regard to a meeting of the Economic Commission for Africa, the Legal Counsel informed the officer in charge of Economic and Social Affairs that "We also do not consider it proper to have a single delegate represent two governments at a meeting", but observed that "it would have been possible to have one of the members of the delegation of the Central African Republic designated as the representative of Gabon."

Analysis of the issues involved in dual or multiple representation

4. The examples listed in the preceding section of this memorandum indicate a consistent policy of advice and practice against permitting dual or multiple representation in United Nations bodies. The reasons for such advice may be summarized as follows:

(a) The practice of one delegate representing two or more countries, if allowed to develop generally, would be inconsistent with one of the basic concepts underlying deliberations in United Nations organs, namely that the various members of those organs should be represented by different delegates who reach conclusions on the issues discussed only after considering the arguments advanced in debate as they affect the interests of their own respective countries. One person representing two States would be unlikely to weigh differently the arguments advanced in his capacity as representative of State A and representative of State B. Furthermore, confusion might arise as to whether a particular statement or argument was made by a single representative on behalf of State A or State B.

(b) Dual or multiple representation of States has serious implications with regard to voting rights, particularly in an organization based on the concept of "one member, one vote". If one representative were permitted to cast votes on behalf of more than one State, various abuses might develop. Thus, for instance, the practice might be utilized to swell voting strengths or to obtain one or more crucial extra votes on which the fate of a decision may depend.

(c) The rules of procedure of most United Nations organs specifically provide that "each member shall have one vote", and that voting shall normally be by show of hands. Dual or multiple representation, insofar as it might affect voting rights, would not be consistent with, or practicable under such rules and would result in confusion and abuse.

5. The first of the foregoing arguments against dual or multiple representation, which relates to the concept of the parliamentary process, has its main application in the political sphere. While it is still applicable in a technical or expert organ, it is perhaps not of the same importance. The other two arguments relate to voting, and thus apply primarily to the case of one individual representing two or more States which are members of a particular organ. They do not necessarily apply to dual representation of a State and of an inter-governmental organization, as such organizations normally have only observer status at United Nations meetings, which does not entitle them to a vote. Nor do they necessarily apply when one individual is accredited by a State which is a member of an organ and by another State which has only observer status on that organ. However, dual representation of a State and of an organization or of a member and an observer State has been resisted in the past, because it can give rise to confusion regarding the capacity in which a representative speaks and because it might be taken as a precedent for arguing that one individual can represent two member States and can thus cast more than one vote.

It also appeared to run contrary to the purpose of the provisions permitting participation by observers from non-members of the organ and from international organizations. The intention of allowing such wider representation was presumably to afford an opportunity for the presentation of views and interests not already represented on the organ and dual representation would tend to defeat this purpose.

Future courses of action

6. Ideally, the best solution, from the point of view of the United Nations, is to preserve unchanged the principle that dual or multiple representation is not allowed. However, as the arguments against such representation do not apply with the same force to the situation of dual representation of a State and of an organization or of a member and an observer State, as they do to representation of two or more member States, some flexibility may be permitted in the former situations where strong reasons are advanced to justify it in technical rather than purely political organs. Such exceptions should preferably be based either upon a rule of procedure or an express decision of the organ concerned. Such a rule or decision will both justify the departure from the normal principle and will also provide a basis for maintaining the principle in the case of other organs which have not adopted a similar rule or decision.

7. In view of the fact that cases of dual representation appear to have been accepted in the past on the Trade and Development Board, at least with respect to representation of a State and of an inter-governmental organization, and in view of the particular case of the European Economic Community insofar as representation of its Council of Ministers is concerned, we agreed that in the UNCTAD situation one

representative may be accredited both by a State and by an inter-governmental organization. In view of this, it will also be necessary to allow one representative to be accredited by two States, provided that only one of these States is a member of the UNCTAD organ involved.

8. It was also agreed that a representative accredited by two entities should be required to speak from separate places when speaking in his separate capacities so as to avoid confusion over the role in which he is acting. Alternatively, if this is not considered desirable by reason of the eminence and rank of the representative concerned (e.g. a Foreign Minister), he may speak from one place, but the conference officer will be required to change the name plate when he speaks in different capacities.

9. As indicated in paragraph 6 above, we think it would be desirable, if the opportunity presents itself, for the Trade and Development Board to take formal note in a rule or decision of the exceptions suggested in paragraph 7 of this memorandum. Furthermore, these exceptions should be limited to representation by a single individual of one State and one organization, or one member and one observer State, or two observer States. It should not be extended to representation of more than two entities by one person. Representation of more than two entities by a single individual would undoubtedly give such an individual the opportunity to wield disproportionate influence and power.

10. To summarize the foregoing points:

(a) In no event may one individual be permitted to represent two States members of a United Nations organ, as multiple voting is contrary to the concepts underlying United Nations proceedings and to the rules of procedure of United Nations organs;

(b) Exceptionally, one individual may be accredited to a technical United Nations organ by (i) one State and one observer organization, or (ii) one member State and one observer State, or (iii) by two observer States. These exceptions will not, however, be extended to representation of more than two entities by a single person. Furthermore, they should be embodied in a rule of procedure or express decision of any United Nations organ permitting such exceptions;

(c) In cases of the nature outlined in (b) above, in order to distinguish the capacity in which a representative of two entities is speaking, he should either speak from separate places or the name plate in front of him should be changed in order to identify the particular entity he is representing at a given moment.

16 May 1967

Alternates

Rule 26

An alternate representative may act as a representative upon designation by the chairman of the delegation.

IV. CREDENTIALS

Submission of credentials

Rule 27

The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.

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 far 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

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 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.

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 case 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, 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.

SCOPE OF CREDENTIALS IN RULE 27 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Statement by the Legal Counsel submitted to the President of the General Assembly at its request

1. The rules of procedure of the General Assembly do not contain a definition of credentials.[1] Rule 27, however, provides:

> "The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the date fixed for the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs."

2. From this rule one may derive three essential elements with respect to credentials to the General Assembly:

(a) "Credentials" designate the representatives of the Member State to the General Assembly;
(b) They are to be submitted to the Secretary-General; and
(c) They are to be issued by the Head of the State or Government or by the Minister for Foreign Affairs.

3. Thus credentials for the General Assembly may be deemed as a document issued by the Head of State or Government or by the Minister for Foreign Affairs of a State Member of the United Nations submitted to the Secretary-General designating the persons entitled to represent that Member at a given session of the General Assembly. Unlike the acceptance of credentials in bilateral relations, the question of recognition of a Government of a Member State is not involved, and substantive issues concerning the status of Governments do not arise except as examined in the following paragraph.

4. While normally the examination of credentials, both in the Credentials Committee and in the General Assembly, is a procedural matter limited to ascertaining that the requirements of rule 27 have been satisfied, there have nevertheless been a few instances involving rival claimants where the question of which claimant represents the true government of the State has arisen as a substantive issue. This issue of representation may, as in the case of the Republic of the Congo (Leopoldville) at the fifteenth session and Yemen at the sixteenth session, be considered in connexion with the examination of

[1] In bilateral diplomatic relations credentials may be defined as the document officially attesting that the person named is the duly appointed envoy accredited by the sending State to the receiving State. While the actual phraseology may differ, the essential part is said to be a phrase asking that credit may be given to all the agent may say in the name of his sovereign or government (Satow, *A Guide to Diplomatic Practice,* Fourth Edition, p. 79, para. 122; B. Sen, *Diplomatic Handbook of International Law and Practice* (1965), p. 40; M. Hardy, *Modern Diplomatic Law* (1968), p. 20, foot-note 3). By adaptation, credentials of a representative to an international organization may be defined as the document attesting that the person or persons named are entitled to represent their State at the seat of or at meetings of the Organization.

credentials, or it may, as in the case of China, be dealt with both in connexion with credentials and as a separate agenda item.

5. Questions have also been raised in the Credentials Committee with respect to the representatives of certain Members, notably South Africa and Hungary, where there was no rival claimant. There has, however, been no case where the representatives were precluded from participation in the meetings of the General Assembly. The General Assembly, in the case of Hungary from the eleventh to the seventeenth session and in the case of South Africa at the twentieth session, decided to take no action on the credentials submitted on behalf of the representatives of Hungary and South Africa. Under rule 29 any representative to whose admission a Member has made objection is seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision.

6. Should the General Assembly, where there is no question of rival claimants, reject credentials satisfying the requirements of rule 27 for the purpose of excluding a Member State from participation in its meetings, this would have the effect of suspending a Member State from the exercise of rights and privileges of membership in a manner not foreseen by the Charter. Article 5 of the Charter lays down the following requirements for the suspension of a Member State from the rights and privileges of membership:

(a) Preventive or enforcement action has to be taken by the Security Council against the Member State concerned;
(b) The Security Council has to recommend to the General Assembly that the Member State concerned be suspended from the exercise of the rights and privileges of membership;
(c) The General Assembly has to act affirmatively on the foregoing recommendation by a two-third vote, in accordance with Article 18, paragraph 2, of the Charter, which lists "the suspension of the rights and privileges of membership" as an "important question".

The participation in meetings of the General Assembly is quite clearly one of the important rights and privileges of membership. Suspension of this right through the rejection of credentials would not satisfy the foregoing requirements and would therefore be contrary to the Charter.

11 November 1970

RULES OF PROCEDURE FOR THE MEETINGS OF THE PARTIES TO TREATIES QUESTION WHETHER TO DELETE FROM THE RULES OF PROCEDURE FOR THE MEETINGS OF THE PARTIES TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER THE PROVISION WHICH REQUIRES THAT THE CREDENTIALS SHALL BE ISSUED EITHER BY THE HEAD OF STATE OR GOVERNMENT OR BY THE MINISTER FOR FOREIGN AFFAIRS OR, IN THE CASE OF A REGIONAL INTEGRATION ORGANIZATION, BY THE COMPETENT AUTHORITY OF THAT ORGANIZATION

Memorandum to the Coordinator, Ozone Secretariat,
United Nations Environment Programme

1. This is in reply to your facsimile of 8 September 1993. By that communication, you requested our advice on the question whether to delete from the rules of procedure for the meetings of the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer" the provision which requires that "the credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs or, in the case of a regional integration organization, by the competent authority of that organization". You sought our advice in the light of our experience with the rules of procedure for the meetings of parties to other treaties.

2. We would advise against deleting the provision; it should be maintained as it stands. In virtually all rules of procedure for meetings of parties to treaties adopted under the auspices of the United Nations, provision is made for the issuance of credentials by the Head of State or Government or by the Minister for Foreign Affairs. This accords with the established international law and practice concerning accreditation in general and in particular concerning the issuance of full powers to diplomatic agents signing treaties. It would not be in accordance with that practice and law to state that the matter of who signs credentials is one to be decided by each Government. Furthermore, if decisions taken by the parties at the meetings bind their Governments, there is added reason why their representatives should be accredited pursuant to the established practice.

3. In your memorandum you expressed concern that the provision in question means that the bureau of the parties is "expected to reject a credential from a representative of a country if it is not signed" by one of the persons specified in the rule. That result does not obtain either in the practice of the General Assembly or in meetings of parties to treaties. As can be seen from the most recent report of the Credentials Committee of the General Assembly, the practice of the Credentials Committee is to accept provisional credentials, i.e., those not signed by the Head of State or Government or by the Minister for Foreign Affairs, "on the understanding that formal credentials for representatives . . . would be communicated . . . as soon as possible".

28 September 1993

QUESTION OF CREDENTIALS, VOTING RIGHTS AND FINANCIAL OBLIGATIONS OF SOUTH AFRICA UPON RESUMPTION OF ITS PARTICIPATION IN THE WORK OF THE GENERAL ASSEMBLY ARTICLE 17 OF THE CHARTER

Memorandum to the Chief of Staff, Executive Office of the Secretary-General

1. In response to your request for comments in connection with a note on a meeting with the Permanent Representative of South Africa on the above subject, I would like to submit the following observations.

2. The resumption of participation by South Africa in the work of the General Assembly and other United Nations bodies raises the issues of credentials, voting rights and financial obligations under Article 17 of the Charter of the United Nations.

3. As far as the issue of credentials is concerned the situation is very simple. When the Government of South Africa submits credentials, they will be forwarded to the Credentials Committee of the General Assembly. It is our understanding that, since such credentials are now being issued by a legitimate Government, they will be accepted by the Credentials Committee, and subsequently, pursuant to the recommendation of the Credentials Committee, by the General Assembly.

4. The issue of South Africa's voting rights is more complicated. Article 19 of the Charter provides that a Member which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two full years. The second sentence of Article 19, however, provides that the General Assembly may permit such a Member to vote "if it is satisfied that the failure to pay is due to conditions beyond the control of the Member". Such a decision is within the exclusive competence of the General Assembly, upon the advice of the Committee on Contributions. Rule 160 of the rules of procedure of the General Assembly provides in part, that the Committee shall "advise the General Assembly... on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter". There is a limited practice in this regard. However, typically the request is made by the country itself.

5. Pursuant to the first sentence of Article 19 of the Charter, South Africa is currently in arrears and thus may not vote in the General Assembly. Pursuant to the second sentence of Article 19 of the Charter, the General Assembly may nevertheless permit South Africa to vote if it is satisfied that South Africa's failure to pay is attributable to conditions beyond its control. That decision would allow South Africa to vote in the General Assembly notwithstanding the fact that its arrears have surpassed the limit provided for in Article 19. It should be noted that, so far, the General Assembly has never explicitly applied this provision of Article 19.

6. With reference to the issue of South Africa's financial obligations it must be pointed out that, although the Government of South Africa was unable to participate in the work of the General Assembly and other United Nations bodies, South Africa's continued membership as a State in the United Nations and its obligations under Article 17 of the Charter have never been in dispute. As a matter of law South Africa has a legal obligation to pay the arrears which are due under Article 17 of the Charter.

7. Thus, even if the General Assembly were to decide pursuant to Article 19 that it is satisfied that the failure of South Africa to pay is due to conditions beyond its control, that decision would only allow South Africa to vote in the general Assembly notwithstanding the fact that its level of arrearages had surpassed the limit in Article 19. The assessment of South Africa and its arrearage would remain unaffected. Article 19 only relates to voting in the General Assembly and contains no provision for deferring or suspending assessments or for relieving a State of its financial obligations. That would be a matter of basic policy for the Members of the Organization, through the General Assembly, to determine in accordance with Article 17, paragraph 2, of the Charter: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

…

9. In connection with the case of China, it is worth mentioning that by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided to expel forthwith the representatives of Chiang Kai-Shek from the place which they unlawfully occupy at the United Nations and to restore all rights to the People's Republic of China. Under the resolution, the representatives of the People's Republic of China were recognized as the only legitimate representatives of China to the United Nations. In the light of that resolution, the Assembly subsequently decided by resolution 30-49 C (XXXVII) that the assessed contributions for China should be based on the period starting from 25 October 1971. By the same resolution, all unpaid assessed contributions for the period prior to 25 October 1971 were transferred to a special account and were included as a part of the short-term deficit of the Organization for the purposes of compute that deficit. It appears from the foregoing that from the legal point of view the case of China is completely distinct from the situation of South Africa.

1 June 1994

RULE 13 OF THE RULES OF PROCEDURE OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT AUTHORITIES ISSUING CREDENTIALS

Letter to the Senior Legal Officer, UNCTAD, Geneva

This is in reply to your facsimile by which you attached a letter from the head of the delegation of [a Member State] to UNCTAD IX addressed to the Secretary of the Conference. In that letter, the [Member State] representative proposed amending rule 13 of the rules of procedure of the Conference to provide that credentials may be issued by authorities other than one of the three following authorities: Head of State or Government or Minister for Foreign Affairs. The representative stated that her delegation found the existing rule "somewhat burdensome". She also referred to a recently approved relevant rule in the context of the law of the sea.

With regard to the procedure to be followed for amendment, as you are no doubt aware, according to rule 83 of the rules of procedure of UNCTAD, rule 13 "may not be amended until the Conference has received a report on the proposed amendment from the Bureau of the Conference".

As to reference to recent decisions in the context of the law of the sea, the relevant rule approved by the International Seabed Authority in March 1995 provides that credentials may be issued not only by the three authorities mentioned above, but also by any "person authorized by him". This rule is unclear in many respects, but what is most important to point out is that the law of the sea body concerned is a treaty body, not a United Nations body, and decisions taken by that body may not be cited as precedents in favour of United Nations bodies taking similar decisions.

It is true that often at international conferences of a short duration, more delegations submit only provisional credentials than is the case at the annual sessions of the General Assembly. But it is the established practice for the credentials committees of such conferences to approve such provisional credentials on the understanding that the formal credentials will be submitted in due course. This practice has not, to our knowledge, led to difficulties.

As concerns the proposal, it is our view that it would be inadvisable for the Conference to adopt it because it would lead to confusion and is at variance with the established practices and rules of United Nations bodies, including those of the General Assembly.

To add an additional authority who may issue credentials if "authorized" by one of the three existing authorities would, in our view, lead to confusion. For example, it is unclear which authority could "authorize" issuances, whether the authorization issued by one authority could supersede an authorization issued by another authority, and what is the length of time during which an authorization would remain valid. In addition, in the event of unstable or rival regimes, adding another possible credentials-issuing authority would increase the possibility for competing claims of accreditation.

UNCTAD is a subsidiary body of the General Assembly, whose rules provide that only the three authorities mentioned above may issue credentials. If UNCTAD adopted the envisaged amendment it would approve a rule at variance with the rule followed by its parent organ, the General Assembly. UNCTAD would be in the position of accrediting representatives on the basis of an authorization considered "formal" by UNCTAD, but which could not be accepted as "formal" by the Assembly itself. As the General Assembly noted in its resolution 396 *(V)* of 14 December 1950, "difficulties may arise regarding the representation of a Member State in the United Nations and... there is a risk that conflicting decisions may be reached by its various organs". The Assembly by that resolution decided that its attitude concerning such difficulties should prevail.

2 May 1996

STATUS OF A MEMBER BETWEEN THE ELECTIONS OF THE MEMBERS OF A UNITED NATIONS SUBCOMMISSION AND THE COMMENCEMENT OF THE SESSION OF THAT SUBCOMMISSION ECONOMIC AND SOCIAL COUNCIL DECISIONS 16 (LVI) AND 1987/102

Memorandum to the Chief of the Legislation and Prevention of Discrimination Branch, Centre for Human Rights, Geneva

1. This is with reference to your facsimile of 6 May 1996 concerning the status of Mr. X between April 1996, the date of the elections of the members of the Subcommission on Prevention of Discrimination and Protection of Minorities, and 5 August 1996, the commencement of the session of that Subcommission, with respect to his membership in the Working Group on Contemporary Forms of Slavery.

2. Pursuant to Economic and Social Council decision 16 (LVI) of 17 May 1974, the Working Group on Contemporary Forms of Slavery is composed of five members of the Subcommission on Prevention of Discrimination and Protection of Minorities. Accordingly, members of the Working Group must also be members of the Subcommission. If an individual ceases to be a member of the Subcommission, he or she therefore also ceases to be a member of the Working Group.

3. In accordance with Economic and Social Council decision 1987/102 of 6 February 1987, newly elected members of the Subcommission begin to exercise their mandate immediately following their election. Accordingly, since the term of office of the newly elected members of the Subcommission begins on the date of election, the term of office of former members who are not reelected ends on the date of election.

4. Based on the foregoing, since Mr. X was not re-elected as a member of the Subcommission in the most recent election, held in April 1996, Mr. X ceases to be a member of the Subcommission and of the Working Group as of that date of that election.

5. The newly elected Subcommission must therefore choose a fifth member of the Working Group from among the members of the Subcommission so that the Working Group may be fully constituted. Pending that decision, the Working Group consists of only four members.

8 May 1996

Credentials Committee

Rule 28

A Credentials Committee shall be appointed at the beginning of each session. It shall consist of nine members, who shall be appointed by the General Assembly on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives and report without delay.

POWERS OF REPRESENTATIVES TO THE GENERAL ASSEMBLY
PRACTICE OF THE CREDENTIALS COMMITTEE
DECISIONS TAKEN BY THE ASSEMBLY IN CERTAIN SPECIFIC CASES IN THE LIGHT
OF THE REPORT OF THE COMMITTEE

Letter to the New York Liaison Office of the United Nations Educational, Scientific and Cultural Organization

1. We refer to your letter of 14 November 1973 in which you transmitted a request for information concerning the practice followed in examining the credentials of representatives to the General Assembly.

2. As you know, the procedure for the examination of credentials is the subject of rules 27, 28 and 29 of the rules of procedure of the General Assembly. The *Repertory of Practice of United Nations Organs* (volume I, Articles 1-22 of the Charter; supplement No. 1 to volume I, Articles 1-54 of the Charter; and supplement No. 2 to volume II, Articles 9-54 of the Charter) provides certain interesting although succinct information concerning this procedure in connexion with Article 9.

We shall confine this letter to answering the precise question raised in the request for information.

When is the Credentials Committee constituted?

3. The Committee is constituted at the opening of each session of the General Assembly, at the first meeting. Traditionally, this question appears as item 3 of the Assembly's agenda, following:

(1) The opening of the session by the Acting President, and
(2) The minute of silence.

4. In accordance with rule 28 of the rules of procedure, the nine members of the Credentials Committee are appointed by the General Assembly on the proposal of the President. If there are no objections, the proposal of the President is considered as being accepted without a vote.

Does the Committee meet more than once?

5. Generally speaking, the Committee meets once at the beginning of the session, during the second or third week, to consider a memorandum of the Secretary-General concerning the status of credentials received by the latter, and at a second meeting, held at the end of the session, it considers the situation of the representatives whose powers in due form had not been received at the time of the first meeting. The Committee may, of course, meet at any time to consider questions within its jurisdiction, either on its own or at the request of the General Assembly.

When does the Committee submit its first report to the General Assembly?

Does it submit one, two or more reports?

6. The Committee reports to the General Assembly immediately after the first examination of credentials. Generally speaking, it submits two reports to the Assembly (one report following each of its customary meetings), but may submit more if necessary.[6]

At the current session, the Committee met two or three weeks after it was constituted in order to consider a specific case: has this happened at previous sessions?

7. At the twenty-fifth session, the Credentials Committee met on 26 October 1970 to examine, as a matter of urgency, the credentials of the representatives of South Africa. At the fifteenth session, in 1960, it met at the beginning of the session, immediately after the admission of the Congo-Leopoldville to the Organization.

Has the Assembly ever decided, prior to the twenty-eighth session, to "reject the credentials" of the representatives of a Member State, and if so, what were the consequences with regard to the rights and privileges of that State?

8. At its twenty-fifth, twenty-sixth and twenty-seventh sessions, after considering the reports of the Credentials Committee concluding that all credentials should be accepted, the General Assembly on each occasion adopted a resolution approving the report "except with regard to the credentials of the representatives of South Africa". At the twenty-fifth session, when that formulation was used for the first time, the President of the General Assembly, after consulting the Legal Counsel (see document A/8160), provided in the meeting the following interpretation, which was not contested: a vote in favour of the aforementioned formulation would mean "on the part of this Assembly, a very strong condemnation of the policies pursued by the Government of South Africa. It would also constitute a warning to that Government as solemn as any such warning could be. But, apart from that, [the formulation] would not seem to me to mean that the South African delegation is unseated or cannot continue to sit in this Assembly; if adopted, it will not affect the rights and privileges of membership of South Africa."

9. At its twenty-eighth session, the General Assembly, on a point of order adopted when the Minister for Foreign Affairs of South Africa was about to take the floor in the general debate, decided to suspend its 2140th meeting until the Credentials Committee had reported to it on the credentials of the representatives of South Africa.

10. The Committee having concluded in its report that the credentials were in order, the General Assembly, on the basis of an amendment proposed by Syria, decided to add to that report a paragraph reading: "The General Assembly rejects the credentials of the representatives of South Africa". The President of the General Assembly was led to

give his interpretation of the vote in an open meeting; he adopted the same interpretation as his predecessors, and concluded: "Since it is not held that the credentials of South Africa are not in keeping with the terms of rule 27 of the rules of procedure, the vote that has just taken place . . . does not affect the rights and privileges of South Africa as a Member of the Organization." The Chairman of the African Group, speaking on behalf of 41 States, then stated that the group did not intend to challenge "the ruling or the personal interpretation" of the President, but intended to study the implications of the ruling and to take any appropriate steps at a future stage.

23 November 1973

QUESTION OF REPRESENTATION OF DEMOCRATIC KAMPUCHEA AT THE RESUMED THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY PROVISIONAL SEATING OF CHALLENGED REPRESENTATIVES OF A MEMBER STATE MAJORITY REQUIRED FOR RECONSIDERATION OF REPRESENTATIVES' CREDENTIALS ALREADY ACCEPTED BY THE GENERAL ASSEMBLY THE GENERAL ASSEMBLY IS NOT BOUND BY OTHER UNITED NATIONS ORGANS' DECISIONS REGARDING REPRESENTATION

Memorandum to the Under-Secretary-General
for Political and General Assembly Affairs

Credentials questions

1. The current thirty-third session of the General Assembly has accepted the credentials of the delegation of Democratic Kampuchea signed by the Deputy Prime Minister in charge of Foreign Affairs of that country.

2. The Security Council at its 2108th meeting held yesterday approved the report of the Secretary-General (S/13021) stating that the credentials of the delegation of Democratic Kampuchea to the Security Council emanating from the same authority were in order. Subsequently, the Council extended an invitation to Prince Sihanouk, Chairman of the delegation, to address the Council under rule 37 of its procedure, i.e. as a representative of a Member of the United Nations which is not a member of the Security Council.

3. In the light of the above, it is clear that it is the delegation of Democratic Kampuchea that should be seated in the General Assembly and in its Main Committees. If the question of representation is raised in plenary and the credentials of the Kampuchean delegation are challenged, the provisions of rule 29 of the General Assembly rules of procedure become applicable. The rule provides as follows:

> "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision."

4. Since the Credentials Committee has already reported on the credentials of the delegation of Kampuchea at the current session and the General Assembly has accepted these credentials, in the absence of conflicting credentials submitted by the new regime, a decision to refer the former credentials to the Credentials Committee once again would involve a re-opening of the matter and therefore such a decision would in effect amount to a motion for reconsideration of the decision concerning the credentials of the delegation of Kampuchea. Under rule 81 of the Assembly rules such a motion required a two-thirds majority for adoption by the Assembly.

Inclusion of an additional agenda item

5. Should any member of the Assembly propose the inclusion of the question of the representation of Democratic Kampuchea or even the question of the situation in Democratic Kampuchea as an additional item on the agenda for consideration at the resumed session this raises the question of the majority required for such a decision to be adopted by the Assembly. In this connexion it should be recalled that on 20 December 1978, at its 90th meeting, the General Assembly decided that "the present session would be suspended to be resumed on 15 January 1979 in order to proceed to a vote on item 32 (Policies of *apartheid* of the Government of South Africa) and to consider the reports of the Second Committee on agenda items 58 *(b)* to *(e)* and 70, the report of the Third Committee on agenda item 88 and Part IV of the report of the Fifth Committee on item 100". (In paragraph *(b)* of its second report (A/33/250/Add.l) the General Committee recommended that "the session should be resumed on 15 January 1979 for a period of one week to 10 days exclusively to conclude the consideration of the remaining items on the agenda of the "session".) It is clear from the foregoing that any decision to include a new item for action during the resumed session would involve a reconsideration of the General Assembly's earlier decision regarding its programme of work. Under rule 81 of the Assembly rules, a motion to reconsider a decision taken at the same session requires a two-thirds majority for adoption. If the motion to reconsider is adopted, then rule 15 of the General Assembly rules becomes applicable. Under this rule, additional items may be placed on the agenda if the General Assembly so decides by a majority of the representatives present and voting.

General observations

6. In connexion with the question of representation of a Member State in the United Nations, it is relevant to refer to General Assembly resolution 396 (V) of 14 December 1950. The operative parts of this resolution read as follows:

> " 1. *Recommends* that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
>
> "3. *Recommends* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;

"4. *Declares* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;

"5. *Requests* the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate." It is clear from this resolution that the General Assembly considers itself the organ best suited to resolve the controversy where more than one authority claims to be the Government entitled to represent a Member State of the United Nations. Moreover, the General Assembly does not consider itself bound by decisions by other United Nations organs taken with regard to questions of representation.

12 January 1979

CREDENTIALS ARRANGEMENTS FOR AN EMERGENCY SPECIAL SESSION EXTENT TO WHICH THE ARRANGEMENTS MADE FOR THE PRECEDING REGULAR SESSION MAY BE RETAINED

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. Due to the emergency nature of an emergency special session of the General Assembly there is a tendency to simplify the rules and practices of the Assembly by applying certain arrangements for the most recent regular session of the Assembly to the emergency session. Thus rule 63 of the rules of procedure provides that the President and Vice-President of an emergency special session shall be, respectively, the chairmen of those delegations from which the President and Vice-Presidents of the previous session were elected. Similarly, the practice has developed whereby the Credentials Committee for an emergency special session has the same composition, and a chairman from the same delegations, as during the preceding regular session.

2. Notwithstanding this assimilation of certain arrangements for purposes of convenience, an emergency special session is different from the preceding regular session and representatives to the emergency session are required to submit credentials empowering them to represent their respective States at that session in accordance with rule 27 of the rules of procedure of the Assembly. Permanent Representatives whose credentials entitle them to represent their respective States at all sessions of the General Assembly are not required, of course, to submit special credentials for a special emergency special session.

31 August 1981

QUESTION WHETHER A MEMBER STATE NOT A MEMBER OF THE UNITED NATIONS COUNCIL FOR NAMIBIA MAY BE GRANTED OBSERVER STATUS IN THE COUNCIL

Memorandum to the Under-Secretary-General for Political Affairs, Trusteeship and Decolonization

Reference is made to your memorandum of 18 October 1983 by which you requested legal advice in connection with the request by a Member State for observer status in the United Nations Council for Namibia.

The resolutions adopted by the General Assembly relating to the establishment and terms of reference of the United Nations Council for Namibia are silent on the question of participation by non-members in the Council's meetings except in respect of the South West Africa People's Organization, which plays a special role in the work of the Council and regularly participates in the Council in a consultative capacity.

In the absence of instructions by the General Assembly on the question of participation by observers other than SWAPO in the work of the Council, it is within the competence of the Council itself to decide whether or not to grant the request for observer status. It is relevant to add that it has become the normal practice in United Nations organs of limited membership for the body concerned to decide on whether to invite non-members to participate in an observer capacity where this is not precluded by decisions of the competent deliberative organ. It is our understanding on the basis of information provided to us by members of the secretariat of the Council for Namibia that one Member State in fact already participates in an observer capacity in plenary meetings of the Council. In these circumstances we can see no obstacle to the Member State in question being invited by the Council to participate in a similar capacity on the same basis in the work of the Council.

24 October 1983

QUESTION WHETHER MEMBER STATES NOT MEMBERS OF THE CREDENTIALS COMMITTEE MAY PARTICIPATE AS OBSERVERS IN THE COMMITTEE'S WORK

Letter to the Permanent Representative of a Member State to the United Nations

As you requested, the Office of Legal Affairs has examined the question of the participation in the Credentials Committee, as observers, of Member States that are not members of the Committee.

Our comments on the matter are as follows:

The rules of procedure of the General Assembly are silent on the question of participation of non-members in committees of the General Assembly that are of limited membership.

In the practice of the Credentials Committee, that question arose at the resumed thirty-fifth session of the General Assembly. On that occasion, the Credentials Committee was considering an objection that had been raised in the General Assembly concerning the credentials of the representatives of a Member State. When the Committee met on 2 March 1981 at the request of the General Assembly to consider the matter, a letter had been received by the Chairman of the Committee from the representative of the State concerned requesting that he be permitted to present his delegation's position on its credentials to the Chairman personally or to the Committee. The Chairman made a statement to the Committee in which he noted that it was not the practice of the Committee to allow Member States not members of the Committee to make statements and that therefore the request by the representative of the State in question could not be acted upon. The Credentials Committee accepted that ruling without objection. The position taken by the Credentials Committee on the request of the State concerned is reflected in the relevant report of the Credentials Committee approved by the General Assembly.

It is relevant to mention that the action taken by the Chairman of the Credentials Committee in the case referred to in the third paragraph above was based on the practice of the Credentials Committee and on the advice of the Office of Legal Affairs. In giving its advice the Office of Legal Affairs had emphasized the fact that the Credentials Committee was an expert body and that non members had not previously been permitted to participate in the Committee's work.

From a legal standpoint, it is our view that the attitude adopted by the Credentials Committee at the resumed thirty-fifth session is the correct one and should be maintained. If non-members were to participate actively in the work of the Credentials Committee and other expert bodies, such participation could seriously affect the ability of such bodies to carry out their responsibilities expeditiously and effectively.

7 November 1983

PRACTICE OF THE GENERAL ASSEMBLY WITH REGARD TO THE EXAMINATION OF CREDENTIALS SUBMITTED BY MEMBER STATES

Letter to a scholar

In response to your request, we are transmitting herewith a note containing replies to the various questions listed in the questionnaire enclosed with your letter concerning the practice of the General Assembly of the United Nations with regard to the examination of credentials submitted by Member States. We trust that the information thus provided will be of assistance to you in connection with the preparation of your study on the practice of the General Assembly with regard to the examination of credentials.

12 February 1985

Replies to a questionnaire concerning the practice of the General Assembly with regard to the examination of credentials

1. Pursuant to rule 28 of the rules of procedure of the General Assembly and the practice established under that rule, the Credentials Committee is appointed at the opening of each session by the Assembly on the proposal of the temporary President, who is usually the outgoing President. The President submits a proposal concerning the nine States to be appointed to serve on the Credentials Committee after appropriate consultations with interested delegations. In recent years China, the Union of Soviet Socialist Republics and the United States of America have been, in accordance with a well-established practice, represented on the Credentials Committee at each session of the General Assembly. Apart from these three members, the remaining six members are normally selected as follows: two from the African Group, two from the Latin American Group, one from the Asian Group and one from the Group of Western European and Other States. Accordingly, the Credentials Committee appointed at the thirty-ninth session is composed as follows: Bhutan, China, Cuba, Equatorial Guinea, Italy, Ivory Coast, Paraguay, Union of Soviet Socialist Republics and United States of America.

2. Credentials received by the Secretariat are checked to ensure compliance with the requirements of rule 27 of the rules of procedure and duly registered and filed. When the Credentials Committee meets, the Secretary-General submits a memorandum to it on the status of credentials received for representatives of Member States authorized to represent their countries at the session then in progress.

3. The role of the Credentials Committee is to examine the credentials of representatives within the context of rule 27 of the rules of procedure on the basis of information provided to it by the Secretary-General and to report to the General Assembly on its findings and recommendations. The Credentials Committee reviews

generally the status of credentials received in respect of the representatives of all States participating in the session on the basis of information submitted to the Committee by the Secretary-General and also examines any question concerning the credentials of representatives that may be specifically referred to it by the General Assembly.

4. It frequently happens that credentials for a delegation are submitted after the opening of a session of the General Assembly. In such cases the delegations concerned are not precluded from taking their seats in the Assembly hall. Under rule 29 of the rules of procedure, all representatives are entitled to sit provisionally, even if an objection has been made concerning their admission to the session in progress, until the Credentials Committee has examined the credentials in question and reported thereon to the Assembly and the Assembly has taken a final decision on the matter.

5. The Credentials Committee does not normally itself physically examine credentials submitted by States. It only does so exceptionally in individual cases if the need arises. All credentials received are however available for examination by any member of the Committee who may wish to do so.

6. The ruling of the President of the General Assembly in 1974 prevented the delegation of South Africa from participating in the twenty-ninth session of the General Assembly. South Africa has on a number of occasions attempted to participate in subsequent sessions but the Assembly has rejected the credentials submitted by the South African Government and as a consequence, on the basis of the precedent established at the twenty-ninth session, its delegation has not been permitted to participate in the work of the General Assembly. The position adopted by the General Assembly has not however affected the status of South Africa as a Member of the United Nations. It continues to be represented at Headquarters by a permanent representative whose credentials have been accepted by the Secretary-General and its representatives, who continue to enjoy the same privileges and immunities as representatives of other Member States, have been invited on several occasions to participate in the work of the Security Council.

7. At the twenty-eighth session of the General Assembly, the Assembly approved the credentials of the representatives of Portugal, "on the clear understanding that they represent Portugal as it exists within its frontiers in Europe and that they do not represent the Portuguese-dominated Territories of Angola and Mozambique, nor could they represent Guinea-Bissau, which is an independent State". The relevant report of the Credentials Committee[1] indicated the action taken by the General Assembly on that report. As a consequence of the General Assembly's action, the persons named in the credentials submitted by the Portuguese authorities were permitted to participate in the work of the Assembly at its twenty-eighth session as representatives of Portugal, excluding the Territories then under its domination in Africa.

8. Each principal organ has its own rules and procedures for reviewing credentials of representatives authorized to participate in its work. Consequently decisions of the General Assembly concerning credentials are not automatically binding

on other principal organs. However, the decisions adopted by the General Assembly with regard to credentials of representatives of Member States to sessions of the General Assembly provide authoritative guidance to other United Nations organs and conferences and in practice the decisions adopted by these organs and conferences always conform to the attitude adopted by the General Assembly in dealing with questions concerning representation and credentials. In this connection, attention is drawn to the provisions of General Assembly resolution 396 (V) of 14 December 1950 entitled "Recognition by the United Nations of the representation of a Member State". That resolution, which has particular relevance in situations where more than one authority claims the right to represent a Member State in the United Nations, reads as follows:

> *The General Assembly,*
>
> *"Considering* that difficulties may arise regarding the representation of a Member State in the United Nations and that there is a risk that conflicting decisions may be reached by its various organs,
>
> *"Considering* that it is in the interest of the proper functioning of the Organization that there should be uniformity in the procedure applicable whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations,
>
> *Considering* that, in virtue of its composition, the General Assembly is the organ of the United Nations in which consideration can best be given to the views of all Member States in matters affecting the functioning of the Organization as a whole,
>
> "1. *Recommends* that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
>
> “3. *Recommends* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;
>
> "4. *Declares* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;

"5. *Requests* the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate."

QUESTION OF CREDENTIALS, VOTING RIGHTS AND FINANCIAL OBLIGATIONS OF SOUTH AFRICA UPON RESUMPTION OF ITS PARTICIPATION IN THE WORK OF THE GENERAL ASSEMBLY ARTICLE 17 OF THE CHARTER

Memorandum to the Chief of Staff, Executive Office of the Secretary-General

1. In response *to* your request for comments in connection with a note on a meeting with the Permanent Representative of South Africa on the above subject, I would like to submit the following observations.

2. The resumption of participation by South Africa in the work of the General Assembly and other United Nations bodies raises the issues of credentials, voting rights and financial obligations under Article 17 of the Charter of the United Nations.

3. As far as the issue of credentials is concerned the situation is very simple. When the Government of South Africa submits credentials, they will be forwarded to the Credentials Committee of the General Assembly. It is our understanding that, since such credentials are now being issued by a legitimate Government, they will be accepted by the Credentials Committee, and subsequently, pursuant to the recommendation of the Credentials Committee, by the General Assembly.

4. The issue of South Africa's voting rights is more complicated. Article 19 of the Charter provides that a Member which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two full years. The second sentence of Article 19, however, provides that the General Assembly may permit such a Member to vote "if it is satisfied that the failure to pay is due to conditions beyond the control of the Member". Such a decision is within the exclusive competence of the General Assembly, upon the advice of the Committee on Contributions. Rule 160 of the rules of procedure of the General Assembly provides in part, that the Committee shall "advise the General Assembly ... on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter". There is a limited practice in this regard. However, typically the request is made by the country itself.

5. Pursuant to the first sentence of Article 19 of the Charter, South Africa is currently in arrears and thus may not vote in the General Assembly. Pursuant to the second sentence of Article 19 of the Charter, the General Assembly may nevertheless permit South Africa to vote if it is satisfied that South Africa's failure to pay is attributable to conditions beyond its control. That decision would allow South Africa to vote in the General Assembly notwithstanding the fact that its arrears have surpassed the limit provided for in Article 19. It should be noted that, so far, the General Assembly has never explicitly applied this provision of Article 19.

6. With reference to the issue of South Africa's financial obligations it must be pointed out that, although the Government of South Africa was unable to participate in the work of the General Assembly and other United Nations bodies, South Africa's continued membership as a State in the United Nations and its obligations under Article 17 of the Charter have never been in dispute. As a matter of law South Africa has a legal obligation to pay the arrears which are due under Article 17 of the Charter.

7. Thus, even if the General Assembly were to decide pursuant to Article 19 that it is satisfied that the failure of South Africa to pay is due to conditions beyond its control, that decision would only allow South Africa to vote in the general Assembly notwithstanding the fact that its level of arrearages had surpassed the limit in Article 19. The assessment of South Africa and its arrearage would remain unaffected. Article 19 only relates to voting in the General Assembly and contains no provision for deferring or suspending assessments or for relieving a State of its financial obligations. That would be a matter of basic policy for the Members of the Organization, through the General Assembly, to determine in accordance with Article 17, paragraph 2, of the Charter: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

…

9. In connection with the case of China, it is worth mentioning that by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided to expel forthwith the representatives of Chiang Kai-Shek from the place which they unlawfully occupy at the United Nations and to restore all rights to the People's Republic of China. Under the resolution, the representatives of the People's Republic of China were recognized as the only legitimate representatives of China to the United Nations. In the light of that resolution, the Assembly subsequently decided by resolution 30-49 C (XXXVII) that the assessed contributions for China should be based on the period starting from 25 October 1971. By the same resolution, all unpaid assessed contributions for the period prior to 25 October 1971 were transferred to a special account and were included as a part of the short-term deficit of the Organization for the purposes of compute that deficit. It appears from the foregoing that from the legal point of view the case of China is completely distinct from the situation of South Africa.

1 June 1994

CONSEQUENCES FOR REPRESENTATION AND ACCREDITATION OF MEMBER STATE FOLLOWING GENERAL ASSEMBLY RESOLUTION 63/301—CALL BY GENERAL ASSEMBLY NOT TO RECOGNIZE *DE FACTO* AUTHORITIES IN STATE—PENDING A DECISION BY THE GENERAL ASSEMBLY, ON THE RECOMMENDATION OF THE CREDENTIALS COMMITTEE, THE SECRETARIAT SHALL ACT IN A MANNER CONSISTENT WITH RESOLUTION—SHOULD ANY MEMBER STATE RAISE AN OBJECTION, IT WOULD BE ADVISED ACCORDINGLY—FUNDS AND PROGRAMMES SHOULD ACT ALONG THE SAME LINES—IN SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY THE QUESTION OF THE STATE'S CREDENTIALS SHOULD BE RESOLVED THROUGH THE INTERGOVERNMENTAL PROCESS—IN THE HUMAN RIGHTS COUNCIL RECOMMENDATION THAT ONLY DULY AUTHORIZED REPRESENTATIVES OF THE LEGITIMATE AND CONSTITUTIONAL GOVERNMENT OF THE STATE PARTICIPATE IN MEETINGS—PERMANENT REPRESENTATIVE WHOSE ACCREDITATION HAS BEEN WITHDRAWN BY THAT GOVERNMENT SHALL BE BARRED FROM MEETINGS—NAMEPLATE OF STATE TO REMAIN IN CONFERENCE ROOM

Note to the Under Secretary-General and Chef de Cabinet, Executive Office of the Secretary-General, concerning General Assembly resolution 63/301 on Honduras

1. Since the adoption of resolution 63/301 of 30 June 2009 entitled "Situation in Honduras: democracy breakdown" (copy attached),* questions have been raised with my Office as to how the United Nations and more broadly the United Nations system should handle the accreditation of representatives from Honduras to upcoming United Nations meetings, including the 64th session of the General Assembly. I therefore thought it useful to set out the legal position on this matter, which has been prepared in consultation with colleagues from the Department of Political Affairs (DPA) and Protocol and has also been shared with the Legal Advisers of the United Nations system. Should the need arise I am also available to address any specific questions on this issue in consultation with DPA and Protocol.

SUMMARY OF THE ADVICE PROVIDED BELOW

- By General Assembly resolution 63/301 of 30 June 2009 the General Assembly demanded the immediate restoration of President Zelaya's Government and called upon Member States to recognize no Government other than that of Mr. Zelaya.

- Ultimately, it is for the Member States, acting through the inter-governmental process, to decide on how they wish to act in light of resolution 63/301. Accordingly any communication received from either President Zelaya's Government or the "*de facto*" authorities will be submitted to the Credentials Committee of the 64th session who will make a recommendation to the General Assembly on the accreditation of representatives from Honduras.

- However, until the General Assembly decides otherwise, the United Nations Secretariat should, with respect to United Nations meetings, act in a manner that is consistent with resolution 63/301, which means that only those delegates from Honduras

* Not reproduced herein.

who can formally confirm that they are the duly authorized representatives of President Zelaya's Government should be invited and allowed to participate in the work of the General Assembly and its subsidiary bodies.

- Should any Member State object to or raise questions concerning the Secretariat's position, it should be advised, that pending a decision on the credentials of Honduras by the General Assembly, the Secretariat will be acting in a manner that is consistent with resolution 63/301.

- As far as the presence of Honduras at the meetings of the Human Rights Council (HRC) in Geneva is concerned, we would recommend that its Bureau when it meets tomorrow take a decision that only the accredited representatives of President Zelaya's Government be allowed to participate in HRC meetings.

- This decision should then be proposed orally by the HRC President to the meeting and formally adopted.

- As the Permanent Representative of Honduras has had his accreditation withdrawn as the representative of President Zelaya's Government he should, pursuant to the HRC decision, be barred from gaining access to HRC meetings.

- This would also be applicable to other members of the Honduras delegation unless they can formally confirm that they represent President Zelaya's Government.

GENERAL ASSEMBLV RESOLUTION 63/301 OF 30 JUNE 2009

2. The General Assembly, by operative paragraph 2 of resolution 63/301, demanded "the immediate and unconditional restoration of the legitimate and Constitutional Government of the President of the Republic of Honduras, Mr. José Manuel Zelaya Rosales, and of the legally constituted authority in Honduras" and also decided by paragraph 3 "to call firmly and unequivocally upon States to recognize no Government other than that of the Constitutional President, Mr. José Manuel Zelaya Rosales."

3. Ultimately, it is for the Member States, acting through the inter-governmental process, to decide on how they wish to act in light of resolution 63/301 when addressing questions concerning the accreditation and representation of Honduras at the General Assembly's 64th session. To that end, any formal communication that the United Nations Secretariat receives from either President Zelaya's Government or the current "*de facto* authorities" in Honduras concerning representatives to the 64th session of the General Assembly should, pursuant to rule 28 of the Rules of Procedure of the General Assembly, be placed before its Credentials Committee. The Credentials Committee will, after reviewing the matter, make a recommendation to the Assembly which will then take a decision on Honduras' credentials.

COMPOSITION OF THE CREDENTIALS COMMITTEE FOR THE 64TH SESSION

4. As far as the composition of the Credentials Committee is concerned, in accordance with prior practice, the Office of Legal Affairs (OLA) consulted with the Member States from various regional groups and Tanzania and Zambia (Africa), China and the Philippines (Asia), the United States and Spain (WEOG), Russia (Eastern Europe) and Brazil and Jamaica (Latin America and the Caribbean), who have agreed to sit on the Credentials Committee for the 64th session. This choice has also been informally communicated to the Office of the President of the General Assembly, so that, in accordance with rule 28 of the Rules of Procedure, the President can propose the composition of the Credentials Committee to the General Assembly at the beginning of the 64th session.

ROLE OF THE SECRETARIAT *VIS-À-VIS* GENERAL ASSEMBLY RESOLUTION 63/301 OF 30 JUNE 2009

5. As far as Honduras is concerned, until the General Assembly decides otherwise, the United Nations Secretariat should, with respect to United Nations meetings, act in a manner that is consistent with resolution 63/301, which means that only those delegates from Honduras who can formally confirm that they are the duly authorized representatives of President Zelaya's Government should be invited and allowed to participate in the work of the General Assembly and its subsidiary bodies. In addition, any facilities that the United Nations Secretariat grants to the representatives of Member States in order to facilitate their participation in the work of the General Assembly, including the issuing of badges and grounds passes, should only be provided to those representatives from Honduras who can formally confirm that they are the duly authorized representatives of President Zelaya's Government.

6. In that connection, DPA has informally informed OLA that they understand that the Government Ministries in Honduras are under the control of the "*de facto* authorities" in that country. Thus, DPA has advised that it would be prudent at this stage to place on hold any formal invitations to representatives from Honduras to attend United Nations meetings, unless it is clear that those attending are the duly authorized representatives of President Zelaya's Government.

7. Should the "*de facto* authorities" seek to attend United Nations meetings or request that correspondence be sent to them, they should be advised that the United Nations Secretariat will be acting in a manner that is consistent with resolution 63/301. Consequently, until the General Assembly decides otherwise, the Secretariat will only be in a position to liaise with those representatives from Honduras that can confirm that they are the duly authorized representatives of President Zelaya's Government.

POSSIBILITY OF AN OBJECTION IN THE GENERAL ASSEMBLY TO THE PRESENCE OF A DELEGATION FROM HONDURAS

8. Furthermore, should any Member State object or raise questions concerning the Secretariat's position, it should be advised that pending a decision on the credentials of Honduras by the General Assembly, the Secretariat will be acting in a manner that is consistent with resolution 63/301. Any Member State can also raise this

issue formally within the General Assembly pursuant to rule 29 of the Rules of Procedure which provides that, "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision." The Credentials Committee for the 64th session can then meet on an urgent basis and make its recommendation to the General Assembly.

UNITED NATIONS FUNDS AND PROGRAMMES AND THE UNITED NATIONS SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

9. We have also advised the Legal Advisers of the United Nations Funds and Programmes that they should act with regard to representatives from Honduras along the lines we set out above for the United Nations Secretariat.

10. As far as the United Nations specialized agencies and the International Atomic Energy Agency (IAEA) are concerned, we have advised that the question of Honduras' credentials should be resolved through the inter-governmental process. It is therefore for the member States of each agency and the IAEA, acting through their inter-governmental bodies and in accordance with their rules of procedure, to decide how they wish to act in light of resolution 63/301 when addressing questions concerning the accreditation and representation of Honduras and whether they wish to approve credentials received from either President Zelaya's Government or the current "*de facto* authorities".

11. However, pending a decision on the credentials of representatives from Honduras, we have recommended to the Legal Advisers of the specialized agencies and the IAEA that representatives from Honduras be dealt with in a manner that is consistent with resolution 63/301 and along the lines set out above.

HUMAN RIGHTS COUNCIL IN GENEVA

12. Finally, the HRC convened in Geneva today and the Office of the High Commissioner for Human Rights (OHCHR) Secretariat has been in touch with my office concerning the presence of Honduras at these meetings. While not a member of the HRC, Honduras has nevertheless participated as an observer in its previous meetings. OHCHR has informed us that the Permanent Representative of Honduras to the United Nations Office in Geneva (UNOG), [Name], has indicated his intention to represent Honduras.

13. However, we were informed today by representatives from OHCHR that [Name] has had his accreditation withdrawn by President Zelaya and that the Secretary-General had been informed of this by letter dated 20 August 2009 (copies of the relevant correspondence attached).[*]

14. We have therefore indicated to OHCHR that in our view, [Name] does not represent President Zelaya's Government. We have recommended that at tomorrow's

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[*] Not reproduced herein.

Bureau meeting, immediately prior to the HRC meeting, the Bureau which comprises the President and the representatives of the various regional groups be informed of the above-mentioned letter to the Secretary-General and agree in line with resolution 63/301 that only the duly authorized representatives of President Zelaya's Government participate in the meetings of the HRC. This proposal can then be gaveled by the President of the HRC when the meeting begins and constitutes a formal decision of that body.

15. Consequently, [Name] can then be barred by United Nations security from gaining access should he try to enter the HRC Chamber. As far as the other representatives from Honduras are concerned, unless they can formally confirm that they are the duly authorized representatives of President Zelaya they should also be barred from gaining access to the HRC Chamber.

16. As a temporary measure and until the HRC has taken its decision, United Nations security should be given instructions to bar any representative from Honduras from gaining access to the HRC Chamber.

17. Finally, as this is a question of accreditation and representation, the nameplate of Honduras should remain in the conference room.

14 September 2009

Provisional admission to a session

Rule 29

Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision.

PRACTICE OF THE GENERAL ASSEMBLY WITH REGARD TO THE EXAMINATION OF CREDENTIALS SUBMITTED BY MEMBER STATES

Letter to a scholar

In response to your request, we are transmitting herewith a note containing replies to the various questions listed in the questionnaire enclosed with your letter concerning the practice of the General Assembly of the United Nations with regard to the examination of credentials submitted by Member States. We trust that the information thus provided will be of assistance to you in connection with the preparation of your study on the practice of the General Assembly with regard to the examination of credentials.

12 February 1985

Replies to a questionnaire concerning the practice of the General Assembly with regard to the examination of credentials

1. Pursuant to rule 28 of the rules of procedure of the General Assembly and the practice established under that rule, the Credentials Committee is appointed at the opening of each session by the Assembly on the proposal of the temporary President, who is usually the outgoing President. The President submits a proposal concerning the nine States to be appointed to serve on the Credentials Committee after appropriate consultations with interested delegations. In recent years China, the Union of Soviet Socialist Republics and the United States of America have been, in accordance with a well-established practice, represented on the Credentials Committee at each session of the General Assembly. Apart from these three members, the remaining six members are normally selected as follows: two from the African Group, two from the Latin American Group, one from the Asian Group and one from the Group of Western European and Other States. Accordingly, the Credentials Committee appointed at the thirty-ninth session is composed as follows: Bhutan, China, Cuba, Equatorial Guinea, Italy, Ivory Coast, Paraguay, Union of Soviet Socialist Republics and United States of America.

2. Credentials received by the Secretariat are checked to ensure compliance with the requirements of rule 27 of the rules of procedure and duly registered and filed. When the Credentials Committee meets, the Secretary-General submits a memorandum to it on the status of credentials received for representatives of Member States authorized to represent their countries at the session then in progress.

3. The role of the Credentials Committee is to examine the credentials of representatives within the context of rule 27 of the rules of procedure on the basis of information provided to it by the Secretary-General and to report to the General Assembly on its findings and recommendations. The Credentials Committee reviews

generally the status of credentials received in respect of the representatives of all States participating in the session on the basis of information submitted to the Committee by the Secretary-General and also examines any question concerning the credentials of representatives that may be specifically referred to it by the General Assembly.

4. It frequently happens that credentials for a delegation are submitted after the opening of a session of the General Assembly. In such cases the delegations concerned are not precluded from taking their seats in the Assembly hall. Under rule 29 of the rules of procedure, all representatives are entitled to sit provisionally, even if an objection has been made concerning their admission to the session in progress, until the Credentials Committee has examined the credentials in question and reported thereon to the Assembly and the Assembly has taken a final decision on the matter.

5. The Credentials Committee does not normally itself physically examine credentials submitted by States. It only does so exceptionally in individual cases if the need arises. All credentials received are however available for examination by any member of the Committee who may wish to do so.

6. The ruling of the President of the General Assembly in 1974 prevented the delegation of South Africa from participating in the twenty-ninth session of the General Assembly. South Africa has on a number of occasions attempted to participate in subsequent sessions but the Assembly has rejected the credentials submitted by the South African Government and as a consequence, on the basis of the precedent established at the twenty-ninth session, its delegation has not been permitted to participate in the work of the General Assembly. The position adopted by the General Assembly has not however affected the status of South Africa as a Member of the United Nations. It continues to be represented at Headquarters by a permanent representative whose credentials have been accepted by the Secretary-General and its representatives, who continue to enjoy the same privileges and immunities as representatives of other Member States, have been invited on several occasions to participate in the work of the Security Council.

7. At the twenty-eighth session of the General Assembly, the Assembly approved the credentials of the representatives of Portugal, "on the clear understanding that they represent Portugal as it exists within its frontiers in Europe and that they do not represent the Portuguese-dominated Territories of Angola and Mozambique, nor could they represent Guinea-Bissau, which is an independent State". The relevant report of the Credentials Committee1 indicated the action taken by the General Assembly on that report. As a consequence of the General Assembly's action, the persons named in the credentials submitted by the Portuguese authorities were permitted to participate in the work of the Assembly at its twenty-eighth session as representatives of Portugal, excluding the Territories then under its domination in Africa.

8. Each principal organ has its own rules and procedures for reviewing credentials of representatives authorized to participate in its work. Consequently decisions of the General Assembly concerning credentials are not automatically binding on other principal organs. However, the decisions adopted by the General Assembly with regard to credentials of representatives of Member States to sessions of the General Assembly provide authoritative guidance to other United Nations organs and conferences and in practice the decisions adopted by these organs and conferences always conform to the attitude adopted by the General Assembly in dealing with questions concerning representation and credentials. In this connection, attention is drawn to the provisions of General Assembly resolution 396 (V) of 14 December 1950 entitled "Recognition by the United Nations of the representation of a Member State". That resolution, which has particular relevance in situations where more than one authority claims the right to represent a Member State in the United Nations, reads as follows:

> *The General Assembly,*
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> "*Considering* that difficulties may arise regarding the representation of a Member State in the United Nations and that there is a risk that conflicting decisions may be reached by its various organs,
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> "*Considering* that it is in the interest of the proper functioning of the Organization that there should be uniformity in the procedure applicable whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations,
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> *Considering* that, in virtue of its composition, the General Assembly is the organ of the United Nations in which consideration can best be given to the views of all Member States in matters affecting the functioning of the Organization as a whole,
>
> "1. *Recommends* that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
>
> “3. *Recommends* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;

"4. *Declares* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;

"5. *Requests* the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate."

V. PRESIDENT AND VICE-PRESIDENTS

Elections

Rule 30[1]

Unless the General Assembly decides otherwise, the General Assembly shall elect a President and twenty-one Vice-Presidents[2] at least three months before the opening of the

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[1] See introduction, paras. 17, 18, 22, 38 and 47 (a).

[2] In the annex to resolution 33/138 of 19 December 1978, the General Assembly decided as follows:

"1. In the election of the President of the General Assembly, regard shall be had for equitable geographical rotation of this office among the regions mentioned in paragraph 4 below.

"2. The twenty-one Vice-Presidents of the General Assembly shall be elected according to the following pattern, subject to paragraph 3 below:

"(a) Six representatives from African States;
"(b) Five representatives from Asian States;
"(c) One representative from an Eastern European State;
"(d) Three representatives from Latin American States;
"(e) Two representatives from Western European or other States;
"(f) Five representatives from the permanent members of the Security Council.

“3. The election of the President of the General Assembly will, however, have the effect of reducing by one the number of vice-presidencies allocated to the region from which the President is elected.

In annex II to its resolution 48/264 of 29 July 1994, the General Assembly decided to replace paragraph 4 of the annex to resolution 33/138 to read as follows:

"4. The six Chairmen of the Main Committees shall be elected according to the following pattern:

"(a) One representative from an African State;
"(b) One representative from an Asian State;
"(c) One representative from an Eastern European State;
"(d) One representative from a Latin American or Caribbean State;
"(e) One representative from a Western European or other State;
"(f) The sixth chairmanship shall rotate over a period of twenty sessions according to the following pattern:

i. One representative from an African State;
ii. One representative from an Asian State;
iii. One representative from a Latin American or Caribbean State;
iv. One representative from an African State;
v. One representative from an Asian State;
vi. One representative from an African State;
vii. One representative from a Latin American or Caribbean State;
viii. One representative from an Asian State;
ix. One representative from an African State;
x. One representative from an Asian State;
xi. One representative from a Latin American or Caribbean State;
xii. One representative from an African State;
xiii. One representative from an Asian State;
xiv. One representative from an African State;
xv. One representative from a Latin American or Caribbean State;
xvi. One representative from an Asian State;
xvii. One representative from an African State;
xviii. One representative from an Asian State;
xix. One representative from a Latin American or Caribbean State;
xx. One representative from an African State.

session over which they are to preside. The President and the Vice-Presidents so elected will assume their functions only at the beginning of the session for which they are elected and shall hold office until the close of that session.[3] The Vice-Presidents shall be elected after the election of the Chairmen of the six Main Committees referred to in rule 98, in such a way as to ensure the representative character of the General Committee.

[3] Rule based directly on a provision of the Charter (Art. 21, second sentence).

Temporary President

Rule 31[1]

If, at the opening of a session of the General Assembly, the President for that session has not yet been elected, in accordance with rule 30 above, the President of the previous session, or the chairman of that delegation from which the President of the previous session was elected, shall preside until the Assembly has elected a President.

[1] See introduction paras. 17, 18, 22 and 44.

Acting President

Rule 32 [105]

If the President finds it necessary to be absent during a meeting or any part thereof, he shall designate one of the Vice-Presidents to take his place.

Rule 33 [105]

A Vice-President acting as President shall have the same powers and duties as the President.

Replacement of the President

Rule 34 [105]

If the President is unable to perform his functions, a new President shall be elected for the unexpired term.

General powers of the President

Rule 35[1] [106]

In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the session, direct the discussions in plenary meeting, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The President may, in the course of the discussion of an item, propose to the General Assembly the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion.

[1] See introduction, para. 7; see also annex I, para. 39, annex III, para. (*g*), annex IV, paras. 39 and 67, annex V, para. 3, and annex VI, para 7.

POSSIBILITY OF SUBMISSION OF DRAFT RESOLUTIONS BY THE PRESIDENT OF THE GENERAL ASSEMBLY MEMORANDUM TO THE UNDER-SECRETARY-GENERAL, OFFICE FOR POLITICAL AND GENERAL ASSEMBLY AFFAIRS

1. As is well known, draft resolutions are normally submitted by Member States. Other possibilities exist, however. Subsidiary organs reporting to the General Assembly have been urged to make every effort to submit draft resolutions in order to facilitate the consideration of the items in question. (See paragraph 31 of annex VI to the Assembly's rules of procedure.) Furthermore, the Chairman or a Vice-Chairman of the Main Committees have, following consultations on a particular draft, submitted draft resolutions on the theory that such drafts represented "consensus" or "no objection" drafts. (For example, in 1985 the Chairman of the Sixth Committee submitted a draft resolution on the "Terrorism" item.)

2. As far as the plenary practice is concerned, we are not aware of instances of the President formally submitted and circulating a draft resolution (i.e., a document with the heading "Draft resolution submitted by the President"). There have, on the other hand, been examples of the President proposing decisions to be taken by the General Assembly. These normally relate to organizational or procedural matters, such as the appointment of members to certain subsidiary organs.

3. The rules of procedure of the General Assembly not containing any provision to the contrary, there would be no legal obstacle to the President of the Assembly submitting a draft resolution to the plenary, just as Chairmen of Main Committees have done.

11 October 1988

Rule 36[1] [107]

The President, in the exercise of his functions, remains under the authority of the General Assembly.

[1] See introduction, para. 7; see also annex I, para. 39, annex III, para. (*g*), annex IV, paras. 39 and 67, annex V, para. 3, and annex VI, para 7.

The President shall not vote

Rule 37 [104]

The President, or a Vice-President acting as President, shall not vote but shall designate another member of his delegation to vote in his place.

VI. GENERAL COMMITTEE

Composition

Rule 38[1]

The General Committee shall comprise the President of the General Assembly, who shall preside, the twenty-one Vice-Presidents and the Chairmen of the six Main Committees. No two members of the General Committee shall be members of the same delegation, and it shall be so constituted as to ensure its representative character. Chairmen of other committees upon which all Members have the right to be represented and which are established by the General Assembly to meet during the session shall be entitled to attend meetings of the General Committee and may participate without vote in the discussions.

[1] See introduction, paras. 7, 15, 17, 18, 22 , 38 and 44.

MEANING OF THE SENTENCE "CHAIRMEN OF OTHER COMMITTEES UPON WHICH ALL MEMBERS HAVE THE RIGHT TO BE REPRESENTED AND WHICH ARE ESTABLISHED BY THE GENERAL ASSEMBLY TO MEET DURING THE SESSION SHALL BE ENTITLED TO ATTEND MEETINGS OF THE GENERAL COMMITTEE AND MAY PARTICIPATE WITHOUT VOTE IN THE DISCUSSIONS" IN RULE 38 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Note prepared by the Secretary-General in accordance with a request made by the Chairman of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly at the 16th meeting of the Committee, on 21 May 1971

1. At its third session in 1948, the General Assembly established an *Ad Hoc* Political Committee composed of all Members of the Assembly to consider and report on a number of agenda items. Although, according to the then existing rule, the General Committee comprised the President of the Assembly, the seven Vice-Presidents and the Chairmen of the six Main Committees, the Chairman of the *Ad Hoc* Political Committee actually took part in the General Committee without the right to vote.

2. The Special Committee on Methods and Procedures of the General Assembly established on 20 April 1949, in examining the rules of procedure of the Assembly, took into consideration the above-mentioned situation and decided to recommend a rule on "participation of Chairmen of *ad hoc* committees". In its report to the Assembly, the Special Committee stated:

"During the third session of the General Assembly, the Chairman of the *Ad Hoc* Political Committee took part, without the right to vote, in the meetings of the General Committee. It is the opinion of the Special Committee that this is a desirable practice which should be confirmed in the rules of procedure. Accordingly the Special Committee recommends the addition of a new rule 34 (a) worded as follows:

"Rule 34 (a)

"Participation of Chairmen of ad hoc *committees*

"Chairmen of committees upon which all Members have the right to be represented, and which are established by the General Assembly to meet during the session, shall been titled to attend meetings of the General Committee and may participate without vote in the discussions."

3. When the report of the Special Committee was considered by the Sixth Committee at the fourth session of the General Assembly, the Chairman of the Special Committee explained that in recommending the addition of the new rule, the Special

Committee "had wished to confirm a practice followed at the previous session of the General Assembly".

4. On the recommendation of the Sixth Committee, the General Assembly adopted the new provision which became the last sentence of rule 38.

5. The history of the said provision indicates that the expression "committees upon which all Members have the right to be represented" was meant to be *ad hoc* committees of the whole established by the Assembly to meet during the session.

24 May 1971

Substitute members

Rule 39[1]

If a Vice-President of the General Assembly finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to take his place. The Chairman of a Main Committee shall, in case of absence, designate one of the Vice-Chairmen of the Committee to take his place. A Vice-Chairman shall not have the right to vote if he is of the same delegation as another member of the General Committee.

[1] See introduction, paras. 15, 17 and 30; see also annex IV, para. 10.

Functions

Rule 40[1]

The General Committee shall, at the beginning of each session, consider the provisional agenda, together with the supplementary list, and shall make recommendations to the General Assembly, with regard to each item proposed, concerning its inclusion in the agenda, the rejection of the request for inclusion or the inclusion of the item in the provisional agenda of a future session. It shall, in the same manner, examine requests for the inclusion of additional items in the agenda and shall make recommendations thereon to the General Assembly. In considering matters relating to the agenda of the General Assembly, the General Committee shall not discuss the substance of any item except insofar as this bears upon the question whether the General Committee should recommend the inclusion of the item in the agenda, the rejection of the request for inclusion or the inclusion of the item in the provisional agenda of a future session, and what priority should be accorded to an item the inclusion of which has been recommended.

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[1] See introduction, para. 7; see also annex III, para. (*f*), annex IV, paras. 11-14, annex V, para. I, annex VI, para. 4, and VII, paras. 3 and 6.

COMMENTS ON SOME PROCEDURAL QUESTIONS IN CONNEXION WITH THE PROPOSAL THAT THE THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY BE HELD AWAY FROM UNITED NATIONS HEADQUARTERS

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This memorandum responds to several procedural questions that have been raised in connexion with the proposal that the thirty-third session of the General Assembly meet in [name of the capital of a Member State].

I. *Majority required for a decision by the General Assembly to meet away from Headquarters*

2. It has been suggested that a decision by the General Assembly to hold a session away from Headquarters requires an absolute majority, i.e. the affirmative vote of a majority (75)[1] of all the Members of the United Nations, as provided in the final clause of rule 3 and in rule 4 of the Assembly's rules of procedure. These rules state:

"Place of meeting

"RULE 3

"The General Assembly shall meet at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision taken at a previous session or at the request of a majority of the Members of the United Nations.

"RULE 4

"Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly."

3. These rules clearly distinguish between a decision to hold a session away from Headquarters made by the Assembly during a session and a determination to hold a session away from Headquarters made outside the Assembly in accordance with the procedure specified in rule 4. The latter, for which an absolute majority is required, is not a decision of the General Assembly but a determination made by the membership of the United Nations.

4. The majority required for decisions of the General Assembly is specified in paragraphs 2 and 3 of Article 18 of the Charter (which are reflected in rules 83-86 of the rules of procedure): a two-thirds majority of the members present and voting for decisions on important questions and on those additional categories decided by the

[1] At the date of drafting of the above opinion, the membership of the United Nations stood at 150.

Assembly, and a simple majority of the members present and voting for other questions. As these are Charter provisions, the Assembly itself cannot vary them, either by adopting particular rules of procedure or on an *ad hoc* basis, so as to provide that certain decisions be taken by majorities different from those specified in the Charter.

5. Under the Charter and the rules of procedure, absolute majorities of the membership are only required for decisions when these are not taken in and by the Assembly itself: the convening of special sessions pursuant to Article 20 of the Charter, in accordance with rules 8 and 9 of the rules of procedure, and the determination of the place of meeting in accordance with rules 3 and 4. Absolute majorities are required in those cases because, in the absence of a meeting at which a quorum can be determined, the only standard by which approval can be measured is that of the total membership of the Organization. On the other hand, when these same decisions are taken by the Assembly itself, as is possible under rule 7 for the convening of a special session or under the first part of rule 3 for establishing a different place of meeting, the majorities indicated in paragraph 4 above must be used.

6. Finally, it should be noted that a decision on the place of meeting does not appear to be an "important question" within the meaning of paragraph 2 of Article 18 of the Charter. This is so whether or not there are any financial implications to the proposed choice of the place of meeting, since it has been held several times that the mere existence of financial implications does not make a decision a "budgetary question" within the meaning of that paragraph. Consequently, the decision on the place of meeting can be taken by a simple majority under paragraph 3 of Article 18 of the Charter and rule 85 of the rules of procedure, unless the Assembly should decide, by a simple majority under the same provisions, that this question be decided by a two-thirds majority.

II. *May a secret ballot be taken in connexion with this question*

7. The question has been raised whether the General Assembly or its General Committee can take a decision by secret ballot with regard to issues relating to the holding of a regular Assembly session away from Headquarters. In the General Committee this would apply to the decision whether to recommend the inclusion of the additional item in the agenda of the Assembly. In the plenary of the Assembly the question could be raised with regard to the decision on the adoption of the recommendation of the General Committee (i.e. inclusion or not in the agenda) and/or eventually with regard to a vote on the actual proposal to hold a session of the Assembly away from Headquarters.

8. The only case where an absolute majority of votes is required in the General Assembly is for elections of the members of the International Court of Justice. This majority is specified in Article 10 of the Statute of the Court, which is an integral part of the Charter, and is restated in rule 151 of the rules of procedure of the Assembly.

9. Rules 87 and 127 of the rules of procedure specify the methods of voting, respectively in the plenary and in committees; they have identical contents and provide that the Assembly or a committee shall normally vote by show of hands or by standing, but that any representative may request a roll-call. The only references to secret ballot are

contained in rules 92 and 103, which govern elections. The rules of procedure of the Assembly thus do not provide for a secret ballot other than for elections.

10. The absence of a provision for secret ballots for other matters does not, however, absolutely prevent the General Assembly from resorting to such a procedure. In fact, there are precedents for doing so, in the practice of the Assembly as well as of subsidiary organs and conferences with rules of procedure similar to those of the Assembly. For example, at the twenty-first session of the Assembly, the Second Committee decided without objection that the site of the future headquarters of UNIDO should be decided by secret ballot. At its second session in October 1965, the Trade and Development Board voted by secret ballot on the location of the site for the Secretariat of UNCTAD. During the sixth session of the Third United Nations Conference on the Law of the Sea in July 1977, the venue of the seventh session of the Conference was decided upon by secret ballot. It may be relevant to note that in all these cases the choice of a site or venue was involved.

11. On all these occasions the secret ballot procedure was resorted to by general agreement of all members of the body concerned. This accords with the principle that the strict observance of rules of procedure can be avoided by virtue of a general agreement among the members of the body concerned, since the essential purposes of rules of procedure — orderly proceedings and protection of the .interests of the minority — are thus not endangered. It is on the basis of the same principle that in the practice of the General Assembly the application of certain rules of procedure has frequently been suspended by common accord: for example, many elections have not taken place by secret ballot as provided in rule 92.

12. The question arises, however, whether in the absence of a common agreement among the membership, the General Assembly may decide by a majority vote to resort to a secret ballot. When this question was put to the Legal Counsel by the Second Committee during the debate on the choice of the UNIDO Headquarters site referred to above, he advised that the Committee could not decide, on the basis of a vote, to suspend the application of any rule of procedure, or to take a secret ballot. While this opinion of the Legal Counsel applies to the proceedings of any sessional organ, including the General Committee, it does not exclude the authority of the General Assembly itself to decide by a majority vote to resort to secret ballot, since even if this is considered as amounting to a suspension or amendment of the rules of procedure, such power is vested in the Assembly by Article 21 of the Charter.

13. While it would therefore not be possible for the General Committee to decide, except in the absence of any objection, to resort to a secret ballot on its recommendation concerning the inclusion of an additional item in the agenda of the General Assembly, the latter could decide by a majority vote to take a secret ballot on deciding on the recommendation of the General Committee or on the substance of a proposal to hold a session away from Headquarters. If the question is referred to a committee (see Part IV below), then that body would be under the same constraints as the General Committee, unless the plenary decided, by a majority vote, to authorize the committee to decide on its substantive recommendation to the plenary by secret ballot.

III. *Procedure for placing an additional item on the agenda of the Assembly in spite of a negative recommendation of the General Committee*

14. The procedure for placing "additional items" on the agenda of a regular session of the Assembly is governed by rules 15 and 40 (second sentence) of the rules of procedure.

15. If the General Committee should decide to recommend against placing an additional item on the agenda, that recommendation would be communicated to the Assembly in the report of the Committee.

16. The normal course for the General Assembly would be to vote on the recommendation of the General Committee contained in its report. Several alternative procedural situations may be foreseen:

(a) *Rejection of the Committee's recommendation*

If the plenary should reject a negative recommendation of the Committee on the inclusion of the item on the agenda, this would not by itself result in that item being so included. This is so because the rejection of a proposal, which could occur by two successive tie votes under rule 95 or by the failure to obtain a two-thirds majority where that is required, can therefore not be interpreted as a positive decision in the opposite sense. However, it would then be in order to take action on and to adopt a separate proposal for the inclusion of the item on the agenda.

(b) *Proposed amendment of the Committee's recommendation*

A proposal to amend a negative recommendation of the Committee so as to reverse its sense, i.e., to include the agenda item in question, would be out of order since rule 90 provides that "A motion is considered an amendment if it merely adds to, deletes from or revises part of the proposal" (emphasis added). It has repeatedly been held that a motion that would completely change the sense of a previous proposal cannot be considered as an amendment to it, but has to be treated as a separate proposal.[1]

(c) *Submission of a separate proposal to include the item on the agenda*

A proposal to include an additional item on the agenda in spite of a negative recommendation of the General Committee would be in order, as there is no requirement that the Assembly act only on a favourable recommendation of the Committee. Such a proposal would, however, under rule 91, be voted on only after a decision is taken on the recommendation of the Committee — unless, under the same rule, the Assembly decides to vote first on the separate proposed to include.

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[1] The Legal Counsel so advised the plenary at the twenty-seventh session of the General Assembly, when a proposal was made that a recommendation of the General Committee to include an item be "amended" so that the item would instead have been included in the provisional agenda of the next session. *(Official Records of the General Assembly, Twenty-seventh Session, Plenary Meetings,* 2037th meeting, paras. 221-223).

(i) If the motion to vote first on the separate proposal prevails, then a vote would be taken on that proposal. If it is accepted, the item is thereby placed on the agenda, and no vote would be taken on the Committee's negative recommendation; if the separate proposal fails, then the item is not placed on the agenda and there would be no need to vote on the Committee's recommendation, though that could be done.

(ii) If the motion to vote first on the separate proposal fails, then a vote would first be taken on the Committee's recommendation. If that recommendation is not adopted, then the situation is as described in subparagraph *(a)* above. If the recommendation of the Committee is approved, then a vote on a separate proposal to include the item on the agenda would constitute a reconsideration which, under rule 81, would require a prior decision taken by a two-thirds vote — which, if successful, would be followed by a vote on the proposal to include the item; however, more likely, after the Committee's negative recommendation has been approved, the separate proposal would be withdrawn by its sponsor(s) under rule 80, or a decision not to vote on it would be taken under the second sentence of rule 91.

IV. *Further proceedings if an additional item is placed on the agenda*

17. If it is decided to place on the agenda of the current session an additional item relating to the place of the thirty-third session, then the second sentence of rule 15 requires that:

(a) Consideration of the item in the plenary be postponed:

(i) for 7 days, *and*
(ii) until a committee has reported thereon; *unless*

(b) The plenary decides otherwise by a two-thirds majority.

18. The requirement of a committee report could be satisfied by submission of the item to and a report from a Main Committee (in particular the Fifth), the General Committee (though the latter probably has no substantive competence under rules 41-42), or an *ad hoc* body. In this connexion, the history of previous considerations of the question of relocating sessions of the General Assembly may be of interest:

(a) At the first session of the Assembly a proposal to relocate the second session was considered only in plenary, and defeated. (The requirement of consideration by a committee did not arise because the item was not an "additional" one.)

(b) At the second session of the Assembly a proposal for relocating the third session was first considered in the plenary from the point of view of principle, and thereafter its administrative and budgetary implications were submitted to the Fifth Committee. After the plenary had thereupon decided on a session in Europe, the choice of site was left to an *ad hoc* committee of 9 members, designated by the President.

(c) At the fifth session of the Assembly the proposed relocation of the sixth session was first considered by the Fifth Committee (though objection was raised against its competence to consider[16] the substance of the item), and then was adopted by the plenary.

19. These precedents indicate that submission of the question to the Fifth Committee would be the most normal course to follow, though the establishment of an *ad hoc* committee is not to be excluded. The report of the Committee could:

(a) restrict itself entirely to a discussion of financial, administrative and other implications;

(b) also include some procedural suggestions for the method whereby the plenary would conduct its own consideration (e.g., that a secret ballot be taken);

(c) include, as is customary, a substantive recommendation on the proposal.

2 December 1977

Rule 41[1]

The General Committee shall make recommendations to the General Assembly concerning the closing date of the session. It shall assist the President and the General Assembly in drawing up the agenda for each plenary meeting, in determining the priority of its items and in coordinating the proceedings of all committees of the Assembly. It shall assist the President in the general conduct of the work of the General Assembly which falls within the competence of the President. It shall not, however, decide any political question.

[1] See introduction, para. 7; see also annex III, para. (*f*), annex IV, paras. 11-14, annex V, para. I, annex VI, para. 4, and VII, paras. 3 and 6.

Rule 42[1]

The General Committee shall meet periodically throughout each session to review the progress of the General Assembly and its committees and to make recommendations for furthering such progress. It shall also meet at such other times as the President deems necessary or upon the request of any other of its members.

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[1] See introduction, para. 7; see also annex I, para. 20, annex III, para. (*f*), annex IV, paras. 13 and 14, annex V, para. 2, annex VI, para. 4 and annex VII, para. 5.

Participation by members requesting the inclusion of items in the agenda

Rule 43

A member of the General Assembly which has no representative on the General Committee and which has requested the inclusion of an item in the agenda shall be entitled to attend any meeting of the General Committee at which its request is discussed and may participate, without vote, in the discussion of that item.

Revision of the form of resolutions

Rule 44

The General Committee may revise the resolutions adopted by the General Assembly, changing their form but not their substance. Any such changes shall be reported to the General Assembly for its consideration.

VII. SECRETARIAT

Duties of the Secretary-General

Rule 45

The Secretary-General shall act in that capacity in all meetings of the General Assembly,[1] its committees and its subcommittees. He may designate a member of the Secretariat to act in his place at these meetings.

[1] Rule based directly on a provision of the Charter (Art. 98).

Rule 46

The Secretary-General shall provide and direct the staff required by the General Assembly and any committees or subsidiary organs which it may establish.

Duties of the Secretariat

Rule 47

The Secretariat shall receive, translate, print and distribute documents, reports and resolutions of the General Assembly, its committees and its organs;[1] interpret speeches made at the meetings; prepare, print and circulate the records of the session;[2] have the custody and proper preservation of the documents in the archives of the General Assembly; distribute all documents of the Assembly to the Members of the United Nations, and, generally, perform all other work which the Assembly may require.

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[1] See annex IV, para. 107, and annex V, paras. 25, 26 and 28-30.
[2] See annex IV, para. 108.

REQUEST OF MEMBER STATE FOR INCLUSION OF ITEM IN THE AGENDA OF THE GENERAL ASSEMBLY PURSUANT TO RULE 14 OF RULES OF PROCEDURE—THE SECRETARIAT DOES NOT INTERFERE WITH A MEMBER STATE'S SOVEREIGN RIGHT TO CIRCULATE DOCUMENT PROVIDED THAT IT IS NOT BLATANTLY INFLAMMATORY OR POTENTIALLY LIBELOUS—STRONG CRITICISM OF ANOTHER MEMBER STATE OR UNITED NATIONS STAFF MEMBER DOES NOT JUSTIFY REFUSAL TO CIRCULATE DOCUMENT—CALL FOR ANOTHER MEMBER STATE'S DISSOLUTION CONSTITUTES DIRECT ATTACH AGAINST ITS SOVEREIGNTY AND TERRITORIAL INTEGRITY IN VIOLATION OF THE PRINCIPLES OF THE CHARTER—SECRETARIAT SHOULD NOT CIRCULATE DOCUMENT CONTAINING BLATANTLY INFLAMMATORY AND DEFAMATORY LANGUAGE AGAINST ANOTHER MEMBER STATE

Note to the Under-Secretary-General, Department of General Assembly Affairs and Conference Management concerning the request by [State] for a supplementary item to be included in the agenda of the sixty-fourth session of the General Assembly

1. This is in reference to your note dated 14 August 2009 to the Chef de Cabinet, copied to the Legal Counsel, to which a letter dated 4 August 2009 from the Permanent Representative of [State 1] to the United Nations and addressed to the Secretary-General was attached. In his letter, the Permanent Representative requests that a supplementary item be included in the agenda of the sixty-fourth session of the General Assembly and that his letter and its explanatory memorandum be circulated as documents of the General Assembly.

2. Pursuant to rule 14 of the Rules of Procedure of the General Assembly, "Any Member or principal organ of the United Nations or the Secretary-General may, at least thirty days before the date fixed for the opening of a regular session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to Members at least twenty days before the opening of the session."

3. The letter from the Permanent Representative of [State 1] by which his Government requests a supplementary agenda item states, *inter alia*, that, "The [State 2] entity is essentially a mafia for money-laundering and the financing of wars and terrorism that is exempt from international law." Furthermore, the letter calls for the dissolution of [State 2] by stating that, "The … part [of State 2] should join [State 3], the … part should join [State 4] and the … and … parts should join [State 5]."

4. As far as this request is concerned, this Office has consistently maintained that Member States have the right to circulate any document they deem appropriate, including when requesting a supplementary agenda item. The Secretariat does not interfere with this sovereign right provided that the document is submitted by a duly accredited representative, that it does not exceed the page limitations established by the General Assembly and that it is not blatantly inflammatory or potentially libelous. The fact that a document contains a strong criticism of another Member State or a United Nations staff member does not justify the Secretariat's refusal to circulate the document. However, should a document contain potentially libelous, protected or confidential

material or language, then this would provide a legitimate basis to approach the Member State that has sought the circulation of the document with a request that it be withdrawn or revised in order to omit such material/language.

5. Thus, we recommended in the attached note[*] dated 27 March 2000, when advising on a request by the Permanent Mission of [State 6] for circulation of an official document at the fifty-sixth session of the Commission on Human Rights, that the Permanent Mission should be requested to re-submit its document without reference to confidential and internal OHCHR communications and should also be asked to remove references to the name of a particular OHCHR staff member in order to avoid a potentially libelous situation. We also advised that should the Permanent Mission refuse, the document could be circulated as requested but that OHCHR would be entitled to circulate its own document that presented its comments on the [State 6] document.

6. In the case of the [State 1] request, however, the content and defamatory language of the letter and its explanatory memorandum make it impossible for the Secretariat to circulate it as submitted.

7. Thus, the Permanent Representative should be informed that his letter and its explanatory memorandum contain blatantly inflammatory and defamatory language against another Member State. Furthermore, by calling for [State 2]'s dissolution, [State 1] is directly attacking that Member State's sovereignty and territorial integrity in violation of the principles of the Charter. Consequently, the Secretariat should not circulate the letter and explanatory memorandum as an official document of the 64th session for purposes of requesting a supplementary agenda item.

8. In a meeting which took place yesterday between the Chef de Cabinet and the Permanent Representative [of State 1] …, the Chef de Cabinet informed the Permanent Representative of the Secretariat's position along the lines of this note, and offered him the option of withdrawing the letter or drastically revising it in both content and style. The Permanent Representative agreed to relay the Secretariat's concerns to [his capital] and revert, and suggested that the problem between [State 1] and [State 2] might eventually be resolved bilaterally between the two States. It was agreed in the meeting that, in the meantime, no further action would be required.

21 August 2009

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[*] Not reproduced herein.

Report of the Secretary-General on the work of the Organization

Rule 48

The Secretary-General shall make an annual report, and such supplementary reports as are required, to the General Assembly on the work of the Organization.[1] He shall communicate the annual report to the Members of the United Nations at least forty-five days before the opening of the session.

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[1] See introduction, para. 7; see also annex I, para. 20, annex III, para. (*f*), annex IV, paras. 13 and 14, annex V, para. 2, annex VI, para. 4 and annex VII, para. 5.

Notification under Article 12 of the Charter

Rule 49[1]

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.

[1] Rule reproducing textually a provision of the Charter (Art. 12, para. 2).

IMPLICATIONS OF ARTICLE 12 OF THE UN CHARTER AND
THE HUMAN RIGHTS COUNCIL
MEMORANDUM FROM PRINCIPAL LEGAL OFFICER IN CHARGE OF THE
OFFICE OF THE LEGAL COUNSEL
TO SECRETARY OF THE COMMISSION ON HUMAN RIGHTS OFFICE OF THE
HIGH COMMISSIONER FOR HUMAN RIGHTS

1. I refer to the request by the President of the Human Rights Council (HRC) during the Bureau meeting of 30 June 2006 about the legal implications of Article 12 of the Charter *vis-à-vis* the decision of the HRC to convene a special session to discuss a matter that was also under consideration by the Security Council.

2. We note that on 30 June, ……… , supported by 21 other members of the HRC, submitted a request to the President calling for a special session of the HRC to discuss the "latest escalation of the situation in the Palestinian and other Occupied Arab Territories." The request met the requirements set out in paragraph 10 of General Assembly resolution 60/251, which provides that the HRC "shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council." The President of the HRC discussed the options for holding the special session in a Bureau meeting right after closing the regular session and decided to hold it on Thursday, 6 July 2006.

3. We also note that, at the requests of ………… , the Security Council held a meeting on 30 June 2006 to consider the item entitled "The situation in the Middle East, including the Palestinian question." At the end of the meeting, the President of the Security Council stated that, with the list of speakers exhausted, the Council had "concluded the present stage of its consideration of the item on its agenda."

4. The question put before us is whether Article 12 of the Charter applies to subsidiary organs of the General Assembly and, if so, whether Article 12 provides for any obstacle for the HRC to meet, discuss and make recommendations on the issued raised by ………..

5. Article 12, paragraph 1, of the Charter provides as follows: "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."

6. Consistent with the previous position of this Office on the matter, we consider that the above provision of the Charter applies to subsidiary organs of the General Assembly, including the HRC.

7. Furthermore, in accordance with the practice of the Assembly, Article 12 does not prevent the General Assembly, and its subsidiary organs, from generally considering, discussing and making recommendations on items which are on the agenda of the Security Council, in particular where the titles of the items before the Council and the Assembly are not identical.

8. It is to be noted that the General Assembly has interpreted the words "is exercising" in Article 12 in a restricted fashion, as meaning "is exercising at this moment" and, consequently, it had made recommendations on matters which the Security Council was also considering. Examples of such matters are the situations in Congo (1960-61), Angola (1961-62), the apartheid question (1960-63), territories under the Portuguese administration (1962-63) or the question of Southern Rhodesia (1962-63).

9. On the question at hand, we note that the Security Council has concluded the present stage of its consideration of item on its agenda. In addition, the title of the item in the Security Council is not identical to that of the HRC.

10. In light of the foregoing, in our view the Security Council is not exercising its functions under the Charter "at this moment" on this particular issue. Therefore, Article 12 of the Charter should not be considered as an obstacle for the HRC to meet in a special session to consider recommendations to the General Assembly on the "latest escalation of the situation in the Palestinian and other Occupied Arab Territories", as proposed by ………...

11. Furthermore, we would point out that the International Court of Justice, in paragraph 27 of its advisory opinion of 9 July 2004 on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" noted that there had been "an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter" (see, for example, recently, the cases of …………) and that "while the Security Council has tended to focus on the aspects of such matters related to international peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects."

12. Accordingly, we believe that, even if the Security Council was "exercising at this moment" its functions under the Charter on the matter, the HRC should also be able to make recommendations regarding those aspects of the situation which do not have any connection with the maintenance of international peace and security, and which are within the scope of its mandate.

13. We would be grateful if you could convey our opinion to the President of the HRC.

6 July 2006

Regulations concerning the Secretariat

Rule 50[1]

The General Assembly shall establish regulations concerning the staff of the Secretariat.[2]

[1] Rule based directly on a provision of the Charter (Art. 101, para. I).
[2] For the Staff Regulations of the United Nations, see ST/SGB/Staff Regulations/ Rev.23 and Corr. 1 and Amend. 1 and 2.

VIII. LANGUAGES

Official and working languages

Rule 51[1]

Arabic, Chinese, English, French, Russian and Spanish shall be both the official and the working languages of the General Assembly, its committees and its subcommittees.

[1] See introduction, paras. 5, 27, 28, 34 and 40.

Interpretation

Rule 52[1]

Speeches made in any of the six languages of the General Assembly shall be interpreted into the other five languages.

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[1] See introduction, paras. 5, 27, 28, 34 and 40.

Rule 53[1]

Any representative may make a speech in a language other than the languages of the General Assembly. In this case, he shall himself provide for interpretation into one of the languages of the General Assembly or of the committee concerned. Interpretation into the other languages of the General Assembly or of the committee concerned by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

[1] See introduction, paras. 5, 27, 28, 34 and 40.

Languages of verbatim and summary records

Rule 54[1]

Verbatim or summary records shall be drawn up as soon as possible in the languages of the General Assembly.

[1] See introduction, paras. 5, 27, 28, 34 and 40.

Languages of the Journal of the United Nations

Rule 55[1]

During the sessions of the General Assembly, the Journal of the United Nations shall be published in the languages of the Assembly.

[1] See introduction, paras. 5, 27, 28, 34 and 40.

Languages of resolutions and other documents

Rule 56[1]

All resolutions and other documents shall be published in the languages of the General Assembly.

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[1] See introduction, paras. 5, 27, 28, 34 and 40.

Publications in languages other than the languages of the General Assembly

Rule 57[1]

Documents of the General Assembly, its committees and its subcommittees shall, if the Assembly so decides, be published in any language other than the languages of the Assembly or of the committee concerned.

[1] See introduction, paras. 5, 27, 28, 34 and 40.

IX. RECORDS

Records and sound recordings of meetings

Rule 58[1]

(a) Verbatim records of the meetings of the General Assembly and of the Political and Security Committee (First Committee) shall be drawn up by the Secretariat and submitted to those organs after approval by the presiding officer. The General Assembly shall decide upon the form of the records of the meetings of the other Main Committees and, if any, of the subsidiary organs and of special meetings and conferences. No organ of the General Assembly shall have both verbatim and summary records.

(b) Sound recordings of the meetings of the General Assembly and of the Main Committees shall be made by the Secretariat. Such recordings shall also be made of the proceedings of subsidiary organs and special meetings and conferences when they so decide.

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[1] See introduction, para. 30; see also annex IV, para. 108, and annex V, para. 27.

QUESTION WHETHER IT IS PROPER FOR THE GENERAL ASSEMBLY OR ITS MAIN COMMITTEES TO DIRECT THAT STATEMENTS MADE BE DELETED FROM THE RECORDS

Note to the Chairman of the Third Committee

1. At the 1714th meeting of the Third Committee, on 25 November 1969, the question was raised of expunging certain statements from the summary records of the Committee.

2. Under rule 60 of the rules of procedure of the General Assembly, the responsibility for preparing records is vested in the Secretariat. There is no provision in those rules which would permit any exception to the general principle that all statements shall be properly recorded in the records. The basic legal position, therefore, is that deletion of statements from the records is not a matter lying properly within the competence of a Committee. The rules exist to bring order to the proceedings, and to protect the rights of all, including the minority.

3. This basic position regarding deletion of statements from the records is supported by the precedents, except for one case.

4. The question of the deletion of statements from the records has arisen on a few occasions in the past in the General Assembly and its Main Committees. One of them occurred in the Third Committee itself at its 398th meeting on 22 January 1952. On that occasion the issue arose of expunging from the records a statement made by one representative, and a reply by another, on an issue which was not before the Committee and which the Chairman ruled to be out of order. The Chairman nevertheless ruled—and her ruling was not challenged—that both statements should appear in the official records. The principle behind this ruling was summed up at the meeting in question by the representative of the USSR who, speaking in support of the Chairman's ruling, said:

"The official records should reproduce accurately, truly and impartially all that occurred at meetings. The record could not be arbitrarily distorted at the request of any delegation; that would amount to falsification."

5. The only instance where the foregoing principles have been departed from occurred in the Fifth Committee, at its 1087th meeting on 5 November 1965. On that occasion, the Committee voted by 39 votes to 16 with 16 abstentions to expunge from the records a statement made at the previous meeting by a representative who had been ruled out of order by the Chairman for seeking to discuss an issue not germane to the item before the Committee. However, bad precedents are to be departed from and not followed. The practice of the plenary, which surely must guide the Committees, is to the contrary of this precedent.

6. At the 1034th plenary meeting, on 11 October 1961, the representative of Liberia proposed that a statement made by another representative in the general debate should be deleted from the record. At the following meeting, on the same day, and after considerable discussion, the representative of Liberia withdrew his proposal. In so doing, he referred to another of the basic principles involved. He said:

> "Many of the African representatives have appealed to us to withdraw our motion. We do not do so on account of South Africa but on account of the principle laid down in the Declaration of Human Rights that each Member has the right to say what he likes and to write what he likes—although South Africa has violated every clause in that Declaration."

7. Principle and precedent therefore strongly support the conclusion that the records must faithfully reflect what was said, and that it is not proper for a Committee to direct that statements made be excluded.

26 November 1969

Resolutions

Rule 59

Resolutions adopted by the General Assembly shall be communicated by the Secretary-General to the Members of the United Nations within fifteen days after the close of the session.

X. PUBLIC AND PRIVATE MEETINGS OF THE GENERAL ASSEMBLY, ITS COMMITTEES AND ITS SUBCOMMITTEES

General principles

Rule 60

The meetings of the General Assembly and its Main Committees shall be held in public unless the organ concerned decides that exceptional circumstances require that the meeting be held in private. Meetings of other committees and subcommittees shall also be held in public unless the organ concerned decides otherwise.

QUESTION WHETHER MEETINGS OF A COMMITTEE OR SUB-COMMITTEE OF THE GENERAL ASSEMBLY WITH LIMITED MEMBERSHIP MAY BE CLOSED TO MEMBER STATES NOT MEMBERS OF THE COMMITTEE OR SUB-COMMITTEE—RULE 62 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Note prepared at the request of a Working Group of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly

A legal opinion has been requested on the legality of having meetings of committees and sub-committees of the General Assembly closed to some Member States. The Office of Legal Affairs has also been asked to examine the drafting history of rule 62 of the rules of procedure of the General Assembly in order to ascertain the intention of the General Assembly in providing for private meetings.

At the outset, we should like to stress that as all Members of the United Nations are, under Article 9 of the Charter, members of the General Assembly and, under rule 102 of the rules of procedure, members of the Main Committees there can be no question of a meeting of the General Assembly itself or of a Main Committee from which a Member of the United Nations could be excluded. Participation on the basis of equality in all plenary meetings of the General Assembly, in all meetings of the Main Committees and in all meetings of other bodies whose membership includes all Members of the United Nations is one of the rights and privileges of membership which, subject, of course, to the provisions of Articles 5 and 19 of the Charter, cannot be curtailed.

The present question therefore relates solely to meetings of committees and subcommittees of limited membership.

Turning first to the drafting history and application of rule 62, it may be noted that the essential provisions of the rule were contained in the original draft rules of procedure prepared by the Executive Committee of the Preparatory Commission of the United Nations which were recommended by the Preparatory Commission for adoption as provisional rules of the General Assembly. The text has remained unchanged except for a consequential change in the second sentence which was made at the second session of the Assembly when the provisional rules were reviewed. Originally this second sentence had read, "Meetings of other committees and *subsidiary organs* shall also be held in public unless the bodies concerned decide otherwise" (emphasis supplied). At the second session it was decided to deal with subsidiary organs separately in a special rule (now rule 162). The term "subsidiary organs" in rule 62 was changed to "sub-committees" as it is in the present text. So far as we have thus far been able to ascertain, there was no discussion of the meaning of the words "public" and "private" either at the time of the adoption of the provisional rules or at the time that the alteration of the text was made at the second session.

However, rules of procedure of principal organs of limited membership adopted at approximately the same time also contained provisions referring to private meetings in which the meaning is unmistakable. In particular we would refer to Chapter IX of the provisional rules of procedure of the Security Council in which it is expressly provided that the Security Council shall decide whether its confidential records may be made available to other Members of the United Nations.

While the drafting history gives us little help, practice which the International Court of Justice in its latest advisory opinion has again affirmed as an appropriate method of interpretation, would seem decisive in indicating that it was the intention that organs and committees of limited membership when meeting in private could exclude representatives and members of the United Nations who were not members of the organs concerned. The normal practice, consistently followed from 1946 to the present, has been that when a committee decides to meet in private only members of the Committee and essential Secretariat members are admitted. However, the Committee, as in the case of the Rationalization Committee itself, may decide to close the meeting only to the press and the public and to allow representatives of other Member States to attend.

Turning now to the constitutional issue, it is the opinion of the Office of Legal Affairs that there is nothing in the Charter which prevents the General Assembly from authorizing committees and sub-committees of limited membership to hold meetings in private from which representatives of other members of the United Nations are excluded. Such procedure, which has the support of twenty-five years of practice, does not violate the principle of sovereign equality. This principle assures to each Member of the United Nations that it be considered eligible for appointment to such committees. But a committee of limited membership necessarily requires some difference of status so far as the work of that particular committee is concerned. A member of a committee has all rights of participation including the right to vote. Accredited observers, if authorized by the General Assembly, may be given the right to participate in the discussions, or even to submit proposals but do not have the right to vote. When there is no provision for accredited observers, a Member of the United Nations present in the meeting room does not have the right to speak unless expressly invited by the committee to make a statement. The closing of a meeting of a committee of limited membership to non-members of the committee is therefore only one of many differences and can no more be considered a violation of the principle of sovereign equality than the establishment of organs of limited membership. With respect to such organs there are Charter provisions (Articles 32 and 69) providing for a right for the Members of the United Nations to participate in the meetings of the Security Council and the Economic and Social Council on matters specifically provided for in those articles. But these provisions do not preclude the holding of closed meetings.

In conclusion, it would appear to the Office of Legal Affairs that under rule 62 of the rules of procedure of the General Assembly and in accordance with 25 years of consistent practice, committees and sub-committees of limited membership may be closed to all but members of the committee and essential Secretariat members, and that there is no provision of the Charter in conflict with these rules and practices of the

Assembly. Experience over the past 25 years would, it is believed, demonstrate that in exceptional circumstances the holding of such private meetings is essential for the performance of the functions of the committees concerned.

8 July 1971

Private meetings

Rule 61

All decisions of the General Assembly taken at a private meeting shall be announced at an early public meeting of the Assembly. At the close of each private meeting of the Main Committees, other committees and subcommittees, the Chairman may issue a communiqué through the Secretary-General.

XI. MINUTE OF SILENCE PRAYER OR MEDITATION

Invitation to silent prayer or meditation

Rule 62[1]

Immediately after the opening of the first plenary meeting and immediately preceding the closing of the final plenary meeting of each session of the General Assembly, the President shall invite the representatives to observe one minute of silence dedicated to prayer or meditation.

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[1] See introduction, para. 7.

XII. PLENARY MEETINGS

CONDUCT OF BUSINESS

Emergency special sessions

Rule 63[31]

Notwithstanding the provisions of any other rule and unless the General Assembly decides otherwise, the Assembly, in case of an emergency special session, shall convene in plenary meeting only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other committee; the President and Vice-Presidents for such emergency special sessions shall be, respectively, the chairmen of those delegations from which were elected the President and Vice-Presidents of the previous session.

[31] See introduction, para. 9.

CREDENTIALS ARRANGEMENTS FOR AN EMERGENCY SPECIAL SESSION EXTENT TO WHICH THE ARRANGEMENTS MADE FOR THE PRECEDING REGULAR SESSION MAY BE RETAINED

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. Due to the emergency nature of an emergency special session of the General Assembly there is a tendency to simplify the rules and practices of the Assembly by applying certain arrangements for the most recent regular session of the Assembly to the emergency session. Thus rule 63 of the rules of procedure provides that the President and Vice-President of an emergency special session shall be, respectively, the chairmen of those delegations from which the President and Vice-Presidents of the previous session were elected. Similarly, the practice has developed whereby the Credentials Committee for an emergency special session has the same composition, and a chairman from the same delegations, as during the preceding regular session.

2. Notwithstanding this assimilation of certain arrangements for purposes of convenience, an emergency special session is different from the preceding regular session and representatives to the emergency session are required to submit credentials empowering them to represent their respective States at that session in accordance with rule 27 of the rules of procedure of the Assembly. Permanent Representatives whose credentials entitle them to represent their respective States at all sessions of the General Assembly are not required, of course, to submit special credentials for a special emergency special session.

31 August 1981

Report of the Secretary-General

Rule 64

Proposals to refer any portion of the report of the Secretary-General to one of the Main Committees without debate shall be decided upon by the General Assembly without previous reference to the General Committee.

Reference to committees

Rule 65

The General Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item.

Discussion of reports of Main Committees

Rule 66[1]

Discussion of a report of a Main Committee in a plenary meeting of the General Assembly shall take place if at least one third of the members present and voting at the plenary meeting consider such a discussion to be necessary. Any proposal to this effect shall not be debated but shall be immediately put to the vote.

[1] See introduction, para. 7; see also annex V, para. 15.

Quorum

Rule 67[1] [108]

The President may declare a meeting open and permit the debate to proceed when at least one third of the members of the General Assembly are present. The presence of a majority of the members shall be required for any decision to be taken.

[1] See introduction, para. 30; see also annex III, para. (*g*) (i), annex IV, para. 67, and annex VI, para. 7.

Speeches

Rule 68[1] [109]

No representative may address the General Assembly without having previously obtained the permission of the President. The President shall call upon speakers in the order in which they signify their desire to speak. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

[1] See annex III, para. (*g*) (ii), annex IV, paras. 69-71, and annex V, para. 17.

Precedence

Rule 69 [111]

The Chairman and the Rapporteur of a committee may be accorded precedence for the purpose of explaining the conclusions arrived at by their committee.

Statements by the Secretariat

Rule 70 [112]

The Secretary-General, or a member of the Secretariat designated by him as his representative, may at any time make either oral or written statements to the General Assembly concerning any question under consideration by it.

Points of order

Rule 71[1] [113]

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote, and the President's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

[1] See introduction, para. 7; see also annex IV, para. 79.

QUESTION OF WHETHER A STATE NOT A MEMBER OF AN ECONOMIC AND SOCIAL COUNCIL FUNCTIONAL COMMISSION PARTICIPATING IN ITS DELIBERATIONS MAY RAISE POINTS OF ORDER OR MAKE PROPOSALS OF A PROCEDURAL NATURE
RULE 69, PARAGRAPH 3, OF THE RULES OF PROCEDURE OF FUNCTIONAL COMMISSIONS
"POINTS OF ORDER", PARAGRAPH 79 OF ANNEX V TO GENERAL ASSEMBLY RULES OF PROCEDURE

Cable to the Director-General, United Nations Office at Geneva

Regarding our cable on whether a State not a member of an Economic and Social Council functional commission participating in its deliberations may "raise points of order or make proposals of a procedural nature":

Rules of Procedure of Functional Commissions do not provide expressly for this matter.

It is true that rule 69, paragraph 3, of the Rules of Procedure of Functional Commissions provides that "a State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the Commission or of the subsidiary organ concerned". However, having regard to clear differentiation in the rules of procedure between "procedural motions" and "substantive proposals and amendments" (see in particular rules 43, 48 to 55, 57 to 65 and 68), and provisions of rules immediately preceding Rule 69 which distinguish between substantive proposals and procedural motions, it seems reasonable to conclude that the expression "proposals" in rule 69, paragraph 3, should be interpreted to mean substantive proposals (including amendments) and not procedural motions which thus cannot be made by States not members of the functional commission in question.

Such an interpretation would also accord with United Nations practice of reserving procedural motions, which concern conduct of business, for full members of the body.

Concerning "points of order", please see description of "point of order" in paragraph 79 of annex V to the General Assembly rules of procedure, which is equally valid, with reference to points of order raised in functional commissions. Thus, points of order raised under rule 42 of functional commission rules would be questions which require a ruling by the presiding officer, subject to possible appeal, relating to conduct of business and consequently are reserved solely for full members of the body.

The following further points should also be noted. As explained in paragraph 79 of annex V to the General Rules, United Nations practice by which participants rise to a "point of order", a means of obtaining the floor in order to seek information or clarification, should not be confused with raising "true" points of order under rule 42 and may be entertained by presiding officer when raised by non-members.

Non-members of functional commissions may, however, make statements or comments on procedural matters which are not in fact procedural motions or points of order under rule 42.

29 January 1988

REQUEST FOR LEGAL ADVICE
FROM THE ASSISTANT SECRETARY-GENERAL FOR LEGAL AFFAIRS
TO THE SECRETARY OF THE HUMAN RIGHTS COUNCIL

1. I refer to your memorandum of 5 November 2007, whereby you seek the advice of this Office on whether non members of the Human Rights Council (HRC) should have the right to raise points of order, "now that the HRC is a subsidiary body of the General Assembly". You indicated that this matter would be considered at the resumed 6th session of the HRC, which is to be held from 10 to 14 December 2007.

Background

2. In your memorandum, you refer to a letter dated 26 September 2007 from the Permanent Representative of ……….. to the HRC President requesting clarification of the "the right of non-members of the council to make a 'Point of Order' during its deliberations." In his letter, the Permanent Representative of …… notes that this matter was referred to in "the discussion that took place in the Council's meetings of 20/9/2007".

3. You also refer to the practice of the former Commission on Human Rights, as reflected in the Note by the Secretariat entitled "Main rules and practices followed by the Commission on Human Rights in the organization of its work and the conduct of its business" of 7 February 2002 (E/CN.4/2002/16). That Note states that "the Commission shall continue to apply the ruling made by the Chairperson of its fifty-fifth session giving the observer for Palestine the right to raise points of order 'relating to the Palestinian and Middle East issues', provided that the right to raise such a point of order shall not include the right to challenge a decision by the presiding officer" (para. 33).

4. With regard to Member States not members of the Commission, the Note states that "the right to raise points of order was also extended to representatives of state Members of the United Nations not members of the Commission on Human Rights but participating in its work in an observer capacity" (para. 34)

Applicable rule and decision

5. The HRC rules of procedure, adopted by resolution 5/I of 18 June 2007, entitled "Institution-building of the Human Rights Council", are silent on this matter. In that context, rule 1 of the HRC rules of procedure states that "[t]he Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council".

6. The relevant rule in the GA rules of procedure is rule 113, which reads as follows:

> "During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the

> Chairman. The appeal shall be immediately put to the vote, and the Chairman's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion."

7. However, by operative paragraph 11 of its resolution 60/251 of 3 April 2006, establishing the HRC, the General Assembly provided that the participation of and consultation with "observers, including States that are not members of the Council […] shall be based on arrangements […] and practices observed by the Commission on Human Rights".

Analysis

8. In accordance with United Nations practice, procedural motions which concern conduct of business are reserved for full members of the organ. Points of order raised under rule 113 are procedural motions, as by definition, they are questions relating to conduct of business which require a ruling by the presiding officer and are subject to possible appeal. Accordingly, the right to raise a point of order should be reserved solely for full members of the HRC.

9. However, as explained in paragraph 79 of annex V to the GA rules of procedure, United Nations practice also provides for representatives, as a means of obtaining the floor, to make a "point of order" when requesting for information or clarification or to make remarks relating to material arrangements including, but not limited to seating arrangements, interpretation system, the temperature in the room, documents, or translations. These are not procedural "points of order" as defined by rule 113. However, they may be raised by non-members and addressed by the presiding officer without requiring a ruling. Statements or comments on procedural matters made by non-members are also considered to fall outside the purview of rule 113 and therefore permissible. Beyond that, the Note by the Secretariat E/CN.4/2002/16 (see, paragraph 4 above) makes it clear that even in the case of rule 113, Member States of the Organization not members of the Commission are entitled to raise points of order, but not including the right to challenge a ruling by the presiding officer.

10. In the specific case of Palestine, GA resolution 52/250 of 13 July 1998, entitled "Participation of Palestine in the work of the United Nations", granted Palestine the "right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer". The Secretary-General further clarified that Palestine did not have the right to raise points of order in connection with the actual conduct of voting. (See A/52/1002 of 4 August 1998). The ruling of the President of the Commission of Human Rights contained in document E/CN.4/2002/16 reflected both GA resolution 52/250 and the advice provided by this Office on 1, 6, and 14 April 1999.

11. We note that in this regard the intention of the Assembly was to expand the rights of Palestine, not to grant them rights in excess of those enjoyed by Member States which are non-members of organs with limited membership.

12. We would also draw your attention to GA resolution 58/314 of 1 July 2004, entitled "Participation of the Holy See in the work of the United Nations", and the subsequent Note of the Secretary-General contained in document A/58/871 of 16 August 2004, which grants the Holy See the right to raise points of order "relating to any proceedings involving the Holy See." Similar to the case of Palestine, this right does not allow the Holy See to challenge the decision of the presiding officer or raise a point of order in connection with the actual conduct of voting.

Advice

13. Palestine and the Holy See, by virtue of resolutions 52/250 and 58/314 quoted above, are entitled to raise points of order under rule 113 in the HRC. Pursuant to those resolutions, these entities are not permitted to challenge the decision of the presiding officer or to raise points of order in connection with the actual conduct of voting.

14. With respect to Member States which are non members of the HRC pursuant to resolution 60/251, they may raise points of order under rule 113 but not make other procedural motions, including appealing the ruling of the presiding officer.

19 November 2007

Time limit on speeches

Rule 72[1] [114]

The General Assembly may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a representative exceeds his allotted time, the President shall call him to order without delay.

[1] See introduction, paras. 7 and 30.

Closing of list of speakers, right of reply

Rule 73[1] [115]

During the course of a debate, the President may announce the list of speakers and, with the consent of the General Assembly, declare the list closed. He may, however, accord the right of reply to any member if a speech delivered after he has declared the list closed makes this desirable.

[1] See annex IV, paras. 46, 69, 77 and 78, and annex V, paras. 8-11.

Adjournment of debate

Rule 74[1] [116]

During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

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[1] See introduction, para. 7.

MOTION TO TAKE NO ACTION ON A PROPOSAL BEFORE THE GENERAL ASSEMBLY
QUESTION OF WHETHER THE MOTION CAN PROPERLY BE MADE UNDER THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Statement made by the Legal Counsel at the 34th plenary meeting of the General Assembly on 20 October 1983

A legal opinion has been requested on the question of whether the motion proposed by the representative of a Member State is a motion that can properly be made under the rules of procedure of the General Assembly. The motion under consideration was proposed within the context of rule 74 of the rules of procedure. That rule provides for the adjournment of debate on the item under consideration without any limitations as to the reasons for which a motion- may be presented under the rule.

A review of the practice of the General Assembly shows that the Assembly has on several occasions in the recent past acted on motions to take no action on a proposal before it on the basis of rule 74. Among the precedents which I have referred to, there are not only those which relate to the item as a whole, but also several which relate to a specific question or text under consideration and to adjournment *sine die.*

As representatives may recall, an identical motion within the context of rule 74 of the rules of procedure of the General Assembly was proposed in similar circumstances when the same agenda item was considered at the thirty-seventh session. On that occasion the Assembly acted on the motion and adopted it. In these circumstances, it is my view that the motion before the Assembly is receivable from a legal standpoint.

On 25 November 1997 the Assembly considered a "no action" motion, which was defeated and then adopted an amendment and then the draft resolution. The Journal summary sets out the procedure. The President asked for an explanation of why a "no action" motion is under Rule 74 and the following statement was subsequently prepared:

> "The General Assembly has a long-standing and well established practice of taking "no action" motions under Rule 74 of the Rules of Procedure of the General Assembly. A Rule 74 motion to adjourn the debate on the item under discussion has been understood to include, in addition to a motion to adjourn the debate temporarily, a motion to take no action on an item or on a draft resolution or on a draft amendment to a resolution."

Closure of debate

Rule 75[1] [117]

A representative may at any time move the closure of the debate on the item under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the General Assembly is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule

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[1] See introduction, para. 7.

QUESTIONS RELATED TO THE CLOSURE OF DEBATE AND CONDUCT DURING VOTING IN THE PLENARY MEETINGS OF THE GENERAL ASSEMBLY AND IN THE MAIN COMMITTEES
RULES 75 AND 88 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. During the current session of the General Assembly a number of questions have arisen, in the plenary and some of the Main Committees, in relation to the closure of debate and conduct during voting, which are principally regulated by rules 75 [117] and 88 [128] of the rules of procedure. The present memorandum discusses these two subjects and their interaction.

I. EFFECTS OF CLOSURE OF DEBATE

A. *Statements*

2. Closure of debate decided under rule 75 or 117 clearly prevents the making of any further substantive statements as to the "item under discussion" (see section I.C. below) in relation to which the motion for closure was adopted. No exception may be made, even for representatives already on the list of speakers (but see paragraph 4 below).

3. However, closure of debate does not prevent the exercise of the right of reply (rule 73 [115]) or the explanation of votes (rule 88 [128]), whether before or after the vote (see section II.C below).

B. *Motions and proposals*

4. Unless specifically otherwise provided in the motion for closure, no new substantive proposals, including amendments or sub-amendments[1], may be submitted after a motion for closure of debate has been adopted. However, proposal already submitted under rule 78 [120] but not yet formally introduced or even circulated should normally be dealt with; there are even precedents for permitting, the principal sponsor to make a statement introducing such a proposal (particularly if the sponsors of other proposals had an opportunity to introduce these before the debate was closed). In addition, the sponsors of a proposal already submitted should normally be permitted to submit a revised version even after closure of debate as long as the initial proposal has not been substantially changed.

5. Normal procedural motions or manoeuvres, such as the withdrawal of a proposal as well as its immediate reintroduction (rule 80 [122]), the division of a proposal (rule 89 [129]) or a motion that there be no vote on a proposal after another has been

[1] Hereinafter, "proposals" should be understood as referring also to amendments and sub-amendments.

acted on (rule 91 [131]), are permitted even after closure of debate. The same should be held of a motion to adjourn the debate (for the purpose of putting aside one or more proposals - rule 74 [116]) or of one addressed to an issue of competence (rule 79 [121]). However, other types of proposals relating to procedures not specifically provided for in the rules of procedure (e.g., the referral of an item to a standing or *ad hoc* body) should be considered as substantive proposals (i.e., in accordance with paragraph 4 above).

C. *Discussion*

6. Rule 75 [117] refers to the closure of the debate on "the item under discussion". Such an "item" need not be an entire agenda item, but can be a sub-item, a particular proposal or set of proposals, or even an amendment to a proposal. For this reason it is important for the President to ascertain, as soon as a proposal for closure of debate is made, and in any event before asking the body to take a decision on it, what the scope of the proposal is. However, to the extent that this is not done, it should usually be assumed that the motion is intended to have the broadest effect it can sensibly be given, i.e., to close debate on as much of the agenda item as possible; certainly it should never be presumed, without explicit confirmation, that debate was meant to be closed merely on an amendment or on one of a series of related proposals.

D. *Closure achieved by other means*

7. Closure of debate achieved by a motion under rule 75 [117] does not differ substantially from that achieved by closure declared after the normal conclusion of debate or on the exhaustion of a closed list of speakers (rule 73 [115]); indeed, this is explicitly provided in the corresponding procedural rule of the Economic and Social Council (rule 45, E/5715/Rev.l). Nevertheless, the prohibition against the making of further statements and against introducing new substantive proposals (see paragraphs 2 and 4 above) are usually not enforced as strictly in the case of such informal closure.

II. THE VOTING PROCESS

A. *Structure of rule 88 [128]*

8. It should be recognized that rule 88 [128] in effect consists of two separate rules:

(a) The first sentence protects the integrity of the voting exercise (see section II.B below);

(b) The remaining text deals with explanation of votes (section II.C). This differentiation is explicitly recognized in the rules of procedure of the Economic and Social Council, which deal with these two subjects respectively in rules 63 and 62.

B. *Conduct during voting*

9. The first question is how to define "during voting" for the purpose of determining the interval during which the strict rule against interruptions must apply.[1] Though occasionally there have been a few differing rulings, in the past years it has been clearly recognized and consistently held that the period protected by the first sentence of rule 88 [128] (i.e., the period of voting in the "narrow sense") is merely the interval between the time the presiding officer initials the voting process by calling for the casting of votes or ballots on a particular question, and until the results of that particular vote are announced (cf. Economic and Social Council Rules of Procedure for United Nations Conferences, A/38/298, annex, rule 56). This is the only period that requires the extraordinary protection provided by the first sentence of rule 88 and in view of the severe restrictions in that sentence (e.g., the prohibition against normal points of order, or against routine procedural motions, such as to suspend a meeting) such protection should not, and in practice cannot, be extended to any period for which this is not absolutely necessary; for example, if a very long series of votes is to be taken, it may be necessary to do so in the course of more than one meeting, i.e., to interrupt for some hours or even some days (e.g., elections to principal organs).

10. In respect of a connected series of votes, it follows from the above that the first sentence of rule 88 [128] is not intended to cover the entire period during which several votes are taken, including the intervals between such votes (i.e., between two amendments to the same proposal or even between two ballots for the same post), which might be referred to as a period of voting in the "wider sense". On the other hand, it must be recalled that such a period of voting normally follows on an explicit or implicit closure of debate (see section I.D above) and is therefore subject to the restrictions consequent on such closure (sections I.A and B), and that often deadlines are set for the submission of substantive proposals which normally will have expired before the period of voting starts. Furthermore, the President often announces (and usually should announce), before or at the beginning of a period of voting, the procedure that he intends to follow during such period (e.g., to permit explanations before the vote on all proposals and amendments, then to call for votes successively on each proposal and the amendments thereto, and then to permit explanations after the vote), and to the extent such announcement is not objected to or is explicitly accepted, it becomes a decision governing that voting period, which can only be changed by an implicit or explicit reconsideration of that decision (subject to rule 81 [123]); even if no explicit regime is established for a period of voting, it may be assumed, on the basis of the usual practice, that a restrictive procedure is to be followed, i.e., that one vote will follow on another, uninterrupted by any substantive business and generally any explanations of vote, though permitting some procedural motions (e.g., suspension or adjournment of the meeting). Only in the somewhat exceptional situation that no such restrictions exist in respect of a particular voting period may room be made during intervals between votes for statements, substantive proposals and procedural motions, and especially (see section 11.C below) explanations of vote (i.e., either those after the previous vote or those before the next one).

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[1] The present memorandum does not deal with what types of points of order it is permissible to raise under the first sentence of rule 88 [128].

C. *Explanations of vote* [1]

11. The second sentence of rule 88 [128] states that "the President may permit members to explain their votes". By tradition, the right to explain a vote has become practically absolute (as stated, e.g., in Economic and Social Council procedural rule 62), though the President retains discretion (subject to the authority of the Assembly, rule 36 [107]) as to whether to permit explanations both before and after or only before (which would be unusual) or only after the vote. Also, if a series of votes is to be taken he may, but need not, allow explanations between such votes (see paragraph 10 above). Furthermore, it should be understood that explanations of vote are not part of the debate and that, therefore, the prior closure of debate does not affect the power of the President to permit explanations of vote either before or after the vote, since there is a distinction between the period of debate (cut off by rule 75 [117]) and the period of voting in the wider sense (governed in part by rule 88 [128]) and in part by *ad hoc* decisions made in respect of each such period (see end of paragraph 10).

10 November 1983

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[1] The present memorandum contains no discussion of what constitutes an explanation of vote, or restrictions on such explanations or an application to' decisions taken without a vote.

Suspension or adjournment of the meeting

Rule 76[1] [118]

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment of the meeting.

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[1] See introduction, para. 7.

Order of procedural motions

Rule 77 [119]

Subject to rule 71, the motions indicated below shall have precedence in the following order over all other proposals or motions before the meeting:

(*a*) To suspend the meeting;

(*b*) To adjourn the meeting;

(*c*) To adjourn the debate on the item under discussion;

(*d*) To close the debate on the item under discussion.

Proposals and amendments

Rule 78[1] [120]

Proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the General Assembly unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.

[1] See annex IV, paras. 87 and 88.

PROCEDURAL QUESTIONS RAISED IN CONNECTION WITH THE ADOPTION OF A REPORT OF THE SUBCOMMITTEE ON PETITIONS. INFORMATION AND ASSISTANCE 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 QUESTION WHETHER ACTION MAY VALIDLY BE TAKEN ON AN AMENDMENT NOT CIRCULATED IN ONE OF THE WORKING LANGUAGES QUESTION WHETHER A FINAL VOTE MUST BE TAKEN ON THE REPORT AS A WHOLE AFTER SEPARATE PARTS HAVE BEEN ADOPTED

Memorandum to the Officer-in-Charge, Department of Political Affairs, Trusteeship and Decolonization

This is in response to your memorandum of 31 August, requesting legal advice as to two procedural questions raised in connection with the adoption of the 226th Report of the Sub-Committee on Petitions, Information and Assistance 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.

1. As the Special Committee and its Sub-Committees are subsidiary organs of the General Assembly, they are to apply the procedures relating to committees of the Assembly, as provided in rule 161 of its rules of procedure.

2. With regard to the objection raised by a delegation concerning the failure to circulate the text of an amendment in one of the working languages before a vote was taken thereon, the relevant rule, namely rule 120, requires that "as a general rule" no proposals shall be put to a vote until the day following their circulation—which is understood to mean circulation in all the working languages. Chairmen are authorized to permit the discussion and consideration of amendments even if they have not been circulated at all or have only been circulated the same day. The practice in implementing this rule has been that frequent use is made of the exceptional authorization to act on uncirculated or only recently circulated amendments, particularly towards the end of a session. In particular, the procedure followed by the Chairman of the Sub-Committee, to read out the amendment at dictation speed to enable the interpreters to translate it carefully and the representatives to copy it down in their respective languages, is often followed. Consequently the objection in question is not well taken.

3. Rule 129 provides that if a proposal (such as the draft report) is divided, and action is taken to adopt separate parts thereof, a final vote must be taken on the proposal as a whole (i.e., on the sum of all the parts adopted separately). This is so whether the division was a formal one under the first part of rule 129, or is merely done informally. It is also immaterial whether the separate parts were adopted by votes or by consensus. The body as a whole must be given an opportunity of acting on (i.e., adopting or rejecting) the sum of all the separate parts. Consequently the demand of the delegation concerned was justified, and a vote on the report as a whole should now be taken.

September 1983

Decisions on competence

Rule 79[1] [121]

Subject to rule 77, any motion calling for a decision on the competence of the General Assembly to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.

[1] See introduction, para. 7.

Withdrawal of motions

Rule 80 [122]

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any member.

Reconsideration of proposals

Rule 81 [123]

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the General Assembly, by a two-thirds majority of the members present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

QUESTION WHETHER A TWO-THIRDS MAJORITY IS REQUIRED FOR THE RECONSIDERATION OF DECISIONS OF THE GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME

Internal memorandum

1. It is our view that under the rules of procedure of the Governing Council of the United Nations Development Programme a two-thirds majority is not required for the reconsideration of decisions of the Governing Council. On the contrary, General Assembly resolution 2029 (XX) of 22 November 1965 on the "Consolidation of the Special Fund and the Expanded Programme of Technical Assistance in a United Nations Development Programme" provides in its operative paragraph 4 that "decisions of the Governing Council shall be made by a majority of the members present and voting". This is repeated in rule 27 of the rules of procedure of the Governing Council.

2. A two-thirds majority for the reconsideration of a proposal which has been adopted or rejected is required only in the General Assembly and in its Main Committees (rules 83 and 124 of the rules of procedure of the General Assembly) and does not apply in regard to other organs, including the Economic and Social Council and the functional commissions of the Council. In the case of the Economic and Social Council, the absence of a provision requiring a two-thirds majority is, of course, based on Article 67, paragraph 2 of the Charter. It is to be noted in that respect that the Council Committee on Procedure in drawing up a revised version of the rules of procedure of the functional commissions rejected as contrary to Article 67 of the Charter an amendment requiring a majority of one third of the members for the adoption of a proposal.

3. It is true that the Governing Council of UNDP appears to be a subsidiary organ of the General Assembly and that under rule 162 of the rules of procedure of the General Assembly "the rules relating to the procedure of committees of the General Assembly […] shall apply to the procedure of any subsidiary organ unless the General Assembly or the subsidiary organ decides otherwise". It is our view however that rule 124 cannot apply to the Governing Council because both the General Assembly in resolution 2029 (XX) and the subsidiary organ in rule 27 of its rules of procedure have "decided otherwise".

29 June 1970

QUESTION WHETHER RULE 124 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY IS APPLICABLE WHEN A MOTION FOR DELETION RELATING TO A PART OF A PROPOSAL IS SUBMITTED AFTER AN AMENDMENT FOR DELETION OF THAT SAME PART HAS BEEN REJECTED

Note addressed to the Secretary of the Second Committee

1. You asked us the following question: is rule 124 of the rules of procedure of the General Assembly concerning the reconsideration of proposals applicable when, after the rejection of an amendment proposing the deletion of a paragraph in a draft resolution, a motion for division concerning the same paragraph is submitted? In our view, the answer is in the negative. Rejection of an amendment proposing the deletion of a paragraph is not the same as adoption of the paragraph: the considerations which guide a delegation when it votes on a proposal for deletion may be very different from those which motivate it when it expresses its opinion on a paragraph voted on separately.

2. In addition, if we admit that rule 124—and therefore also rule 83 which is the symmetrical provision for plenary meetings—is applicable in the situation under consideration, illogicalities may result. The following example demonstrates this particularly clearly: if in the General Assembly a draft resolution on an important question within the meaning of rule 85 is the subject of an amendment proposing the deletion of one paragraph and if that amendment does not obtain at least two thirds of the votes, the amendment is rejected. Thus 34 per cent of the Members present and voting suffices to defeat the amendment. If we admit that a motion for division concerning the same paragraph, submitted after the rejection of the amendment, falls within the scope of rule 83 concerning the reconsideration of proposals, the same 34 per cent would be allowed to prevent the motion for division from being put to a vote, the result being that a paragraph opposed by 66 per cent of the Members present and voting would be retained in the draft resolution. The application of rule 83 in such a situation would therefore be unjustifiable; in any case, the provisions of rule 91 which enable the majority to prevent a separate vote provide sufficient protection against the efforts of a minority to deprive a proposal of its substance.

3. While the effect in committees is not so great as in the General Assembly, there is still a slight difference in the voting requirements, and the considerations which delegations may take into account may be different. In any case, the considerations of principle advanced in paragraph 1 above are equally valid for rule 83 and rule 124 and, in addition, it would be illogical to interpret differently two symmetrical provisions.

8 December 1971

QUESTION OF REPRESENTATION OF DEMOCRATIC KAMPUCHEA AT THE RESUMED THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY
PROVISIONAL SEATING OF CHALLENGED REPRESENTATIVES OF A MEMBER STATE
MAJORITY REQUIRED FOR RECONSIDERATION OF REPRESENTATIVES' CREDENTIALS ALREADY ACCEPTED BY THE GENERAL ASSEMBLY
THE GENERAL ASSEMBLY IS NOT BOUND BY OTHER UNITED NATIONS ORGANS' DECISIONS REGARDING REPRESENTATION

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

Credentials questions

1. The current thirty-third session of the General Assembly has accepted the credentials of the delegation of Democratic Kampuchea signed by the Deputy Prime Minister in charge of Foreign Affairs of that country.

2. The Security Council at its 2108th meeting held yesterday approved the report of the Secretary-General (S/13021) stating that the credentials of the delegation of Democratic Kampuchea to the Security Council emanating from the same authority were in order. Subsequently, the Council extended an invitation to Prince Sihanouk, Chairman of the delegation, to address the Council under rule 37 of its procedure, i.e. as a representative of a Member of the United Nations which is not a member of the Security Council.

3. In the light of the above, it is clear that it is the delegation of Democratic Kampuchea that should be seated in the General Assembly and in its Main Committees. If the question of representation is raised in plenary[1] and the credentials of the Kampuchean delegation are challenged, the provisions of rule 29 of the General Assembly rules of procedure become applicable. The rule provides as follows:

> "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has/given its decision."

Since the Credentials Committee has already reported on the credentials of the delegation of Kampuchea at the current session and the General Assembly has accepted these credentials, in the absence of conflicting credentials submitted by the new regime, a decision to refer the former credentials to the Credentials Committee once again would involve a re-opening of the matter and therefore such a decision would in effect amount to a motion for reconsideration of the decision concerning the credentials of the

[1] The Chairmen of the Second, Third and Fifth Committees should be advised that if the question is raised in their Committee they should state that it is not a matter which the Committee can consider and should draw the attention of the President to the fact that it has been raised.

delegation of Kampuchea. Under rule 81 of the Assembly rules such a motion required a two-thirds majority for adoption by the Assembly.

Inclusion of an additional agenda item

4. Should any member of the Assembly propose the inclusion of the question of the representation of Democratic Kampuchea or even the question of the situation in Democratic Kampuchea as an additional item on the agenda for consideration at the resumed session this raises the question of the majority required for such a decision to be adopted by the Assembly. In this connexion it should be recalled that on 20 December 1978, at its 90th meeting, the General Assembly decided that "the present session would be suspended to be resumed on 15 January 1979 in order to proceed to a vote on item 32 (Policies of *apartheid* of the Government of South Africa) and to consider the reports of the Second Committee on agenda items 58 *(b)* to *(e)* and 70, the report of the Third Committee on agenda item 88 and Part IV of the report of the Fifth Committee on item 100". (In paragraph *(b)* of its second report (A/33/250/Add. 1) the General Committee recommended that "the session should be resumed on 15 January 1979 for a period of one week to 10 days exclusively to conclude the consideration of the remaining items on the agenda of the current session".) It is clear from the foregoing that any decision to include a new item for consideration during the resumed session would involve a reconsideration of the General Assembly's earlier decision regarding its programme of work. Under rule 81 of the Assembly rules, a motion to reconsider a decision taken at the same session requires a two-thirds majority for adoption. If the motion to reconsider is adopted, then rule 15 of the General Assembly rules becomes applicable. Under this rule, additional items may be placed on the agenda if the General Assembly so decides by a majority of the representatives present and voting.

General observations

5. In connexion with the question of representation of a Member State in the United Nations, it is relevant to refer to General Assembly resolution 396 (V) of 14 December 1950. The operative parts of this resolution read as follows:

> "1. *Recommends* that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
>
> "3. *Recommends* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;

"4. *Declares* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;

"5. *Requests* the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate."

It is clear from this resolution that the General Assembly considers itself the organ best suited to resolve the controversy where more than one authority claims to be the Government entitled to represent a Member State of the United Nations. Moreover, the General Assembly does not consider itself bound by decisions by other United Nations organs taken with regard to questions of representation.

12 January 1979

VOTING

Voting rights

Rule 82[1] [124]

Each member of the General Assembly shall have one vote.

[1] Rules 82, 83 and 85 reproduce textually the three paragraphs of Article 18 of the Charter.

USE OF THE TERM "CONSENSUS" IN UNITED NATIONS PRACTICE

Summary of a statement made at the11th meeting of the Population Commission, on 6 March 1974

The Director of the General Legal Division, Office of Legal Affairs, stated that no plenipotentiary conference under United Nations auspices had included in its rules of procedure a provision on consensus, partly due to the fact that it was somewhat difficult to arrive at an exact definition of consensus, and partly because the objective which was usually sought, namely, that every effort should be made to achieve a consensus before a vote was taken, could better be achieved by simply an understanding at the beginning of the conference.

In United Nations organs, the term "consensus" was used to describe a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record.

The statement was made in connexion with a proposal (E/CN.9/L. 110) that the rules of procedure of the World Population Conference, 1974, should specify that “the President of the Conference has the possibility to recommend that the decisions on the important matters of substance shall be taken, if possible, by consensus".

The Population Commission subsequently agreed to annex the following recommendation to the revised preliminary draft of the rules of procedure of the Conference, for consideration by the Council:

> "The Population Commission considers that it is highly desirable for the World Population Conference, 1974, to reach decisions on the basis of consensus, which is understood to mean, according to United Nations practice, general agreement without vote, but not necessarily unanimity."

By resolution 1835 (LV1) of 14 May 1974, the Council approved as the provisional rules of procedure for the Conference the text of the revised preliminary draft of the rules of procedure, as well as the annex on consensus recommended by the Population Commission. The provisional rules of procedure were adopted by the World Population Conference subject to some amendments unrelated to the question under consideration (see document E/5585, p. 57).

It should be noted, however, that the rules of procedure of the Third Conference on the Law of the Sea, adopted by the Conference on 27 June 1974 (A/CONF.62/30/Rev.l, United Nations publication, Sales No. E.74.1.18) contain a rule 37 on "Requirements for voting", which reads as follows:

"1. Before a matter of substance is put to the vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the majority specified in paragraph 1 of rule 39.

"2. Prior to making such a determination the following procedures may be invoked:

> "(a) When a matter of substance comes up for voting for the first time, the President may, and shall if requested by at least 15 representatives, defer the question of taking a vote on such matter for a period not exceeding 10 calendar days. The provisions of this subparagraph may be applied only once on the matter.
>
> "(b) At any time the Conference, upon a proposal by the President or upon motion by any representative, may decide, by a majority of the representatives present and voting, to defer the question of taking a vote on any matter of substance for a specified period of time.
>
> "(c) During any period of deferment, the President shall make every effort, with the assistance as appropriate of the General Committee, to facilitate the achievement of general agreement, having regard to the over-all progress made on all matters of substance which are closely related, and a report shall be made to the Conference by the President prior to the end of the period.
>
> "(d) If by the end of a specified period of deferment the Conference has not reached agreement and if the question of taking a vote is not further deferred in accordance with subparagraph (b) of this paragraph, the determination that all efforts at reaching general agreement have been exhausted shall be made in accordance with paragraph 1 of this rule.
>
> "(e) If the Conference has not determined that all efforts at reaching agreement had been exhausted, the President may propose or any representative may move, notwithstanding rule 36, after the end of a period of no less than five calendar days from the last prior vote on such a determination, that such a determination be made in accordance with paragraph 1 of this rule; the requirement of five days' delay shall not apply during the last two weeks of a session.

"3. No vote shall be taken on any matter of substance less than two working days after an announcement that the Conference is to proceed to vote on the matter has been made, during which period the announcement shall be published in the Journal at the first opportunity."

QUESTION WHETHER WITHIN THE TRADE AND DEVELOPMENT BOARD A DELEGATION CAN INTRODUCE RESERVATIONS TO A CONSENSUS RESOLUTION AFTER THE CLOSURE OF THE SESSION DURING WHICH THAT RESOLUTION WAS ADOPTED

Memorandum to the Senior Legal Liaison Officer, United Nations Conference on Trade and Development

You have requested a legal opinion on the question "whether a delegation can introduce reservations to a consensus resolution after the closure of the session during which that resolution was adopted". The legal opinion was requested after a statement was made by the representative of a Member State at the twenty-fourth session of the Trade and Development Board notifying the Board that the Member State in question had formally reserved its position on part B of resolution 222 (XXI) adopted by the Board at its twenty-first session by consensus.

From a legal standpoint it is clear that a delegation can only effectively register a reservation to a consensus resolution at the time of adoption of the resolution in question. Consensus is generally understood to mean the adoption of a resolution or a decision without a vote in the absence of any formal objection or opposition, and therefore even a reservation made formally at the time of adoption of the text, while indicative of a qualified assent, does not prevent the adoption of the consensus text in question. In our view the statement made by the representative of the Member State concerned in respect of resolution 222 (XXI) during the twenty-first session of the Board cannot be characterized as a reservation to a resolution adopted by consensus at a previous session of the Board. The statement must be regarded as reflecting the position of the State concerned with regard to the consensus resolution at the time that the statement was made in the light of its interpretation of relevant developments in the period subsequent to the adoption of the resolution. While it is the sovereign right of every State to make its position known and even to change its position on a particular subject at any time, such an act cannot affect the validity of the earlier adoption by consensus of a resolution on that same subject. It should be borne in mind that while resolutions of General Assembly and its organs are of a recommendatory character, there may be situations where a State enters into a commitment to carry out the provisions of a resolution in good faith. If it is argued that such commitments have been made in the case under review, it would appear to be the position of the State concerned that such commitments are no longer binding in view of a breach of undertakings of sufficient gravity by certain parties which releases other parties from their earlier commitments. Underlying this argument is a general principle of law, its application in the circumstances of this case not being a matter on which the Secretariat is competent to give an opinion.

4 May 1982

DECISION OF THE ECONOMIC AND SOCIAL COUNCIL IN ITS RESOLUTION 1982/26 OF 4 MAY 1982 THAT THE COMMISSION ON THE STATUS OF WOMEN, WHEN ACTING AS PREPARATORY BODY FOR THE 1985 WORLD CONFERENCE TO REVIEW AND APPRAISE THE ACHIEVEMENTS OF THE UNITED NATIONS DECADE FOR WOMEN, SHOULD -OPERATE ON THE BASIS OF CONSENSUS"
PRACTICE FOLLOWED IN UNITED NATIONS ORGANS WITH SIMILAR TERMS OF REFERENCE

Memorandum to the Acting Assistant Director, Office of Secretariat Services for Economic and Social Matters

1. You have requested the Office of Legal Affairs to provide clarification with regard to the decision of the Economic and Social Council in its resolution 1982/26 of 4 May 1982 that the Commission on the Status of Women, when acting as preparatory body for the 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, should "operate on the basis of consensus".

2. Although there is no definitive or authoritative interpretation of the words "on the basis of consensus", we would suggest, in the light of the practice followed in United Nations organs with similar terms of reference, that the Commission consider the following interpretation in implementing Council resolution 1982/26 and General Assembly resolution 37/60 of 3 December 1982. When acting as the preparatory body for the 1985 World Conference, the Commission may decide by vote all questions of a procedural nature; however, all decisions on substantive questions, i.e., those relating to any aspect of the Conference, should be taken on the basis of consensus. If the Commission adopts this approach, it would not be precluded from taking indicative votes on those proposals on which a consensus could not be achieved; the results of such votes could also be included in the preparatory body's report to the Economic and Social Council, with an indication that these proposals are not considered as adopted by the Commission.

28 January 1983

RIGHT TO VOTE OF A UNION OR GROUP OF MEMBER STATES RIGHTS OF THE EUROPEAN COMMUNITY IN THE GENERAL ASSEMBLY

Letter to the Director, Office of International Standards and Legal Affairs, United Nations Educational, Scientific and Cultural Organization

I wish to acknowledge receipt of your telefax message dated 20 September 1995.

In your communication, you inquire about the following:

(1) Do the rules and/or practice of the United Nations permit the full participation, with the right to vote, by any union or group of Member States, on the same footing as other participating Member States, in meetings of the Governing bodies of the Organization?

(2) If so, may the Member States of the union or group also participate at the same time in their respective individual capacities in such meetings with the right to vote?

The Charter of the United Nations grants the right to vote in the intergovernmental organs of the United Nations only to individual Member States. Intergovernmental organizations or other entities cannot be Members of the United Nations, and consequently do not have the right to vote in its organs. However, such entities may participate in the work of United Nations organs as observers. In your communication, you refer to "any union or group of Member States", by which you may have in mind the "European Union". In this connection, please note that the European Economic Community was granted observer status in the General Assembly by the Assembly resolution 3208 (XXIX) of 11 October 1974. Since then, that organization has changed its name to the "European Community", which is represented at Headquarters by the Presidency of the Council of the European Union and by the European Commission.

As to the scope and extent of the participation of intergovernmental organizations enjoying observer status in the work of United Nations organs, they obviously do not enjoy the same rights as Member States but, in general, a limited right of participation in substantive discussions on items of relevance to them. Intergovernmental organizations, as well as other observers, cannot perform a number of acts which are reserved for the full members of an organ, such as the introduction of substantive proposals or procedural motions, the raising of points of order, the circulation of communications as official documents of that organ and the exercise of the right of reply.

As regards the European Community, the particular nature of this organization and its sometimes exclusive competence on behalf of its Member States in certain areas has led the General Assembly to grant to the Community rights of "full participation" in a number of United Nations conferences, such as the United Nations Conference on Environment and Development of 1992. In paragraph 7(a) of resolution 47/191 of 22 December 1992, the General Assembly recommended to the Economic and Social

Council that the newly established Commission on Sustainable Development should "provide for the European Community, within its areas of competence, to participate fully ... *without the right to vote"* (emphasis added). Pursuant to that recommendation, the Council, on 8 February 1995, adopted decision 1995/201, which amends the rules of procedure of the functional commissions of the Council and spells out the scope of the "full participation" by the Community in the work of the Commission.

As to your second query, let me firstly reiterate that the issue of voting is moot, as only Member States can vote in United Nations organs. As to participation, the distribution of competence between an organization and its member States and consequently the right to make statements on a particular subject matter, is an internal matter between the organization and its members and does not affect per se the work of the organs of the United Nations. Needless to say, an intergovernmental organization can only exercise the limited rights of participation granted to it, even if it declares that it speaks on behalf of its member States or that it exercises exclusive competence over a particular subject matter.

29 September 1995

QUESTION OF VOTES BY CORRESPONDENCE
PROCEDURE APPLIED BY THE COMMISSION ON NARCOTIC DRUGS

Letter to the Deputy Secretary-General, World Meteorological Organization

1. You have enquired about the experience of the United Nations in regard to votes by correspondence. The closest parallel that we know of in the United Nations to the system of votes by correspondence of WMO which you describe is in the Commission on Narcotic Drugs. That Commission, at its twentieth session in 1965, adopted its resolution 1 (XX) to deal with the problem of placing new narcotic substances under international control, pursuant to article 3 of the Single Convention on Narcotic Drugs, 1961, during periods when the Commission was not in session. This resolution provides as follows:

"The Commission on Narcotic Drugs,

"Considering the importance of ensuring that new narcotic substances are brought under control as quickly as possible,

"Sharing the concern of the World Health Assembly (resolution WHA 18.46) about the dangers to public health which may arise if the control of such substances is delayed,

"Taking into account the provisions of the Single Convention on Narcotic Drugs, 1961, under which decisions on the control of narcotic substances are taken by the Commission on Narcotic Drugs,

"Considering also that the Commission on Narcotic Drugs meets not more than once a year,

"Believing that steps can be taken under the present terms of the 1961 Convention to speed up the process of placing new substances under control,

> "1. *Resolves* that if a recommendation is made by the World Health Organization for the control of a new narcotic substance, and the Commission is not, or will not within a period of three months be in session, a decision should be taken by the Commission before its next session; and
>
> "2. *Requests* the Secretary-General, for that purpose, to arrange in these exceptional circumstances for a decision of the Commission to be taken by a vote of the Commission by mail or telegram, and for a report to be made to the Commission at its next session"

2. Various decisions have been taken by the foregoing procedure. In its report on the work of its twenty-first session in 1966, the Commission made the following observation:

> "The Commission noted that the procedure it had adopted at its twentieth session regarding voting by mail, on a recommendation of WHO under article 3 of the 1961 Convention, had worked satisfactorily that year. It agreed with the representative of the United Kingdom that in future cases when that procedure was applied, a request by any member of the Commission for further discussion in the Commission regarding any such recommendation of WHO would automatically place the matter on the agenda of the Commission session immediately following."

Further observations concerning the procedure were made in the report of the Commission's twenty-second session. In particular, the Commission expressed the hope that Commission members would reply promptly to requests for votes by mail in accordance with its resolution 1 (XX).

3. We do not believe that any other United Nations organ has adopted a similar form of procedure for taking decisions by correspondence, but it not infrequently happens that the report of a body is approved by the members by correspondence after the end of the session. Mention may also be made of the rules of procedure of the General Assembly, which provide in rule 4 that regular sessions shall be held away from Headquarters if a majority of Members concur within thirty days in a request to that effect, and in rules 8 and 9 that a special session or emergency special session shall be held if a majority of Members similarly concur; in such cases concurrence is expressed by correspondence. Moreover, the Economic Commission for Africa now meets only every second year, and in the years when it does not meet, it approves draft reports which are circulated by mail. The procedure is described in one of the Commission's reports.

2 April 1970

Consensus in UN practice General[1]

Background

1. In accordance with Rule 82 of the Rules of Procedure of the General Assembly, each of its members shall have one vote. This provision is based on Article 18 (1) of the UN Charter and cannot be altered by the Assembly.

2. Consistent with the standard procedure for decision-making in universal international organizations and international conferences after WWII, the vast majority of the General Assembly's decisions were initially made by the affirmative vote of more than two-thirds of the Members present and voting.[2]

3. From the mid-60's - early 70's, a growing number of decisions were adopted "without a vote" or "by consensus": at the nineteenth session (1964), in view of special circumstances relating to several Member States in arrears with their contributions to the regular budget, the General Assembly did not adopt any decision by means of a vote.[3]

4. Since then, in particular in view of the decolonization process and the related admission of a significant number of new Member States, the consensus technique has played a major role in the practice of the General Assembly, as well as in its main committees and other organs, including UN Conferences.

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[1] Paper prepared by the UN Secretariat.

[2] Article 18 (2) and (3) of the UN Charter differentiates between "important questions" for which decisions are made by a two-thirds majority and "other questions" for which decisions are made by a simple majority:

"2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non permanent members of the Security Council, the election of the members of the ECOSOC, the election of the members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the UN, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting."

[3] 62 decisions out of 132 were adopted without a vote during the twenty-first session (1966) (Repertory of the Practice, Supplement 4, Volume I, p. 227; 155 out of 274 during the thirty-third session (1978) (Repertory of the Practice, Supplement 5, Volume I, p. 213); 220 out of 271 during the forty-fifth session (1990) (The Charter of the United Nations, A commentary, Bruno Simma, Oxford University Press, p. 326).

5. While consensus is an entirely practice based technique constituting a *de facto* amendment of the UN Charter, in 1971, the General Assembly took a small step towards its introduction into its own rules of procedure upon adoption of resolution 2837 (XXVI) of 17 December 1971 by which it approved, among others, the recommendation made in the report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly and annexed it to its rules of procedure.[1]

6. In 1986, the General Assembly confirmed the existing practice and the underlying gentlemen's agreement when it adopted resolution 41/213 of 19 December 1986 on the budgetary process.[2]

7. None of the above developments lead however to a mandatory replacement of the majority rule by consensus in the rules of procedure.

Definition

8. Consensus is generally understood as a decision-taking process consisting in arriving at a decision without formal objections and vote. It may however not necessarily reflect “unanimity” of opinion on the substantive matter. It is used to describe the practice under which every effort is made to achieve general agreement and no delegation objects explicitly to a consensus being recorded.

9. Consensus decisions may be expressed as being adopted "without a vote" or "by consensus", but never as "unanimous decisions".

10. Decisions made by consensus have the same legally binding status as decisions adopted by other methods. A delegation that does not participate in the decision making, but does not prevent the Chair from stating that the decision is adopted by

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[1] The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly recommended in its 1971 report: 'The Special Committee considers that the adoption of decisions and resolutions by consensus is desirable when it contributes to the effective and lasting settlement of differences, thus strengthening the authority of the UN. It wishes, however, to emphasize that the right of every member state to set forth its views in full must not be prejudiced by this procedure" (A/8426, paragraph 289 (1971)).

[2] Paragraphs 5, 6 and 7 of Resolution 41 /213 (Review of the efficiency of the administrative and financial functioning of the United Nations) read as follows:

"5. *Reaffirms* that the decision-making process is governed by the provisions of the Charter of the United Nations and the rules of procedure of the General Assembly;

“6. *Agrees* that, without prejudice to paragraph 5 above, the Committee for Programme and Co-ordination should continue its existing practice of reaching decisions by consensus; explanatory views, if any, shall be presented to the General Assembly;

“7. *Considers it desirable* that the Fifth Committee, before submitting its recommendations on the outline of the programme budget to the General Assembly in accordance with the provisions of the Charter and the rules of procedure of the Assembly, should continue to make all possible efforts with a view to establishing the broadest possible agreement;"

consensus, is deemed to have participated in it. It follows that when a decision has been reached by consensus, it constitutes a decision of the meeting equivalent to a decision by vote that may only be reopened in accordance with the rules of procedure applicable to the reopening of decisions.

Decisions made "by consensus" vs. decisions made "without a vote"

11. *By Consensus* (strong form of consensus): Decisions are referred to as having been made "by consensus" in cases where - although there may not be unanimity of opinion - disagreeing delegations do not press their disagreement to the point where no "decision by consensus" may be made. They may voice their disagreement and have their views reflected in the record. All delegations are however in the end considered to be closely linked with the decision.

12. *Without a Vote* (weak form of consensus): Reference is made to decisions "without a vote" in cases where delegations do not wish to be closely associated with the decision, yet have no formal objection to the adoption. Such decisions have less of a positive connotation than those made by consensus and do not represent "consensus" in its truest form.

Decisions made "by consensus" vs. decisions made by "unanimity"

13. Consensus should not be confused with unanimity i.e., decision technique by which an agreement is reached by a vote in which no negative votes, but some abstentions may be cast. In fact, unanimity may be reached in cases where no delegation is against the adoption of a decision.

Scope of application of consensus

14. Consensus is generally understood to refer to all decisions on *substantive* questions. Decisions on questions of a *procedural* nature generally continue to be made subject to voting.

Reservations and explanations of positions

15. Though consensus may be attained when no delegation objects to a consensus being recorded, some may register reservations or objections to the substantive matter at issue.

16. A reservation made *at the time of adoption,* while indicative of a qualified assent, does not prevent the adoption of the consensus text in question. A reservation made to a consensus decision *after the closure of the session* during which that decision was adopted does not affect the validity of the decision. Instead, such a statement is regarded as reflecting the position of the State concerned in light of its interpretation of relevant developments in the period subsequent to the adoption of the decision.

Recourse to vote by UN organs operating by consensus

17. No consensus may be obtained if even a single representative objects explicitly to a consensus being recorded: in such cases, the only possibility is to proceed to a vote, subject to the requirements of the relevant rules of procedure. It would however, not be permissible for an organ to decide, even by a large majority, that a certain decision be taken by consensus, and thus to disregard a demand for a vote thereon, even by one State - for such a decision would deprive the objector of the right to exercise the vote specifically granted by the Charter and the rules of procedure.

18. Even where it has become common practice for a UN organ to operate by consensus, delegations are always entitled to request a vote on any matter - in that case, that vote would be valid.[1] This option would however not apply to cases where decision-taking is to be exclusively done by consensus in accordance with express provisions to that effect adopted by a competent organ.

19. Consensus would not either preclude a body operating under that modality from taking indicative votes on substantive proposals for which consensus could not be achieved. In such instances, an indication can be made in the record that the proposal is not considered as having been adopted by the body.

Role of the Secretary-General

20. Article 98 of the Charter provides *inter alia* that "the Secretary-General shall act [as the chief administrative officer of the Organization] in all meetings of the General Assembly [...]". Thus the Rules of Procedure mirror that provision and further provide that the Secretary-General may speak at any meeting. Accordingly, and although the General Assembly (and the other principal legislative organs and their committees) are masters of their own procedure, subject to the Charter, the Secretary-General could always appeal to Member States if he considered that a particular mode of reaching decision was not effective.

Pros and cons of consensus

21. Decisions made by consensus will tend to result in a text that is the "least common denominator" of the positions of the participants, which may make the text "practically meaningless." However, choosing to make decisions by this method may increase the chances of adopting a decision quickly. Further it is perhaps best to have consensus made the preferred method rather than the only method of taking decisions, since if consensus is the only method, any one participant can "hold the others to ransom."

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[1] This has e.g. occurred on at least four occasions on substantive questions since the adoption of General Assembly resolution 41/213 of 19 December 1986 relating to the budgetary process.

QUESTION OF VOTING OR REPRESENTATION BY PROXY IN THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES

Letter to a resident representative of the Technical Assistance Board

1. We are replying to your letter concerning an enquiry which you received from one of the embassies in Addis Ababa as regards the question of one person acting as a delegate to a United Nations body for two or more countries.

2. The matter is one which has been raised from time to time in the past and one on which the Office of Legal Affairs has taken a consistent stand: that representation by one delegate of more than one country is improper and undesirable. There have been several instances where attempts at such representation at United Nations Conferences have been effectively discouraged and the position of the Organization on this matter could be regarded as a constant one.

3. The practice of one delegate representing two or more countries, if allowed to grow up, would be inconsistent with one of the basic concepts underlying deliberations in United Nations organs *i.e.* that the various members of these organs should be represented by different delegates who reach conclusions on the issues discussed only after considering the arguments advanced in debate as they affect the interests of their own respective countries. It would be undesirable and open to objections for one delegate to represent more than one country in an organ taking political decisions and thereby to have more voting power than other delegates.

4. The purely procedural implications of such a practice in relation to voting at the conclusion of debate are also to be kept in mind. To take as an example the rules of procedure of the Economic Commission for Africa itself, rule 55 provides that "Each member of the Commission shall have one vote" and rule 57 that "... the Commission shall normally vote by show of hands ...". The practical difficulties alone that will be encountered in the application of these rules if one delegate were representing two Member States are self-evident.

5. The participation in a technical meeting through an expert already participating for another country does not seem to present much practical importance. The expert will not be able to bring any special technical contribution to the work of the organ because he represents two countries rather than one, and the political significance of being "represented" at such technical meetings by an expert from another country seems to be negligible.

6. Of course, the special difficulties facing some of the smaller Member States, particularly in Africa, in sending representatives of their own to meetings are understood and appreciated. You will recall, however, that under United Nations procedures and practices, Member States receive adequate information as to the proceedings of United Nations organs through the records and reports which are sent to

them by the Secretariat. Members unable to participate in meetings can address written communications to the organs concerned, which are reproduced as official documents.

1 September 1965

QUESTION OF CREDENTIALS, VOTING RIGHTS AND FINANCIAL OBLIGATIONS OF SOUTH AFRICA UPON RESUMPTION OF ITS PARTICIPATION IN THE WORK OF THE GENERAL ASSEMBLY ARTICLE 17 OF THE CHARTER

Memorandum to the Chief of Staff, Executive Office of the Secretary-General

1. In response *to* your request for comments in connection with a note on a meeting with the Permanent Representative of South Africa on the above subject, I would like to submit the following observations.

2. The resumption of participation by South Africa in the work of the General Assembly and other United Nations bodies raises the issues of credentials, voting rights and financial obligations under Article 17 of the Charter of the United Nations.

3. As far as the issue of credentials is concerned the situation is very simple. When the Government of South Africa submits credentials, they will be forwarded to the Credentials Committee of the General Assembly. It is our understanding that, since such credentials are now being issued by a legitimate Government, they will be accepted by the Credentials Committee, and subsequently, pursuant to the recommendation of the Credentials Committee, by the General Assembly.

4. The issue of South Africa's voting rights is more complicated. Article 19 of the Charter provides that a Member which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two full years. The second sentence of Article 19, however, provides that the General Assembly may permit such a Member to vote "if it is satisfied that the failure to pay is due to conditions beyond the control of the Member". Such a decision is within the exclusive competence of the General Assembly, upon the advice of the Committee on Contributions. Rule 160 of the rules of procedure of the General Assembly provides in part, that the Committee shall "advise the General Assembly ... on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter". There is a limited practice in this regard. However, typically the request is made by the country itself.

5. Pursuant to the first sentence of Article 19 of the Charter, South Africa is currently in arrears and thus may not vote in the General Assembly. Pursuant to the second sentence of Article 19 of the Charter, the General Assembly may nevertheless permit South Africa to vote if it is satisfied that South Africa's failure to pay is attributable to conditions beyond its control. That decision would allow South Africa to vote in the General Assembly notwithstanding the fact that its arrears have surpassed the limit provided for in Article 19. It should be noted that, so far, the General Assembly has never explicitly applied this provision of Article 19.

6. With reference to the issue of South Africa's financial obligations it must be pointed out that, although the Government of South Africa was unable to participate in the work of the General Assembly and other United Nations bodies, South Africa's continued membership as a State in the United Nations and its obligations under Article 17 of the Charter have never been in dispute. As a matter of law South Africa has a legal obligation to pay the arrears which are due under Article 17 of the Charter.

7. Thus, even if the General Assembly were to decide pursuant to Article 19 that it is satisfied that the failure of South Africa to pay is due to conditions beyond its control, that decision would only allow South Africa to vote in the general Assembly notwithstanding the fact that its level of arrearages had surpassed the limit in Article 19. The assessment of South Africa and its arrearage would remain unaffected. Article 19 only relates to voting in the General Assembly and contains no provision for deferring or suspending assessments or for relieving a State of its financial obligations. That would be a matter of basic policy for the Members of the Organization, through the General Assembly, to determine in accordance with Article 17, paragraph 2, of the Charter: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

………..

9. In connection with the case of China, it is worth mentioning that by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided to expel forthwith the representatives of Chiang Kai-Shek from the place which they unlawfully occupy at the United Nations and to restore all rights to the People's Republic of China. Under the resolution, the representatives of the People's Republic of China were recognized as the only legitimate representatives of China to the United Nations. In the light of that resolution, the Assembly subsequently decided by resolution 30-49 C (XXXVII) that the assessed contributions for China should be based on the period starting from 25 October 1971. By the same resolution, all unpaid assessed contributions for the period prior to 25 October 1971 were transferred to a special account and were included as a part of the short-term deficit of the Organization for the purposes of compute that deficit. It appears from the foregoing that from the legal point of view the case of China is completely distinct from the situation of South Africa.

1 June 1994

Two-thirds majority

Rule 83[1]

Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 c of Article 86 of the Charter, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

[1] Rules 82, 83 and 85 reproduce textually the three paragraphs of Article 18 of the Charter.

EVENTUALITY OF THE GENERAL ASSEMBLY FAILING TO ADOPT FOR LACK OF THE REQUIRED TWO-THIRDS MAJORITY A SCALE OF ASSESSMENTS FOR A GIVEN FINANCIAL PERIOD
RESPONSIBILITY OF THE GENERAL ASSEMBLY REGARDING (1) THE EXPENSES OF THE UNITED NATIONS UNDER THE REGULAR BUDGET AND (2) THE PROVISION OF FUNDS BY APPORTIONMENT OR OTHERWISE PROCEDURES FOR APPORTIONMENT OF EXPENSES

Memorandum to the Assistant Secretary-General, Controller, Office of Financial Services

Introduction

1. I have received your memorandum of 29 October 1976 concerning the question of the situation which might arise if in the General Assembly a two-thirds majority is not obtained to adopt either a resolution embodying the new scale of assessments recommended by the Committee on Contributions for the years 1977-1979, or a resolution continuing the existing 1974-1976 scale for another two years. You have asked whether, in this eventuality, there would be any legal basis for assessing Member States for the 1977 expenses of the Organization under this regular budget and for the 1976-1977 expenses of UNEF/UNDOF.

2. Briefly speaking, there would appear to be no legal basis under the Charter for requiring[1] Member States to contribute to the 1977 expenses of the Organization, in the total absence of any indication from the Assembly on how those Member States are to be assessed. However, it is my opinion, given the various alternatives which exist, that the situation to which you allude can be avoided or at least its consequences mitigated.

3. In order to explain my opinion further it is necessary to examine briefly the responsibilities of the General Assembly regarding: the expenses of the United Nations (I), the provision of funds by appointment or otherwise (II), and the procedures for apportionment (III), all in connexion with the regular budget of the Organization. As far as UNEF/UNDOF expenses are concerned, the same general considerations would *mutatis mutandis* apply. These expenses are not, therefore, the subject of any separate detailed consideration at this stage.

4. In the light of the considerations just indicated, we offer certain suggestions as to the procedures which may be followed in the present case (IV).

I. *Responsibilities of the General Assembly regarding the expenses of the United Nations*

5. The budgetary powers and responsibilities of the General Assembly are spelled out in Article 17 of the Charter, the relevant provisions of which, in the present context, provide that:

[1] In contradistinction to a request for voluntary contributions.

> "1. The General Assembly shall consider and approve the budget of the Organization.
>
> "2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

6. Article 17 has twice been the subject of detailed examination, in various of its aspects, by the International Court of Justice in its advisory opinions regarding *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* (I.C.J. Reports 1954, p. 47) and *Certain expenses of the United Nations (Article 17, paragraph 2 of the Charter)* (I.CJ. Reports 1962, p. 151). While recognizing the wide powers conferred by Article 17 of the Charter on the General Assembly[1], the Court has affirmed in both of its opinions that the Assembly's authority is not absolute. In the *United Nations Administrative Tribunal Case* (at p. 59), the Court said that:

> "the function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditure proposed to it, for some part of that expenditure arises out of obligations already incurred by the Organization, and to this extent the General Assembly has no alternative but to honour these engagements".

7. These remarks were cited with approval in the *Certain expenses Case* (at p. 169), in which the Court added (at p. 169), that:

> "Similarly, obligations of the Organization may be incurred by the Secretary-General, acting on the authority of the Security Council or of the General Assembly, and the General Assembly 'has no alternative but to honour these engagements'".

In this connexion, the Court referred (at pp. 168-169) to Regulation 4.1 of the Financial Regulations and Rules of the United Nations which provides that:

> "The appropriations voted by the General Assembly shall constitute an authorization to the Secretary-General to incur obligations and make payments for the purposes for which the appropriations were voted and up to the amounts so voted."

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[1] In the *Certain expenses Case,* for instance, the Court remarked (at p. 162) that:

"The general purposes of Article 17 are the vesting of control over the finances of the Organization and the levying of apportioned amounts of the expenses of the Organization in order to enable it to carry out the functions of the Organization as a whole acting through its principal organs and such subsidiary organs as may be established under the authority of Article 22 or Article 29.

"Article 17 is the only article in the Charter which refers to budgetary authority or to the power to apportion expenses, or otherwise to raise revenue ...".

8. It is thus abundantly clear that the General Assembly is under a legal obligation to provide the funds necessary to meet the expenditures for which it has voted appropriations. Within the present context, the General Assembly has, by its resolution 3539 (XXX) of 17 December 1975 *(Programme budget for the biennium 1976-1977),* voted appropriations for the biennium 1976-1977, and the Assembly is thus obliged to find the funds necessary to cover the outstanding appropriations for 1977.

II. *Responsibilities of the General Assembly regarding the provision of funds by apportionment or otherwise*

9. After laying down the obligation of the Assembly to meet its financial commitments, the Court, in the *Certain expenses Case* (at pp. 169-170) declared that:

> "The obligation is one thing: the way in which the obligation is met—that is from what source the funds are secured—is another. The General Assembly may follow any one of several alternatives: it may apportion the cost of the item according to some special scale of assessment: it may utilize funds which are voluntarily contributed to the Organization, or it may find some other method or combination of methods for providing the necessary funds. In this context, it is of no legal significance whether, as a matter of book-keeping or accounting, the General Assembly chooses to have the item in question included under one of the standard established sections of the 'regular' budget or whether it is separately listed in some special account or fund. The significant fact is that the item is an expense of the Organization and under Article 17, paragraph 2, the General Assembly therefore has authority to apportion it."

10. Various sources may thus be used for finding the necessary funds but, where the regular budget is concerned, its magnitude requires that the bulk of those funds are found by the Assembly's apportionment of expenses between Member States. In line with the general principles stated above, the Assembly is legally required to apportion expenses when funds to cover those expenses are not available from other sources such as income producing activities, or voluntary contributions.

III. *Procedures for apportionment of expenses*

11. Apart from the proviso in Article 18, paragraph 2, of the Charter that a two-thirds majority is required in the General Assembly for the adoption of decisions on "important questions", including budgetary questions, the Charter does not contain any provisions on the procedures to be followed by the Assembly in apportioning expenses among Member States. The applicability of Article 18, paragraph 2, to the present situation is considered in more detail in paragraphs 15, 16 and 19 below. Beyond this, the procedures for apportionment of expenses can be determined at its discretion by the General Assembly. In the exercise of this discretion, the Assembly has adopted rule 160 of its rules of procedure which provides that:

> "The Committee on Contributions shall advise the General Assembly concerning the apportionment, under Article 17, paragraph 2, of the Charter, of the expenses of the Organization among Members, broadly according to capacity to pay. The scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantive changes in relative capacity to pay. The Committee shall also advise the General Assembly on the assessments to be fixed for new Members, on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter."

In addition, from time to time the General Assembly has, in the form of resolutions, laid down guiding principles to be followed by the Committee on Contributions in arriving at its recommendations. As with most of its rules of procedure, the Assembly can, by specific decision, amend or vary the terms of rule 160 or its application in specific cases. Likewise it may alter the guiding principles relating to the apportionment of expenses.

(a) *Role of the Committee on Contributions and the practice of the Assembly*

12. It is clear from the terms of rule 160, as it now stands, that the role of the Committee on Contributions is advisory. While the Assembly would clearly wish to give the greatest weight to the advice of an expert committee of this nature, it is not bound by that advice. It can thus accept, amend or reject the Committee's recommendations, whether they relate to the actual scale of assessments or the duration of the application of a particular scale. Thus, for instance, at its eleventh session, the Assembly, having before it a revised scale of assessments recommended by the Committee on Contributions for years 1956, 1957 and 1958, decided to adopt that scale for only 1956 and 1957.

13. The practice of the General Assembly establishes that the normal procedure for assessing expenses is for the Assembly to adopt the recommendations of the Committee on Contributions regarding scales of assessment for succeeding three-year periods by overwhelming majorities. However, at the nineteenth session of the General Assembly in 1964-1965, a situation arose where it was not possible for the Assembly to act, at that session, on the recommendations of the Committee on Contributions on a scale of assessments for 1965, 1966 and 1967. It will be recalled that, at that session, voting on matters of substance was precluded by the question of the applicability of Article 19 of the Charter to the expenses of UNEF and ONUC and decisions were taken by a procedure of no objection. Under this procedure, rather than taking a decision on apportionment, the Assembly, by its resolution 2004 (XIX) of 18 February 1965, requested:

> " . . . Member States to make advance payments towards the expenses of the Organization in amounts not less than 80 per cent of their assessed contributions for the financial year 1964, pending decisions by the General Assembly on the level of appropriations and the scale of assessments for 1965, and subject to such retroactive adjustments as may then be called for."

Subsequently, at its twentieth session, by its resolution 2118 (XX) of 21 December 1965, the Assembly adopted a scale of assessments for the years 1965, 1966 and 1967. Thus, throughout the bulk of 1965, the Organization met its financial obligations on the basis of cash advances, made voluntarily by Member States, subsequently converted into binding assessments under Article 17 of the Charter through action of the General Assembly at its twentieth session.

14. Practice thus discloses that, while adoption of scales of assessment recommended by the Committee on Contributions for immediately succeeding years constitutes the normal procedure, amendments to the Committee's recommendations have been adopted and even alternatives procedures followed.

(b) *Article 18, paragraph 2, of the Charter*

15. As pointed out in paragraph 11 above, decisions of the General Assembly on budgetary questions require a two-third majority under Article 18, paragraph 2, of the Charter. Principle and practice would indicate that adoption of a scale of assessments, or of principles and directives relating thereto, are budgetary questions. This issue arose at the 2108th plenary meeting of the General Assembly, on 13 December 1972, and was the subject of an opinion by the Legal Counsel. The specific points in question related to directives to the Committee on Contributions on the principles to be applied in drawing up a new scale of assessments (in particular, the percentage ceiling for the largest contributor). The Legal Counsel was of the view that the adoption of the budget and the apportionment of expenses must be characterized as budgetary questions, and he concluded that the same characterization should apply to directives to the Committee on Contributions on the formulation of a new scale. The Legal Counsel's opinion was/the basis for a ruling by the President of the Assembly at the 2108th plenary meeting, that the draft resolutions then before the Assembly required a two-thirds majority. This ruling was not challenged, and all the resolutions obtained the requisite two-thirds majority.

16. It is thus to be concluded that adoption of a new scale of assessment for the apportionment of expenses for the years 1977, 1978 and 1979 would require a two-thirds majority in the General Assembly. Likewise, adoption of a resolution to continue for another two years the existing scale beyond the end of 1976 (the limit specified in General Assembly resolution 3062 (XXVIII) of 9 November 1973) would also require a two-thirds majority.

IV. *Suggestions regarding the present situation*

17. The possibility that a two-thirds majority might not be obtained for adoption of either of the two alternative courses of action set out in the previous paragraph, has led to the present request for an opinion. These, however, would not appear to be the only available alternatives, taking into account the principles and practice indicated earlier in this memorandum.

18. The first course of action relates to the adoption, *in toto,* of the recommendations of the Committee on Contributions. However, as pointed out above, the recommendations do not have to be adopted as they stand. They can be amended by the Assembly, both as to the level of assessments and as to the length of duration of the scale. While adjustments in the scale itself may be complicated and time consuming, the application of the scale for perhaps only one or two years is simple to effect, requiring only a simple majority in the Fifth Committee, under rule 125 of the rules of procedure, the requirements of a two-thirds majority for amendments and proposals on budgetary questions being confined to the plenary. Such application could also be stated to be without prejudice to decisions of the Assembly at its next or a later session on the basis of a further review of the scale of assessments by the Committee on Contributions in the light of any new criteria the Assembly might wish to adopt. In other words, many variations might be explored to find an acceptable solution, within the broad framework of the recommendations of the Committee on Contributions.

19. If negotiation along the lines just indicated were to prove fruitless, and the question then arose of continuing the existing scale of assessments until a solution could be found, it should be noted that such a continuation might prove possible by a procedure other than the adoption of an express resolution to this effect. Should a draft resolution containing a new scale of assessments fail to be adopted by the requisite majority, the President of the General Assembly could draw attention to the legal obligation of the Assembly, as outlined above, to provide funds to cover the appropriations it has voted. He could state that, in view of such an obligation, he would presume that it was the intention of the Assembly that the existing scale of assessments should be continued until the Assembly has adopted a new scale. If the President's ruling were the subject of an appeal, he could put the appeal to a vote and, under rule 71 of the rules of procedure, his ruling would stand, "unless overruled by a majority of the members present and voting." The need to obtain a two-thirds majority would thus be avoided. Whether such a course of action were feasible would, of course, depend upon the attitude of the President which, in turn, might be affected if a resolution extending the existing scale for two years had already been defeated (although, technically, a ruling by the President to continue the scale until a new one is adopted would differ from a proposal to continue it for a fixed period of time).

20. Should the procedure of the presidential ruling either prove not acceptable, or should his ruling be overruled, it is still open for the Assembly, as a last resort, to follow the precedent of the nineteenth session, and to request cash advances from Member States at a stated percentage of the 1976 assessments, pending definitive arrangements by the Assembly at its next session. Such a request, either in the form of a resolution or of a statement by the President, would be the minimum the Assembly could do to meet its legal obligation to defray the expenses of the Organization under the appropriations voted in connexion with the regular budget for the biennium 1976-1977.

3 November 1976

Rule 84[1]

Decisions of the General Assembly on amendments to proposals relating to important questions, and on parts of such proposals put to the vote separately, shall be made by a two-thirds majority of the members present and voting.

[1] See introduction, para. 10.

Simple majority

Rule 85[1] [125]

Decisions of the General Assembly on questions other than those provided for in rule 83, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

[1] Rules 82, 83 and 85 reproduce textually the three paragraphs of Article 18 of the Charter.

USE IN RESOLUTIONS, DECISIONS OR CONCLUSIONS ADOPTED BY THE TRADE AND DEVELOPMENT BOARD OR ITS SUBSIDIARY BODIES OF THE WORDS "AS ADOPTED" IMMEDIATELY FOLLOWING REFERENCES TO AN EXISTING RESOLUTION

Note submitted to the Trade and Development Board during the first part of its fourteenth session

Background

1. Prior to the thirteenth session of the Trade and Development Board there had been several instances in which the representatives of countries in Group B proposed, as amendments to certain draft resolutions being considered by a deliberative body of UNCTAD, the insertion of the words "as adopted" immediately following the references to another resolution—whether of UNCTAD or another United Nations body—which had been previously adopted. Examples are to be found in resolution 6 (VI) of the Committee on Manufactures and resolution 5 (VI) of the Committee on Invisibles and Financing Related to Trade. It was explained by the sponsors of this insertion that, because their countries had not subscribed to the resolution or resolutions previously adopted, and because these countries had not changed their position since, the term "as adopted" was needed to record that position.

2. The same proposal for the insertion of these words had also been made in other UNCTAD/ora, prior to the thirteenth session of the Trade and Development Board; on those occasions when the opinion of the UNCTAD secretariat was sought, the secretariat expressed the view, for reasons set out below, that it would be unnecessary and undesirable to insert these words. In these instances the representatives in question did not insist on the inclusion o f the words "as adopted" in the draft resolution under consideration.

Thirteenth session of the Trade and Development Board

3. At the thirteenth session of the Board, during discussion of the draft decision on Special Measures in Favour of the Least Developed among the Developing Countries (TD/ B/ L.340/ Rev. 1) submitted by the Group of 77, the spokesman for the countries members of Group B proposed that the words "as adopted" should be inserted after the reference to Conference resolution 62(111) in paragraph 1 of the draft decision. The spokesman for the Asian countries members of the Group of 77 accepted that proposal, on the understanding that the following footnote should be added: "The inclusion of these words in the text was objected to by the developing countries. It was agreed that this matter, dealing with the use of these words, should be the subject of a discussion in depth at the fourteenth session of the Board."

4. The following additional resolution and decision, subsequently adopted at the thirteenth session, include the words "as adopted" as well as the footnote: resolution 101(XIII) and decision 102(XIII).

Analysis

5. The inclusion of the words "as adopted" to modify or qualify the reference in resolutions, decisions or agreed conclusions to previously adopted resolutions is undesirable; since the term is nowhere defined and since its meaning is unclear, it could be understood to refer either to the method of voting on the resolution (by show of hands or by roll-call) or to the fact that it was adopted without vote, by consensus, by acclamation or otherwise, or to the fact that explanations of vote or explanations of position where there was no vote were given. Furthermore, the inclusion of these words in respect of a selection of previously adopted resolutions and the absence of these words in respect of other previously adopted resolutions leads to an apparent and ambiguous distinction between the status of the two groups of resolutions. Finally, in the more than twenty-five years of United Nations practice in adopting resolutions, no need had been felt to include this qualification in resolutions. In this connection, it should be pointed out that in United Nations editorial practice, the term "as adopted" in reference to a resolution has always been used—in reports and not in the text of a resolution—to denote the final text of the resolution, as distinct from the text of the draft resolution.

6. As stated above, the inclusion of these words is unnecessary. The fact that a State or a number of States have expressed reservations at the time of the adoption of a given resolution or have otherwise explained the reasons why they could not then support or accept that resolution,' remains part of the legislative history of that resolution. While it is common practice for States to restate, during discussions of draft resolutions containing references to previously adopted resolutions, their previous opposition to such resolutions, it could not be maintained that failure to do so would imply *post hoc* acceptance by those States. Hence there is no need to include the words "as adopted" in a draft resolution when reference is made to a previously adopted resolution. Should the Board agree with the above analysis, it may wish to record such agreement in the report on its present session; this could then serve, also, as guidance to the main Committees of the Board and to other UNCTAD bodies.

2 August 1974

Meaning of the phrase "members present and voting"

Rule 86 [126]

For the purposes of these rules, the phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.

Method of voting

Rule 87[1] [127]

(a) The General Assembly shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the members, beginning with the member whose name is drawn by lot by the: President. The name of each member shall be called in any roll-call, and one of its representatives shall reply "yes", "no" or "abstention". The result of the voting shall be inserted in the record in the English alphabetical order of the names of the members.

(b) When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

[1] See introduction, para. 24; see also annex IV, para. 84 and annex VII, para. 2.

COMMENTS ON SOME PROCEDURAL QUESTIONS IN CONNEXION WITH THE PROPOSAL THAT THE THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY BE HELD AWAY FROM UNITED NATIONS HEADQUARTERS

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This memorandum responds to several procedural questions that have been raised in connexion with the proposal that the thirty-third session of the General Assembly meet in [name of the capital of a Member State].

I. *Majority required for a decision by the General Assembly to meet away from Headquarters*

2. It has been suggested that a decision by the General Assembly to hold a session away from Headquarters requires an absolute majority, i.e. the affirmative vote of a majority (75)[1] of all the Members of the United Nations, as provided in the final clause of rule 3 and in rule 4 of the Assembly's rules of procedure. These rules state:

> *"Place of meeting*
>
> "Rule 3
>
> "The General Assembly shall meet at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision taken at a previous session or at the request of a majority of the Members of the United Nations.
>
> "Rule 4
>
> "Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly."

3. These rules clearly distinguish between a decision to hold a session away from Headquarters made by the Assembly during a session and a determination to hold a session away from Headquarters made outside the Assembly in accordance with the procedure specified in rule 4. The latter, for which an absolute majority is required, is not a decision of the General Assembly but a determination made by the membership of the United Nations.

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[1] At the date of drafting of the above opinion, the membership of the United Nations stood at 150.

4. The majority required for decisions of the General Assembly is specified in paragraphs 2 and 3 of Article 18 of the Charter (which are reflected in rules 83-86 of the rules of procedure): a two-thirds majority of the members present and voting for decisions on important questions and on those additional categories decided by the Assembly, and a simple majority of the members present and voting for other questions. As these are Charter provisions, the Assembly itself cannot vary them, either by adopting particular rules of procedure or on an *ad hoc* basis, so as to provide that certain decisions be taken by majorities different from those specified in the Charter.

5. Under the Charter and the rules of procedure, absolute majorities of the membership are only required for decisions when these are not taken in and by the Assembly itself: the convening of special sessions pursuant to Article 20 of the Charter, in accordance with rules 8 and 9 of the rules of procedure, and the determination of the place of meeting in accordance with rules 3 and 4. Absolute majorities are required in those cases because, in the absence of a meeting at which a quorum can be determined, the only standard by which approval can be measured is that of the total membership of the Organization. On the other hand, when these same decisions are taken by the Assembly itself, as is possible under rule 7 for the convening of a special session or under the first part of rule 3 for establishing a different place of meeting, the majorities indicated in paragraph 4 above must be used.

6. Finally, it should be noted that a decision on the place of meeting does not appear to be an "important question" within the meaning of paragraph 2 of Article 18 of the Charter. This is so whether or not there are any financial implications to the proposed choice of the place of meeting, since it has been held several times that the mere existence of financial implications does not make a decision a "budgetary question" within the meaning of that paragraph. Consequently, the decision on the place of meeting can be taken by a simple majority under paragraph 3 of Article 18 of the Charter and rule 85 of the rules of procedure, unless the Assembly should decide, by a simple majority under the same provisions, that this question be decided by a two-thirds majority.

II. *May a secret ballot be taken in connexion with this question*

7. The question has been raised whether the General Assembly or its General Committee can take a decision by secret ballot with regard to issues relating to the holding of a regular Assembly session away from Headquarters. In the General Committee this would apply to the decision whether to recommend the inclusion of the additional item in the agenda of the Assembly. In the plenary of the Assembly the question could be raised with regard to the decision on the adoption of the recommendation of the General Committee (i.e. inclusion or not in the agenda) and/or eventually with regard to a vote on the actual proposal to hold a session of the Assembly away from Headquarters.

8. The only case where an absolute majority of votes is required in the General Assembly is for elections of the members of the International Court of Justice. This majority is specified in Article 10 of the Statute of the Court, which is an integral part of the Charter, and is restated in rule 151 of the rules of procedure of the Assembly.

9. Rules 87 and 127 of the rules of procedure specify the methods of voting, respectively in the plenary and in committees; they have identical contents and provide that the Assembly or a committee shall normally vote by show of hands or by standing, but that any representative may request a roll-call. The only references to secret ballot are contained in rules 92 and 103, which govern elections. The rules of procedure of the Assembly thus do not provide for a secret ballot other than for elections.

10. The absence of a provision for secret ballots for other matters does not, however, absolutely prevent the General Assembly from resorting to such a procedure. In fact, there are precedents for doing so, in the practice of the Assembly as well as of subsidiary organs and conferences with rules of procedure similar to those of the Assembly. For example, at the twenty-first session of the Assembly, the Second Committee decided without objection that the site of the future headquarters of UNIDO should be decided by secret ballot. At its second session in October 1965, the Trade and Development Board voted by secret ballot on the location of the site for the Secretariat of UNCTAD. During the sixth session of the Third United Nations Conference on the Law of the Sea in July 1977, the venue of the seventh session of the Conference was decided upon by secret ballot. It may be relevant to note that in all these cases the choice of a site or venue was involved.

11. On all these occasions the secret ballot procedure was resorted to by general agreement of all members of the body concerned. This accords with the principle that the strict observance of rules of procedure can be avoided by virtue of a general agreement among the members of the body concerned, since the essential purposes of rules of procedure — orderly proceedings and protection of the .interests of the minority — are thus not endangered. It is on the basis of the same principle that in the practice of the General Assembly the application of certain rules of procedure has frequently been suspended by common accord: for example, many elections have not taken place by secret ballot as provided in rule 92.

12. The question arises, however, whether in the absence of a common agreement among the membership, the General Assembly may decide by a majority vote to resort to a secret ballot. When this question was put to the Legal Counsel by the Second Committee during the debate on the choice of the UNIDO Headquarters site referred to above, he advised that the Committee could not decide, on the basis of a vote, to suspend the application of any rule of procedure, or to take a secret ballot. While this opinion of the Legal Counsel applies to the proceedings of any sessional organ, including the General Committee, it does not exclude the authority of the General Assembly itself to decide by a majority vote to resort to secret ballot, since even if this is considered as amounting to a suspension or amendment of the rules of procedure, such power is vested in the Assembly by Article 21 of the Charter.

13. While it would therefore not be possible for the General Committee to decide, except in the absence of any objection, to resort to a secret ballot on its recommendation concerning the inclusion of an additional item in the agenda of the General Assembly, the latter could decide by a majority vote to take a secret ballot on deciding on the recommendation of the General Committee or on the substance of a proposal to hold a session away from Headquarters. If the question is referred to a committee (see Part IV below), then that body would be under the same constraints as the General Committee, unless the plenary decided, by a majority vote, to authorize the committee to decide on its substantive recommendation to the plenary by secret ballot.

III. *Procedure for placing an additional item on the agenda of the Assembly in spite of a negative recommendation of the General Committee*

14. The procedure for placing "additional items" on the agenda of a regular session of the Assembly is governed by rules 15 and 40 (second sentence) of the rules of procedure.

15. If the General Committee should decide to recommend against placing an additional item on the agenda, that recommendation would be communicated to the Assembly in the report of the Committee.

16. The normal course for the General Assembly would be to vote on the recommendation of the General Committee contained in its report. Several alternative procedural situations may be foreseen:

(a) *Rejection of the Committee's recommendation*

If the plenary should reject a negative recommendation of the Committee on the inclusion of the item on the agenda, this would not by itself result in that item being so included. This is so because the rejection of a proposal, which could occur by two successive tie votes under rule 95 or by the failure to obtain a two-thirds majority where that is required, can therefore not be interpreted as a positive decision in the opposite sense. However, it would then be in order to take action on and to adopt a separate proposal for the inclusion of the item on the agenda.

(b) *Proposed amendment of the Committee's recommendation*

A proposal to amend a negative recommendation of the Committee so as to reverse its sense, i.e., to include the agenda item in question, would be out of order since rule 90 provides that "A motion is considered an amendment if it *merely* adds to, deletes from or revises part of the proposal" (emphasis added). It has repeatedly been held that a motion that would completely change the sense of a previous proposal cannot be considered as an amendment to it, but has to be treated as a separate proposal.[1]

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[1] The Legal Counsel so advised the plenary at the twenty-seventh session of the General Assembly, when a proposal was made that a recommendation of the General Committee to include an item be "amended" so that the item would instead have been included in the provisional agenda of the next session. *(Official*

(c) *Submission of a separate proposal to include the item on the agenda*

A proposal to include an additional item on the agenda in spite of a negative recommendation of the General Committee would be in order, as there is no requirement that the Assembly act only on a favourable recommendation of the Committee. Such a proposal would, however, under rule 91, be voted on only after a decision is taken on the recommendation of the Committee — unless, under the same rule, the Assembly decides to vote first on the separate proposed to include.

(i) If the motion to vote first on the separate proposal prevails, then a vote would be taken on that proposal. If it is accepted, the item is thereby placed on the agenda, and no vote would be taken on the Committee's negative recommendation; if the separate proposal fails, then the item is not placed on the agenda and there would be no need to vote on the Committee's recommendation, though that could be done.

(ii) If the motion to vote first on the separate proposal fails, then a vote would first be taken on the Committee's recommendation. If that recommendation is not adopted, then the situation is as described in subparagraph *(a)* above. If the recommendation of the Committee is approved, then a vote on a separate proposal to include the item on the agenda would constitute a reconsideration which, under rule 81, would require a prior decision taken by a two-thirds vote — which, if successful, would be followed by a vote on the proposal to include the item; however, more likely, after the Committee's negative recommendation has been approved, the separate proposal would be withdrawn by its sponsor(s) under rule 80, or a decision not to vote on it would be taken under the second sentence of rule 91.

IV. *Further proceedings if an additional item is placed on the agenda*

17. If it is decided to place on the agenda of the current session an additional item relating to the place of the thirty-third session, then the second sentence of rule 15 requires that:

(a) Consideration of the item in the plenary be postponed:

(i) for 7 days, and
(ii) until a committee has reported thereon; unless

(b) The plenary decides otherwise by a two-thirds majority.

Records of the General Assembly, Twenty-seventh Session, Plenary Meetings, 2037th meeting, paras. 221-223).

18. The requirement of a committee report could be satisfied by submission of the item to and a report from a Main Committee (in particular the Fifth), the General Committee (though the latter probably has no substantive competence under rules 41-42), or an *ad hoc* body. In this connexion, the history of previous considerations of the question of relocating sessions of the General Assembly may be of interest:

(a) At the first session of the Assembly a proposal to relocate the second session was considered only in plenary, and defeated. (The requirement of consideration by a committee did not arise because the item was not an "additional" one.)

(b) At the second session of the Assembly a proposal for relocating the third session was first considered in the plenary from the point of view of principle, and thereafter its administrative and budgetary implications were submitted to the Fifth Committee. After the plenary had thereupon decided on a session in Europe, the choice of site was left to an *ad hoc* committee of 9 members, designated by the President.

(c) At the fifth session of the Assembly the proposed relocation of the sixth session was first considered by the Fifth Committee (though objection was raised against its competence to consider16 the substance of the item), and then was adopted by the plenary.

19. These precedents indicate that submission of the question to the Fifth Committee would be the most normal course to follow, though the establishment of an *ad hoc* committee is not to be excluded. The report of the Committee could:

(a) restrict itself entirely to a discussion of financial, administrative and other implications;

(b) also include some procedural suggestions for the method whereby the plenary would conduct its own consideration (e.g., that a secret ballot be taken);

(c) include, as is customary, a substantive recommendation on the proposal.

2 December 1977

METHOD OF VOTING IN THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES QUESTION OF SECRET BALLOTING

Memorandum to the Assistant Secretary-General for Human Rights, Centre for Human Rights

1. This is in response to your memorandum of 14 February on the method of voting in the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. The Sub-Commission is, pursuant to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, bound by the rules applicable to the Commission on Human Rights, i.e., by those same rules. The words "in so far as they are applicable" in the cited rule do not detract in any way from the analysis presented below, since there is no reason why any of the specific rules referred to should not be applicable to the Sub-Commission.

3. The method of voting in the Sub-Commission is thus that specified by rule 59. That rule calls for votes to be taken "normally... by show of hands", except if a roll-call is taken on the request of any representative. This rule is substantially the same as that which applies in most United Nations organs, in particular the Economic and Social Council (rule 61 (1)) and the General Assembly (rule 87). All those rules have consistently been interpreted as not permitting secret ballots except for elections. The word "normally" is not meant to permit exceptions, but merely takes account of the exception for roll-calls already provided for in the rule. Consequently, we have advised various organs bound by similar rules, such as Main Committees of the General Assembly, that a secret ballot could only be taken if two conditions were met: the decision to take a secret ballot was reached by general agreement; and the question was akin to an election (e.g., the selection of a site among several proposals).

4. An organ that has the explicit or implicit power (e.g., the plenary of the General Assembly) to suspend its rules can do so for the purpose of holding a secret ballot; this the Sub-Commission can do by following rule 78. However, it is not good practice to suspend any rule as a matter of routine. Therefore, if it is desired to take secret ballots with some regularity this should be allowed by some other mechanism. There should on the other hand be no legal objection to doing so on an *ad hoc* basis, e.g., for the purpose of adopting a recommendation to the Commission and the Council on this subject.

5. The best method of allowing the Sub-Commission to take secret ballots on some questions is to so provide in its rules. This might be accomplished by having the Economic and Social Council adopt an additional paragraph to rule 24 of the rules of procedure of the functional commissions along the following lines:

"2. Notwithstanding paragraph 1 of rule 59,[1] the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Human Rights Commission [may decide to] [shall, at the request of a member,][2] take a secret ballot on any matter of substance [relating to . . .].[3] [Such a decision to proceed by a secret ballot shall itself be taken by a secret ballot and require a two-thirds majority of the members present .and voting.][4]"

16 February 1984

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[1] By making the proposed new rule an exception from all of rule 59 (1), it is clear that if requests are made for a roll-call vote under that rule and for a secret ballot under the proposed rule 24 (2), the latter would automatically have precedence.

[2] The first two brackets present alternative approaches. The first reflects the proposal in E/CN.4/Sub.2/1983/5. The second is formulated by analogy to the provision for taking votes by roll-call under rule 59 (1); naturally one could instead require a request by a specified number of members.

[3] This bracketed clause is to be added if it is desired to restrict the scope of the provision, for example to matters concerning confidential communications. Incidentally, there appears to be no logical connection between confidential proceedings and secret ballots, and no contradiction between open proceedings and such ballots; the motives for closing proceedings have little to do with those for desiring a confidential franchise.

[4] Both the conditions stated in this bracketed sentence are optional, and thus either or both could be omitted. Both would become irrelevant if the second alternative referred to in note 2 is selected, for in that event no decision would be required for a secret ballot to be taken.

Conduct during voting

Rule 88[1] [128]

After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The President may permit members to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The President may limit the time to be allowed for such explanations. The President shall not permit the proposer of a proposal or of an amendment to explain his vote on his own proposal or amendment.

[1] See introduction, para. 7; see also annex IV, paras. 74-76, and annex V, paras. 6, 7 and 11.

QUESTIONS RELATED TO THE CLOSURE OF DEBATE AND CONDUCT DURING VOTING IN THE PLENARY MEETINGS OF THE GENERAL ASSEMBLY AND IN THE MAIN COMMITTEES
RULES 75 AND 88 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. During the current session of the General Assembly a number of questions have arisen, in the plenary and some of the Main Committees, in relation to the closure of debate and conduct during voting, which are principally regulated by rules 75 [117] and 88 [128] of the rules of procedure. The present memorandum discusses these two subjects and their interaction.

I. EFFECTS OF CLOSURE OF DEBATE

A. *Statements*

2. Closure of debate decided under rule 75 or 117 clearly prevents the making of any further substantive statements as to the "item under discussion" (see section I.C. below) in relation to which the motion for closure was adopted. No exception may be made, even for representatives already on the list of speakers (but see paragraph 4 below).

3. However, closure of debate does not prevent the exercise of the right of reply (rule 73 [115]) or the explanation of votes (rule 88 [128]), whether before or after the vote (see section II.C below).

B. *Motions and proposals*

4. Unless specifically otherwise provided in the motion for closure, no new substantive proposals, including amendments or sub-amendments[1], may be submitted after a motion for closure of debate has been adopted. However, proposal already submitted under rule 78 [120] but not yet formally introduced or even circulated should normally be dealt with; there are even precedents for permitting, the principal sponsor to make a statement introducing such a proposal (particularly if the sponsors of other proposals had an opportunity to introduce these before the debate was closed). In addition, the sponsors of a proposal already submitted should normally be permitted to submit a revised version even after closure of debate as long as the initial proposal has not been substantially changed.

[1] Hereinafter, "proposals" should be understood as referring also to amendments and sub-amendments.

5. Normal procedural motions or manoeuvres, such as the withdrawal of a proposal as well as its immediate reintroduction (rule 80 [122]), the division of a proposal (rule 89 [129]) or a motion that there be no vote on a proposal after another has been acted on (rule 91 [131]), are permitted even after closure of debate. The same should be held of a motion to adjourn the debate (for the purpose of putting aside one or more proposals - rule 74 [116]) or of one addressed to an issue of competence (rule 79 [121]). However, other types of proposals relating to procedures not specifically provided for in the rules of procedure (e.g., the referral of an item to a standing or *ad hoc* body) should be considered as substantive proposals (i.e., in accordance with paragraph 4 above).

C. *Discussion*

6. Rule 75 [117] refers to the closure of the debate on "the item under discussion". Such an "item" need not be an entire agenda item, but can be a sub-item, a particular proposal or set of proposals, or even an amendment to a proposal. For this reason it is important for the President to ascertain, as soon as a proposal for closure of debate is made, and in any event before asking the body to take a decision on it, what the scope of the proposal is. However, to the extent that this is not done, it should usually be assumed that the motion is intended to have the broadest effect it can sensibly be given, i.e., to close debate on as much of the agenda item as possible; certainly it should never be presumed, without explicit confirmation, that debate was meant to be closed merely on an amendment or on one of a series of related proposals.

D. *Closure achieved by other means*

7. Closure of debate achieved by a motion under rule 75 [117] does not differ substantially from that achieved by closure declared after the normal conclusion of debate or on the exhaustion of a closed list of speakers (rule 73 [115]); indeed, this is explicitly provided in the corresponding procedural rule of the Economic and Social Council (rule 45, E/5715/Rev.l). Nevertheless, the prohibition against the making of further statements and against introducing new substantive proposals (see paragraphs 2 and 4 above) are usually not enforced as strictly in the case of such informal closure.

II. THE VOTING PROCESS

A. *Structure of rule 88 [128]*

8. It should be recognized that rule 88 [128] in effect consists of two separate rules:

(a) The first sentence protects the integrity of the voting exercise (see section II.B below);

(b) The remaining text deals with explanation of votes (section II.C). This differentiation is explicitly recognized in the rules of procedure of the Economic and Social Council, which deal with these two subjects respectively in rules 63 and 62.

B. *Conduct during voting*

9. The first question is how to define "during voting" for the purpose of determining the interval during which the strict rule against interruptions must apply.[1] Though occasionally there have been a few differing rulings, in the past years it has been clearly recognized and consistently held that the period protected by the first sentence of rule 88 [128] (i.e., the period of voting in the "narrow sense") is merely the interval between the time the presiding officer initials the voting process by calling for the casting of votes or ballots on a particular question, and until the results of that particular vote are announced (cf. Economic and Social Council Rules of Procedure for United Nations Conferences, A/38/298, annex, rule 56). This is the only period that requires the extraordinary protection provided by the first sentence of rule 88 and in view of the severe restrictions in that sentence (e.g., the prohibition against normal points of order, or against routine procedural motions, such as to suspend a meeting) such protection should not, and in practice cannot, be extended to any period for which this is not absolutely necessary; for example, if a very long series of votes is to be taken, it may be necessary to do so in the course of more than one meeting, i.e., to interrupt for some hours or even some days (e.g., elections to principal organs).

10. In respect of a connected series of votes, it follows from the above that the first sentence of rule 88 [128] is not intended to cover the entire period during which several votes are taken, including the intervals between such votes (i.e., between two amendments to the same proposal or even between two ballots for the same post), which might be referred to as a period of voting in the "wider sense". On the other hand, it must be recalled that such a period of voting normally follows on an explicit or implicit closure of debate (see section I.D above) and is therefore subject to the restrictions consequent on such closure (sections I.A and B), and that often deadlines are set for the submission of substantive proposals which normally will have expired before the period of voting starts. Furthermore, the President often announces (and usually should announce), before or at the beginning of a period of voting, the procedure that he intends to follow during such period (e.g., to permit explanations before the vote on all proposals and amendments, then to call for votes successively on each proposal and the amendments thereto, and then to permit explanations after the vote), and to the extent such announcement is not objected to or is explicitly accepted, it becomes a decision governing that voting period, which can only be changed by an implicit or explicit reconsideration of that decision (subject to rule 81 [123]); even if no explicit regime is established for a period of voting, it may be assumed, on the basis of the usual practice, that a restrictive procedure is to be followed, i.e., that one vote will follow on another, uninterrupted by any substantive business and generally any explanations of vote, though permitting some procedural motions (e.g., suspension or adjournment of the meeting). Only in the somewhat exceptional situation that no such restrictions exist in respect of a particular voting period may room be made during intervals between votes for statements, substantive proposals and procedural motions, and especially (see section 11.C below) explanations of vote (i.e., either those after the previous vote or those before the next one).

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[1] The present memorandum does not deal with what types of points of order it is permissible to raise under the first sentence of rule 88 [128].

C. *Explanations of vote* [1]

11. The second sentence of rule 88 [128] states that "the President may permit members to explain their votes". By tradition, the right to explain a vote has become practically absolute (as stated, e.g., in Economic and Social Council procedural rule 62), though the President retains discretion (subject to the authority of the Assembly, rule 36 [107]) as to whether to permit explanations both before and after or only before (which would be unusual) or only after the vote. Also, if a series of votes is to be taken he may, but need not, allow explanations between such votes (see paragraph 10 above). Furthermore, it should be understood that explanations of vote are not part of the debate and that, therefore, the prior closure of debate does not affect the power of the President to permit explanations of vote either before or after the vote, since there is a distinction between the period of debate (cut off by rule 75 [117]) and the period of voting in the wider sense (governed in part by rule 88 [128]) and in part by *ad hoc* decisions made in respect of each such period (see end of paragraph 10).

10 November 1983

[1] The present memorandum contains no discussion of what constitutes an explanation of vote, or restrictions on such explanations or an application to' decisions taken without a vote.

EXPLANATION OF VOTE BY THE PROPOSER OF A PROPOSAL OR OF AN AMENDMENT
RULE 90 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Executive Office of the Secretary-General

1. In regard to the question which was put to us this morning, the attention of the President of the General Assembly should be drawn to the unequivocal provision of rule 90 of the rules of procedure that he "shall not permit the proposer of a proposal or of an amendment to explain his vote on his own proposal or amendment". This rule, however, does not bar the intervention of (a) a "proposer of a proposal" to explain his vote on an amendment before or after the amendment has been adopted or rejected by the Assembly or (b) a "proposer of an amendment" to explain his vote on the proposal before or after the proposal has been adopted or rejected by the Assembly. The term "proposer" must be deemed to cover "co-sponsor" of a proposal. There is, of course, nothing to prevent a "proposer of a proposal or of an amendment" to intervene in exercise of his right of reply or for the purpose of raising a point of order in accordance with the Assembly's rules of procedure.

2. On one occasion, a co-sponsor of a draft resolution was permitted to explain the vote of his delegation after the resolution had been adopted by the Assembly (see A/PV. 1405, paras. 247-253). On another occasion, a co-sponsor of a draft resolution was given the floor to make a statement after the adoption of the resolution (see A/PV.1356, paras. 64-68). Other similar cases might have existed. From a legal point of view, a practice which is clearly contrary to the provisions of a rule of procedure cannot negate the rule itself. But we feel that the President should be informed of the existence of those cases together with the legal position set forth herein. Should the question of the application of rule 90 be raised from the floor when a proposer or co-sponsor has asked to explain his vote, the President would have no choice but to apply the rule by refusing the floor to the proposer or co-sponsor.

19 October 1966

Division of proposals and amendments

Rule 89[1] [129]

A representative may move that parts of a proposal or of an amendment should be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

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[1] See introduction, para. 7.

PROCEDURAL QUESTIONS RAISED IN CONNECTION WITH THE ADOPTION OF A REPORT OF THE SUBCOMMITTEE ON PETITIONS. INFORMATION AND ASSISTANCE 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 QUESTION WHETHER ACTION MAY VALIDLY BE TAKEN ON AN AMENDMENT NOT CIRCULATED IN ONE OF THE WORKING LANGUAGES QUESTION WHETHER A FINAL VOTE MUST BE TAKEN ON THE REPORT AS A WHOLE AFTER SEPARATE PARTS HAVE BEEN ADOPTED

Memorandum to the Officer-in-Charge, Department of Political Affairs, Trusteeship and Decolonization

This is in response to your memorandum of 31 August, requesting legal advice as to two procedural questions raised in connection with the adoption of the 226th Report of the Sub-Committee on Petitions, Information and Assistance 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.

1. As the Special Committee and its Sub-Committees are subsidiary organs of the General Assembly, they are to apply the procedures relating to committees of the Assembly, as provided in rule 161 of its rules of procedure.

2. With regard to the objection raised by a delegation concerning the failure to circulate the text of an amendment in one of the working languages before a vote was taken thereon, the relevant rule, namely rule 120, requires that "as a general rule" no proposals shall be put to a vote until the day following their circulation, which is understood to mean circulation in all the working languages. Chairmen are authorized to permit the discussion and consideration of amendments even if they have not been circulated at all or have only been circulated the same day. The practice in implementing this rule has been that frequent use is made of the exceptional authorization to act on uncirculated or only recently circulated amendments, particularly towards the end of a session. In particular, the procedure followed by the Chairman of the Sub-Committee, to read out the amendment at dictation speed to enable the interpreters to translate it carefully and the representatives to copy it down in their respective languages, is often followed. Consequently the objection in question is not well taken.

3. Rule 129 provides that if a proposal (such as the draft report) is divided, and action is taken to adopt separate parts thereof, a Final vote must be taken on the proposal as a whole (i.e., on the sum of all the parts adopted separately). This is so whether the division was a formal one under the first part of rule 129, or is merely done informally. It is also immaterial whether the separate parts were adopted by votes or by consensus. The body as a whole must be given an opportunity of acting on (i.e., adopting or rejecting) the sum of all the separate parts. Consequently the demand of the delegation concerned was justified, and a vote on the report as a whole should now be taken.

September 1983

Voting on amendments

Rule 90[1] [130]

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the General Assembly shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal.

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[1] See introduction, para. 7.

Voting on proposals

Rule 91 [131]

If two or more proposals relate to the same question, the General Assembly shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The General Assembly may, after each vote on a proposal, decide whether to vote on the next proposal.

PRIORITY OF DRAFT RESOLUTIONS BEFORE THE GENERAL ASSEMBLY
A DRAFT RESOLUTION SUBMITTED AT ONE SESSION WILL NOT NORMALLY BE BEFORE A SUBSEQUENT SESSION UNLESS *INTER ALIA* THERE IS AN EXPRESS DESIRE ON THE PART OF THE SPONSORS TO MAINTAIN IT
WHERE AN AGENDA ITEM HAS VARIOUS SUBITEMS, THE RELEVANT RESOLUTIONS ARE VOTED ON IN THE ORDER OF SUBMISSION REGARDLESS OF THE SUBITEM TO WHICH THEY RELATE
A
DRAFT RESOLUTION RETAINS ITS STATUS EVEN IF IT IS REVISED

Memorandum to the Under-Secretary-General
for Political and Security Council Affairs

I. *Historical background*

1. At its 1939th plenary meeting during the twenty-sixth session, the General Assembly decided, on the recommendation of the General Committee (A/8500, para. 18), to include the following items in the provisional agenda of the twenty-seventh session:

> "Withdrawal of United States and all other foreign forces occupying South Korea under the flag of the United Nations.
>
> "Dissolutions of the United Nations Commission for the Unification and Rehabilitation of Korea.
>
> "Question of Korea: report of the United Nations Commission for the Unification and Rehabilitation of Korea."

2. These three items were therefore included in the provisional agenda of the twenty-seventh regular session (A/8760), numbered respectively 35, 36 and 37. In addition, on 17 July 1972, Algeria and twelve other Member States had requested the inclusion in the provisional agenda of that session of an item entitled "Creation of favourable conditions to accelerate the independent and peaceful rehabilitation of Korea" (A /8752), which was included as item 96 on the provisional list; a number of new sponsors were added subsequently, and on 15 September 1972 the sponsors communicated to the Secretary-General a draft resolution under the proposed item (A/8752/Add.9).

3. The General Committee recommended to the Assembly that items 35 and 36 not be included in the agenda, and that items 37 and 96 be included in the provisional agenda of the twenty-eighth session (A/88OO/Rev.l). The Assembly accepted this recommendation at its 2037th meeting.

4. The two items were therefore included as numbers 40 and 41 on the preliminary list of items to be included in the provisional agenda of the twenty-eighth regular session (A/9000), in the annotated preliminary list (A/9090) and in the provisional agenda (A/9100).

5. On 10 September 1973 the representatives of Algeria and 21 other States constituting most of those that had co-sponsored the resolution in document A/8752/Add.9 addressed a letter to the Secretary-General transmitting a draft resolution relating to item 41 ("Creation of favourable conditions to accelerate the independent and peaceful rehabilitation of Korea"), indicating that the new draft replaced that contained in the 1972 document; that letter was circulated the same day (A/9145). Later on 10 September 1973 the representatives of Australia and twelve other States addressed a note verbale to the Secretary-General in which they requested that a draft resolution relating to item 40 of the provisional agenda ("Question of Korea, report of the United Nations Commission for the Unification and Rehabilitation of Korea") be circulated as an official document of the Assembly "for the information of Member States"; this was done on the same day in document A/9146. The reason for the difference in the presentation of the two draft resolutions was that the Secretariat had indicated to the sponsors of resolution A/9146 that they could not at that stage introduce a draft resolution with respect to an item not yet placed on the agenda by the Assembly and allocated to a Committee; on the other hand, the sponsors of resolution A /9145 could, under rule 20 of the rules of procedure of the General Assembly, introduce a revision of the draft resolution that they had previously presented with respect to an item they had proposed for the agenda of the previous session of the Assembly.

6. On 20 September, the General Committee considered the provisional agenda, and with respect to items 40 and 41 the Chairman announced that he understood that "there was a general sentiment that those items should be recommended for inclusion as sub-items of a single item under the heading "Question of Korea". The Committee then "decided to recommend to the General Assembly that items 40 and 41 should be combined into a single item and included in the agenda" (A/BUR/SR.206, pp. 3-4; A/9200, para. 19). At the afternoon meeting on 21 September of the General Assembly, the President called attention to item 41 as recommended by the General Committee "which contains two sub-items under the single heading 'Question of Korea'"; the Soviet representative "did not object to the recommendation of the General Committee that the two questions concerning Korea be merged as two subparagraphs of one general item". The Assembly thereupon decided, without objection, to include item 41 as recommended by the General Committee. Later, at the same meeting, the Assembly approved the recommendation of the General Committee (A/9200, para. 27, p. 23) that item 41 be allocated to the First Committee (A/PV.2123, pp. 6-10 and 16).

7. Immediately after the Assembly had decided on the allocation of items to the First Committee, the representatives of Japan and the United States presented to the Secretary of that Committee in his office, on their behalf and on behalf of sixteen other States, the same draft resolution that they had presented on 10 September. Slightly later the sponsors of the "Algerian" resolution informed the Secretary of the Committee that

they wished to maintain the revised draft they had introduced on 10 September. The "Algerian" draft was therefore republished as document A/C. 1/L.644 and A/C.l/L.644/Corr.l under the names of 32 sponsors, and the other draft was re-published as document A/C.l /L.645 with 18 sponsors

II. *Legal considerations*

8. Both rules 80 and 122 of the rules of procedure of the General Assembly provide that "proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations." Rules 93 and 133 provide that "if two or more proposals relate to the same question, the General Assembly/committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted." The question therefore is: what is "Submission" within the meaning of these rules? The prevailing practice is that submission means the written submission provided for in rules 80 and 122.[1]

9. There is no rule explicitly providing for the introduction of proposals with respect to any question before that question has been placed as an item on the agenda by the General Assembly and before it has been allocated to a Committee. However, rule 20 does provide that "all items proposed for inclusion in the agenda shall be accompanied . . . if possible . . . by a draft resolution." Consequently, it can be concluded that as to items proposed by Member States for inclusion in the agenda the proposed may submit therewith a draft resolution. With respect to sponsors other than those that introduced the item or with respect to items not so introduced, there is no authority in the rules for the submission of draft resolutions in advance.

10. The question of the status of resolutions introduced at a previous session of the Assembly was examined in a memorandum dated 14 November 1966, from which it appears that up to then no definitive decision had been reached on that point. However, the memorandum concludes that "generally a draft resolution submitted at one session will not be before the subsequent session unless (1) it is resubmitted, (2) there is an express desire on the part of the sponsors to maintain it, or (3) the General Assembly in recommending postponement and/or in placing the item on the agenda has expressly transmitted all documents relating thereto." Since then, there have been no relevant decisions or changes in the rules or practice.

In the present case, it is clear that alternative (3), an express decision of the Assembly to transmit all relevant documents to a later session, has not taken place; the "Algerian" draft comes under alternative (2) as a revision (see paragraph 12 below) of the draft resolution submitted in September 1972, which the sponsors desired to maintain. This would have been the case even if, as implicitly assumed in the 1966 memorandum, the item and the draft would have been discussed at the previous session of the

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[1] Only once, in the Special Political Committee at the eighteenth session, did the Chairman rule and the Committee decide that as between two draft resolutions submitted in writing, priority would be given to the one first orally introduced during the debate in the Committee (Official Records of the General Assembly, Eighteenth Session, Special Political Committee, 405th meeting, paras. 41-85)

Assembly; *a fortiori,* it should apply to an item and draft that was merely postponed by the Assembly, without any substantive consideration.

11. There appears to have been no decision whatsoever relating to the status of resolutions introduced with respect to items on the provisional agenda when these items are later included in the agenda in an altered form: i.e., change of title, or combination with another item. In the present case it seems clear from para. 6 above that items 40 and 41 of the provisional agenda were not altered at all by their merger under a single heading, especially since each survived under a separate subheading, corresponding to its original title and neither the debates in the General Committee nor in the Assembly suggested any desire to alter the items otherwise. It should be noted that where an agenda item has various sub-items, the draft resolutions are voted on in the order of submission, regardless of the sub-item to which they relate. This was illustrated at both the twenty-second and twenty-third sessions when the Korean item was considered in the First Committee, respectively with three and with four sub-items. In both instances, four drafts were introduced (respectively A/C.l/L.399/Rev.l, L.401 and Add.l and 2, L.404 and Add.1-3 and L.405 and Add.l, and A/C.1/L.453 and Add.l, L.454 and Add.l, L.455 and Add.l and 2 and L.461), and these were voted on in the order of their submission which did not correspond to that of the relative sub-items.

12. In accordance with established practice, a draft resolution retains its status even if it is revised.

13. The draft published as document A/C.1/L.644 and Corr.l thus maintained its continuous status in spite of the transmission from one session of the Assembly to the next (para. 10 above), the merger of the item under which it was originally proposed with another item (para. 11 above) and a slight revision of text (para. 12 above). Having maintained its status it also maintained its priority with respect to alternative drafts, and the Secretariat attempted to reflect this in the numbering of the documents (see para. 7 above).

28 September 1973

ORDER OF PRIORITY OF PROPOSALS UNDER THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY
MEANING OF THE PHRASE "IN THE ORDER IN WHICH THEY ARE SUBMITTED" IN RULES 91 AND 131
DUTIES OF THE SECRETARIAT IN THIS CONNEXION

Memorandum to the Deputy Executive Assistant to the Secretary-General

1. Under rules 91 and 131 of the rules of procedure of the General Assembly, proposals relating to the same question are to be voted on "in the order in which they are submitted". It is now clearly established that the order referred to is the order of submission of a draft to the Secretariat, not the date of circulation of the document or of its formal introduction in the organ concerned.

2. It is the duty of the Secretariat to note the time of receipt of a proposal, to allocate a number accordingly, and to send the document immediately for translation and reproduction, particularly in view of the provision in rules 78 and 120 of the rules of procedure that "no proposal shall be discussed or put to the vote at any meeting OF THE General Assembly unless copies of it have been circulated to all delegations not later than the day preceding the meeting". In order to prevent any misunderstanding, should the Secretariat receive a proposal and be requested to hold it until some later date, the responsible official should explain that he cannot consider the proposal as being officially submitted and, therefore, he cannot assign a number until he is requested by the sponsor or sponsors to proceed with its submission for reproduction.

19 November 1976

Elections

Rule 92[1] [103]

All elections shall be held by secret ballot. There shall be no nominations.

[1] See annex V, para. 16.

MEANING OF THE WORDS "AGREED CANDIDATE" RULE 68 OF THE RULES OF PROCEDURE OF THE ECONOMIC AND SOCIAL COUNCIL PARAGRAPH 16 OF ANNEX VI TO THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Letter to the Permanent Representative of a Member State to the United Nations

I should like to reply to your letter of 8 May 1995 addressed to the Legal Counsel, by which you requested legal advice on certain aspects of rule 68 of the rules of procedure of the Economic and Social Council, which reads in relevant part as follows:

> "All elections shall be held by secret ballot, unless, in the absence of any objection, the Council decides to proceed without taking a ballot on *an agreed candidate or slate..."* (Emphasis added)

The general question you raised was: in the absence of consensus among the members of the Economic and Social Council, what is the legal interpretation of the phrase "agreed candidate" contained in rule 68? The phrase in question reflects the well-established practice in both the General Assembly and the Economic and Social Council by which the requirement of a secret ballot for elections is waived when there is an "agreed candidate or slate" and when there is no objection to such a waiver. The meaning of the phrase is set out in paragraph 16 of annex VI to the rules of procedure of the General Assembly, which defines the practice of the Assembly as follows:

> "The practice of dispensing with the secret ballot for elections to subsidiary organs *when the number of candidates corresponds to the number of seats to be filled* should become standard and the same practice should apply to the election of the President and Vice-Presidents of the General Assembly, unless a delegation specifically requests a vote on a given election" (emphasis added).

Thus, an agreed candidate or slate exists when the number of candidates corresponds to the number of seats to be filled. The threshold question of what constitutes the number of seats to be filled depends upon the particular election. In some cases, there is no official geographic distribution among the posts to be filled and thus it is the total number of vacancies to be filled which is the number at issue. In most other cases, the seats have been distributed among geographic regions by decision of the competent organ and thus the number of seats to be filled is per region.

Turning to your specific question, if three seats are to be filled by candidates from a particular region that is the number of seats to be filled. Thus, a secret ballot may be waived only if there are three candidates from the region and there is no objection. If, as in your specific question, there are five candidates from the region for three seats to be filled and only one has been endorsed by the regional group, a secret ballot is still required among all five candidates for the three seats. The fact that a group has endorsed

certain candidates, of whatever number, is irrelevant to ascertaining whether in fact, the number of candidates from the region corresponds to the number of seats to be filled.

12 May 1995

Rule 93 [132]

When only one person or Member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, and a majority is required, the President shall decide between the candidates by drawing lots. If a two-thirds majority is required, the balloting shall be continued until one candidate secures two thirds of the votes cast; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or Member. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third of the unrestricted ballots, and the following three ballots thereafter shall be unrestricted, and so on until a person or Member is elected. These provisions shall not prejudice the application of rules 143, 144, 146 and 148.

Rule 94

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such majority is less than the number of persons or Members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or Member. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled. These provisions shall not prejudice the application of rules 143, 144, 146 and 148.

Equally divided votes

Rule 95 [133]

If a vote is equally divided on matters other than elections, a second vote shall be taken at a subsequent meeting which shall be held within forty-eight hours of the first vote; and it shall be expressly mentioned in the agenda that a second vote will be taken on the matter in question. If this vote also results in equality, the proposal shall be regarded as rejected.

XIII. COMMITTEES

ESTABLISHMENT, OFFICERS, ORGANIZATION OF WORK

Establishment of committees

Rule 96

The General Assembly may establish such committees as it deems necessary for the performance of its functions.

Categories of subjects

Rule 97[1]

Items relating to the same category of subjects shall be referred to the committee or committees dealing with that category of subjects. Committees shall not introduce new items on their own initiative.

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[1] See annex I, paras. 22 and 23, annex II, paras. 1, 19 and 20, annex IV, paras. 25-28, annex V, para. 4, annex VI, para. 3 and annex VII, para. 4.

Main Committees

Rule 98[1]

The Main Committees of the General Assembly are the following:

(a) Disarmament and International Security (First Committee);

(b) Special Political and Decolonization Committee (Fourth Committee);

(c) Economic and Financial Committee (Second Committee);

(d) Social, Humanitarian and Cultural Committee (Third Committee);

(e) Administrative and Budgetary Committee (Fifth Committee);

(f) Legal Committee (Sixth Committee).

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[1] See introduction, paras. 17, 30 and 44; see also annex IV, paras. 29-38.

Organization of work

Rule 99[1]

(a) All the Main Committees shall, at least three months before the opening of the session, elect a Chairman. Elections of the other officers provided for in rule 103 shall be held at the latest by the end of the first week of the session.

(b) Each Main Committee, taking into account the closing date for the session fixed by the General Assembly on the recommendation of the General Committee, shall adopt its own priorities and meet as may be necessary to complete the consideration of the items referred to it. It shall at the beginning of the session adopt a programme of work indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item.

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[1] See introduction, paras. 7, 15, 30 and 47; see also annex V, paras. 21 and 23.

Representation of Members

Rule 100

Each Member may be represented by one person on each Main Committee and on any other committee that may be established upon which all Members have the right to be represented. It may also assign to these committees advisers, technical advisers, experts or persons of similar status.

Rule 101

Upon designation by the chairman of the delegation, advisers, technical advisers, experts or persons of similar status may act as members of committees. Persons of this status shall not, however, unless designated as alternate representatives, be eligible for election as Chairmen, Vice-Chairmen or Rapporteurs of committees or for seats in the General Assembly.

Subcommittees

Rule 102[1]

Each committee may set up subcommittees, which shall elect their own officers.

[1] See annex I, para. 14, annex II, para. 29, annex III, para. (*e*), and annex IV, para. 66.

Election of officers

Rule 103[1] [92]

Each Main Committee shall elect a Chairman, three Vice-Chairmen and a Rapporteur. In the case of other committees, each shall elect a Chairman, one or more Vice-Chairmen and a Rapporteur. These officers shall be elected on the basis of equitable geographical distribution, experience and personal competence. The elections shall be held by secret ballot unless the committee decides otherwise in an election where only one candidate is standing. The nomination of each candidate shall be limited to one speaker, after which the committee shall immediately proceed to the election.

[1] See introduction, paras. 30 and 45; see also annex IV, paras. 40 and 54-57, and annex V, paras. 18-20.

OFFICERS OF SUBSIDIARY ORGANS OF THE GENERAL ASSEMBLY UNDER THE RULES OF PROCEDURE OF THE ASSEMBLY, SUCH OFFICERS ARE ELECTED AS INDIVIDUAL REPRESENTATIVES

Memorandum to the Secretary of the Working Group on the financing of UNRWA

1. The Working Group on the Financing of UNRWA[1] is a subsidiary organ of the General Assembly and under rule 163 of the rules of procedure of the Assembly the rules relating to the procedure of committees of the General Assembly apply, unless the Assembly or the subsidiary organ decides otherwise. The General Assembly has taken no contrary decision and consequently unless the Working Group were itself to decide otherwise, the election of officers is governed by rule 105 of the rules of procedure of the General Assembly.[2] This rule provides, *inter alia*, that "in the case of Committees], each shall elect a Chairman, one or more Vice-Chairmen and a Rapporteur. These officers shall be elected on the basis of equitable geographical distribution, experience and personal competence . . ."

2. Under this rule, and in accordance with normal practice for Committees and subsidiary organs of the General Assembly, the Chairman and other officers are elected as individual representatives and not as Member States or delegations. This is indicated by the rule which includes individual qualifications ("experience and personal competence") among the criteria for selection. The procedure under General Assembly Rule 105 is in contrast with the practice in the Security Council where the presidency, under rule 18 of procedure of the Council, is held in turn by member States on the Security Council. The Security Council thus has no provision for Vice-President since it is the delegation which holds the presidency. In this connexion, it will be noted that in General Assembly Committees and subsidiary organs, under rule 107, it is a Vice-Chairman and not another member of the Chairman's delegation who is designated to serve in the absence of the Chairman.

3. It should also be noted that under rule 107, if any officer of the Committee is unable to perform his functions, a new officer is to be elected for the unexpired term. While, in practice, it very often occurs that the new officer is a member of the same delegation as his predecessor, under the rules this is by election (which in some cases may take the form of explicit or tacit confirmation) and not by automatic succession.

4. Of course the subsidiary organ under rule 163 is free to depart from this normal procedure if it so decides and there are cases in which subsidiary organs have adopted other procedures with respect to the Chairman. The United Nations Commission for the Unification and Rehabilitation of Korea, for example, adopted a method of

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[1] Established by General Assembly resolution 2656 (XXV) of 7 December 1970.

[2] This rule has since been amended by the General Assembly. Rules 105, 107 and 163 referred to in this memorandum are numbered 103, 105 and 161 respectively in the current version of the rules of procedure of the General Assembly.

rotation modeled on that of the Security Council. In practice the vast majority of the subsidiary organs apply rule 105 and elect their officers as individual representatives.

5. As to the terms of office, there is no uniform practice. Some subsidiary organs re-elect officers each year, while others continue with the same officers. This depends on the decision or the practice of the subsidiary organ concerned.

12 January 1973

The Chairman of a Main Committee shall not vote

Rule 104 [37]

The Chairman of a Main Committee shall not vote, but another member of his delegation may vote in his place.

Absence of officers

Rule 105[1] [32-34]

If the Chairman finds it necessary to be absent during a meeting or any part thereof, he shall designate one of the Vice-Chairmen to take his place. A Vice-Chairman acting as Chairman shall have the same powers and duties as the Chairman. If any officer of the committee is unable to perform his functions, a new officer shall be elected for the unexpired term.

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[1] See introduction, para. 30.

Functions of the Chairman

Rule 106[1] [35]

The Chairman shall declare the opening and closing of each meeting of the committee, direct its discussions, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The Chairman may, in the course of the discussion of an item, propose to the committee the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion.

[1] See introduction, para. 7; see also annex I, para. 39, annex III, para. (*g*), annex IV, paras. 39 and 67, annex V, paras. 3 and 22, and annex VI paras. 6 and 7.

RESPONSIBILITIES OF A CHAIRMAN OF A COMMITTEE OF THE GENERAL ASSEMBLY WITH RESPECT TO THE CIRCULATION OF COMMUNICATIONS FROM NON-MEMBERS RULE 108 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Secretary of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa

1. You have asked for our views on the responsibilities of a chairman of a subsidiary organ of the General Assembly with respect to communications addressed to the chairman by non-members and requesting that their contents be circulated or brought to the attention of the members of the subsidiary organ concerned. It is our understanding that the communications involved are ones not specifically requested from a non-member by the relevant subsidiary organ. You have also asked for some information with respect to the means usually adopted in handling such communications, particularly when they emanate from areas or authorities the status of which is unclear.

2. Pursuant to rule 162 of the rules of procedure of the General Assembly, the procedures of committees of the Assembly normally apply to the procedure of subsidiary organs. It is our understanding that this is the situation in the case in question.

3. Unlike the rules of procedure of certain other principal organs, the General Assembly's rules do not lay down any specific procedures for handling communications addressed to the Assembly, or its presiding officers. Nor do rules 108 and 109, concerning the functions of a chairman of a committee of the Assembly, invest him with any specific responsibility with respect to communications addressed to him by non-members and dealing with some topic with which the committee over which he presides is seized. However, rule 108 invests the chairman with broad powers, including the power to "put questions" and, subject to the rules, to exercise "complete control of the proceedings of the committee..." Rule 109 provides that "the Chairman, in the exercise of his functions, remains under the authority of the committee."

4. Taking account of the broad powers vested in the chairman by rule 108, it would appear that a chairman is not precluded and, indeed, may deem it his responsibility to consult with the members of his committee with respect to the manner in which a communication received from a non-member, and requesting transmission to the committee, should be handled. In so doing, under rule 109, the chairman is "under the authority of the committee", the decision of which is final.

5. As regards past practice with respect to communications from non-members, it would appear that, for the past several years, no communications received from non-members and addressed to the President, on subjects on which comments were not specifically requested from such non-members, have been circulated to the plenary meetings of the Assembly in the full "A" series. A number of such communications have, at the request of a Member State, been circulated under cover of a *note verbale.* On a

very few occasions a number have also been circulated to main committees of the Assembly, as committee documents, when the non-member concerned has a direct and immediate interest in the agenda item concerned (i.e. the Republic of Korea and the Democratic People's Republic of Korea with respect to the Korean question).

6. The practice of subsidiary organs of the Assembly in respect of communications of the nature here involved does not appear to have been entirely uniform. In one subsidiary organ two such communications have been informally circulated without document symbol. Considerations of time have not permitted any detailed enquiry into the practices of other subsidiary organs. However, no examples in the last few years have been brought to our attention where a communication of the nature here envisaged has been circulated in document form without a specific written request from a Member State.

7. Some variation from the General Assembly practice of circulation under cover of a *note verbale,* as described in paragraph 5 above, appears to exist in the practice of certain other principal organs, such as the Economic and Social Council and the Security Council. In the Economic and Social Council, for example, a few communications of the nature here envisaged have, provided this is requested by a Member State, been circulated as an annex to the letter of the Member State concerned. A similar example also exists in the recent practice of the Security Council.

2 August 1966

Rule 107[1] [36]

The Chairman, in the exercise of his functions, remains under the authority of the committee.

[1] See introduction, para. 7; see also annex I, para. 39, annex III, para. (*g*), annex IV, paras. 39 and 67, annex V, paras. 3 and 22, and annex VI paras. 6 and 7.

CONDUCT OF BUSINESS

Quorum

Rule 108[1] [67]

The Chairman may declare a meeting open and permit the debate to proceed when at least one quarter of the members of the committee are present. The presence of a majority of the members shall be required for any decision to be taken.

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[1] See introduction, paras. 7 and 30.

Speeches

Rule 109[1] [68]

No representative may address the committee without having previously obtained the permission of the Chairman. The Chairman shall call upon speakers in the order in which they signify their desire to speak. The Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

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[1] See annex III, para. (*g*), (ii), annex IV, paras. 69-71, and annex VI, para. 6.

Congratulations

Rule 110[1]

Congratulations to the officers of a Main Committee shall not be expressed except by the Chairman of the previous session — or, in his absence, by a member of his delegation — after all the officers of the Committee have been elected.

[1] See introduction, para. 30.

Precedence

Rule 111 [69]

The Chairman and the Rapporteur of a committee or subcommittee may be accorded precedence for the purpose of explaining the conclusions arrived at by their committee or subcommittee.

Statements by the Secretariat

Rule 112 [70]

The Secretary-General, or a member of the Secretariat designated by him as his representative, may at any time make either oral or written statements to any committee or subcommittee concerning any question under consideration by it.

Points of order

Rule 113[1] [71]

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote, and the Chairman's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

[1] See introduction, para. 7; see also annex IV, para. 79.

QUESTION OF WHETHER A STATE NOT A MEMBER OF AN ECONOMIC AND SOCIAL COUNCIL FUNCTIONAL COMMISSION PARTICIPATING IN ITS DELIBERATIONS MAY RAISE POINTS OF ORDER OR MAKE PROPOSALS OF A PROCEDURAL NATURE
RULE 69, PARAGRAPH 3, OF THE RULES OF PROCEDURE OF FUNCTIONAL COMMISSIONS
"POINTS OF ORDER", PARAGRAPH 79 OF ANNEX V TO GENERAL ASSEMBLY RULES OF PROCEDURE

Cable to the Director-General, United Nations Office at Geneva

Regarding our cable on whether a State not a member of an Economic and Social Council functional commission participating in its deliberations may "raise points of order or make proposals of a procedural nature":

Rules of Procedure of Functional Commissions do not provide expressly for this matter.

It is true that rule 69, paragraph 3, of the Rules of Procedure of Functional Commissions provides that "a State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the Commission or of the subsidiary organ concerned". However, having regard to clear differentiation in the rules of procedure between "procedural motions" and "substantive proposals and amendments" (see in particular rules 43, 48 to 55, 57 to 65 and 68), and provisions of rules immediately preceding Rule 69 which distinguish between substantive proposals and procedural motions, it seems reasonable to conclude that the expression "proposals" in rule 69, paragraph 3, should be interpreted to mean substantive proposals (including amendments) and not procedural motions which thus cannot be made by States not members of the functional commission in question.

Such an interpretation would also accord with United Nations practice of reserving procedural motions, which concern conduct of business, for full members of the body.

Concerning "points of order", please see description of "point of order" in paragraph 79 of annex V to the General Assembly rules of procedure, which is equally valid, with reference to points of order raised in functional commissions. Thus, points of order raised under rule 42 of functional commission rules would be questions which require a ruling by the presiding officer, subject to possible appeal, relating to conduct of business and consequently are reserved solely for full members of the body.

The following further points should also be noted. As explained in paragraph 79 of annex V to the General Rules, United Nations practice by which participants rise to a "point of order", a means of obtaining the floor in order to seek information or clarification, should not be confused with raising "true" points of order under rule 42 and may be entertained by presiding officer when raised by non-members.

Non-members of functional commissions may, however, make statements or comments on procedural matters which are not in fact procedural motions or points of order under rule 42.

29 January 1988

REQUEST FOR LEGAL ADVICE
FROM THE ASSISTANT SECRETARY-GENERAL FOR LEGAL AFFAIRS
TO THE SECRETARY OF THE HUMAN RIGHTS COUNCIL

1. I refer to your memorandum of 5 November 2007, whereby you seek the advice of this Office on whether non members of the Human Rights Council (HRC) should have the right to raise points of order, "now that the HRC is a subsidiary body of the General Assembly". You indicated that this matter would be considered at the resumed 6th session of the HRC, which is to be held from 10 to 14 December 2007.

Background

2. In your memorandum, you refer to a letter dated 26 September 2007 from the Permanent Representative of ……….. to the HRC President requesting clarification of the "the right of non-members of the council to make a 'Point of Order' during its deliberations." In his letter, the Permanent Representative of …… notes that this matter was referred to in "the discussion that took place in the Council's meetings of 20/9/2007".

3. You also refer to the practice of the former Commission on Human Rights, as reflected in the Note by the Secretariat entitled "Main rules and practices followed by the Commission on Human Rights in the organization of its work and the conduct of its business" of 7 February 2002 (E/CN.4/2002/16). That Note states that "the Commission shall continue to apply the ruling made by the Chairperson of its fifty-fifth session giving the observer for Palestine the right to raise points of order 'relating to the Palestinian and Middle East issues', provided that the right to raise such a point of order shall not include the right to challenge a decision by the presiding officer" (para. 33).

4. With regard to Member States not members of the Commission, the Note states that "the right to raise points of order was also extended to representatives of state Members of the United Nations not members of the Commission on Human Rights but participating in its work in an observer capacity" (para. 34)

Applicable rule and decision

5. The HRC rules of procedure, adopted by resolution 5/I of 18 June 2007, entitled "Institution-building of the Human Rights Council", are silent on this matter. In that context, rule 1 of the HRC rules of procedure states that "[t]he Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council".

6. The relevant rule in the GA rules of procedure is rule 113, which reads as follows:

> "During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A representative may appeal against the ruling of the

Chairman. The appeal shall be immediately put to the vote, and the Chairman's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion."

7. However, by operative paragraph 11 of its resolution 60/251 of 3 April 2006, establishing the HRC, the General Assembly provided that the participation of and consultation with "observers, including States that are not members of the Council […] shall be based on arrangements […] and practices observed by the Commission on Human Rights".

Analysis

8. In accordance with United Nations practice, procedural motions which concern conduct of business are reserved for full members of the organ. Points of order raised under rule 113 are procedural motions, as by definition, they are questions relating to conduct of business which require a ruling by the presiding officer and are subject to possible appeal. Accordingly, the right to raise a point of order should be reserved solely for full members of the HRC.

9. However, as explained in paragraph 79 of annex V to the GA rules of procedure, United Nations practice also provides for representatives, as a means of obtaining the floor, to make a "point of order" when requesting for information or clarification or to make remarks relating to material arrangements including, but not limited to seating arrangements, interpretation system, the temperature in the room, documents, or translations. These are not procedural "points of order" as defined by rule 113. However, they may be raised by non-members and addressed by the presiding officer without requiring a ruling. Statements or comments on procedural matters made by non-members are also considered to fall outside the purview of rule 113 and therefore permissible. Beyond that, the Note by the Secretariat E/CN.4/2002/16 (see, paragraph 4 above) makes it clear that even in the case of rule 113, Member States of the Organization not members of the Commission are entitled to raise points of order, but not including the right to challenge a ruling by the presiding officer.

10. In the specific case of Palestine, GA resolution 52/250 of 13 July 1998, entitled "Participation of Palestine in the work of the United Nations", granted Palestine the "right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer". The Secretary-General further clarified that Palestine did not have the right to raise points of order in connection with the actual conduct of voting. (See A/52/1002 of 4 August 1998). The ruling of the President of the Commission of Human Rights contained in document E/CN.4/2002/16 reflected both GA resolution 52/250 and the advice provided by this Office on 1, 6, and 14 April 1999.

11. We note that in this regard the intention of the Assembly was to expand the rights of Palestine, not to grant them rights in excess of those enjoyed by Member States which are non-members of organs with limited membership.

12. We would also draw your attention to GA resolution 58/314 of 1 July 2004, entitled "Participation of the Holy See in the work of the United Nations", and the subsequent Note of the Secretary-General contained in document A/58/871 of 16 August 2004, which grants the Holy See the right to raise points of order "relating to any proceedings involving the Holy See." Similar to the case of Palestine, this right does not allow the Holy See to challenge the decision of the presiding officer or raise a point of order in connection with the actual conduct of voting.

Advice

13. Palestine and the Holy See, by virtue of resolutions 52/250 and 58/314 quoted above, are entitled to raise points of order under rule 113 in the HRC. Pursuant to those resolutions, these entities are not permitted to challenge the decision of the presiding officer or to raise points of order in connection with the actual conduct of voting.

14. With respect to Member States which are non members of the HRC pursuant to resolution 60/251, they may raise points of order under rule 113 but not make other procedural motions, including appealing the ruling of the presiding officer.

19 November 2007

Time limit on speeches

Rule 114[1] [72]

The committee may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a representative exceeds his allotted time, the Chairman shall call him to order without delay.

[1] See introduction, paras. 7 and 30.

Closing of list of speakers, right of reply

Rule 115[1] [73]

During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the committee, declare the list closed. He may, however, accord the right of reply to any member if a speech delivered after he has declared the list closed makes this desirable.

[1] See annex IV, paras. 69, 77 and 78, annex V, paras. 8-10, and annex VI, para. 6.

RULE 38 OF THE RULES OF PROCEDURE OF THE GOVERNING COUNCIL OF THE UNITED NATIONS ENVIRONMENT PROGRAMME RELATING TO RIGHT OF REPLY
PRACTICE OF THE GENERAL ASSEMBLY AND THE ECONOMIC AND SOCIAL COUNCIL REGARDING THE EXERCISE OF THE RIGHT OF REPLY

Cable to the Legal Liaison Officer to the United Nations Environment Programme

Rule 38 of the rules of procedure of the Governing Council of UNEP concerning the right of reply is based on rule 73 of the rules of procedure of the General Assembly. Although rule 73 is formulated in a way that gives the President discretion to grant the right of reply or not to do so, in practice the right of reply is routinely granted to any Member State that requests it. In the light of this practice, members of the Governing Council of UNEP should be considered as having an absolute right to exercise the right of reply. In contrast, observer States and other observers such as the PLO and SWAPO do not have an absolute right to reply but may be granted an opportunity to reply by the President. In practice such requests are traditionally granted and very rarely denied.

If a statement in the exercise of the right of reply by one State gives rise to a request by another State for a statement in reply, this request is normally acceded to in the practice of the Assembly and the Economic and Social Council. In effect, rule 46 of the rules of procedure of the Economic and Social Council, which was adopted in its current form later than the corresponding rule in the rules of procedure of the General Assembly and of the Governing Council of UNEP, accurately reflects the established practice whereby the right of reply is regarded to be an absolute right of Member States which is not subject to the discretion of the presiding officer as regards States which are full members of the organ concerned. The said may of course limit the length and the number of interventions that may be made in the exercise of the right of reply at a given meeting and under the same agenda item.

16 May 1983

Adjourmnent of debate

Rule 116[1] [74]

During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The Chairman may limit the time to be allowed to speakers under this rule.

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[1] See introduction, para. 7.

MOTION TO TAKE NO ACTION ON A PROPOSAL BEFORE THE GENERAL ASSEMBLY
QUESTION OF WHETHER THE MOTION CAN PROPERLY BE MADE UNDER THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Statement made by the Legal Counsel at the 34th plenary meeting of the General Assembly on 20 October 1983

A legal opinion has been requested on the question of whether the motion proposed by the representative of a Member State is a motion that can properly be made under the rules of procedure of the General Assembly. The motion under consideration was proposed within the context of rule 74 of the rules of procedure. That rule provides for the adjournment of debate on the item under consideration without any limitations as to the reasons for which a motion- may be presented under the rule.

A review of the practice of the General Assembly shows that the Assembly has on several occasions in the recent past acted on motions to take no action on a proposal before it on the basis of rule 74. Among the precedents which I have referred to, there are not only those which relate to the item as a whole, but also several which relate to a specific question or text under consideration and to adjournment *sine die.*

As representatives may recall, an identical motion within the context of rule 74 of the rules of procedure of the General Assembly was proposed in similar circumstances when the same agenda item was considered at the thirty-seventh session. On that occasion the Assembly acted on the motion and adopted it. In these circumstances, it is my view that the motion before the Assembly is receivable from a legal standpoint.

On 25 November 1997 the Assembly considered a "no action" motion, which was defeated and then adopted an amendment and then the draft resolution. The Journal summary sets out the procedure. The President asked for an explanation of why a "no action" motion is under Rule 74 and the following statement was subsequently prepared:

> "The General Assembly has a long-standing and well established practice of taking "no action" motions under Rule 74 of the Rules of Procedure of the General Assembly. A Rule 74 motion to adjourn the debate on the item under discussion has been understood to include, in addition to a motion to adjourn the debate temporarily, a motion to take no action on an item or on a draft resolution or on a draft amendment to a resolution."

Closure of debate

Rule 117[1] [75]

A representative may at any time move the closure of the debate on the item under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the committee is in favour of the closure, the Chairman shall declare the closure of the debate. The Chairman may limit the time to be allowed to speakers under this rule.

[1] See introduction, para. 7.

QUESTIONS RELATED TO THE CLOSURE OF DEBATE AND CONDUCT DURING VOTING IN THE PLENARY MEETINGS OF THE GENERAL ASSEMBLY AND IN THE MAIN COMMITTEES
RULES 75 AND 88 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. During the current session of the General Assembly a number of questions have arisen, in the plenary and some of the Main Committees, in relation to the closure of debate and conduct during voting, which are principally regulated by rules 75 [117] and 88 [128] of the rules of procedure. The present memorandum discusses these two subjects and their interaction.

I. EFFECTS OF CLOSURE OF DEBATE

A. *Statements*

2. Closure of debate decided under rule 75 or 117 clearly prevents the making of any further substantive statements as to the "item under discussion" (see section I.C. below) in relation to which the motion for closure was adopted. No exception may be made, even for representatives already on the list of speakers (but see paragraph 4 below).

3. However, closure of debate does not prevent the exercise of the right of reply (rule 73 [115]) or the explanation of votes (rule 88 [128]), whether before or after the vote (see section II.C below).

B. *Motions and proposals*

4. Unless specifically otherwise provided in the motion for closure, no new substantive proposals, including amendments or sub-amendments[1], may be submitted after a motion for closure of debate has been adopted. However, proposal already submitted under rule 78 [120] but not yet formally introduced or even circulated should normally be dealt with; there are even precedents for permitting, the principal sponsor to make a statement introducing such a proposal (particularly if the sponsors of other proposals had an opportunity to introduce these before the debate was closed). In addition, the sponsors of a proposal already submitted should normally be permitted to submit a revised version even after closure of debate as long as the initial proposal has not been substantially changed.

5. Normal procedural motions or manoeuvres, such as the withdrawal of a proposal as well as its immediate reintroduction (rule 80 [122]), the division of a proposal (rule 89 [129]) or a motion that there be no vote on a proposal after another has been

[1] Hereinafter, "proposals" should be understood as referring also to amendments and sub-amendments.

acted on (rule 91 [131]), are permitted even after closure of debate. The same should be held of a motion to adjourn the debate (for the purpose of putting aside one or more proposals - rule 74 [116]) or of one addressed to an issue of competence (rule 79 [121]). However, other types of proposals relating to procedures not specifically provided for in the rules of procedure (e.g., the referral of an item to a standing or *ad hoc* body) should be considered as substantive proposals (i.e., in accordance with paragraph 4 above).

C. *Discussion*

6. Rule 75 [117] refers to the closure of the debate on "the item under discussion". Such an "item" need not be an entire agenda item, but can be a sub-item, a particular proposal or set of proposals, or even an amendment to a proposal. For this reason it is important for the President to ascertain, as soon as a proposal for closure of debate is made, and in any event before asking the body to take a decision on it, what the scope of the proposal is. However, to the extent that this is not done, it should usually be assumed that the motion is intended to have the broadest effect it can sensibly be given, i.e., to close debate on as much of the agenda item as possible; certainly it should never be presumed, without explicit confirmation, that debate was meant to be closed merely on an amendment or on one of a series of related proposals.

D. *Closure achieved by other means*

7. Closure of debate achieved by a motion under rule 75 [117] does not differ substantially from that achieved by closure declared after the normal conclusion of debate or on the exhaustion of a closed list of speakers (rule 73 [115]); indeed, this is explicitly provided in the corresponding procedural rule of the Economic and Social Council (rule 45, E/5715/Rev.l). Nevertheless, the prohibition against the making of further statements and against introducing new substantive proposals (see paragraphs 2 and 4 above) are usually not enforced as strictly in the case of such informal closure.

II. THE VOTING PROCESS

A. *Structure of rule 88 [128]*

8. It should be recognized that rule 88 [128] in effect consists of two separate rules:

(a) The first sentence protects the integrity of the voting exercise (see section II.B below);

(b) The remaining text deals with explanation of votes (section II.C). This differentiation is explicitly recognized in the rules of procedure of the Economic and Social Council, which deal with these two subjects respectively in rules 63 and 62.

B. *Conduct during voting*

9. The first question is how to define "during voting" for the purpose of determining the interval during which the strict rule against interruptions must apply.[1] Though occasionally there have been a few differing rulings, in the past years it has been clearly recognized and consistently held that the period protected by the first sentence of rule 88 [128] (i.e., the period of voting in the "narrow sense") is merely the interval between the time the presiding officer initials the voting process by calling for the casting of votes or ballots on a particular question, and until the results of that particular vote are announced (cf. Economic and Social Council Rules of Procedure for United Nations Conferences, A/38/298, annex, rule 56). This is the only period that requires the extraordinary protection provided by the first sentence of rule 88 and in view of the severe restrictions in that sentence (e.g., the prohibition against normal points of order, or against routine procedural motions, such as to suspend a meeting) such protection should not, and in practice cannot, be extended to any period for which this is not absolutely necessary; for example, if a very long series of votes is to be taken, it may be necessary to do so in the course of more than one meeting, i.e., to interrupt for some hours or even some days (e.g., elections to principal organs).

10. In respect of a connected series of votes, it follows from the above that the first sentence of rule 88 [128] is not intended to cover the entire period during which several votes are taken, including the intervals between such votes (i.e., between two amendments to the same proposal or even between two ballots for the same post), which might be referred to as a period of voting in the "wider sense". On the other hand, it must be recalled that such a period of voting normally follows on an explicit or implicit closure of debate (see section I.D above) and is therefore subject to the restrictions consequent on such closure (sections I.A and B), and that often deadlines are set for the submission of substantive proposals which normally will have expired before the period of voting starts. Furthermore, the President often announces (and usually should announce), before or at the beginning of a period of voting, the procedure that he intends to follow during such period (e.g., to permit explanations before the vote on all proposals and amendments, then to call for votes successively on each proposal and the amendments thereto, and then to permit explanations after the vote), and to the extent such announcement is not objected to or is explicitly accepted, it becomes a decision governing that voting period, which can only be changed by an implicit or explicit reconsideration of that decision (subject to rule 81 [123]); even if no explicit regime is established for a period of voting, it may be assumed, on the basis of the usual practice, that a restrictive procedure is to be followed, i.e., that one vote will follow on another, uninterrupted by any substantive business and generally any explanations of vote, though permitting some procedural motions (e.g., suspension or adjournment of the meeting). Only in the somewhat exceptional situation that no such restrictions exist in respect of a particular voting period may room be made during intervals between votes for statements, substantive proposals and procedural motions, and especially (see section 11.C below) explanations of vote (i.e., either those after the previous vote or those before the next one).

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[1] The present memorandum does not deal with what types of points of order it is permissible to raise under the first sentence of rule 88 [128].

C. *Explanations of vote* [1]

11. The second sentence of rule 88 [128] states that "the President may permit members to explain their votes". By tradition, the right to explain a vote has become practically absolute (as stated, e.g., in Economic and Social Council procedural rule 62), though the President retains discretion (subject to the authority of the Assembly, rule 36 [107]) as to whether to permit explanations both before and after or only before (which would be unusual) or only after the vote. Also, if a series of votes is to be taken he may, but need not, allow explanations between such votes (see paragraph 10 above). Furthermore, it should be understood that explanations of vote are not part of the debate and that, therefore, the prior closure of debate does not affect the power of the President to permit explanations of vote either before or after the vote, since there is a distinction between the period of debate (cut off by rule 75 [117]) and the period of voting in the wider sense (governed in part by rule 88 [128]) and in part by *ad hoc* decisions made in respect of each such period (see end of paragraph 10).

10 November 19

[1] The present memorandum contains no discussion of what constitutes an explanation of vote, or restrictions on such explanations or an application to' decisions taken without a vote.

Suspension or adjournment of the meeting

Rule 118[1] [76]

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated but shall be immediately put to the vote. The Chairman may limit the time to be allowed to the speaker moving the suspension or adjournment of the meeting.

[1] See introduction, para. 7.

Order of procedural motions

Rule 119 [77]

Subject to rule 113, the motions indicated below shall have precedence in the following order over all other proposals or motions before the meeting:

(a) To suspend the meeting;
(b) To adjourn the meeting;
(c) To adjourn the debate on the item under discussion;
(d) To close the debate on the item under discussion.

Proposals and amendments

Rule 120[1] [78]

Proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the committee unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.

[1] See annex IV, paras. 87 and 88.

PROCEDURAL QUESTIONS RAISED IN CONNECTION WITH THE ADOPTION OF A REPORT OF THE SUBCOMMITTEE ON PETITIONS. INFORMATION AND ASSISTANCE 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 QUESTION WHETHER ACTION MAY VALIDLY BE TAKEN ON AN AMENDMENT NOT CIRCULATED IN ONE OF THE WORKING LANGUAGES QUESTION WHETHER A FINAL VOTE MUST BE TAKEN ON THE REPORT AS A WHOLE AFTER SEPARATE PARTS HAVE BEEN ADOPTED

Memorandum to the Officer-in-Charge, Department of Political Affairs, Trusteeship and Decolonization

This is in response to your memorandum of 31 August, requesting legal advice as to two procedural questions raised in connection with the adoption of the 226th Report of the Sub-Committee on Petitions, Information and Assistance 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.

1. As the Special Committee and its Sub-Committees are subsidiary organs of the General Assembly, they are to apply the procedures relating to committees of the Assembly, as provided in rule 161 of its rules of procedure.

2. With regard to the objection raised by a delegation concerning the failure to circulate the text of an amendment in one of the working languages before a vote was taken thereon, the relevant rule, namely rule 120, requires that "as a general rule" no proposals shall be put to a vote until the day following their circulation—which is understood to mean circulation in all the working languages. Chairmen are authorized to permit the discussion and consideration of amendments even if they have not been circulated at all or have only been circulated the same day. The practice in implementing this rule has been that frequent use is made of the exceptional authorization to act on uncirculated or only recently circulated amendments, particularly towards the end of a session. In particular, the procedure followed by the Chairman of the Sub-Committee, to read out the amendment at dictation speed to enable the interpreters to translate it carefully and the representatives to copy it down in their respective languages, is often followed. Consequently the objection in question is not well taken.

3. Rule 129 provides that if a proposal (such as the draft report) is divided, and action is taken to adopt separate parts thereof, a final vote must be taken on the proposal as a whole (i.e., on the sum of all the parts adopted separately). This is so whether the division was a formal one under the first part of rule 129, or is merely done informally. It is also immaterial whether the separate parts were adopted by votes or by consensus. The body as a whole must be given an opportunity of acting on (i.e., adopting or rejecting) the sum of all the separate parts. Consequently the demand of the delegation concerned was justified, and a vote on the report as a whole should now be taken.

September 1983

Decisions on competence

Rule 121[1] [79]

Subject to rule 119, any motion calling for a decision on the competence of the General Assembly or the committee to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.

[1] See annex IV, para. 96.

Withdrawal of motions

Rule 122 [80]

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any member.

Reconsideration of proposals

Rule 123 [81]

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the committee, by a two-thirds majority of the members present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

QUESTION WHETHER A TWO-THIRDS MAJORITY IS REQUIRED FOR THE RECONSIDERATION OF DECISIONS OF THE GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME

Internal memorandum

1. It is our view that under the rules of procedure of the Governing Council of the United Nations Development Programme a two-thirds majority is not required for the reconsideration of decisions of the Governing Council. On the contrary, General Assembly resolution 2029 (XX) of 22 November 1965 on the "Consolidation of the Special Fund and the Expanded Programme of Technical Assistance in a United Nations Development Programme" provides in its operative paragraph 4 that "decisions of the Governing Council shall be made by a majority of the members present and voting". This is repeated in rule 27 of the rules of procedure of the Governing Council.

2. A two-thirds majority for the reconsideration of a proposal which has been adopted or rejected is required only in the General Assembly and in its Main Committees (rules 83 and 124 of the rules of procedure of the General Assembly) and does not apply in regard to other organs, including the Economic and Social Council and the functional commissions of the Council. In the case of the Economic and Social Council, the absence of a provision requiring a two-thirds majority is, of course, based on Article 67, paragraph 2 of the Charter. It is to be noted in that respect that the Council Committee on Procedure in drawing up a revised version of the rules of procedure of the functional commissions rejected as contrary to Article 67 of the Charter an amendment requiring a majority of one third of the members for the adoption of a proposal.

3. It is true that the Governing Council of UNDP appears to be a subsidiary organ of the General Assembly and that under rule 162 of the rules of procedure of the General Assembly "the rules relating to the procedure of committees of the General Assembly […] shall apply to the procedure of any subsidiary organ unless the General Assembly or the subsidiary organ decides otherwise". It is our view however that rule 124 cannot apply to the Governing Council because both the General Assembly in resolution 2029 (XX) and the subsidiary organ in rule 27 of its rules of procedure have "decided otherwise".

29 June 1970

QUESTION WHETHER RULE 124 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY IS APPLICABLE WHEN A MOTION FOR DELETION RELATING TO A PART OF A PROPOSAL IS SUBMITTED AFTER AN AMENDMENT FOR DELETION OF THAT SAME PART HAS BEEN REJECTED

Note addressed to the Secretary of the Second Committee

1. You asked us the following question: is rule 124 of the rules of procedure of the General Assembly concerning the reconsideration of proposals applicable when, after the rejection of an amendment proposing the deletion of a paragraph in a draft resolution, a motion for division concerning the same paragraph is submitted? In our view, the answer is in the negative. Rejection of an amendment proposing the deletion of a paragraph is not the same as adoption of the paragraph: the considerations which guide a delegation when it votes on a proposal for deletion may be very different from those which motivate it when it expresses its opinion on a paragraph voted on separately.

2. In addition, if we admit that rule 124—and therefore also rule 83 which is the symmetrical provision for plenary meetings—is applicable in the situation under consideration, illogicalities may result. The following example demonstrates this particularly clearly: if in the General Assembly a draft resolution on an important question within the meaning of rule 85 is the subject of an amendment proposing the deletion of one paragraph and if that amendment does not obtain at least two thirds of the votes, the amendment is rejected. Thus 34 per cent of the Members present and voting suffices to defeat the amendment. If we admit that a motion for division concerning the same paragraph, submitted after the rejection of the amendment, falls within the scope of rule 83 concerning the reconsideration of proposals, the same 34 per cent would be allowed to prevent the motion for division from being put to a vote, the result being that a paragraph opposed by 66 per cent of the Members present and voting would be retained in the draft resolution. The application of rule 83 in such a situation would therefore be unjustifiable; in any case, the provisions of rule 91 which enable the majority to prevent a separate vote provide sufficient protection against the efforts of a minority to deprive a proposal of its substance.

3. While the effect in committees is not so great as in the General Assembly, there is still a slight difference in the voting requirements, and the considerations which delegations may take into account may be different. In any case, the considerations of principle advanced in paragraph 1 above are equally valid for rule 83 and rule 124 and, in addition, it would be illogical to interpret differently two symmetrical provisions.

8 December 1971

QUESTION OF REPRESENTATION OF DEMOCRATIC KAMPUCHEA AT THE RESUMED THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY
PROVISIONAL SEATING OF CHALLENGED REPRESENTATIVES OF A MEMBER STATE
MAJORITY REQUIRED FOR RECONSIDERATION OF REPRESENTATIVES' CREDENTIALS ALREADY ACCEPTED BY THE GENERAL ASSEMBLY
THE GENERAL ASSEMBLY IS NOT BOUND BY OTHER UNITED NATIONS ORGANS' DECISIONS REGARDING REPRESENTATION

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

Credentials questions

1. The current thirty-third session of the General Assembly has accepted the credentials of the delegation of Democratic Kampuchea signed by the Deputy Prime Minister in charge of Foreign Affairs of that country.

2. The Security Council at its 2108th meeting held yesterday approved the report of the Secretary-General (S/13021) stating that the credentials of the delegation of Democratic Kampuchea to the Security Council emanating from the same authority were in order. Subsequently, the Council extended an invitation to Prince Sihanouk, Chairman of the delegation, to address the Council under rule 37 of its procedure, i.e. as a representative of a Member of the United Nations which is not a member of the Security Council.

3. In the light of the above, it is clear that it is the delegation of Democratic Kampuchea that should be seated in the General Assembly and in its Main Committees. If the question of representation is raised in plenary[1] and the credentials of the Kampuchean delegation are challenged, the provisions of rule 29 of the General Assembly rules of procedure become applicable. The rule provides as follows:

> "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has/given its decision."

Since the Credentials Committee has already reported on the credentials of the delegation of Kampuchea at the current session and the General Assembly has accepted these credentials, in the absence of conflicting credentials submitted by the new regime, a decision to refer the former credentials to the Credentials Committee once again would involve a re-opening of the matter and therefore such a decision would in effect amount to a motion for reconsideration of the decision concerning the credentials of the

[1] The Chairmen of the Second, Third and Fifth Committees should be advised that if the question is raised in their Committee they should state that it is not a matter which the Committee can consider and should draw the attention of the President to the fact that it has been raised.

delegation of Kampuchea. Under rule 81 of the Assembly rules such a motion required a two-thirds majority for adoption by the Assembly.

Inclusion of an additional agenda item

4. Should any member of the Assembly propose the inclusion of the question of the representation of Democratic Kampuchea or even the question of the situation in Democratic Kampuchea as an additional item on the agenda for consideration at the resumed session this raises the question of the majority required for such a decision to be adopted by the Assembly. In this connexion it should be recalled that on 20 December 1978, at its 90th meeting, the General Assembly decided that "the present session would be suspended to be resumed on 15 January 1979 in order to proceed to a vote on item 32 (Policies of *apartheid* of the Government of South Africa) and to consider the reports of the Second Committee on agenda items 58 *(b)* to *(e)* and 70, the report of the Third Committee on agenda item 88 and Part IV of the report of the Fifth Committee on item 100". (In paragraph *(b)* of its second report (A/33/250/Add. 1) the General Committee recommended that "the session should be resumed on 15 January 1979 for a period of one week to 10 days exclusively to conclude the consideration of the remaining items on the agenda of the current session".) It is clear from the foregoing that any decision to include a new item for consideration during the resumed session would involve a reconsideration of the General Assembly's earlier decision regarding its programme of work. Under rule 81 of the Assembly rules, a motion to reconsider a decision taken at the same session requires a two-thirds majority for adoption. If the motion to reconsider is adopted, then rule 15 of the General Assembly rules becomes applicable. Under this rule, additional items may be placed on the agenda if the General Assembly so decides by a majority of the representatives present and voting.

General observations

5. In connexion with the question of representation of a Member State in the United Nations, it is relevant to refer to General Assembly resolution 396 (V) of 14 December 1950. The operative parts of this resolution read as follows:

> "1. *Recommends* that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
>
> "2. *Recommends* that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
>
> "3. *Recommends* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;

> "4. *Declares* that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;
>
> "5. *Requests* the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate."

It is clear from this resolution that the General Assembly considers itself the organ best suited to resolve the controversy where more than one authority claims to be the Government entitled to represent a Member State of the United Nations. Moreover, the General Assembly does not consider itself bound by decisions by other United Nations organs taken with regard to questions of representation.

12 January 1979

VOTING

Voting rights

Rule 124 [82]

Each member of the committee shall have one vote.

USE OF THE TERM "CONSENSUS" IN UNITED NATIONS PRACTICE

Summary of a statement made at the11th meeting of the
Population Commission, on 6 March 1974

The Director of the General Legal Division, Office of Legal Affairs, stated that no plenipotentiary conference under United Nations auspices had included in its rules of procedure a provision on consensus, partly due to the fact that it was somewhat difficult to arrive at an exact definition of consensus, and partly because the objective which was usually sought, namely, that every effort should be made to achieve a consensus before a vote was taken, could better be achieved by simply an understanding at the beginning of the conference.

In United Nations organs, the term "consensus" was used to describe a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record.

The statement was made in connexion with a proposal (E/CN.9/L. 110) that the rules of procedure of the World Population Conference, 1974, should specify that “the President of the Conference has the possibility to recommend that the decisions on the important matters of substance shall be taken, if possible, by consensus".

The Population Commission subsequently agreed to annex the following recommendation to the revised preliminary draft of the rules of procedure of the Conference, for consideration by the Council:

> "The Population Commission considers that it is highly desirable for the World Population Conference, 1974, to reach decisions on the basis of consensus, which is understood to mean, according to United Nations practice, general agreement without vote, but not necessarily unanimity."

By resolution 1835 (LV1) of 14 May 1974, the Council approved as the provisional rules of procedure for the Conference the text of the revised preliminary draft of the rules of procedure, as well as the annex on consensus recommended by the Population Commission. The provisional rules of procedure were adopted by the World Population Conference subject to some amendments unrelated to the question under consideration (see document E/5585, p. 57).

It should be noted, however, that the rules of procedure of the Third Conference on the Law of the Sea, adopted by the Conference on 27 June 1974 (A/CONF.62/30/Rev.l, United Nations publication, Sales No. E.74.1.18) contain a rule 37 on "Requirements for voting", which reads as follows:

"1. Before a matter of substance is put to the vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the majority specified in paragraph 1 of rule 39.

"2. Prior to making such a determination the following procedures may be invoked:

"(a) When a matter of substance comes up for voting for the first time, the President may, and shall if requested by at least 15 representatives, defer the question of taking a vote on such matter for a period not exceeding 10 calendar days. The provisions of this subparagraph may be applied only once on the matter.

"(b) At any time the Conference, upon a proposal by the President or upon motion by any representative, may decide, by a majority of the representatives present and voting, to defer the question of taking a vote on any matter of substance for a specified period of time.

"(c) During any period of deferment, the President shall make every effort, with the assistance as appropriate of the General Committee, to facilitate the achievement of general agreement, having regard to the over-all progress made on all matters of substance which are closely related, and a report shall be made to the Conference by the President prior to the end of the period.

"(e) If by the end of a specified period of deferment the Conference has not reached agreement and if the question of taking a vote is not further deferred in accordance with subparagraph (b) of this paragraph, the determination that all efforts at reaching general agreement have been exhausted shall be made in accordance with paragraph 1 of this rule.

"(f) If the Conference has not determined that all efforts at reaching agreement had been exhausted, the President may propose or any representative may move, notwithstanding rule 36, after the end of a period of no less than five calendar days from the last prior vote on such a determination, that such a determination be made in accordance with paragraph 1 of this rule; the requirement of five days' delay shall not apply during the last two weeks of a session.

"3. No vote shall be taken on any matter of substance less than two working days after an announcement that the Conference is to proceed to vote on the matter has been made, during which period the announcement shall be published in the Journal at the first opportunity."

QUESTION WHETHER WITHIN THE TRADE AND DEVELOPMENT BOARD A DELEGATION CAN INTRODUCE RESERVATIONS TO A CONSENSUS RESOLUTION AFTER THE CLOSURE OF THE SESSION DURING WHICH THAT RESOLUTION WAS ADOPTED

Memorandum to the Senior Legal Liaison Officer, United Nations Conference on Trade and Development

You have requested a legal opinion on the question "whether a delegation can introduce reservations to a consensus resolution after the closure of the session during which that resolution was adopted". The legal opinion was requested after a statement was made by the representative of a Member State at the twenty-fourth session of the Trade and Development Board notifying the Board that the Member State in question had formally reserved its position on part B of resolution 222 (XXI) adopted by the Board at its twenty-first session by consensus.

From a legal standpoint it is clear that a delegation can only effectively register a reservation to a consensus resolution at the time of adoption of the resolution in question. Consensus is generally understood to mean the adoption of a resolution or a decision without a vote in the absence of any formal objection or opposition, and therefore even a reservation made formally at the time of adoption of the text, while indicative of a qualified assent, does not prevent the adoption of the consensus text in question. In our view the statement made by the representative of the Member State concerned in respect of resolution 222 (XXI) during the twenty-first session of the Board cannot be characterized as a reservation to a resolution adopted by consensus at a previous session of the Board. The statement must be regarded as reflecting the position of the State concerned with regard to the consensus resolution at the time that the statement was made in the light of its interpretation of relevant developments in the period subsequent to the adoption of the resolution. While it is the sovereign right of every State to make its position known and even to change its position on a particular subject at any time, such an act cannot affect the validity of the earlier adoption by consensus of a resolution on that same subject. It should be borne in mind that while resolutions of General Assembly and its organs are of a recommendatory character, there may be situations where a State enters into a commitment to carry out the provisions of a resolution in good faith. If it is argued that such commitments have been made in the case under review, it would appear to be the position of the State concerned that such commitments are no longer binding in view of a breach of undertakings of sufficient gravity by certain parties which releases other parties from their earlier commitments. Underlying this argument is a general principle of law, its application in the circumstances of this case not being a matter on which the Secretariat is competent to give an opinion.

4 May 1982

DECISION OF THE ECONOMIC AND SOCIAL COUNCIL IN ITS RESOLUTION 1982/26 OF 4 MAY 1982 THAT THE COMMISSION ON THE STATUS OF WOMEN, WHEN ACTING AS PREPARATORY BODY FOR THE 1985 WORLD CONFERENCE TO REVIEW AND APPRAISE THE ACHIEVEMENTS OF THE UNITED NATIONS DECADE FOR WOMEN, SHOULD -OPERATE ON THE BASIS OF CONSENSUS"
PRACTICE FOLLOWED IN UNITED NATIONS ORGANS WITH SIMILAR TERMS OF REFERENCE

Memorandum to the Acting Assistant Director, Office of Secretariat Services for Economic and Social Matters

1. You have requested the Office of Legal Affairs to provide clarification with regard to the decision of the Economic and Social Council in its resolution 1982/26 of 4 May 1982 that the Commission on the Status of Women, when acting as preparatory body for the 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, should "operate on the basis of consensus".

2. Although there is no definitive or authoritative interpretation of the words "on the basis of consensus", we would suggest, in the light of the practice followed in United Nations organs with similar terms of reference, that the Commission consider the following interpretation in implementing Council resolution 1982/26 and General Assembly resolution 37/60 of 3 December 1982. When acting as the preparatory body for the 1985 World Conference, the Commission may decide by vote all questions of a procedural nature; however, all decisions on substantive questions, i.e., those relating to any aspect of the Conference, should be taken on the basis of consensus. If the Commission adopts this approach, it would not be precluded from taking indicative votes on those proposals on which a consensus could not be achieved; the results of such votes could also be included in the preparatory body's report to the Economic and Social Council, with an indication that these proposals are not considered as adopted by the Commission.

28 January 1983

RIGHT TO VOTE OF A UNION OR GROUP OF MEMBER STATES
RIGHTS OF THE EUROPEAN COMMUNITY IN THE GENERAL ASSEMBLY

Letter to the Director, Office of International Standards and Legal Affairs, United Nations Educational, Scientific and Cultural Organization

I wish to acknowledge receipt of your telefax message dated 20 September 1995.

In your communication, you inquire about the following:

(1) Do the rules and/or practice of the United Nations permit the full participation, with the right to vote, by any union or group of Member States, on the same footing as other participating Member States, in meetings of the Governing bodies of the Organization?

(2) If so, may the Member States of the union or group also participate at the same time in their respective individual capacities in such meetings with the right to vote?

The Charter of the United Nations grants the right to vote in the intergovernmental organs of the United Nations only to individual Member States. Intergovernmental organizations or other entities cannot be Members of the United Nations, and consequently do not have the right to vote in its organs. However, such entities may participate in the work of United Nations organs as observers. In your communication, you refer to "any union or group of Member States", by which you may have in mind the "European Union". In this connection, please note that the European Economic Community was granted observer status in the General Assembly by the Assembly resolution 3208 (XXIX) of 11 October 1974. Since then, that organization has changed its name to the "European Community", which is represented at Headquarters by the Presidency of the Council of the European Union and by the European Commission.

As to the scope and extent of the participation of intergovernmental organizations enjoying observer status in the work of United Nations organs, they obviously do not enjoy the same rights as Member States but, in general, a limited right of participation in substantive discussions on items of relevance to them. Intergovernmental organizations, as well as other observers, cannot perform a number of acts which are reserved for the full members of an organ, such as the introduction of substantive proposals or procedural motions, the raising of points of order, the circulation of communications as official documents of that organ and the exercise of the right of reply.

As regards the European Community, the particular nature of this organization and its sometimes exclusive competence on behalf of its Member States in certain areas has led the General Assembly to grant to the Community rights of "full participation" in a number of United Nations conferences, such as the United Nations Conference on Environment and Development of 1992. In paragraph 7(a) of resolution 47/191 of 22 December 1992, the General Assembly recommended to the Economic and Social

Council that the newly established Commission on Sustainable Development should "provide for the European Community, within its areas of competence, to participate fully ... *without the right to vote"* (emphasis added). Pursuant to that recommendation, the Council, on 8 February 1995, adopted decision 1995/201, which amends the rules of procedure of the functional commissions of the Council and spells out the scope of the "full participation" by the Community in the work of the Commission.

As to your second query, let me firstly reiterate that the issue of voting is moot, as only Member States can vote in United Nations organs. As to participation, the distribution of competence between an organization and its member States and consequently the right to make statements on a particular subject matter, is an internal matter between the organization and its members and does not affect per se the work of the organs of the United Nations. Needless to say, an intergovernmental organization can only exercise the limited rights of participation granted to it, even if it declares that it speaks on behalf of its member States or that it exercises exclusive competence over a particular subject matter.

29 September 1995

QUESTION OF VOTES BY CORRESPONDENCE
PROCEDURE APPLIED BY THE COMMISSION ON NARCOTIC DRUGS

Letter to the Deputy Secretary-General, World Meteorological Organization

1. You have enquired about the experience of the United Nations in regard to votes by correspondence. The closest parallel that we know of in the United Nations to the system of votes by correspondence of WMO which you describe is in the Commission on Narcotic Drugs. That Commission, at its twentieth session in 1965, adopted its resolution 1 (XX) to deal with the problem of placing new narcotic substances under international control, pursuant to article 3 of the Single Convention on Narcotic Drugs, 1961, during periods when the Commission was not in session. This resolution provides as follows:

"The Commission on Narcotic Drugs,

"Considering the importance of ensuring that new narcotic substances are brought under control as quickly as possible,

"Sharing the concern of the World Health Assembly (resolution WHA 18.46) about the dangers to public health which may arise if the control of such substances is delayed,

"Taking into account the provisions of the Single Convention on Narcotic Drugs, 1961, under which decisions on the control of narcotic substances are taken by the Commission on Narcotic Drugs,

"Considering also that the Commission on Narcotic Drugs meets not more than once a year,

"Believing that steps can be taken under the present terms of the 1961 Convention to speed up the process of placing new substances under control,

> "1. *Resolves* that if a recommendation is made by the World Health Organization for the control of a new narcotic substance, and the Commission is not, or will not within a period of three months be in session, a decision should be taken by the Commission before its next session; and
>
> "2. *Requests* the Secretary-General, for that purpose, to arrange in these exceptional circumstances for a decision of the Commission to be taken by a vote of the Commission by mail or telegram, and for a report to be made to the Commission at its next session"

2. Various decisions have been taken by the foregoing procedure. In its report on the work of its twenty-first session in 1966, the Commission made the following observation:

> "The Commission noted that the procedure it had adopted at its twentieth session regarding voting by mail, on a recommendation of WHO under article 3 of the 1961 Convention, had worked satisfactorily that year. It agreed with the representative of the United Kingdom that in future cases when that procedure was applied, a request by any member of the Commission for further discussion in the Commission regarding any such recommendation of WHO would automatically place the matter on the agenda of the Commission session immediately following."

Further observations concerning the procedure were made in the report of the Commission's twenty-second session. In particular, the Commission expressed the hope that Commission members would reply promptly to requests for votes by mail in accordance with its resolution 1 (XX).

3. We do not believe that any other United Nations organ has adopted a similar form of procedure for taking decisions by correspondence, but it not infrequently happens that the report of a body is approved by the members by correspondence after the end of the session. Mention may also be made of the rules of procedure of the General Assembly, which provide in rule 4 that regular sessions shall be held away from Headquarters if a majority of Members concur within thirty days in a request to that effect, and in rules 8 and 9 that a special session or emergency special session shall be held if a majority of Members similarly concur; in such cases concurrence is expressed by correspondence. Moreover, the Economic Commission for Africa now meets only every second year, and in the years when it does not meet, it approves draft reports which are circulated by mail. The procedure is described in one of the Commission's reports.

2 April 1970

Consensus in UN practice General[1]

Background

1. In accordance with Rule 82 of the Rules of Procedure of the General Assembly, each of its members shall have one vote. This provision is based on Article 18 (1) of the UN Charter and cannot be altered by the Assembly.

2. Consistent with the standard procedure for decision-making in universal international organizations and international conferences after WWII, the vast majority of the General Assembly's decisions were initially made by the affirmative vote of more than two-thirds of the Members present and voting.[2]

3. From the mid-60's - early 70's, a growing number of decisions were adopted "without a vote" or "by consensus": at the nineteenth session (1964), in view of special circumstances relating to several Member States in arrears with their contributions to the regular budget, the General Assembly did not adopt any decision by means of a vote.[3]

4. Since then, in particular in view of the decolonization process and the related admission of a significant number of new Member States, the consensus technique has played a major role in the practice of the General Assembly, as well as in its main committees and other organs, including UN Conferences.

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[1] Paper prepared by the UN Secretariat.

[2] Article 18 (2) and (3) of the UN Charter differentiates between "important questions" for which decisions are made by a two-thirds majority and "other questions" for which decisions are made by a simple majority:

"2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non permanent members of the Security Council, the election of the members of the ECOSOC, the election of the members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the UN, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting."

[3] 62 decisions out of 132 were adopted without a vote during the twenty-first session (1966) (Repertory of the Practice, Supplement 4, Volume I, p. 227; 155 out of 274 during the thirty-third session (1978) (Repertory of the Practice, Supplement 5, Volume I, p. 213); 220 out of 271 during the forty-fifth session (1990) (The Charter of the United Nations, A commentary, Bruno Simma, Oxford University Press, p. 326).

5. While consensus is an entirely practice based technique constituting a *de facto* amendment of the UN Charter, in 1971, the General Assembly took a small step towards its introduction into its own rules of procedure upon adoption of resolution 2837 (XXVI) of 17 December 1971 by which it approved, among others, the recommendation made in the report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly and annexed it to its rules of procedure.[4]

6. In 1986, the General Assembly confirmed the existing practice and the underlying gentlemen's agreement when it adopted resolution 41/213 of 19 December 1986 on the budgetary process.[5]

7. None of the above developments lead however to a mandatory replacement of the majority rule by consensus in the rules of procedure.

Definition

8. Consensus is generally understood as a decision-taking process consisting in arriving at a decision without formal objections and vote. It may however not necessarily reflect “unanimity” of opinion on the substantive matter. It is used to describe the practice under which every effort is made to achieve general agreement and no delegation objects explicitly to a consensus being recorded.

9. Consensus decisions may be expressed as being adopted "without a vote" or "by consensus", but never as "unanimous decisions".

10. Decisions made by consensus have the same legally binding status as decisions adopted by other methods. A delegation that does not participate in the decision making, but does not prevent the Chair from stating that the decision is adopted by

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[4] The Special Committee on the Rationalization of the Procedures and Organization of the General Assembly recommended in its 1971 report: 'The Special Committee considers that the adoption of decisions and resolutions by consensus is desirable when it contributes to the effective and lasting settlement of differences, thus strengthening the authority of the UN. It wishes, however, to emphasize that the right of every member state to set forth its views in full must not be prejudiced by this procedure" (A/8426, paragraph 289 (1971)).

[5] Paragraphs 5, 6 and 7 of Resolution 41 /213 (Review of the efficiency of the administrative and financial functioning of the United Nations) read as follows:

"5. *Reaffirms* that the decision-making process is governed by the provisions of the Charter of the United Nations and the rules of procedure of the General Assembly;

“6. *Agrees* that, without prejudice to paragraph 5 above, the Committee for Programme and Co-ordination should continue its existing practice of reaching decisions by consensus; explanatory views, if any, shall be presented to the General Assembly;

“7. *Considers it desirable* that the Fifth Committee, before submitting its recommendations on the outline of the programme budget to the General Assembly in accordance with the provisions of the Charter and the rules of procedure of the Assembly, should continue to make all possible efforts with a view to establishing the broadest possible agreement;"

consensus, is deemed to have participated in it. It follows that when a decision has been reached by consensus, it constitutes a decision of the meeting equivalent to a decision by vote that may only be reopened in accordance with the rules of procedure applicable to the reopening of decisions.

Decisions made "by consensus" vs. decisions made "without a vote"

11. *By Consensus* (strong form of consensus): Decisions are referred to as having been made "by consensus" in cases where - although there may not be unanimity of opinion - disagreeing delegations do not press their disagreement to the point where no "decision by consensus" may be made. They may voice their disagreement and have their views reflected in the record. All delegations are however in the end considered to be closely linked with the decision.

12. *Without a Vote* (weak form of consensus): Reference is made to decisions "without a vote" in cases where delegations do not wish to be closely associated with the decision, yet have no formal objection to the adoption. Such decisions have less of a positive connotation than those made by consensus and do not represent "consensus" in its truest form.

Decisions made "by consensus" vs. decisions made by "unanimity"

13. Consensus should not be confused with unanimity i.e., decision technique by which an agreement is reached by a vote in which no negative votes, but some abstentions may be cast. In fact, unanimity may be reached in cases where no delegation is against the adoption of a decision.

Scope of application of consensus

14. Consensus is generally understood to refer to all decisions on *substantive* questions. Decisions on questions of a *procedural* nature generally continue to be made subject to voting.

Reservations and explanations of positions

15. Though consensus may be attained when no delegation objects to a consensus being recorded, some may register reservations or objections to the substantive matter at issue.

16. A reservation made *at the time of adoption,* while indicative of a qualified assent, does not prevent the adoption of the consensus text in question. A reservation made to a consensus decision *after the closure of the session* during which that decision was adopted does not affect the validity of the decision. Instead, such a statement is regarded as reflecting the position of the State concerned in light of its interpretation of relevant developments in the period subsequent to the adoption of the decision.

Recourse to vote by UN organs operating by consensus

17. No consensus may be obtained if even a single representative objects explicitly to a consensus being recorded: in such cases, the only possibility is to proceed to a vote, subject to the requirements of the relevant rules of procedure. It would however, not be permissible for an organ to decide, even by a large majority, that a certain decision be taken by consensus, and thus to disregard a demand for a vote thereon, even by one State - for such a decision would deprive the objector of the right to exercise the vote specifically granted by the Charter and the rules of procedure.

18. Even where it has become common practice for a UN organ to operate by consensus, delegations are always entitled to request a vote on any matter - in that case, that vote would be valid.[6] This option would however not apply to cases where decision-taking is to be exclusively done by consensus in accordance with express provisions to that effect adopted by a competent organ.

19. Consensus would not either preclude a body operating under that modality from taking indicative votes on substantive proposals for which consensus could not be achieved. In such instances, an indication can be made in the record that the proposal is not considered as having been adopted by the body.

Role of the Secretary-General

20. Article 98 of the Charter provides *inter alia* that "the Secretary-General shall act [as the chief administrative officer of the Organization] in all meetings of the General Assembly [...]". Thus the Rules of Procedure mirror that provision and further provide that the Secretary-General may speak at any meeting. Accordingly, and although the General Assembly (and the other principal legislative organs and their committees) are masters of their own procedure, subject to the Charter, the Secretary-General could always appeal to Member States if he considered that a particular mode of reaching decision was not effective.

Pros and cons of consensus

21. Decisions made by consensus will tend to result in a text that is the "least common denominator" of the positions of the participants, which may make the text "practically meaningless." However, choosing to make decisions by this method may increase the chances of adopting a decision quickly. Further it is perhaps best to have consensus made the preferred method rather than the only method of taking decisions, since if consensus is the only method, any one participant can "hold the others to ransom."

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[6] This has e.g. occurred on at least four occasions on substantive questions since the adoption of General Assembly resolution 41/213 of 19 December 1986 relating to the budgetary process.

QUESTION OF VOTING OR REPRESENTATION BY PROXY IN THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES

Letter to a resident representative of the Technical Assistance Board

1. We are replying to your letter concerning an enquiry which you received from one of the embassies in Addis Ababa as regards the question of one person acting as a delegate to a United Nations body for two or more countries.

2. The matter is one which has been raised from time to time in the past and one on which the Office of Legal Affairs has taken a consistent stand: that representation by one delegate of more than one country is improper and undesirable. There have been several instances where attempts at such representation at United Nations Conferences have been effectively discouraged and the position of the Organization on this matter could be regarded as a constant one.

3. The practice of one delegate representing two or more countries, if allowed to grow up, would be inconsistent with one of the basic concepts underlying deliberations in United Nations organs *i.e.* that the various members of these organs should be represented by different delegates who reach conclusions on the issues discussed only after considering the arguments advanced in debate as they affect the interests of their own respective countries. It would be undesirable and open to objections for one delegate to represent more than one country in an organ taking political decisions and thereby to have more voting power than other delegates.

4. The purely procedural implications of such a practice in relation to voting at the conclusion of debate are also to be kept in mind. To take as an example the rules of procedure of the Economic Commission for Africa itself, rule 55 provides that "Each member of the Commission shall have one vote" and rule 57 that "... the Commission shall normally vote by show of hands ...". The practical difficulties alone that will be encountered in the application of these rules if one delegate were representing two Member States are self-evident.

5. The participation in a technical meeting through an expert already participating for another country does not seem to present much practical importance. The expert will not be able to bring any special technical contribution to the work of the organ because he represents two countries rather than one, and the political significance of being "represented" at such technical meetings by an expert from another country seems to be negligible.

6. Of course, the special difficulties facing some of the smaller Member States, particularly in Africa, in sending representatives of their own to meetings are understood and appreciated. You will recall, however, that under United Nations procedures and practices, Member States receive adequate information as to the proceedings of United Nations organs through the records and reports which are sent to

them by the Secretariat. Members unable to participate in meetings can address written communications to the organs concerned, which are reproduced as official documents.

1 September 1965

QUESTION OF CREDENTIALS, VOTING RIGHTS AND FINANCIAL OBLIGATIONS OF SOUTH AFRICA UPON RESUMPTION OF ITS PARTICIPATION IN THE WORK OF THE GENERAL ASSEMBLY ARTICLE 17 OF THE CHARTER

Memorandum to the Chief of Staff, Executive Office of the Secretary-General

1. In response *to* your request for comments in connection with a note on a meeting with the Permanent Representative of South Africa on the above subject, I would like to submit the following observations.

2. The resumption of participation by South Africa in the work of the General Assembly and other United Nations bodies raises the issues of credentials, voting rights and financial obligations under Article 17 of the Charter of the United Nations.

3. As far as the issue of credentials is concerned the situation is very simple. When the Government of South Africa submits credentials, they will be forwarded to the Credentials Committee of the General Assembly. It is our understanding that, since such credentials are now being issued by a legitimate Government, they will be accepted by the Credentials Committee, and subsequently, pursuant to the recommendation of the Credentials Committee, by the General Assembly.

4. The issue of South Africa's voting rights is more complicated. Article 19 of the Charter provides that a Member which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two full years. The second sentence of Article 19, however, provides that the General Assembly may permit such a Member to vote "if it is satisfied that the failure to pay is due to conditions beyond the control of the Member". Such a decision is within the exclusive competence of the General Assembly, upon the advice of the Committee on Contributions. Rule 160 of the rules of procedure of the General Assembly provides in part, that the Committee shall "advise the General Assembly ... on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter". There is a limited practice in this regard. However, typically the request is made by the country itself.

5. Pursuant to the first sentence of Article 19 of the Charter, South Africa is currently in arrears and thus may not vote in the General Assembly. Pursuant to the second sentence of Article 19 of the Charter, the General Assembly may nevertheless permit South Africa to vote if it is satisfied that South Africa's failure to pay is attributable to conditions beyond its control. That decision would allow South Africa to vote in the General Assembly notwithstanding the fact that its arrears have surpassed the limit provided for in Article 19. It should be noted that, so far, the General Assembly has never explicitly applied this provision of Article 19.

6. With reference to the issue of South Africa's financial obligations it must be pointed out that, although the Government of South Africa was unable to participate in the work of the General Assembly and other United Nations bodies, South Africa's continued membership as a State in the United Nations and its obligations under Article 17 of the Charter have never been in dispute. As a matter of law South Africa has a legal obligation to pay the arrears which are due under Article 17 of the Charter.

7. Thus, even if the General Assembly were to decide pursuant to Article 19 that it is satisfied that the failure of South Africa to pay is due to conditions beyond its control, that decision would only allow South Africa to vote in the general Assembly notwithstanding the fact that its level of arrearages had surpassed the limit in Article 19. The assessment of South Africa and its arrearage would remain unaffected. Article 19 only relates to voting in the General Assembly and contains no provision for deferring or suspending assessments or for relieving a State of its financial obligations. That would be a matter of basic policy for the Members of the Organization, through the General Assembly, to determine in accordance with Article 17, paragraph 2, of the Charter: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

………

9. In connection with the case of China, it is worth mentioning that by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided to expel forthwith the representatives of Chiang Kai-Shek from the place which they unlawfully occupy at the United Nations and to restore all rights to the People's Republic of China. Under the resolution, the representatives of the People's Republic of China were recognized as the only legitimate representatives of China to the United Nations. In the light of that resolution, the Assembly subsequently decided by resolution 30-49 C (XXXVII) that the assessed contributions for China should be based on the period starting from 25 October 1971. By the same resolution, all unpaid assessed contributions for the period prior to 25 October 1971 were transferred to a special account and were included as a part of the short-term deficit of the Organization for the purposes of compute that deficit. It appears from the foregoing that from the legal point of view the case of China is completely distinct from the situation of South Africa.

1 June 1994

Majority required

Rule 125 [85]

Decisions of committees shall be made by a majority of the members present and voting.

VOTING REQUIREMENTS IN MAIN COMMITTEES OF THE GENERAL ASSEMBLY ON PROPOSALS TO AMEND THE CHARTER

Note prepared at the request of the Secretary of the Second Committee

1. You have requested an opinion concerning the voting requirements in Main Committees of the General Assembly on proposals to amend the Charter.

2. We would like to point out first that when previous amendments to the Charter were considered by Main Committees (namely by the Special Political Committee at the eighteenth session and by the Sixth Committee at the twentieth session) no question concerning any special voting requirements was raised.

3. While Article 108 of the United Nations Charter lays down special voting requirements for the adoption of amendments to the Charter, namely two-thirds of the members of the General Assembly, this requirement applies only to a vote in plenary where the amendments are adopted. The Main Committee's action is a recommendation to the General Assembly and is governed, as all decisions of Committees of the General Assembly (except on a question of reconsideration) by rules 126 and 127 of the rules of procedure of the Assembly in accordance with which decisions in the Committees of the General Assembly are made by a majority of the members present and voting.

4. In this connexion mention should be made of another Charter requirement concerning voting majorities, namely the provision in Article 18, paragraph 2, that decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. It is to be noted that that requirement has always been applied only to the decisions of the General Assembly itself taken in plenary and not to decisions of Committees.

9 December 1971

Meaning of the phrase "members present and voting"

Rule 126 [86]

For the purposes of these rules, the phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.

Method of voting

Rule 127[1] [87]

(a) The committee shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the members, beginning with the member whose name is drawn by lot by the Chairman. The name of each member shall be called in any roll-call, and its representative shall reply "yes", "no" or "abstention". The result of the voting shall be inserted in the record in the English alphabetical order of the names of the members.

(b) When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

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[1] See introduction, para. 24; see also annex IV, para. 84 and annex VII, para. 2.

COMMENTS ON SOME PROCEDURAL QUESTIONS IN CONNEXION WITH THE PROPOSAL THAT THE THIRTY-THIRD SESSION OF THE GENERAL ASSEMBLY BE HELD AWAY FROM UNITED NATIONS HEADQUARTERS

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. This memorandum responds to several procedural questions that have been raised in connexion with the proposal that the thirty-third session of the General Assembly meet in [name of the capital of a Member State].

I. *Majority required for a decision by the General Assembly to meet away from Headquarters*

2. It has been suggested that a decision by the General Assembly to hold a session away from Headquarters requires an absolute majority, i.e. the affirmative vote of a majority (75)[1] of all the Members of the United Nations, as provided in the final clause of rule 3 and in rule 4 of the Assembly's rules of procedure. These rules state:

> *"Place of meeting*
>
> "Rule 3
>
> "The General Assembly shall meet at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision taken at a previous session or at the request of a majority of the Members of the United Nations.
>
> "Rule 4
>
> "Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly."

3. These rules clearly distinguish between a decision to hold a session away from Headquarters made by the Assembly during a session and a determination to hold a session away from Headquarters made outside the Assembly in accordance with the procedure specified in rule 4. The latter, for which an absolute majority is required, is not a decision of the General Assembly but a determination made by the membership of the United Nations.

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[1] At the date of drafting of the above opinion, the membership of the United Nations stood at 150.

4. The majority required for decisions of the General Assembly is specified in paragraphs 2 and 3 of Article 18 of the Charter (which are reflected in rules 83-86 of the rules of procedure): a two-thirds majority of the members present and voting for decisions on important questions and on those additional categories decided by the Assembly, and a simple majority of the members present and voting for other questions. As these are Charter provisions, the Assembly itself cannot vary them, either by adopting particular rules of procedure or on an *ad hoc* basis, so as to provide that certain decisions be taken by majorities different from those specified in the Charter.

5. Under the Charter and the rules of procedure, absolute majorities of the membership are only required for decisions when these are not taken in and by the Assembly itself: the convening of special sessions pursuant to Article 20 of the Charter, in accordance with rules 8 and 9 of the rules of procedure, and the determination of the place of meeting in accordance with rules 3 and 4. Absolute majorities are required in those cases because, in the absence of a meeting at which a quorum can be determined, the only standard by which approval can be measured is that of the total membership of the Organization. On the other hand, when these same decisions are taken by the Assembly itself, as is possible under rule 7 for the convening of a special session or under the first part of rule 3 for establishing a different place of meeting, the majorities indicated in paragraph 4 above must be used.

6. Finally, it should be noted that a decision on the place of meeting does not appear to be an "important question" within the meaning of paragraph 2 of Article 18 of the Charter. This is so whether or not there are any financial implications to the proposed choice of the place of meeting, since it has been held several times that the mere existence of financial implications does not make a decision a "budgetary question" within the meaning of that paragraph. Consequently, the decision on the place of meeting can be taken by a simple majority under paragraph 3 of Article 18 of the Charter and rule 85 of the rules of procedure, unless the Assembly should decide, by a simple majority under the same provisions, that this question be decided by a two-thirds majority.

II. *May a secret ballot be taken in connexion with this question*

7. The question has been raised whether the General Assembly or its General Committee can take a decision by secret ballot with regard to issues relating to the holding of a regular Assembly session away from Headquarters. In the General Committee this would apply to the decision whether to recommend the inclusion of the additional item in the agenda of the Assembly. In the plenary of the Assembly the question could be raised with regard to the decision on the adoption of the recommendation of the General Committee (i.e. inclusion or not in the agenda) and/or eventually with regard to a vote on the actual proposal to hold a session of the Assembly away from Headquarters.

8. The only case where an absolute majority of votes is required in the General Assembly is for elections of the members of the International Court of Justice. This majority is specified in Article 10 of the Statute of the Court, which is an integral part of the Charter, and is restated in rule 151 of the rules of procedure of the Assembly.

9. Rules 87 and 127 of the rules of procedure specify the methods of voting, respectively in the plenary and in committees; they have identical contents and provide that the Assembly or a committee shall normally vote by show of hands or by standing, but that any representative may request a roll-call. The only references to secret ballot are contained in rules 92 and 103, which govern elections. The rules of procedure of the Assembly thus do not provide for a secret ballot other than for elections.

10. The absence of a provision for secret ballots for other matters does not, however, absolutely prevent the General Assembly from resorting to such a procedure. In fact, there are precedents for doing so, in the practice of the Assembly as well as of subsidiary organs and conferences with rules of procedure similar to those of the Assembly. For example, at the twenty-first session of the Assembly, the Second Committee decided without objection that the site of the future headquarters of UNIDO should be decided by secret ballot. At its second session in October 1965, the Trade and Development Board voted by secret ballot on the location of the site for the Secretariat of UNCTAD. During the sixth session of the Third United Nations Conference on the Law of the Sea in July 1977, the venue of the seventh session of the Conference was decided upon by secret ballot. It may be relevant to note that in all these cases the choice of a site or venue was involved.

11. On all these occasions the secret ballot procedure was resorted to by general agreement of all members of the body concerned. This accords with the principle that the strict observance of rules of procedure can be avoided by virtue of a general agreement among the members of the body concerned, since the essential purposes of rules of procedure — orderly proceedings and protection of the .interests of the minority — are thus not endangered. It is on the basis of the same principle that in the practice of the General Assembly the application of certain rules of procedure has frequently been suspended by common accord: for example, many elections have not taken place by secret ballot as provided in rule 92.

12. The question arises, however, whether in the absence of a common agreement among the membership, the General Assembly may decide by a majority vote to resort to a secret ballot. When this question was put to the Legal Counsel by the Second Committee during the debate on the choice of the UNIDO Headquarters site referred to above, he advised that the Committee could not decide, on the basis of a vote, to suspend the application of any rule of procedure, or to take a secret ballot. While this opinion of the Legal Counsel applies to the proceedings of any sessional organ, including the General Committee, it does not exclude the authority of the General Assembly itself to decide by a majority vote to resort to secret ballot, since even if this is considered as amounting to a suspension or amendment of the rules of procedure, such power is vested in the Assembly by Article 21 of the Charter.

13. While it would therefore not be possible for the General Committee to decide, except in the absence of any objection, to resort to a secret ballot on its recommendation concerning the inclusion of an additional item in the agenda of the General Assembly, the latter could decide by a majority vote to take a secret ballot on deciding on the recommendation of the General Committee or on the substance of a

proposal to hold a session away from Headquarters. If the question is referred to a committee (see Part IV below), then that body would be under the same constraints as the General Committee, unless the plenary decided, by a majority vote, to authorize the committee to decide on its substantive recommendation to the plenary by secret ballot.

III. *Procedure for placing an additional item on the agenda of the Assembly in spite of a negative recommendation of the General Committee*

14. The procedure for placing "additional items" on the agenda of a regular session of the Assembly is governed by rules 15 and 40 (second sentence) of the rules of procedure.

15. If the General Committee should decide to recommend against placing an additional item on the agenda, that recommendation would be communicated to the Assembly in the report of the Committee.

16. The normal course for the General Assembly would be to vote on the recommendation of the General Committee contained in its report. Several alternative procedural situations may be foreseen:

(a) *Rejection of the Committee's recommendation*

If the plenary should reject a negative recommendation of the Committee on the inclusion of the item on the agenda, this would not by itself result in that item being so included. This is so because the rejection of a proposal, which could occur by two successive tie votes under rule 95 or by the failure to obtain a two-thirds majority where that is required, can therefore not be interpreted as a positive decision in the opposite sense. However, it would then be in order to take action on and to adopt a separate proposal for the inclusion of the item on the agenda.

(b) *Proposed amendment of the Committee's recommendation*

A proposal to amend a negative recommendation of the Committee so as to reverse its sense, i.e., to include the agenda item in question, would be out of order since rule 90 provides that "A motion is considered an amendment if it *merely* adds to, deletes from or revises part of the proposal" (emphasis added). It has repeatedly been held that a motion that would completely change the sense of a previous proposal cannot be considered as an amendment to it, but has to be treated as a separate proposal.[1]

[1] The Legal Counsel so advised the plenary at the twenty-seventh session of the General Assembly, when a proposal was made that a recommendation of the General Committee to include an item be "amended" so that the item would instead have been included in the provisional agenda of the next session. *(Official Records of the General Assembly, Twenty-seventh Session, Plenary Meetings,* 2037th meeting, paras. 221-223).

(c) *Submission of a separate proposal to include the item on the agenda*

A proposal to include an additional item on the agenda in spite of a negative recommendation of the General Committee would be in order, as there is no requirement that the Assembly act only on a favourable recommendation of the Committee. Such a proposal would, however, under rule 91, be voted on only after a decision is taken on the recommendation of the Committee — unless, under the same rule, the Assembly decides to vote first on the separate proposed to include.

(i) If the motion to vote first on the separate proposal prevails, then a vote would be taken on that proposal. If it is accepted, the item is thereby placed on the agenda, and no vote would be taken on the Committee's negative recommendation; if the separate proposal fails, then the item is not placed on the agenda and there would be no need to vote on the Committee's recommendation, though that could be done.

(ii) If the motion to vote first on the separate proposal fails, then a vote would first be taken on the Committee's recommendation. If that recommendation is not adopted, then the situation is as described in subparagraph *(a)* above. If the recommendation of the Committee is approved, then a vote on a separate proposal to include the item on the agenda would constitute a reconsideration which, under rule 81, would require a prior decision taken by a two-thirds vote — which, if successful, would be followed by a vote on the proposal to include the item; however, more likely, after the Committee's negative recommendation has been approved, the separate proposal would be withdrawn by its sponsor(s) under rule 80, or a decision not to vote on it would be taken under the second sentence of rule 91.

IV. *Further proceedings if an additional item is placed on the agenda*

17. If it is decided to place on the agenda of the current session an additional item relating to the place of the thirty-third session, then the second sentence of rule 15 requires that:

(a) Consideration of the item in the plenary be postponed:

(i) for 7 days, and
(ii) until a committee has reported thereon; unless

(b) The plenary decides otherwise by a two-thirds majority.

18. The requirement of a committee report could be satisfied by submission of the item to and a report from a Main Committee (in particular the Fifth), the General Committee (though the latter probably has no substantive competence under rules 41-42), or an *ad hoc* body. In this connexion, the history of previous considerations of the question of relocating sessions of the General Assembly may be of interest:

(a) At the first session of the Assembly a proposal to relocate the second session was considered only in plenary, and defeated. (The requirement of consideration by a committee did not arise because the item was not an "additional" one.)

(b) At the second session of the Assembly a proposal for relocating the third session was first considered in the plenary from the point of view of principle, and thereafter its administrative and budgetary implications were submitted to the Fifth Committee. After the plenary had thereupon decided on a session in Europe, the choice of site was left to an *ad hoc* committee of 9 members, designated by the President.

(c) At the fifth session of the Assembly the proposed relocation of the sixth session was first considered by the Fifth Committee (though objection was raised against its competence to consider16 the substance of the item), and then was adopted by the plenary.

19. These precedents indicate that submission of the question to the Fifth Committee would be the most normal course to follow, though the establishment of an *ad hoc* committee is not to be excluded. The report of the Committee could:

(a) restrict itself entirely to a discussion of financial, administrative and other implications;

(b) also include some procedural suggestions for the method whereby the plenary would conduct its own consideration (e.g., that a secret ballot be taken);

(c) include, as is customary, a substantive recommendation on the proposal.

2 December 1977

METHOD OF VOTING IN THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES QUESTION OF SECRET BALLOTING

Memorandum to the Assistant Secretary-General for Human Rights, Centre for Human Rights

1. This is in response to your memorandum of 14 February on the method of voting in the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. The Sub-Commission is, pursuant to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, bound by the rules applicable to the Commission on Human Rights, i.e., by those same rules. The words "in so far as they are applicable" in the cited rule do not detract in any way from the analysis presented below, since there is no reason why any of the specific rules referred to should not be applicable to the Sub-Commission.

3. The method of voting in the Sub-Commission is thus that specified by rule 59. That rule calls for votes to be taken "normally... by show of hands", except if a roll-call is taken on the request of any representative. This rule is substantially the same as that which applies in most United Nations organs, in particular the Economic and Social Council (rule 61 (1)) and the General Assembly (rule 87). All those rules have consistently been interpreted as not permitting secret ballots except for elections. The word "normally" is not meant to permit exceptions, but merely takes account of the exception for roll-calls already provided for in the rule. Consequently, we have advised various organs bound by similar rules, such as Main Committees of the General Assembly, that a secret ballot could only be taken if two conditions were met: the decision to take a secret ballot was reached by general agreement; and the question was akin to an election (e.g., the selection of a site among several proposals).

4. An organ that has the explicit or implicit power (e.g., the plenary of the General Assembly) to suspend its rules can do so for the purpose of holding a secret ballot; this the Sub-Commission can do by following rule 78. However, it is not good practice to suspend any rule as a matter of routine. Therefore, if it is desired to take secret ballots with some regularity this should be allowed by some other mechanism. There should on the other hand be no legal objection to doing so on an *ad hoc* basis, e.g., for the purpose of adopting a recommendation to the Commission and the Council on this subject.

5. The best method of allowing the Sub-Commission to take secret ballots on some questions is to so provide in its rules. This might be accomplished by having the Economic and Social Council adopt an additional paragraph to rule 24 of the rules of procedure of the functional commissions along the following lines:

"2. Notwithstanding paragraph 1 of rule 59,[1] the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Human Rights Commission [may decide to] [shall, at the request of a member,][2] take a secret ballot on any matter of substance [relating to . . .].[3] [Such a decision to proceed by a secret ballot shall itself be taken by a secret ballot and require a two-thirds majority of the members present .and voting.][4]"

16 February 1984

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[1] By making the proposed new rule an exception from all of rule 59 (1), it is clear that if requests are made for a roll-call vote under that rule and for a secret ballot under the proposed rule 24 (2), the latter would automatically have precedence.

[2] The first two brackets present alternative approaches. The first reflects the proposal in E/CN.4/Sub.2/1983/5. The second is formulated by analogy to the provision for taking votes by roll-call under rule 59 (1); naturally one could instead require a request by a specified number of members.

[3] This bracketed clause is to be added if it is desired to restrict the scope of the provision, for example to matters concerning confidential communications. Incidentally, there appears to be no logical connection between confidential proceedings and secret ballots, and no contradiction between open proceedings and such ballots; the motives for closing proceedings have little to do with those for desiring a confidential franchise.

[4] Both the conditions stated in this bracketed sentence are optional, and thus either or both could be omitted. Both would become irrelevant if the second alternative referred to in note 2 is selected, for in that event no decision would be required for a secret ballot to be taken.

Conduct during voting

Rule 128[1] [88]

After the Chairman has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Chairman may permit members to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The Chairman may limit the time to be allowed for such explanations. The Chairman shall not permit the proposer of a proposal or of an amendment to explain his vote on his own proposal or amendment.

[1] See introduction, para. 7; see also annex IV, paras. 74-76, and annex V, paras. 6 and 7.

QUESTIONS RELATED TO THE CLOSURE OF DEBATE AND CONDUCT DURING VOTING IN THE PLENARY MEETINGS OF THE GENERAL ASSEMBLY AND IN THE MAIN COMMITTEES
RULES 75 AND 88 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Under-Secretary-General for Political and General Assembly Affairs

1. During the current session of the General Assembly a number of questions have arisen, in the plenary and some of the Main Committees, in relation to the closure of debate and conduct during voting, which are principally regulated by rules 75 [117] and 88 [128] of the rules of procedure. The present memorandum discusses these two subjects and their interaction.

I. EFFECTS OF CLOSURE OF DEBATE

A. *Statements*

2. Closure of debate decided under rule 75 or 117 clearly prevents the making of any further substantive statements as to the "item under discussion" (see section I.C. below) in relation to which the motion for closure was adopted. No exception may be made, even for representatives already on the list of speakers (but see paragraph 4 below).

3. However, closure of debate does not prevent the exercise of the right of reply (rule 73 [115]) or the explanation of votes (rule 88 [128]), whether before or after the vote (see section II.C below).

B. *Motions and proposals*

4. Unless specifically otherwise provided in the motion for closure, no new substantive proposals, including amendments or sub-amendments[1], may be submitted after a motion for closure of debate has been adopted. However, proposal already submitted under rule 78 [120] but not yet formally introduced or even circulated should normally be dealt with; there are even precedents for permitting, the principal sponsor to make a statement introducing such a proposal (particularly if the sponsors of other proposals had an opportunity to introduce these before the debate was closed). In addition, the sponsors of a proposal already submitted should normally be permitted to submit a revised version even after closure of debate as long as the initial proposal has not been substantially changed.

[1] Hereinafter, "proposals" should be understood as referring also to amendments and sub-amendments.

5. Normal procedural motions or manoeuvres, such as the withdrawal of a proposal as well as its immediate reintroduction (rule 80 [122]), the division of a proposal (rule 89 [129]) or a motion that there be no vote on a proposal after another has been acted on (rule 91 [131]), are permitted even after closure of debate. The same should be held of a motion to adjourn the debate (for the purpose of putting aside one or more proposals - rule 74 [116]) or of one addressed to an issue of competence (rule 79 [121]). However, other types of proposals relating to procedures not specifically provided for in the rules of procedure (e.g., the referral of an item to a standing or *ad hoc* body) should be considered as substantive proposals (i.e., in accordance with paragraph 4 above).

C. *Discussion*

6. Rule 75 [117] refers to the closure of the debate on "the item under discussion". Such an "item" need not be an entire agenda item, but can be a sub-item, a particular proposal or set of proposals, or even an amendment to a proposal. For this reason it is important for the President to ascertain, as soon as a proposal for closure of debate is made, and in any event before asking the body to take a decision on it, what the scope of the proposal is. However, to the extent that this is not done, it should usually be assumed that the motion is intended to have the broadest effect it can sensibly be given, i.e., to close debate on as much of the agenda item as possible; certainly it should never be presumed, without explicit confirmation, that debate was meant to be closed merely on an amendment or on one of a series of related proposals.

D. *Closure achieved by other means*

7. Closure of debate achieved by a motion under rule 75 [117] does not differ substantially from that achieved by closure declared after the normal conclusion of debate or on the exhaustion of a closed list of speakers (rule 73 [115]); indeed, this is explicitly provided in the corresponding procedural rule of the Economic and Social Council (rule 45, E/5715/Rev.l). Nevertheless, the prohibition against the making of further statements and against introducing new substantive proposals (see paragraphs 2 and 4 above) are usually not enforced as strictly in the case of such informal closure.

II. THE VOTING PROCESS

A. *Structure of rule 88 [128]*

8. It should be recognized that rule 88 [128] in effect consists of two separate rules:

(a) The first sentence protects the integrity of the voting exercise (see section II.B below);

(b) The remaining text deals with explanation of votes (section II.C). This differentiation is explicitly recognized in the rules of procedure of the Economic and Social Council, which deal with these two subjects respectively in rules 63 and 62.

B. *Conduct during voting*

9. The first question is how to define "during voting" for the purpose of determining the interval during which the strict rule against interruptions must apply.[1] Though occasionally there have been a few differing rulings, in the past years it has been clearly recognized and consistently held that the period protected by the first sentence of rule 88 [128] (i.e., the period of voting in the "narrow sense") is merely the interval between the time the presiding officer initials the voting process by calling for the casting of votes or ballots on a particular question, and until the results of that particular vote are announced (cf. Economic and Social Council Rules of Procedure for United Nations Conferences, A/38/298, annex, rule 56). This is the only period that requires the extraordinary protection provided by the first sentence of rule 88 and in view of the severe restrictions in that sentence (e.g., the prohibition against normal points of order, or against routine procedural motions, such as to suspend a meeting) such protection should not, and in practice cannot, be extended to any period for which this is not absolutely necessary; for example, if a very long series of votes is to be taken, it may be necessary to do so in the course of more than one meeting, i.e., to interrupt for some hours or even some days (e.g., elections to principal organs).

10. In respect of a connected series of votes, it follows from the above that the first sentence of rule 88 [128] is not intended to cover the entire period during which several votes are taken, including the intervals between such votes (i.e., between two amendments to the same proposal or even between two ballots for the same post), which might be referred to as a period of voting in the "wider sense". On the other hand, it must be recalled that such a period of voting normally follows on an explicit or implicit closure of debate (see section I.D above) and is therefore subject to the restrictions consequent on such closure (sections I.A and B), and that often deadlines are set for the submission of substantive proposals which normally will have expired before the period of voting starts. Furthermore, the President often announces (and usually should announce), before or at the beginning of a period of voting, the procedure that he intends to follow during such period (e.g., to permit explanations before the vote on all proposals and amendments, then to call for votes successively on each proposal and the amendments thereto, and then to permit explanations after the vote), and to the extent such announcement is not objected to or is explicitly accepted, it becomes a decision governing that voting period, which can only be changed by an implicit or explicit reconsideration of that decision (subject to rule 81 [123]); even if no explicit regime is established for a period of voting, it may be assumed, on the basis of the usual practice, that a restrictive procedure is to be followed, i.e., that one vote will follow on another, uninterrupted by any substantive business and generally any explanations of vote, though permitting some procedural motions (e.g., suspension or adjournment of the meeting). Only in the somewhat exceptional situation that no such restrictions exist in respect of a particular voting period may room be made during intervals between votes for statements, substantive proposals and procedural motions, and especially (see section 11.C below) explanations of vote (i.e., either those after the previous vote or those before the next one).

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[1] The present memorandum does not deal with what types of points of order it is permissible to raise under the first sentence of rule 88 [128].

C. *Explanations of vote* [1]

11. The second sentence of rule 88 [128] states that "the President may permit members to explain their votes". By tradition, the right to explain a vote has become practically absolute (as stated, e.g., in Economic and Social Council procedural rule 62), though the President retains discretion (subject to the authority of the Assembly, rule 36 [107]) as to whether to permit explanations both before and after or only before (which would be unusual) or only after the vote. Also, if a series of votes is to be taken he may, but need not, allow explanations between such votes (see paragraph 10 above). Furthermore, it should be understood that explanations of vote are not part of the debate and that, therefore, the prior closure of debate does not affect the power of the President to permit explanations of vote either before or after the vote, since there is a distinction between the period of debate (cut off by rule 75 [117]) and the period of voting in the wider sense (governed in part by rule 88 [128]) and in part by *ad hoc* decisions made in respect of each such period (see end of paragraph 10).

10 November 1983

[1] The present memorandum contains no discussion of what constitutes an explanation of vote, or restrictions on such explanations or an application to' decisions taken without a vote.

EXPLANATION OF VOTE BY THE PROPOSER OF A PROPOSAL OR OF AN AMENDMENT RULE 90 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Executive Office of the Secretary-General

1. In regard to the question which was put to us this morning, the attention of the President of the General Assembly should be drawn to the unequivocal provision of rule 90 of the rules of procedure that he "shall not permit the proposer of a proposal or of an amendment to explain his vote on his own proposal or amendment". This rule, however, does not bar the intervention of (a) a "proposer of a proposal" to explain his vote on an amendment before or after the amendment has been adopted or rejected by the Assembly or (b) a "proposer of an amendment" to explain his vote on the proposal before or after the proposal has been adopted or rejected by the Assembly. The term "proposer" must be deemed to cover "co-sponsor" of a proposal. There is, of course, nothing to prevent a "proposer of a proposal or of an amendment" to intervene in exercise of his right of reply or for the purpose of raising a point of order in accordance with the Assembly's rules of procedure.

2. On one occasion, a co-sponsor of a draft resolution was permitted to explain the vote of his delegation after the resolution had been adopted by the Assembly (see A/PV. 1405, paras. 247-253). On another occasion, a co-sponsor of a draft resolution was given the floor to make a statement after the adoption of the resolution (see A/PV.1356, paras. 64-68). Other similar cases might have existed. From a legal point of view, a practice which is clearly contrary to the provisions of a rule of procedure cannot negate the rule itself. But we feel that the President should be informed of the existence of those cases together with the legal position set forth herein. Should the question of the application of rule 90 be raised from the floor when a proposer or co-sponsor has asked to explain his vote, the President would have no choice but to apply the rule by refusing the floor to the proposer or co-sponsor.

19 October 1966

Division of proposals and amendments

Rule 129[1] [89]

A representative may move that parts of a proposal or of an amendment should be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

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[1] See introduction, para. 7.

PROCEDURAL QUESTIONS RAISED IN CONNECTION WITH THE ADOPTION OF A REPORT OF THE SUBCOMMITTEE ON PETITIONS. INFORMATION AND ASSISTANCE 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 QUESTION WHETHER ACTION MAY VALIDLY BE TAKEN ON AN AMENDMENT NOT CIRCULATED IN ONE OF THE WORKING LANGUAGES QUESTION WHETHER A FINAL VOTE MUST BE TAKEN ON THE REPORT AS A WHOLE AFTER SEPARATE PARTS HAVE BEEN ADOPTED

Memorandum to the Officer-in-Charge, Department of Political Affairs, Trusteeship and Decolonization

This is in response to your memorandum of 31 August, requesting legal advice as to two procedural questions raised in connection with the adoption of the 226th Report of the Sub-Committee on Petitions, Information and Assistance 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.

1. As the Special Committee and its Sub-Committees are subsidiary organs of the General Assembly, they are to apply the procedures relating to committees of the Assembly, as provided in rule 161 of its rules of procedure.

2. With regard to the objection raised by a delegation concerning the failure to circulate the text of an amendment in one of the working languages before a vote was taken thereon, the relevant rule, namely rule 120, requires that "as a general rule" no proposals shall be put to a vote until the day following their circulation, which is understood to mean circulation in all the working languages. Chairmen are authorized to permit the discussion and consideration of amendments even if they have not been circulated at all or have only been circulated the same day. The practice in implementing this rule has been that frequent use is made of the exceptional authorization to act on uncirculated or only recently circulated amendments, particularly towards the end of a session. In particular, the procedure followed by the Chairman of the Sub-Committee, to read out the amendment at dictation speed to enable the interpreters to translate it carefully and the representatives to copy it down in their respective languages, is often followed. Consequently the objection in question is not well taken.

3. Rule 129 provides that if a proposal (such as the draft report) is divided, and action is taken to adopt separate parts thereof, a Final vote must be taken on the proposal as a whole (i.e., on the sum of all the parts adopted separately). This is so whether the division was a formal one under the first part of rule 129, or is merely done informally. It is also immaterial whether the separate parts were adopted by votes or by consensus. The body as a whole must be given an opportunity of acting on (i.e., adopting or rejecting) the sum of all the separate parts. Consequently the demand of the delegation concerned was justified, and a vote on the report as a whole should now be taken.

September 1983

Voting on amendments

Rule 130[1] [90]

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal.

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[1] See introduction, para. 7.

Voting on proposals

Rule 131 [91]

If two or more proposals relate to the same question, the committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The committee may, after each vote on a proposal, decide whether to vote on the next proposal.

PRIORITY OF DRAFT RESOLUTIONS BEFORE THE GENERAL ASSEMBLY
A DRAFT RESOLUTION SUBMITTED AT ONE SESSION WILL NOT NORMALLY BE BEFORE A SUBSEQUENT SESSION UNLESS *INTER ALIA* THERE IS AN EXPRESS DESIRE ON THE PART OF THE SPONSORS TO MAINTAIN IT WHERE AN AGENDA ITEM HAS VARIOUS SUBITEMS, THE RELEVANT RESOLUTIONS ARE VOTED ON IN THE ORDER OF SUBMISSION REGARDLESS OF THE SUBITEM TO WHICH THEY RELATE
A
DRAFT RESOLUTION RETAINS ITS STATUS EVEN IF IT IS REVISED

Memorandum to the Under-Secretary-General
for Political and Security Council Affairs

I. *Historical background*

1. At its 1939th plenary meeting during the twenty-sixth session, the General Assembly decided, on the recommendation of the General Committee (A/8500, para. 18), to include the following items in the provisional agenda of the twenty-seventh session:

> "Withdrawal of United States and all other foreign forces occupying South Korea under the flag of the United Nations.
>
> "Dissolutions of the United Nations Commission for the Unification and Rehabilitation of Korea.
>
> "Question of Korea: report of the United Nations Commission for the Unification and Rehabilitation of Korea."

2. These three items were therefore included in the provisional agenda of the twenty-seventh regular session (A/8760), numbered respectively 35, 36 and 37. In addition, on 17 July 1972, Algeria and twelve other Member States had requested the inclusion in the provisional agenda of that session of an item entitled "Creation of favourable conditions to accelerate the independent and peaceful rehabilitation of Korea" (A /8752), which was included as item 96 on the provisional list; a number of new sponsors were added subsequently, and on 15 September 1972 the sponsors communicated to the Secretary-General a draft resolution under the proposed item (A/8752/Add.9).

3. The General Committee recommended to the Assembly that items 35 and 36 not be included in the agenda, and that items 37 and 96 be included in the provisional agenda of the twenty-eighth session (A/88OO/Rev.l). The Assembly accepted this recommendation at its 2037th meeting.

4. The two items were therefore included as numbers 40 and 41 on the preliminary list of items to be included in the provisional agenda of the twenty-eighth regular session (A/9000), in the annotated preliminary list (A/9090) and in the provisional agenda (A/9100).

5. On 10 September 1973 the representatives of Algeria and 21 other States constituting most of those that had co-sponsored the resolution in document A/8752/Add.9 addressed a letter to the Secretary-General transmitting a draft resolution relating to item 41 ("Creation of favourable conditions to accelerate the independent and peaceful rehabilitation of Korea"), indicating that the new draft replaced that contained in the 1972 document; that letter was circulated the same day (A/9145). Later on 10 September 1973 the representatives of Australia and twelve other States addressed a note verbale to the Secretary-General in which they requested that a draft resolution relating to item 40 of the provisional agenda ("Question of Korea, report of the United Nations Commission for the Unification and Rehabilitation of Korea") be circulated as an official document of the Assembly "for the information of Member States"; this was done on the same day in document A/9146. The reason for the difference in the presentation of the two draft resolutions was that the Secretariat had indicated to the sponsors of resolution A/9146 that they could not at that stage introduce a draft resolution with respect to an item not yet placed on the agenda by the Assembly and allocated to a Committee; on the other hand, the sponsors of resolution A /9145 could, under rule 20 of the rules of procedure of the General Assembly, introduce a revision of the draft resolution that they had previously presented with respect to an item they had proposed for the agenda of the previous session of the Assembly.

6. On 20 September, the General Committee considered the provisional agenda, and with respect to items 40 and 41 the Chairman announced that he understood that "there was a general sentiment that those items should be recommended for inclusion as sub-items of a single item under the heading "Question of Korea". The Committee then "decided to recommend to the General Assembly that items 40 and 41 should be combined into a single item and included in the agenda" (A/BUR/SR.206, pp. 3-4; A/9200, para. 19). At the afternoon meeting on 21 September of the General Assembly, the President called attention to item 41 as recommended by the General Committee "which contains two sub-items under the single heading 'Question of Korea'"; the Soviet representative "did not object to the recommendation of the General Committee that the two questions concerning Korea be merged as two subparagraphs of one general item". The Assembly thereupon decided, without objection, to include item 41 as recommended by the General Committee. Later, at the same meeting, the Assembly approved the recommendation of the General Committee (A/9200, para. 27, p. 23) that item 41 be allocated to the First Committee (A/PV.2123, pp. 6-10 and 16).

7. Immediately after the Assembly had decided on the allocation of items to the First Committee, the representatives of Japan and the United States presented to the Secretary of that Committee in his office, on their behalf and on behalf of sixteen other States, the same draft resolution that they had presented on 10 September. Slightly later the sponsors of the "Algerian" resolution informed the Secretary of the Committee that

they wished to maintain the revised draft they had introduced on 10 September. The "Algerian" draft was therefore republished as document A/C. 1/L.644 and A/C.l/L.644/Corr.l under the names of 32 sponsors, and the other draft was re-published as document A/C.l /L.645 with 18 sponsors

II. *Legal considerations*

8. Both rules 80 and 122 of the rules of procedure of the General Assembly provide that "proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations." Rules 93 and 133 provide that "if two or more proposals relate to the same question, the General Assembly/committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted." The question therefore is: what is "Submission" within the meaning of these rules? The prevailing practice is that submission means the written submission provided for in rules 80 and 122.[1]

9. There is no rule explicitly providing for the introduction of proposals with respect to any question before that question has been placed as an item on the agenda by the General Assembly and before it has been allocated to a Committee. However, rule 20 does provide that "all items proposed for inclusion in the agenda shall be accompanied . . . if possible . . . by a draft resolution." Consequently, it can be concluded that as to items proposed by Member States for inclusion in the agenda the proposed may submit therewith a draft resolution. With respect to sponsors other than those that introduced the item or with respect to items not so introduced, there is no authority in the rules for the submission of draft resolutions in advance.

10. The question of the status of resolutions introduced at a previous session of the Assembly was examined in a memorandum dated 14 November 1966, from which it appears that up to then no definitive decision had been reached on that point. However, the memorandum concludes that "generally a draft resolution submitted at one session will not be before the subsequent session unless (1) it is resubmitted, (2) there is an express desire on the part of the sponsors to maintain it, or (3) the General Assembly in recommending postponement and/or in placing the item on the agenda has expressly transmitted all documents relating thereto." Since then, there have been no relevant decisions or changes in the rules or practice.

In the present case, it is clear that alternative (3), an express decision of the Assembly to transmit all relevant documents to a later session, has not taken place; the "Algerian" draft comes under alternative (2) as a revision (see paragraph 12 below) of the draft resolution submitted in September 1972, which the sponsors desired to maintain. This would have been the case even if, as implicitly assumed in the 1966 memorandum, the item and the draft would have been discussed at the previous session of the

[1] Only once, in the Special Political Committee at the eighteenth session, did the Chairman rule and the Committee decide that as between two draft resolutions submitted in writing, priority would be given to the one first orally introduced during the debate in the Committee (Official Records of the General Assembly, Eighteenth Session, Special Political Committee, 405th meeting, paras. 41-85)

Assembly; *a fortiori,* it should apply to an item and draft that was merely postponed by the Assembly, without any substantive consideration.

11. There appears to have been no decision whatsoever relating to the status of resolutions introduced with respect to items on the provisional agenda when these items are later included in the agenda in an altered form: i.e., change of title, or combination with another item. In the present case it seems clear from para. 6 above that items 40 and 41 of the provisional agenda were not altered at all by their merger under a single heading, especially since each survived under a separate subheading, corresponding to its original title and neither the debates in the General Committee nor in the Assembly suggested any desire to alter the items otherwise. It should be noted that where an agenda item has various sub-items, the draft resolutions are voted on in the order of submission, regardless of the sub-item to which they relate. This was illustrated at both the twenty-second and twenty-third sessions when the Korean item was considered in the First Committee, respectively with three and with four sub-items. In both instances, four drafts were introduced (respectively A/C.l/L.399/Rev.l, L.401 and Add.l and 2, L.404 and Add.1-3 and L.405 and Add.l, and A/C.1/L.453 and Add.l, L.454 and Add.l, L.455 and Add.l and 2 and L.461), and these were voted on in the order of their submission which did not correspond to that of the relative sub-items.

12. In accordance with established practice, a draft resolution retains its status even if it is revised.

13. The draft published as document A/C.1/L.644 and Corr.l thus maintained its continuous status in spite of the transmission from one session of the Assembly to the next (para. 10 above), the merger of the item under which it was originally proposed with another item (para. 11 above) and a slight revision of text (para. 12 above). Having maintained its status it also maintained its priority with respect to alternative drafts, and the Secretariat attempted to reflect this in the numbering of the documents (see para. 7 above).

28 September 1973

ORDER OF PRIORITY OF PROPOSALS UNDER THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY
MEANING OF THE PHRASE "IN THE ORDER IN WHICH THEY ARE SUBMITTED" IN RULES 91 AND 131
DUTIES OF THE SECRETARIAT IN THIS CONNEXION

Memorandum to the Deputy Executive Assistant to the Secretary-General

1. Under rules 91 and 131 of the rules of procedure of the General Assembly, proposals relating to the same question are to be voted on "in the order in which they are submitted". It is now clearly established that the order referred to is the order of submission of a draft to the Secretariat, not the date of circulation of the document or of its formal introduction in the organ concerned.

2. It is the duty of the Secretariat to note the time of receipt of a proposal, to allocate a number accordingly, and to send the document immediately for translation and reproduction, particularly in view of the provision in rules 78 and 120 of the rules of procedure that "no proposal shall be discussed or put to the vote at any meeting OF THE General Assembly unless copies of it have been circulated to all delegations not later than the day preceding the meeting". In order to prevent any misunderstanding, should the Secretariat receive a proposal and be requested to hold it until some later date, the responsible official should explain that he cannot consider the proposal as being officially submitted and, therefore, he cannot assign a number until he is requested by the sponsor or sponsors to proceed with its submission for reproduction.

19 November 1976

ORDER OF VOTING OF PROPOSALS BEFORE A MAIN COMMITTEE OF THE GENERAL ASSEMBLY UNDER THE RULES OF PROCEDURE OF THE ASSEMBLY, PROPOSALS WHETHER SUBMITTED BY MEMBER STATES OR BY MAIN OR SUBSIDIARY BODIES ARE VOTED ON IN THE ORDER OF SUBMISSION UNLESS THE COMMITTEE DECIDES OTHERWISE

Memorandum to the Secretary of the Fifth Committee of the General Assembly

1. Rule 131 of the rules of procedure of the General Assembly states:

> "If two or more proposals relate to the same question, the committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The committee may, after each vote on a proposal, decide whether to vote on the next proposal".

2. Accordingly, whenever a Main Committee of the Assembly has had before it two or more proposals relating to the same question, such Committee has invariably followed the established practice of voting on the proposals in the order of their submission. This practice has been followed in the Fifth and other Main Committees not only in the case of proposals submitted by Member States but also when one of the proposals before it had been submitted in the form of a draft resolution embodied in the report of a main or a subsidiary organ, including expert bodies such as the Committee on Contributions and the Advisory Committee on Administrative and Budgetary Questions. This course of action is also dictated by logic, there being no utility in establishing subsidiary organs or expert bodies to prepare recommendations if these recommendations were to rank only after the proposals of States.

3. The Committee on Contributions is an expert body established under rule 158 of the General Assembly's rules of procedure specifically for the purpose of advising the Assembly on the apportionment, under Article 17, paragraph 2, of the Charter, of the expenses of the Organization among Members and also on the assessments to be fixed for new Members, on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter (see rule 160 of the rules of procedure of the General Assembly).

4. Acting under the provisions of rule 160 of the rules of procedure of the General Assembly, the Committee on Contributions for a number of years adopted the practice of embodying its recommendations regarding the scale of assessments in the form of a draft resolution in its reports to the Fifth Committee at various sessions. The Fifth Committee has acted on these draft resolutions, treating them as the basic proposals before it. In this respect, the normal rule is complied with, the proposal of the Committee on Contributions regarding the scale of assessments being the first in point of time to be submitted to the Fifth Committee, as part of the report of the Committee on Contributions. This conclusion is amply confirmed in practice.

5. At the twenty-third session of the General Assembly, the Fifth Committee had before it in connexion with the agenda item entitled "Scale of assessments for the apportionment of the expenses of the United Nations":

(a) The report of the Committee on Contributions (A/7210 and Add.l and 2 and Add.2/Corr.l) and a note by the Secretariat (A/C.5/L.949) subsequently revised (A/C.5/L.949/Rev.l), embodying the recommendations of the Committee in the form of a draft resolution;

(b) A draft resolution (A/C.5/L.955 and Add.l) sponsored by Argentina and others; and

(c) An amendment (A/C.5/L.953) to the draft resolution contained in document A/C.5/L.949/Rev.l.87.

The Fifth Committee, at its 1263rd meeting, adopted the amendment to the draft resolution embodied in the note by the Secretariat and then voted on the draft resolution (A/C.5/L.949/Rev.l). The draft resolution, as amended, was adopted. Subsequently, at its 1266th meeting, the Committee adopted draft resolution A/C.5/L.955 and Add.l.68. Thus the voting followed the order of submission of the two proposals before the Committee.

6. At the twenty-seventh session of the General Assembly, the Fifth Committee had before it in connexion with the same item

(a) The report of the Committee on Contributions (A/8711 and Corr.l and Add.l) containing the draft resolution which the Committee was recommending to the Assembly for adoption;

(b) A draft resolution (A/C.5/L.1091/Rev.l) submitted by the United States of America;

(c) A draft resolution (A/C.5/L.1092) sponsored by Argentina and others;

(d) An amendment (A/C.5/L.1095) to the draft resolution contained in document A/C.5/L.1092;

(e) A draft resolution (A/C.5/L.1093), sponsored by Afghanistan and others; and

(f) An amendment (A/C.5/L.1097 to the draft resolution contained in document A/C.5/L.1093.

At its 1540th meeting the Fifth Committee voted first on the draft resolution recommended by the Committee on Contributions and then voted on the other draft resolutions before it in the order in which they had been submitted.

7. At the eighteenth session of the General Assembly, however, the Fifth Committee had before it:

(a) The report of the Committee on Contributions embodying the recommendations of the Committee in the form of a draft resolution (A/5510); and

(b) A draft resolution (A/C.5/L.806) submitted by the United Arab Republic and Yugoslavia.

The Fifth Committee acted on the latter draft resolution and adopted it unanimously. In this case, the difference between the draft resolution recommended by the Committee on Contributions in its report and that recommended by the United Arab Republic and Yugoslavia was mainly in form and not in substance. The Fifth Committee did not act on the draft resolution recommended by the Committee on Contributions. There was clearly a consensus reached by the members of the Fifth Committee not to follow the normal practice of voting on proposals in their order of submission. Thus, in this case, the proposals were not voted on in the order of submission because the Committee, in accordance with the provisions of rule 131, decided otherwise.

8. It appears from the above that the established practice is for the Fifth Committee to vote on proposals whether they have been submitted by States or by experts bodies in the order in which they have been submitted, unless the Committee decides otherwise. In the present case, it is clear that the draft resolution embodied in the report of the Committee on Contributions (A/31/11, para. 59) was submitted before the other proposals before the Fifth Committee and, consequently, in accordance with the normal practice, should be voted on first.

24 November 1976

Elections

Rule 132 [93]

When only one person or Member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, and a majority is required, the Chairman shall decide between the candidates by drawing lots.

Equally divided votes

Rule 133 [95]

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

XIV. ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Applications

Rule 134[1]

Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. Such application shall contain a declaration, made in a formal instrument, that the State in question accepts the obligations contained in the Charter.

[1] See introduction, para. 4.

REQUEST FOR INFORMATION ON THE PROCEDURES APPLICABLE TO THE ACQUISITION OF MEMBERSHIP IN THE UNITED NATIONS ARTICLE 4 OF THE CHARTER OF THE UNITED NATIONS AND THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL AND THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Letter to an official of a private firm

I hereby acknowledge receipt of your letter of 4 October 1993, requesting information on the procedures applicable to the acquisition of membership in the United Nations. As you have correctly outlined, Article 4 of the Charter of the United Nations provides an opportunity for membership to "all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations". Article 4, however, further provides that "the admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council". Consequently, the question of admission is a question for the States Members of the Organization to determine, not the Secretary-General.

In addition to Article 4 of the Charter, the procedural mechanism for acquiring membership is also defined by chapter X of the provisional rules of procedure of the Security Council and by chapter XIV of the rules of procedure of the General Assembly. Please be advised of the following provisions:

1. In accordance with rule 58 of the provisional rules of procedure of the Security Council and with rule 134 of the rules of procedure of the General Assembly, the application for admission of any State desiring to become a Member of the United Nations shall be submitted to the Secretary-General and shall contain a declaration, made in a formal instrument, that the State in question accepts the obligations contained in the Charter. The requirement that it be "formal" means that it is to be signed by the Head of State, Head of Government or Minister for Foreign Affairs of the applicant State.

2. As stated in rule 59 of the provisional rules of procedure of the Security Council and in rule 135 of the rules of procedure of the General Assembly, the Secretary-General will immediately circulate the application as an official document of the General Assembly and of the Security Council. The latter, unless it otherwise decides, will refer it to its Committee on the Admission of New Members. The Security Council shall decide whether, in its judgment, the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and, accordingly, whether to recommend the applicant State for membership.

3. Pursuant to rule 60 of the provisional rules of procedure of the Security Council, after receiving the Committee's report, the Security Council will make its recommendation and forward it through the Secretary-General to the General Assembly not less than 25 days in advance of a regular session of the General Assembly, nor less than 4 days in advance of a special session.

4. A favourable recommendation by the Security Council involves a nonprocedural decision requiring the affirmative vote of nine members including the concurring votes of the permanent members.

(a) If the Security Council recommends admission, the General Assembly then considers whether the applicant is a peace-loving State and is willing and able to carry out the obligations contained in the Charter. A General Assembly decision granting admission requires a two-thirds majority of the Members present and voting in the General Assembly. The Secretary-General informs the applicant State of the Assembly's decision.

(b) In accordance with rule 138 of the rules of procedure of the General Assembly, if the application is approved, membership becomes effective on the date on which the General Assembly takes its decision.

5. Pursuant to rule 60 of the provisional rules of procedure of the Security Council, if the Council does not recommend the applicant State for membership or postpones the consideration of the application, the Council shall submit a special report to the General Assembly with a complete record of the discussion. Pursuant to rule 137 of the rules of procedure of the General Assembly, after full consideration of the Council's special report, the Assembly may send the application back to the Security Council, together with a full record of the discussion in the Assembly, for future consideration and recommendation or report.

It should be noted that the Secretary-General may only accept applications for United Nations membership submitted by States responsible for their own international relations. Should any question or doubt arise in that regard, the Secretary-General consults with the members of the Security Council.

Furthermore, and without prejudice to the interest you expressed with regard to admission procedures, you may wish to note that States which are not members of the United Nations may establish observer missions at Headquarters, and in that event are provided observer status facilities in the General Assembly by the Secretary-General. However, the Secretary-General accords such observer facilities only to States generally recognized as sovereign independent States by the international community as evidenced by being States members of a specialized agency of the United Nations or parties to the Statute of the International Court of Justice.

9 November 1993

CERTAIN ASPECTS OF THE DEPOSITARY PRACTICE OF THE SECRETARY-GENERAL IN RESPECT OF CONSTITUENT INSTRUMENTS OF INTERNATIONAL ORGANIZATIONS

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 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. 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

Notification of applications

Rule 135[1]

The Secretary-General shall, for information, send a copy of the application to the General Assembly, or to the Members of the United Nations if the Assembly is not in session.

[1] See introduction, para. 4.

Consideration of applications and decision thereon

Rule 136

If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and shall decide, by a two-thirds majority of the members present and voting, upon its application for membership.

Rule 137[1]

If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send the application back to the Council, together with a full record of the discussion in the Assembly, for further consideration and recommendation or report.

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[1] See introduction, para. 4.

Notification of decision and effective date of membership

Rule 138[1]

The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership shall become effective on the date on which the General Assembly takes its decision on the application.

[1] See introduction, para. 4.

CERTAIN ASPECTS OF THE DEPOSITARY PRACTICE OF THE SECRETARY-GENERAL IN RESPECT OF CONSTITUENT INSTRUMENTS OF INTERNATIONAL ORGANIZATIONS

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 instruments of international organizations, you ask us for certain information on the depositary practice of the Secretariat in respect of such instruments.

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24 March 1964

XV. ELECTIONS TO PRINCIPAL ORGANS

GENERAL PROVISIONS

Terms of office

Rule 139

Except as provided in rule 147, the term of office of members of Councils shall begin on 1 January following their election by the General Assembly and shall end on 31 December following the election of their successors.

LEGAL CONSEQUENCES OF AN INABILITY OF THE GENERAL ASSEMBLY TO ELECT A NON-PERMANENT MEMBER OF THE SECURITY COUNCIL

Statement made by the Legal Counsel of the United Nations at the 118th Plenary Meeting of the thirty-fourth session of the General Assembly

The question has been raised of the legal and constitutional consequences arising from the possible inability of the General Assembly to elect a non-permanent member of the Security Council which would thereby result temporarily in a Security Council of only 14 members instead of 15 members, as prescribed by the Charter.

Before addressing the consequences of such an eventuality, it is necessary to consider the function and role of the General Assembly in the election of non-permanent members of the Security Council and the nature of the obligation of the Assembly in this regard. Article 23 of the Charter provides, *inter alia,* that:

"The General Assembly shall elect 10 other Members of the United Nations to be nonpermanent members of the Security Council This provision is confirmed and clarified in rule 142 of the rules of procedure of the General Assembly, which states:

> "The General Assembly shall each year, in the course of its regular session, elect five nonpermanent members of the Security Council for a term of two years."

In addition, rule 94 contains detailed provisions on the conduct of the elections which leave no doubt as to the absolute nature of the obligation of the Assembly, since the balloting must continue until a result is achieved — that is, " . . .and so on until all the places have been filled."

Finally, in the event that a member ceases to belong to a Council before its term of office expires, rule 140 requires the General Assembly to conduct a by-election at the next session to elect a member for the unexpired term.

From all those provisions it is clear that the Charter and the General Assembly's own rules of procedure establish the function and role of the Assembly as essentially procedural in nature — for example, the election of a non-permanent member of the Council — and it is equally clear that the obligation of the Assembly in this regard is absolute and mandatory.

In the past the Assembly has resolved difficulties of this nature by resorting to the technique of split terms of membership. That was the case in 1956-1957 with Yugoslavia and the Philippines, in 1960-1961 with Poland and Turkey, in 1961-1962 with Liberia and Ireland, in 1962-1963 with Romania and the Philippines, and in 1964-1965 with Czechoslovakia and Malaysia. It should, however, be noted that no split terms of membership have occurred since the enlargement of the Security Council in 1965 from 11 to 15 members.

The failure of the General Assembly to elect a non-permanent member would constitute a failure to comply with its constitutional functions and would violate the clear language of Article 23 of the Charter, the mandatory nature of which leads to the conclusion that a Security Council of less than 15 members would not be legally constituted in accordance with the Charter.

We now turn to the consideration of the consequences of such a failure of the General Assembly for the constitution and functioning of the Security Council. The question arises whether there are circumstances in which the Security Council may continue to function notwithstanding the fact that temporarily it may not be legally constituted in membership. The first such situation, which has never in fact occurred, is that foreseen in rule 140 of the rules of procedure of the General Assembly.

It states:

> "Should a member cease to belong to a Council before its term of office expires, a by-election shall be held separately at the next session of the General Assembly to elect a member for the unexpired term."

That rule applies also to the Security Council. However, the fact that that rule is part of the rules of procedure of the General Assembly indicates, first and foremost, the obligation of the General Assembly to hold a by-election. But the implication of that rule is that it may occur that between the cessation of membership in the Council and the time of the by-election in the General Assembly the Security Council does not consist of the number of members prescribed by Article 23 of the Charter.

A membership short of the prescribed number would not, therefore, affect the functioning of the Security Council in this situation. As pointed out, however, this situation has never developed, but even if it were to develop it would be a very exceptional circumstance and one, furthermore, over which the General Assembly could have no control.

A further situation in which the Security Council membership might no longer be in accordance with the constitutional requirements of the Charter would be during the period of time between the entry into force of a Charter amendment increasing the membership and the actual election of the new members. This very exceptional situation arose in connexion with the Charter amendments adopted by the General Assembly in 1963. The amendment increasing the membership of the Security Council was adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. The Legal Counsel's opinion was sought on the legal position of the Security Council during the interim period between the entry into force of the amendment and the election of new members. The Legal Counsel was confronted with the alternatives presented by Articles 23 and 28 of the Charter respectively. In his opinion, he argued that, where the two alternatives are both possible, the "interpretation to be adopted is the one most consonant with the terms and purposes of the instruments as a whole. An interpretation tending to so extreme a consequence as a break in the functioning [of the Security

Council] could not be accepted without clear support in the text itself. That legal opinion can be found in the *United Nations Juridical Yearbook, 1965,* on pages 224 and 225.

Therefore, notwithstanding the entry into force of the new Article 23 expanding the membership of the Council from 11 to 15, the Council continued to function under the previous regime until the election of the additional members.

A third situation in which the Security Council could be faced with a discrepancy between the prescribed membership and the actual membership could arise because of the inability of the General Assembly to reach agreement on an election. This situation, which we face today, may be distinguished from the two previous situations in which the temporary shortfall in membership was beyond the control of the Assembly although the Assembly has the ultimate obligation to fill the vacancy. The inability of the General Assembly to elect all the non-permanent members of the Security Council is not something which is beyond the control of the Assembly. On the contrary, the General Assembly is under an obligation to elect the members of the Council under the Charter.

The question, then, is whether the Security Council may continue to function even when its membership is not the prescribed number as a result of a situation which is not beyond the control of the Assembly.

As indicated, Article 23 of the Charter provides that the Security Council "shall consist" of 15 Members of the United Nations. It is clear, therefore, that a legally constituted Security Council must have 15 members. However, Article 23 must be read in the context of the Charter as a whole, taking into particular consideration its object and purpose. The object and purpose of a treaty are of particular importance in the interpretation of treaties establishing international organizations because constitutions, such as the Charter, as distinct from mere contracts, are designed to give effect to certain purposes and principles in a moving political context.

In this broader perspective, it must be recognized that the Members of the United Nations have conferred on the Security Council "primary responsibility for the maintenance of international peace and security" (Article 24), which is one of the purposes of the Organization (Article 1, paragraph 1), and that the Security Council "shall be so organized as to be able to function continuously" (Article 28).

Thus, at the very least, the compositional requirement of Article 23 must be balanced against the requirements of other provisions of the Charter concerning the functioning of the Council in so far as the non-compliance with the requirement of Article 23 does not run counter to the provisions of Article 27, which may be considered as an implied quorum provision.

Accordingly, an act of omission or the failure of the General Assembly to fulfil its constitutional obligations cannot be held to produce legal consequences so fundamental to the Organization as the paralysis of a principal organ. To argue otherwise would be to effect a constitutional amendment of the Charter through extra-constitutional means.

Such a paralysis could have the gravest consequence for the whole system of the preservation of international peace and security, including a potential shift of well-established powers between the Security Council and the General Assembly.

The foregoing suggests that in theory and in practice the Security Council may continue to function notwithstanding the fact that it is not legally constituted.

In conclusion, while the failure of the General Assembly to elect a non-permanent member of the Security Council would be inconsistent with Article 23 of the Charter, such an act of omission could not produce legal consequences for the functioning of the Security Council, which is the organ primarily responsible for the maintenance of international peace and security. In such a situation, it would be the view of the Office of Legal Affairs that decisions of the Security Council taken in accordance with the relevant provisions of Article 27 of the Charter would constitute valid decisions.

This is not to say, however, that the exceptional situation created by such a failure on the part of the General Assembly is either legally or constitutionally desirable. But in the interests of maintaining the authority of the Security Council and the balance of powers between the General Assembly and the Security Council, it is essential that the General Assembly should fulfil its obligations and responsibilities under the Charter.

31 December 1979

AMENDMENT TO ARTICLE 61 OF THE CHARTER INCREASING THE MEMBERSHIP OF THE ECONOMIC AND SOCIAL COUNCIL FROM TWENTY SEVEN TO FIFTY-FOUR MEMBERS
QUESTION WHETHER, DURING THE PERIOD BETWEEN THE ENTRY INTO FORCE OF THE AMENDMENT AND THE TIME WHEN THE GENERAL ASSEMBLY ELECTS THE NEW MEMBERS, THE COUNCIL SHOULD MEET IN ITS OLD COMPOSITION OR WHETHER INTERIM ARRANGEMENTS SHOULD BE MADE TO PERMIT IT TO CONVENE WITH FIFTY-FOUR MEMBERS

Note to the Secretary of the Economic and Social Council

1. By its resolution 2847 (XXVI) of 20 December 1971, the General Assembly adopted the following amendment to the Charter and submitted it for ratification by the States Members of the United Nations:

"Article 61

"1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.

"2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

"3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

"4. Each member of the Economic and Social Council shall have one representative."

2. The foregoing amendment entered into force on 24 September 1973, the requirements of Article 108 of the Charter regarding ratification being met on that date by the deposit of an instrument of ratification by the United States of America.

3. The resumed fifty-fifth session of the Economic and Social Council is scheduled to take place at United Nations Headquarters from 15 to 18 October 1973. The question therefore arises whether the Council should, at that time, meet in its old composition of twenty-seven members or whether arrangements should be made to permit it to convene with fifty-four members, such arrangements being of an interim

nature pending the election by the General Assembly of thirty-six Member States to serve on the Council in accordance with Article 61, paragraph 3 of the Charter, as amended, and the entry into office of those Member States on 1 January 1974, in accordance with rule 141 of the rules of procedure of the General Assembly. This rule provides, *inter alia,* that "the term of office of members of Councils shall begin on 1 January following their election by the General Assembly and shall end on 31 December following the election of their successors." In this connexion, a suggestion has been made that, as an interim arrangement, the General Assembly should elect for a term of office commencing on the day of election and ending on 31 December 1973 those twenty-seven States currently serving on the sessional committees of the Economic and Social Council in addition to the existing members of the Council.

4. The situation which has now arisen is, *mutatis mutandis,* identical with that which arose in 1965 when a previous amendment to Article 61 of the Charter, enlarging the membership of the Economic and Social Council, entered into force. On that occasion, a legal opinion was issued indicating that there was no obstacle to the Council meeting in its old composition pending the implementation by the General Assembly of the amendment by electing the new members of the Council and their entry into office in accordance with rule 141 of the rules of procedure. That opinion was in fact followed, as the Council met in 1965 for a resumed session in its old composition after the entry into force of the amendment concerned. At that time no argument was raised that the Council was not properly constituted.

5. The legislative history of General Assembly resolution 2847 (XXVI) adopting the present amendment to the Charter, and Economic and Social Council resolution 1621 (XLI) recommending that amendment, does not reveal any understanding that there should be a departure from the procedures followed in 1965, or that interim arrangements should be made of the nature indicated in paragraph 3 above. In other words, there is no indication that a departure should be made from the regular procedure whereby the Economic and Social Council would meet for the remainder of this year in its old composition and the General Assembly would at its current session elect the requisite number of members, to take office on 1 January 1974, in order to permit the Economic and Social Council to meet in that year in its new composition.

6 An interim arrangement whereby the General Assembly would first elect to the Council for a term of office ending on 31 December 1973 the additional members of the sessional committees of the Council, and then elect the Member States to take office on 1 January 1974, would not, therefore, accord with precedent and does not seem to have been foreseen when the present amendment to the Charter was adopted. Furthermore, such an arrangement might be difficult to reconcile with paragraph 3 of Article 61 of the Charter, as amended, which lays down precise procedures to be followed in the "first election after the increase in membership of the Economic and Social Council" and for determining the term of office of the members so elected. In view of this difficulty, and as there is an established precedent indicating that there is no bar to the Council meeting in its old composition for the duration of this year, there would appear to be no necessity for any interim arrangement of the nature which has been

suggested. Such an arrangement would only be possible, perhaps by analogy to by-elections provided for in rule 142 of the rules of procedure of the General Assembly, if there were a consensus in which all Member States participated that the arrangement should be followed and if there was general agreement on those States to serve until 31 December 1973.[1]

28 September 1973

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[1] At the 2152nd meeting of the General Assembly, on 12 October 1973, the President of the General Assembly stated the following (translation from Spanish):

> " . . . I have held consultations in order to ascertain whether a consensus could be arrived at on an interim arrangement which would permit the Council to hold its resumed session with a full complement of fifty-four members.
>
> "The interim arrangement proposed was to the effect that the additional twenty-seven members of the sessional committees of the Council already elected by the Council for this year should be empowered to serve on the Council itself for a term of office commencing on the day action is taken by the General Assembly and ending 31 December 1973.
>
> "I am happy to announce that a consensus has been reached among all the regional groups to the effect that we adopt the interim arrangement I have just described."

The General Assembly then decided that the twenty-seven additional members of the sessional committees would become members of the Council for the period 12 October 1973-31 December 1973.

By-elections

Rule 140

Should a member cease to belong to a Council before its term of office expires, a by-election shall be held separately at the next session of the General Assembly to elect a member for the unexpired term.

LEGAL CONSEQUENCES OF AN INABILITY OF THE GENERAL ASSEMBLY TO ELECT A NON-PERMANENT MEMBER OF THE SECURITY COUNCIL

Statement made by the Legal Counsel of the United Nations at the 118th Plenary Meeting of the thirty-fourth session of the General Assembly

The question has been raised of the legal and constitutional consequences arising from the possible inability of the General Assembly to elect a non-permanent member of the Security Council which would thereby result temporarily in a Security Council of only 14 members instead of 15 members, as prescribed by the Charter.

Before addressing the consequences of such an eventuality, it is necessary to consider the function and role of the General Assembly in the election of non-permanent members of the Security Council and the nature of the obligation of the Assembly in this regard. Article 23 of the Charter provides, *inter alia,* that:

"The General Assembly shall elect 10 other Members of the United Nations to be nonpermanent members of the Security Council This provision is confirmed and clarified in rule 142 of the rules of procedure of the General Assembly, which states:

> "The General Assembly shall each year, in the course of its regular session, elect five nonpermanent members of the Security Council for a term of two years."

In addition, rule 94 contains detailed provisions on the conduct of the elections which leave no doubt as to the absolute nature of the obligation of the Assembly, since the balloting must continue until a result is achieved — that is, " . . .and so on until all the places have been filled."

Finally, in the event that a member ceases to belong to a Council before its term of office expires, rule 140 requires the General Assembly to conduct a by-election at the next session to elect a member for the unexpired term.

From all those provisions it is clear that the Charter and the General Assembly's own rules of procedure establish the function and role of the Assembly as essentially procedural in nature — for example, the election of a non-permanent member of the Council — and it is equally clear that the obligation of the Assembly in this regard is absolute and mandatory.

In the past the Assembly has resolved difficulties of this nature by resorting to the technique of split terms of membership. That was the case in 1956-1957 with Yugoslavia and the Philippines, in 1960-1961 with Poland and Turkey, in 1961-1962 with Liberia and Ireland, in 1962-1963 with Romania and the Philippines, and in 1964-1965 with Czechoslovakia and Malaysia. It should, however, be noted that no split terms of membership have occurred since the enlargement of the Security Council in 1965 from 11 to 15 members.

The failure of the General Assembly to elect a non-permanent member would constitute a failure to comply with its constitutional functions and would violate the clear language of Article 23 of the Charter, the mandatory nature of which leads to the conclusion that a Security Council of less than 15 members would not be legally constituted in accordance with the Charter.

We now turn to the consideration of the consequences of such a failure of the General Assembly for the constitution and functioning of the Security Council. The question arises whether there are circumstances in which the Security Council may continue to function notwithstanding the fact that temporarily it may not be legally constituted in membership. The first such situation, which has never in fact occurred, is that foreseen in rule 140 of the rules of procedure of the General Assembly.

It states:

> "Should a member cease to belong to a Council before its term of office expires, a by-election shall be held separately at the next session of the General Assembly to elect a member for the unexpired term."

That rule applies also to the Security Council. However, the fact that that rule is part of the rules of procedure of the General Assembly indicates, first and foremost, the obligation of the General Assembly to hold a by-election. But the implication of that rule is that it may occur that between the cessation of membership in the Council and the time of the by-election in the General Assembly the Security Council does not consist of the number of members prescribed by Article 23 of the Charter.

A membership short of the prescribed number would not, therefore, affect the functioning of the Security Council in this situation. As pointed out, however, this situation has never developed, but even if it were to develop it would be a very exceptional circumstance and one, furthermore, over which the General Assembly could have no control.

A further situation in which the Security Council membership might no longer be in accordance with the constitutional requirements of the Charter would be during the period of time between the entry into force of a Charter amendment increasing the membership and the actual election of the new members. This very exceptional situation arose in connexion with the Charter amendments adopted by the General Assembly in 1963. The amendment increasing the membership of the Security Council was adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. The Legal Counsel's opinion was sought on the legal position of the Security Council during the interim period between the entry into force of the amendment and the election of new members. The Legal Counsel was confronted with the alternatives presented by Articles 23 and 28 of the Charter respectively. In his opinion, he argued that, where the two alternatives are both possible, the "interpretation to be adopted is the one most consonant with the terms and purposes of the instruments as a whole. An interpretation tending to so extreme a consequence as a break in the functioning [of the Security

Council] could not be accepted without clear support in the text itself. That legal opinion can be found in the *United Nations Juridical Yearbook, 1965,* on pages 224 and 225.

Therefore, notwithstanding the entry into force of the new Article 23 expanding the membership of the Council from 11 to 15, the Council continued to function under the previous regime until the election of the additional members.

A third situation in which the Security Council could be faced with a discrepancy between the prescribed membership and the actual membership could arise because of the inability of the General Assembly to reach agreement on an election. This situation, which we face today, may be distinguished from the two previous situations in which the temporary shortfall in membership was beyond the control of the Assembly although the Assembly has the ultimate obligation to fill the vacancy. The inability of the General Assembly to elect all the non-permanent members of the Security Council is not something which is beyond the control of the Assembly. On the contrary, the General Assembly is under an obligation to elect the members of the Council under the Charter.

The question, then, is whether the Security Council may continue to function even when its membership is not the prescribed number as a result of a situation which is not beyond the control of the Assembly.

As indicated, Article 23 of the Charter provides that the Security Council "shall consist" of 15 Members of the United Nations. It is clear, therefore, that a legally constituted Security Council must have 15 members. However, Article 23 must be read in the context of the Charter as a whole, taking into particular consideration its object and purpose. The object and purpose of a treaty are of particular importance in the interpretation of treaties establishing international organizations because constitutions, such as the Charter, as distinct from mere contracts, are designed to give effect to certain purposes and principles in a moving political context.

In this broader perspective, it must be recognized that the Members of the United Nations have conferred on the Security Council "primary responsibility for the maintenance of international peace and security" (Article 24), which is one of the purposes of the Organization (Article 1, paragraph 1), and that the Security Council "shall be so organized as to be able to function continuously" (Article 28).

Thus, at the very least, the compositional requirement of Article 23 must be balanced against the requirements of other provisions of the Charter concerning the functioning of the Council in so far as the non-compliance with the requirement of Article 23 does not run counter to the provisions of Article 27, which may be considered as an implied quorum provision.

Accordingly, an act of omission or the failure of the General Assembly to fulfil its constitutional obligations cannot be held to produce legal consequences so fundamental to the Organization as the paralysis of a principal organ. To argue otherwise would be to effect a constitutional amendment of the Charter through extra-constitutional means.

Such a paralysis could have the gravest consequence for the whole system of the preservation of international peace and security, including a potential shift of well-established powers between the Security Council and the General Assembly.

The foregoing suggests that in theory and in practice the Security Council may continue to function notwithstanding the fact that it is not legally constituted.

In conclusion, while the failure of the General Assembly to elect a non-permanent member of the Security Council would be inconsistent with Article 23 of the Charter, such an act of omission could not produce legal consequences for the functioning of the Security Council, which is the organ primarily responsible for the maintenance of international peace and security. In such a situation, it would be the view of the Office of Legal Affairs that decisions of the Security Council taken in accordance with the relevant provisions of Article 27 of the Charter would constitute valid decisions.

This is not to say, however, that the exceptional situation created by such a failure on the part of the General Assembly is either legally or constitutionally desirable. But in the interests of maintaining the authority of the Security Council and the balance of powers between the General Assembly and the Security Council, it is essential that the General Assembly should fulfil its obligations and responsibilities under the Charter.

31 December 1979

SECRETARY-GENERAL

Appointment of the Secretary-General

Rule 141

When the Security Council has submitted its recommendation on the appointment of the Secretary-General, the General Assembly shall consider the recommendation and vote upon it by secret ballot in private meeting.

SECURITY COUNCIL

Annual elections

Rule 142[1]

The General Assembly shall each year, in the course of its regular session, elect five non-permanent members of the Security Council for a term of two years.[2]

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[1] Rule based directly on a provision of the Charter (Art. 23, para. 2, as amended under General Assembly resolution 1991 A (XVIII)). See introduction, para. 23.

[2] Under paragraph 3 of resolution 1991 A (XVIII) of 17 December 1963, the General Assembly decided that "the ten non-permanent members of the Security Council shall be elected according to the following pattern:

"(*a*) Five from African and Asian States;
"(*b*) One from Eastern European States;
"(*c*) Two from Latin American States;
"(*d*) Two from Western European and other States".

LEGAL CONSEQUENCES OF AN INABILITY OF THE GENERAL ASSEMBLY TO ELECT A NON-PERMANENT MEMBER OF THE SECURITY COUNCIL

Statement made by the Legal Counsel of the United Nations at the 118th Plenary Meeting of the thirty-fourth session of the General Assembly

The question has been raised of the legal and constitutional consequences arising from the possible inability of the General Assembly to elect a non-permanent member of the Security Council which would thereby result temporarily in a Security Council of only 14 members instead of 15 members, as prescribed by the Charter.

Before addressing the consequences of such an eventuality, it is necessary to consider the function and role of the General Assembly in the election of non-permanent members of the Security Council and the nature of the obligation of the Assembly in this regard. Article 23 of the Charter provides, *inter alia,* that:

"The General Assembly shall elect 10 other Members of the United Nations to be nonpermanent members of the Security Council This provision is confirmed and clarified in rule 142 of the rules of procedure of the General Assembly, which states:

> "The General Assembly shall each year, in the course of its regular session, elect five nonpermanent members of the Security Council for a term of two years."

In addition, rule 94 contains detailed provisions on the conduct of the elections which leave no doubt as to the absolute nature of the obligation of the Assembly, since the balloting must continue until a result is achieved — that is, " . . .and so on until all the places have been filled."

Finally, in the event that a member ceases to belong to a Council before its term of office expires, rule 140 requires the General Assembly to conduct a by-election at the next session to elect a member for the unexpired term.

From all those provisions it is clear that the Charter and the General Assembly's own rules of procedure establish the function and role of the Assembly as essentially procedural in nature — for example, the election of a non-permanent member of the Council — and it is equally clear that the obligation of the Assembly in this regard is absolute and mandatory.

In the past the Assembly has resolved difficulties of this nature by resorting to the technique of split terms of membership. That was the case in 1956-1957 with Yugoslavia and the Philippines, in 1960-1961 with Poland and Turkey, in 1961-1962 with Liberia and Ireland, in 1962-1963 with Romania and the Philippines, and in 1964-1965 with Czechoslovakia and Malaysia. It should, however, be noted that no split terms of membership have occurred since the enlargement of the Security Council in 1965 from 11 to 15 members.

The failure of the General Assembly to elect a non-permanent member would constitute a failure to comply with its constitutional functions and would violate the clear language of Article 23 of the Charter, the mandatory nature of which leads to the conclusion that a Security Council of less than 15 members would not be legally constituted in accordance with the Charter.

We now turn to the consideration of the consequences of such a failure of the General Assembly for the constitution and functioning of the Security Council. The question arises whether there are circumstances in which the Security Council may continue to function notwithstanding the fact that temporarily it may not be legally constituted in membership. The first such situation, which has never in fact occurred, is that foreseen in rule 140 of the rules of procedure of the General Assembly.

It states:

> "Should a member cease to belong to a Council before its term of office expires, a by-election shall be held separately at the next session of the General Assembly to elect a member for the unexpired term."

That rule applies also to the Security Council. However, the fact that that rule is part of the rules of procedure of the General Assembly indicates, first and foremost, the obligation of the General Assembly to hold a by-election. But the implication of that rule is that it may occur that between the cessation of membership in the Council and the time of the by-election in the General Assembly the Security Council does not consist of the number of members prescribed by Article 23 of the Charter.

A membership short of the prescribed number would not, therefore, affect the functioning of the Security Council in this situation. As pointed out, however, this situation has never developed, but even if it were to develop it would be a very exceptional circumstance and one, furthermore, over which the General Assembly could have no control.

A further situation in which the Security Council membership might no longer be in accordance with the constitutional requirements of the Charter would be during the period of time between the entry into force of a Charter amendment increasing the membership and the actual election of the new members. This very exceptional situation arose in connexion with the Charter amendments adopted by the General Assembly in 1963. The amendment increasing the membership of the Security Council was adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. The Legal Counsel's opinion was sought on the legal position of the Security Council during the interim period between the entry into force of the amendment and the election of new members. The Legal Counsel was confronted with the alternatives presented by Articles 23 and 28 of the Charter respectively. In his opinion, he argued that, where the two alternatives are both possible, the "interpretation to be adopted is the one most consonant with the terms and purposes of the instruments as a whole. An interpretation tending to so extreme a consequence as a break in the functioning [of the Security

Council] could not be accepted without clear support in the text itself. That legal opinion can be found in the *United Nations Juridical Yearbook, 1965,* on pages 224 and 225.

Therefore, notwithstanding the entry into force of the new Article 23 expanding the membership of the Council from 11 to 15, the Council continued to function under the previous regime until the election of the additional members.

A third situation in which the Security Council could be faced with a discrepancy between the prescribed membership and the actual membership could arise because of the inability of the General Assembly to reach agreement on an election. This situation, which we face today, may be distinguished from the two previous situations in which the temporary shortfall in membership was beyond the control of the Assembly although the Assembly has the ultimate obligation to fill the vacancy. The inability of the General Assembly to elect all the non-permanent members of the Security Council is not something which is beyond the control of the Assembly. On the contrary, the General Assembly is under an obligation to elect the members of the Council under the Charter.

The question, then, is whether the Security Council may continue to function even when its membership is not the prescribed number as a result of a situation which is not beyond the control of the Assembly.

As indicated, Article 23 of the Charter provides that the Security Council "shall consist" of 15 Members of the United Nations. It is clear, therefore, that a legally constituted Security Council must have 15 members. However, Article 23 must be read in the context of the Charter as a whole, taking into particular consideration its object and purpose. The object and purpose of a treaty are of particular importance in the interpretation of treaties establishing international organizations because constitutions, such as the Charter, as distinct from mere contracts, are designed to give effect to certain purposes and principles in a moving political context.

In this broader perspective, it must be recognized that the Members of the United Nations have conferred on the Security Council "primary responsibility for the maintenance of international peace and security" (Article 24), which is one of the purposes of the Organization (Article 1, paragraph 1), and that the Security Council "shall be so organized as to be able to function continuously" (Article 28).

Thus, at the very least, the compositional requirement of Article 23 must be balanced against the requirements of other provisions of the Charter concerning the functioning of the Council in so far as the non-compliance with the requirement of Article 23 does not run counter to the provisions of Article 27, which may be considered as an implied quorum provision.

Accordingly, an act of omission or the failure of the General Assembly to fulfil its constitutional obligations cannot be held to produce legal consequences so fundamental to the Organization as the paralysis of a principal organ. To argue otherwise would be to effect a constitutional amendment of the Charter through extra-constitutional means.

Such a paralysis could have the gravest consequence for the whole system of the preservation of international peace and security, including a potential shift of well-established powers between the Security Council and the General Assembly.

The foregoing suggests that in theory and in practice the Security Council may continue to function notwithstanding the fact that it is not legally constituted.

In conclusion, while the failure of the General Assembly to elect a non-permanent member of the Security Council would be inconsistent with Article 23 of the Charter, such an act of omission could not produce legal consequences for the functioning of the Security Council, which is the organ primarily responsible for the maintenance of international peace and security. In such a situation, it would be the view of the Office of Legal Affairs that decisions of the Security Council taken in accordance with the relevant provisions of Article 27 of the Charter would constitute valid decisions.

This is not to say, however, that the exceptional situation created by such a failure on the part of the General Assembly is either legally or constitutionally desirable. But in the interests of maintaining the authority of the Security Council and the balance of powers between the General Assembly and the Security Council, it is essential that the General Assembly should fulfil its obligations and responsibilities under the Charter.

31 December 1979

Qualifications for membership

Rule 143[1]

In the election of non-permanent members of the Security Council, due regard shall, in accordance with Article 23, paragraph 1, of the Charter, be specially paid, in the first instance, to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.[2]

[1] Rule based directly on a provision of the Charter (Art. 23, para. 1).

[2] Rule based directly on a provision of the Charter (Art. 23, para. 2, as amended under General Assembly resolution 1991 A (XVIII)). See introduction, para. 23.

Re-eligibility

Rule 144[1]

A retiring member of the Security Council shall not be eligible for immediate re-election.

[1] Rule reproducing textually a provision of the Charter (Art. 23, para. 2, last sentence).

ECONOMIC AND SOCIAL COUNCIL

Annual elections

Rule 145[1]

The General Assembly shall each year, in the course of its regular session, elect eighteen members of the Economic and Social Council for a term of three years.[2]

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[1] Rule based directly on a provision of the Charter (Art. 61, para. 2, as amended under General Assembly resolution 2847 (XXVI)). See introduction, paras. 23 and 32.

[2] Under paragraph 4 of resolution 2847 (XXVI) of 20 December 1971, the General Assembly decided that "the members of the Economic and Social Council shall be elected according to the following pattern:

"(*a*) Fourteen members from African States;
"(*b*) Eleven members from Asian States;
"(*c*) Ten members from Latin American States;
"(*d*) Thirteen members from Western European and other States;
"(*e*) Six members from socialist States of Eastern Europe."

AMENDMENT TO ARTICLE 61 OF THE CHARTER INCREASING THE MEMBERSHIP OF THE ECONOMIC AND SOCIAL COUNCIL FROM TWENTY SEVEN TO FIFTY-FOUR MEMBERS QUESTION WHETHER, DURING THE PERIOD BETWEEN THE ENTRY INTO FORCE OF THE AMENDMENT AND THE TIME WHEN THE GENERAL ASSEMBLY ELECTS THE NEW MEMBERS, THE COUNCIL SHOULD MEET IN ITS OLD COMPOSITION OR WHETHER INTERIM ARRANGEMENTS SHOULD BE MADE TO PERMIT IT TO CONVENE WITH FIFTY-FOUR MEMBERS

Note to the Secretary of the Economic and Social Council

1. By its resolution 2847 (XXVI) of 20 December 1971, the General Assembly adopted the following amendment to the Charter and submitted it for ratification by the States Members of the United Nations:

"Article 61

"1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.

"2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

"3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

"4. Each member of the Economic and Social Council shall have one representative."

2. The foregoing amendment entered into force on 24 September 1973, the requirements of Article 108 of the Charter regarding ratification being met on that date by the deposit of an instrument of ratification by the United States of America.

3. The resumed fifty-fifth session of the Economic and Social Council is scheduled to take place at United Nations Headquarters from 15 to 18 October 1973. The question therefore arises whether the Council should, at that time, meet in its old composition of twenty-seven members or whether arrangements should be made to permit it to convene with fifty-four members, such arrangements being of an interim

nature pending the election by the General Assembly of thirty-six Member States to serve on the Council in accordance with Article 61, paragraph 3 of the Charter, as amended, and the entry into office of those Member States on 1 January 1974, in accordance with rule 141 of the rules of procedure of the General Assembly. This rule provides, *inter alia,* that "the term of office of members of Councils shall begin on 1 January following their election by the General Assembly and shall end on 31 December following the election of their successors." In this connexion, a suggestion has been made that, as an interim arrangement, the General Assembly should elect for a term of office commencing on the day of election and ending on 31 December 1973 those twenty-seven States currently serving on the sessional committees of the Economic and Social Council in addition to the existing members of the Council.

4. The situation which has now arisen is, *mutatis mutandis,* identical with that which arose in 1965 when a previous amendment to Article 61 of the Charter, enlarging the membership of the Economic and Social Council, entered into force. On that occasion, a legal opinion was issued indicating that there was no obstacle to the Council meeting in its old composition pending the implementation by the General Assembly of the amendment by electing the new members of the Council and their entry into office in accordance with rule 141 of the rules of procedure. That opinion was in fact followed, as the Council met in 1965 for a resumed session in its old composition after the entry into force of the amendment concerned. At that time no argument was raised that the Council was not properly constituted.

5. The legislative history of General Assembly resolution 2847 (XXVI) adopting the present amendment to the Charter, and Economic and Social Council resolution 1621 (XLI) recommending that amendment, does not reveal any understanding that there should be a departure from the procedures followed in 1965, or that interim arrangements should be made of the nature indicated in paragraph 3 above. In other words, there is no indication that a departure should be made from the regular procedure whereby the Economic and Social Council would meet for the remainder of this year in its old composition and the General Assembly would at its current session elect the requisite number of members, to take office on 1 January 1974, in order to permit the Economic and Social Council to meet in that year in its new composition.

6 An interim arrangement whereby the General Assembly would first elect to the Council for a term of office ending on 31 December 1973 the additional members of the sessional committees of the Council, and then elect the Member States to take office on 1 January 1974, would not, therefore, accord with precedent and does not seem to have been foreseen when the present amendment to the Charter was adopted. Furthermore, such an arrangement might be difficult to reconcile with paragraph 3 of Article 61 of the Charter, as amended, which lays down precise procedures to be followed in the "first election after the increase in membership of the Economic and Social Council" and for determining the term of office of the members so elected. In view of this difficulty, and as there is an established precedent indicating that there is no bar to the Council meeting in its old composition for the duration of this year, there would appear to be no necessity for any interim arrangement of the nature which has been

suggested. Such an arrangement would only be possible, perhaps by analogy to by-elections provided for in rule 142 of the rules of procedure of the General Assembly, if there were a consensus in which all Member States participated that the arrangement should be followed and if there was general agreement on those States to serve until 31 December 1973.[1]

28 September 1973

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[1] At the 2152nd meeting of the General Assembly, on 12 October 1973, the President of the General Assembly stated the following (translation from Spanish):

> " . . . I have held consultations in order to ascertain whether a consensus could be arrived at on an interim arrangement which would permit the Council to hold its resumed session with a full complement of fifty-four members.
>
> "The interim arrangement proposed was to the effect that the additional twenty-seven members of the sessional committees of the Council already elected by the Council for this year should be empowered to serve on the Council itself for a term of office commencing on the day action is taken by the General Assembly and ending 31 December 1973.
>
> "I am happy to announce that a consensus has been reached among all the regional groups to the effect that we adopt the interim arrangement I have just described."

The General Assembly then decided that the twenty-seven additional members of the sessional committees would become members of the Council for the period 12 October 1973-31 December 1973.

Re-eligibility

Rule 146[1]

A retiring member of the Economic and Social Council shall be eligible for immediate re-election.

[1] Rule reproducing textually a provision of the Charter (Art. 61, para. 2, last sentence).

Occasions for elections

Rule 147

When a Trusteeship Agreement has been approved and a Member of the United Nations has become an Administering Authority of a Trust Territory in accordance with Article 83 or Article 85 of the Charter, the General Assembly shall hold such election or elections to the Trusteeship Council as may be necessary, in accordance with Article 86. A Member or Members elected at any such election at a regular session shall take office immediately upon their election and shall complete their terms in accordance with the provisions of rule 139 as if they had begun their terms of office on I January following their election.

Terms of office and re-eligibility

Rule 148[1]

A non-administering member of the Trusteeship Council shall be elected for a term of three years and shall be eligible for immediate re-election.

[1] Rule based directly on a provision of the Charter (Art. 86, para. 1 *c*).

Vacancies

Rule 149

At each session the General Assembly shall, in accordance with Article 86 of the Charter, elect members to fill any vacancies.

INTERNATIONAL COURT OF JUSTICE

Method of election

Rule 150

The election of the members of the International Court of Justice shall take place in accordance with the Statute of the Court.

Rule 151

Any meeting of the General Assembly held in pursuance of the Statute of the International Court of Justice for the purpose of electing members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes.

INTERNATIONAL COURT OF JUSTICE ELECTION PROCEDURE TO BE FOLLOWED IN THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY APPLICATION OF RULE 151 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY AND RULE 6 1 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL MEANING OF THE TERMS "ABSOLUTE MAJORITY" AND "JOINT CONFERENCE" IN ARTICLES 10 AND 12 RESPECTIVELY OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE EVENTUALITY THAT MORE THAN THE REQUIRED NUMBER OF CANDIDATES RECEIVES AN ABSOLUTE MAJORITY

Internal memorandum

The annexed notes deal with certain specific issues which go beyond the purpose of the memorandum of the Secretary-General (A/39/354) that has set forth the International Court of Justice election procedure to be followed in the Security Council and the General Assembly.

I. APPLICATION OF RULE 151 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY AND RULE 61 OF THE PROVISIONAL RULES OF PROCEDURE OF THE SECURITY COUNCIL

Meaning of "meeting" and "balloting"

1. Rule 151 of the rules of procedure of the Assembly (rule 61 of the Council) reads:

> "Any meeting of the General Assembly held in pursuance of the Statute of the International Court of Justice for the purpose of electing members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes."

2. It may be recalled that at the 24th meeting of the General Assembly, on 6 February 1946, a procedural discussion took place on the meaning of the word "meeting" for the purposes of Articles 11 and 12 of the Statute of the International Court of Justice. Some delegates interpreted "meeting" as meaning "ballot"; others argued that it should be interpreted to mean "day" and not simply one ballot. The President of the Assembly made a ruling that a meeting for the purpose of ICJ elections was "a meeting with a single ballot". The ruling was sustained in the Assembly, but was challenged by several Member States. A proposal to request an advisory opinion was first accepted by the Security Council, but was eventually turned down by the General Committee on the ground that that was a procedural question and should be decided by the organ concerned." In November 1946, the Assembly, on the basis of a Sixth Committee report, decided to adopt resolution 88 (I) adding a new rule to its rules of procedure (rule 151). The rule interpreted "meeting" as continuous balloting, rather than one single ballot.

3. The Security Council, on 4 June 1947 (at its 138th meeting), concurred in this action of the General Assembly and adopted a similar rule (rule 61). The report of the Sixth Committee further stressed that the General Assembly, in adopting this rule, contemplated that the communication of the result to the other organ should take place only when "as many delegates as required for all the seats to be filled", no less and no more, had been produced.

Consequently, paragraph 15 of the Secretary-General's memorandum points out that neither the Assembly nor the Council should communicate to each other the result of a meeting which did not produce the exact number of candidates to fill the vacancies. This practice has been consistently followed in the United Nations since the adoption of rule 152/61.

II. ABSOLUTE MAJORITY

4. Regarding the practice of the United Nations in interpreting the words "absolute majority" in Article 10, paragraph 1, of the Statute of the International Court of Justice, attention is drawn to paragraph 9 of the memorandum by the Secretary-General on the procedure to be followed in Court elections which appears in document A/39/354. The paragraph reads as follows:

> "The consistent practice of the United Nations has been to interpret the words 'absolute majority' as meaning a majority of all electors, whether or not they vote. The electors in the General Assembly are all the Member States, together with the three nonmember States mentioned in paragraph 5 above which are parties to the Statute of the Court. Accordingly, as at the date of the present memorandum, eighty-one (81) votes constitute an absolute majority in the Assembly."

Since the issuance of that document, a new Member has been admitted. Consequently, eighty-two (82) constitutes the required majority.

5. This paragraph does not provide for any reduction in calculating the absolute majority required by reason of inability to vote either because of the application of Article 19 of the Charter or for any other reason. The foregoing interpretation derives from the relevant records of the United Nations Conference on International Organizations held at San Francisco in 1945. The Co-ordinating Committee of the Conference, in reporting on Article 10 of the Statute, stated that "the Committee agreed that [in] line 1, paragraph 1, and [in] line 3, paragraph 3, it was necessary to retain 'absolute' in front of 'majority', since the required majority was one half of the whole membership plus one". The Conference itself endorsed the Co-ordinating Committee's wording.

6. Since Switzerland, San Marino and Liechtenstein are also parties to the Statute of the Court, they are to be added to the total number.

7. The General Assembly and the Security Council have always accepted the foregoing interpretation of the term "absolute majority".

8. Accordingly, on the basis of the text of Article 10, paragraph 1, of the Statute, the interpretation given at the San Francisco Conference, and the consistent practice of the United Nations, eighty-two (82) votes are required for election in the General Assembly and 8 votes are required in the Security Council.

III. JOINT CONFERENCE

9. Article 12, paragraph 1, provides that:

> "If after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, *may be* formed at any time at the request of either the General Assembly or the Security Council . . . " (Emphasis added.)

10. The above provision was taken from the Statute of the Permanent Court of International Justice. In 1921, a deadlock was reached after the "third meeting" in the election of the deputy judges. The President of the Assembly then proposed that the procedure for setting up a joint conference be followed. Pursuant to this proposal, a joint conference was formed by the two electoral bodies. The joint conference then recommended a candidate for election.

The Assembly and the Council approved his candidature.

11. A deadlock after the third meeting was reached in June 1956 during the occasional election resulting from the death of Judge Hsu Mo. There were eight candidates. One candidate received the absolute majority in the Council at its 757th, 758th and 759th meetings, whereas another received the absolute majority in the General Assembly at its 625th, 626th and 627th meetings.

12. The General Assembly then decided to postpone the election, which was resumed in January 1957. At the 760th meeting of the Council, and at the 637th plenary meeting of the Assembly, one of the candidates received the required majority in both organs.

13. The official records of the two organs do not disclose, however, any attempt to resolve the deadlock by resorting to a joint conference.

14. According to Article 12, paragraph 1, of the Statute, a joint conference is only optional (the word "may" is used). Since a joint conference is not compulsory, it is therefore for each organ to determine which procedure it wishes to follow, e.g., to proceed to a joint conference or to continue to a fourth or, if necessary, a fifth meeting. The wording of the Statute does not give any preference to either method.

15. It is the view of the Office of Legal Affairs that to proceed to a fourth or fifth meeting is a more normal procedure than a joint conference. This seems to be supported by the 1956 case. Moreover, the resort to a joint conference also raises a number of difficult issues on which the relevant provisions of the Statute do not provide any clear solution.

16. The application of Article 12, paragraph 1, involves at least three kinds of decisions of the organs concerned:

(i) a decision by the Assembly or the Council to request that a joint conference be formed under the terms of the Article. Once such a request is made by one organ, the other organ must comply;

(ii) appointment by the Assembly and by the Council of the three members which each organ contributes to the conference;

(iii) decision of the conference on names of candidates to be submitted to the Assembly and the Council for their respective acceptance.

17. There is no express provision in the ICJ Statute regarding the majority required in the Assembly for the request for a conference or the appointment of its members. The *travaux preparatoires* of Article 12, paragraph 1, do not shed any useful light on this question. These decisions therefore fall under Article 18 of the Charter concerning voting in the general Assembly. The question arises whether they are votes on important questions, requiring a two-thirds majority, or on "other questions", which may be decided by a simple majority of those present and voting. This question, if raised, would be for decision by the General Assembly in the usual manner. It would seem difficult to justify that these questions are "important questions", as those mentioned in paragraph 2 of Article 18. The matter would seem to be that they should be voted on as "other questions".

18. As for voting in the Council, Article 10, paragraph 2, of the Statute states that any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference, shall be taken without any distinction between permanent and non-permanent members of the Security Council. No express reference is, however, made to decisions by the Council to request a conference. Taking into account Article 10, paragraph 2, which was specially added at the San Francisco Conference, and reading it together with Article 27 of the Charter, which refers to the voting in the Council, it would seem that in the Security Council, a vote either to request a joint conference or to appoint its members falls within Article 27, paragraph 1, as a procedural question requiring the affirmative votes of nine members, without distinction between permanent and non-permanent members.

19. The voting in the joint conference is prescribed in Article 12 of the Statute. The term "by the vote of an absolute majority" in paragraph 1 was added at the San Francisco Conference. It was intended to mean four votes, irrespective of the number present and voting.

20. The relevant provisions in Article 12, paragraph 1, do not provide any guideline or criterion for appointing the three representatives. It may be useful to recall that in 1921, the following was suggested: (i) the Assembly representatives should be delegates of States not represented in the Council; (ii) they should represent different systems of law; and (iii) they should not have a direct interest in the outcome.

21. In the light of the above, should a deadlock occur, a joint conference should not automatically be resorted to. It seems more practical that the electoral organs should proceed to further "meetings".

IV. MORE THAN THE REQUIRED NUMBER OF CANDIDATES HAVE RECEIVED AN ABSOLUTE MAJORITY

22. At the 567th meeting of the Security Council, on 6 December 1951, six candidates obtained an absolute majority: three received seven votes and three received more than seven.

The President ruled that, in view of Articles 8 and 13 of the Statute of the Court, since the Security Council was responsible for electing five judges of the Court, it would appear incompatible with the Statute for the Council to submit to the General Assembly the names of six candidates.

23. One representative proposed that the Council should wait for the result of the ballot of the General Assembly before taking a vote again. The proposal was rejected. Another representative held the view that the three candidates who had received more votes than the others had already been elected and that a vote needed to be taken on the three candidates who had received seven votes. The third representative was of the opinion that the question was whether there was an absolute majority or not and that the size of the majority did not seem decisive. He proposed to take a ballot on all candidates. His proposal was adopted by 9 votes in favour, 1 against and 1 abstention. The general view was thus that to do otherwise would be inconsistent with the task to elect the exact number of candidates to fill the vacant seats.

24. The same situation also occurred on 7 October 1954, 21 October 1963 and 30 October 1972. The practice followed by the Council has been to hold a new vote on all the candidates.

6 November 1984

XVI. ADMINISTRATIVE AND BUDGETARY QUESTIONS

GENERAL PROVISIONS

Regulations for financial administration

Rule 152

The General Assembly shall establish regulations for the financial administration of the United Nations.[1]

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[1] For the Financial Regulations of the United Nations, see ST/SGB/Financial Rules/1/Rev.3.

Financial implications of resolutions

Rule 153[1]

No resolution involving expenditure shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of expenditures prepared by the Secretary-General. No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary Committee (Fifth Committee) has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations.

[1] See annex IV, paras. 97 and 98, and annex V, paras. 12 and 13.

QUESTION WHETHER THE UNITED NATIONS HAS THE OBLIGATION TO PAY EMOLUMENTS TO THE MEMBERS OF THE HUMAN RIGHTS COMMITTEE ESTABLISHED BY THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND ITS OPTIONAL PROTOCOL QUESTION OF HOW THE RESULTING EXPENDITURES CONNECTED WITH THE FIRST (1977) SESSION OF THE COMMITTEE ARE TO BE MET

Memorandum to the Chief, Economic, Social and Human Rights Section, Budget Division, Office of Financial Services

1. With regard to the questions posed in your memorandum of 7 February 1977, on the above-mentioned subject, our views are given below.

2. By its resolution 2200(XXI) of 16 December 1966, the General Assembly adopted the Covenant on Civil and Political Rights and opened it for signature, ratification and accession. Article 28 of the Covenant provides for the establishment of a Human Rights Committee consisting of eighteen members, which are to be elected, under article 30 by the State Parties to the Covenant, the initial election being held no later than six months after the date of entry into force of the Covenant.

3. Article 35 of the Covenant reads as follows:

> "The members of the Committee shall, with the approval of the General Assembly of the United Nations receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities".

When the Third Committee recommended the adoption of resolution 2200 (XXI) to the General Assembly, it had before it a note of the Secretary-General on the financial implications of the above quoted article (A/C.3/L.1382) and before the General Assembly adopted resolution 2200 (XXI) it had before it three documents submitted respectively by the Secretary-General (A/C.5/1102), the Advisory Committee on Administrative and Budgetary Questions (A/6585) and the Fifth Committee (A/6591), concerning the financial implications of the draft Covenant.[1]

4. Rule 154 of the Assembly's rules of procedure at that time read as follows:

> "No resolution involving expenditures shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of expenditures prepared by the Secretary-General. No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary

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[1] The Covenant came into force on 23 March 1976 and the first election was held on 20 September 1976 at United Nations Headquarters (see *Official Records of the General Assembly, Thirty-second Session, Supplement No. 44* (A/32/44).

Committee has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations."

5. From the listing of the documents in paragraph 3 above — the last three of which will be analyzed later in this memorandum insofar as they relate to article 35 of the Covenant— it is clear that the requirement of rule 154 had been met. Consequently, the adoption of the Covenant including article 35 thereof imposes on the United Nations an obligation to pay emoluments to the members of the Human Rights Committee.

6. Article 35 of the Covenant provides that the members of the Committee shall receive emoluments "on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities". In his note on the financial implications of the draft Covenant, the Secretary-General, expressing the concern that article 35 if approved would constitute an exception to the decision taken by the General Assembly at its sixteenth session,[1] nevertheless stated that

> "should the General Assembly decide that emoluments are in fact to be paid to the members of the human rights committee under article 35, provision will have to be made in the budget, beginning with 1968, to meet the resulting expenditure, <u>the magnitude of which would depend on the terms and conditions to be established by the Assembly"</u> (underlining added).

The Secretary-General then proceeded to recommend that

> "To discharge its responsibilities under rule 154 of the General Assembly's rules of procedure, the Fifth Committee might wish to advise the Assembly that:
>
> "(a) Adoption of part IV of the draft Covenant on Civil and Political Rights recommended by the Third Committee in document A/6546 would have the following financial implications:
>
> (i) As regards the human rights committee:
>
> a. Provisions would need to be made in the annual budget, beginning with 1968, to cover the costs of the emoluments which the General Assembly might decide to grant to the members of the committee: <u>the amount of that provision would depend on the</u>

[1] By that decision the Assembly reaffirmed "the basic principle governing the emoluments of persons who serve in organs and subsidiary organs of the United Nations, according to which neither fee nor other remuneration shall normally be paid to:….members serving on organs or subsidiary organs of the United Nations in an individual personal capacity. Where appropriate, a subsistence allowance at the standard rate, together with travel expenses, shall be payable, but the allowance shall not be deemed to contain any element of fee or remuneration; … [These] decisions shall not be deemed to embrace any honoraries which the General Assembly has already authorized for payment on an exceptional basis (*Official Records of the General Assembly, Sixteenth Session, Annexes,* agenda item 54, document A/5005, para 10).

> terms and conditions established by the Assembly" (underlining added).

These statements show that the phrase "on such terms and conditions as the General Assembly may decide" in article 35 refers to the amount to be paid and not to any terms or conditions under which no payment can be made.

7. The ACABQ in its report on financial implications of the draft Covenant, after summarizing the actions which resulted in the earlier decision by the Assembly reaffirming the basic principles governing the emoluments of persons who serve on organs and subsidiary organs of the United Nations, according to which neither fee nor remunerations should normally be paid, expressed the opinion that the General Assembly should maintain its decision of principle and that any payment of honoraria should be limited to those members of organs and subsidiary organs to whom the General Assembly had already authorized payments on an exceptional basis. However, in view of the importance of the Covenant and Optional Protocol recommended by the Third Committee for adoption by the General Assembly, the Advisory Committee suggested that the Fifth Committee might wish to recommend to the General Assembly that, should any such expenditure become necessary during 1967, it should be authorized under the terms of the General Assembly resolution relating to unforeseen and extraordinary expenses for 1967 with the prior concurrence of the Advisory Committee.

8. The report of the Fifth Committee to the Assembly on the financial implications of the draft Covenant contained the following statements: "Concurring with the recommendation of the Advisory Committee on this matter, the Committee decided to inform the General Assembly that, at this time, no financial implications were foreseen in so far as the budget estimates for 1967 were concerned. The Committee decided, however, to recommend that the General Assembly should authorize the Secretary-General, with the prior concurrence of the Advisory Committee, to meet any necessary expenditures which might occur in 1967 under the terms of the General Assembly resolution relating to unforeseen and extraordinary expenses for the financial year 1967. The Committee decided to inform the Assembly that requirements for 1968 would be taken into account in the initial budget estimates for that year.

> "The Committee further recommended that the General Assembly should take note of the observations expressed by the Secretary-General and the Advisory Committee relating to the payment of emoluments to members of the proposed human rights committee referred to in article 35 of the draft Covenant."

9. Although the statements on financial implications mentioned in the preceding paragraphs related to the financial year following the adoption of the Covenant, the views expressed therein on the principles and procedures are relevant to the question dealt with in the present memorandum. In particular the question of payment of emoluments to the members of the Human Rights Committee was one which was considered in depth by the ACABQ and on which the Secretary-General and the Fifth

Committee also expressed concern. Secondly, both the ACABQ and the Fifth Committee recommended that the General Assembly should authorize the Secretary-General with the prior concurrence of the Advisory Committee to meet any necessary expenditures under the terms of the General Assembly resolution relating to unforeseen and extraordinary expenses.

10. Having regard to the background of the adoption of article 35 of the Covenant as reviewed above, we have reached the following conclusions:

(1) that the United Nations has the obligation to pay emoluments to the members of the Human Rights Committee;

(2) that in view of the postponement by the General Assembly of its consideration of the question of honoraria to its next session and of the fact that the Committee is scheduled to hold its first session from 21 March to 1 April 1977, the Secretary-General should deal with the matter under General Assembly resolution 3540 (XXX) on unforeseen and extraordinary expenses for the biennium 1976-1977 and try to obtain the concurrence of the ACABQ, if possible before the opening of the first session of the Human Rights Committee.

25 February 1977

EVENTUALITY OF PROPOSALS INVOLVING EXPENDITURES BEING VOTED ON AT THE TENTH SPECIAL SESSION OF THE GENERAL ASSEMBLY QUESTION WHETHER, SHOULD THAT EVENTUALITY MATERIALIZE, THE ADVISORY COMMITTEE ON ADMINISTRATIVE AND BUDGETARY QUESTIONS AND THE FIFTH COMMITTEE SHOULD BE CONVENED IN THE LIGHT OF RULE 153 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Memorandum to the Secretary of the Fifth Committee

1. In your memorandum of 6 April 1978, you requested the advice of the Office of Legal Affairs with regard to the question of convening ACABQ and the Fifth Committee, in the event that the tenth special session is to adopt decisions having financial implications, in the light of rule 153 of the General Assembly's rules of procedure.

2. The relevant provision in connexion with the question under review is contained in the second sentence of rule 153 of the General Assembly's rules of procedure. It reads as follows:

> ". . .No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary Committee (Fifth Committee) has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations."

3. Clearly, this provision makes it mandatory for the Fifth Committee to consider any proposal involving expenditures before such proposal is voted on by the Assembly. The rule as it is now formulated allows for no exceptions. Nevertheless, as you correctly indicated, the General Assembly is master of its own procedure, to the extent that such procedure is not based on provisions contained in the United Nations Charter (such as for example, rules 82, 83 and 85). Consequently, the Assembly could, preferably on the basis of consensus, decide to suspend the application of this rule if there are valid and practical reasons for avoiding the convening of the Fifth Committee during the tenth special session. In this connexion, your attention is drawn to what we believe is the most pertinent precedent for not convening the Fifth Committee during a special session. At the 2349th plenary meeting of the General Assembly (held during the seventh special session), the Assembly adopted a draft resolution on development and international economic co-operation after hearing the following statement by the Under-Secretary-General for Political and General Assembly Affairs:

> "The draft resolution recommended by the *Ad Hoc* Committee incorporates a number of proposals regarding development and international economic co-operation.

"23. Should the draft resolution be adopted, financial implications will arise in respect of some of the provisions requiring action by the Secretary-General or units of the Secretariat. In accordance with past practice at previous special sessions and in view of the convening later today of the thirtieth regular session of the General Assembly, the Secretary-General intends to deal with the financial implications which may arise from any resolution adopted at the seventh special session as may be required either in the context of the final performance report of the 1974-1975 biennium or in revised estimates for the 1976-1977 biennium."

Several decisions giving rise to expenditures were adopted by the seventh special session28 but the convening of the Fifth Committee was avoided for practical considerations, in particular, the convening of the thirtieth regular session immediately after the special session.

4. In conclusion, it is our view that if resolutions involving expenditures are to be voted on by the General Assembly during the special session devoted to disarmament, the requirements of rule 153 should, if possible, be satisfied. If this procedure presents difficulties, consultations regarding the procedure to be followed should be held in advance of the session among representatives of the various regional groups and, if there is general agreement, the General Assembly could decide to follow the precedent established at the seventh special session, i.e., to act on the substance of proposals and to refer their administrative and financial aspects to the following regular session. The financial implications of any resolutions adopted by the tenth special session could then be included in the Secretary-General's revised estimates for the 1978-1979 biennium and submitted to the General Assembly for its consideration and approval during the course of the thirty-third regular session.

11 April 1978

QUESTION WHETHER MAIN COMMITTEES OF THE GENERAL ASSEMBLY, OTHER THAN THE FIFTH COMMITTEE, HAVE ANY COMPETENCE TO CONSIDER THE FINANCIAL IMPLICATIONS OF THE DRAFT RESOLUTIONS THEY RECOMMEND FOR ADOPTION BY THE ASSEMBLY

Opinions prepared at the request of the Chairman of the Sixth Committee

I

1. You requested a legal opinion of whether Main Committees of the General Assembly, aside from the Administrative and Budgetary one (Fifth Committee), have any competence to consider the financial implications of the draft resolutions they recommend for adoption by the General Assembly and, in particular, to include in such drafts any specifically financial provisions.

2. The constant practice in implementing rules 153 and 154 of the rules of procedure of the General Assembly has been that when a substantive Main Committee is considering a draft resolution to be proposed for adoption to the plenary, the Secretary-General submits a financial implications statement to the Committee; the latter then takes its action in the light of that statement, and might even make some consequential changes in the draft. Thereupon the Secretary-General prepares another financial implications statement (which is substantially identical to the first, but is generally more detailed and includes modalities of budgetary arrangements) for use of the Fifth Committee; that Committee considers the statement and the recommendations thereon of ACABQ, and thereupon formulates its own report to the plenary.

The plenary then acts on the resolution in the light of the Fifth Committee's report, generally adopting the draft proposed by the substantive Main Committee without any change. Consequently the actual financial implications of the definitive resolution are usually those flowing from the draft prepared by the substantive Main Committee, normally without any subsequent modification reflecting the consideration in the Fifth Committee.

3. It follows from the above description of prevailing procedures that substantive Main Committees are expected to and do consider the financial implications of the resolution they recommend to the plenary, and indeed are deliberately given an opportunity to modify these drafts in the light of the Secretary-General's statement of the financial implications of the proposed draft. It is, however, not expected and would indeed not be proper for such a Committee to consider the budgetary implication of resolutions, or the budgetary arrangements that should be made in connection therewith.

18 November 1982

II

Further to our opinion on the subject set out in our memorandum of 18 November 1982 and with specific reference to an amendment to a draft resolution before the Sixth Committee which seeks to authorize the Secretary-General to implement the activities approved under the present resolution "only to the extent that they can be financed without exceeding the level of resources approved in the programme budget for the biennium 1982-1983", it should be clarified that that amendment is not one that requires the consideration of budgetary implications within the meaning of the last sentence of the previous memorandum. Rather, the proposed amendment is one essentially addressed to the priority to be assigned to the proposed activity—a matter to which the Sixth Committee may, of course, address itself. The fact that, in practice, the proposed amendment could only be implemented by taking certain budgetary measures does not, however, make that proposal itself a budgetary one; rather, as indicated in the previous memorandum, if the Sixth Committee should incorporate the proposed amendment in the resolution it proposes to the General Assembly, the Fifth Committee would have to consider what the budgetary implications of the proposed authorization would be, or what budgetary measures would have to be taken to enable the Secretary-General to implement it.

24 November 1982

Rule 154[1]

The Secretary-General shall keep all committees informed of the detailed estimated cost of all resolutions which have been recommended by the committees for approval by the General Assembly.

[1] See annex IV, paras. 97 and 98, and annex V, paras. 12 and 13.

QUESTION WHETHER MAIN COMMITTEES OF THE GENERAL ASSEMBLY, OTHER THAN THE FIFTH COMMITTEE, HAVE ANY COMPETENCE TO CONSIDER THE FINANCIAL IMPLICATIONS OF THE DRAFT RESOLUTIONS THEY RECOMMEND FOR ADOPTION BY THE ASSEMBLY

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24 November 1982

ADVISORY COMMITTEE ON ADMINISTRATIVE AND BUDGETARY QUESTIONS

Appointment

Rule 155[1]

The General Assembly shall appoint an Advisory Committee on Administrative and Budgetary Questions consisting of sixteen members, including at least three financial experts of recognized standing.

[1] See introduction, paras. 19, 31 and 36.

Composition

Rule 156[1]

The members of the Advisory Committee on Administrative and Budgetary Questions, no two of whom shall be nationals of the same State shall be selected on the basis of broad geographical representation, personal qualifications and experience and shall serve for a period of three years corresponding to three calendar years. Members shall retire by rotation and shall be eligible for reappointment. The three financial experts shall not retire simultaneously. The General Assembly shall appoint the members of the Advisory Committee at the regular session immediately preceding the expiration of the term of office of the members or, in case of vacancies, at the next session.

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[1] See introduction, paras. 19 and 36.

Functions

Rule 157[1]

The Advisory Committee on Administrative and Budgetary Questions shall be responsible for expert examination of the programme budget of the United Nations and shall assist the Administrative and Budgetary Committee (Fifth Committee). At the beginning of each regular session at which the proposed programme budget for the following biennium is to be considered, it shall submit to the General Assembly a detailed report on the proposed programme budget for that biennium. It shall also submit, at such times as may be specified in the applicable provisions of the Financial Regulations and Rules of the United Nations,[2] a report on the accounts of the United Nations and all United Nations entities for which the Secretary-General has administrative responsibility. It shall examine on behalf of the General Assembly the administrative budgets of specialized agencies and proposals for financial and budgetary arrangements with such agencies. It shall perform such other duties as may be assigned to it under the Financial Regulations of the United Nations.

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[1] See introduction, para. 36.

[2] ST/SGB/Financial Rules/l/Rev.3 and Amend. 1.

COMMITTEE ON CONTRIBUTIONS

Appointment

Rule 158[1]

The General Assembly shall appoint an expert Committee on Contributions consisting of eighteen members.

[1] See introduction, paras. 26, 33 and 35.

INTERPRETATION OF GENERAL ASSEMBLY RESOLUTION 36/231 A OF 18 DECEMBER 1981 ON THE SCALE OF ASSESSMENTS
QUESTION WHETHER THE COMMITTEE ON CONTRIBUTIONS MUST CONSIDER ITSELF BOUND BY THE FOUR CRITERIA SET OUT IN SUBPARAGRAPHS 4 *(a)-(d)* OF THE RESOLUTION

Memorandum to the Secretary of the Committee on Contributions

The following is a written summary of the legal advice we gave to the Committee on Contributions in two statements this morning, as to whether it must consider itself bound by the four criteria set out in subparagraphs 4 *(a)-(d)* of General Assembly resolution 36/231 A of 18 December 1981.

1. The Committee, as a subsidiary organ of the General Assembly (established and assigned functions by rules 158-160 of the rules of procedure of the General Assembly) required to assist the Assembly in carrying out functions assigned to the latter by Articles 17 (2) and 19 of the Charter, is bound to carry out its tasks in accordance with any directives addressed to it by the Assembly.

2. Although such directives as the General Assembly has from time to time addressed to the Committee (those preceding the thirty-sixth session being listed in document A/36/11, annex I) have often been formulated by the Assembly on the advice of the Committee, there is no requirement that this be so, and the Assembly is consequently entirely free to promulgate directives without first receiving the comments of the Committee thereon.

3. The four criteria in question appear to have been intended as temporary (subject to the conditions set out in the introductory sentence of paragraph 4) but binding directives for the Committee. This appears from the following:

(a) The use of the term "will be observed" ("seront utilises" in French) indicates that the criteria set out in the following subparagraphs are meant to be binding. While the use of the word "shall" in English ("devront être" in French) would have been even more imperative, the word "will" sufficiently conveys the same meaning and certainly does not suggest any flexibility for the Committee as to whether or not to apply the criteria.

(b) The fact that three of the four subparagraphs in which the criteria are set out use the word "should" ("devrait") does not change the conclusion following from the above subparagraph, since it is the introductory part of paragraph 4 that indicates the extent to which the following criteria are to be binding. While again it might have been preferable to use more imperative expressions in the subparagraphs, experience indicates that General Assembly resolutions are not drafted with such degree of care and uniformity that is applied, for instance, to the formulation of treaty instruments. However, it should be noted that while subparagraphs (a), (b) and (d) appear to state absolute criteria, subparagraph (c) is, of necessity, formulated more flexibly in terms of "efforts to

be made" and "special measures to be taken", so that, even if binding, this subparagraph is certainly not rigid.

(c) The debate on the draft resolution in the Fifth Committee, which is summarized in the report of the latter to the General Assembly, suggests that the participants therein, who for the most part concentrated on paragraph 4, were interested in influencing their colleagues in the Fifth Committee and the plenary as to the desirability of adopting the criteria rather than seeking to influence the Committee on Contributions as to whether or not to apply these criteria. In other words, it seems to have been assumed by the participants in the Fifth Committee debate that whatever criteria were to be included in paragraph 4 of the resolution would be binding on the Committee on Contributions.

9 June 1982

GEOGRAPHICAL GROUPS AND CONTRIBUTIONS BY MEMBER STATES TO THE EXPENSES OF THE ORGANIZATION ARTICLES 17 AND 19 OF THE CHARTER OF THE UNITED NATIONS RULES 158 AND 160 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Letter to the Senior Legal Adviser of the Universal Postal Union

This is with reference to your facsimile of 16 February 1996 to the Legal Counsel, requesting information on provisions of the Charter of the United Nations on geographical groups and on contributions by Member States to the expenses of the Organization.

As to your first query, membership in the United Nations, pursuant to Article 4 of the Charter of the United Nations, is open to all peace-loving States which accept the obligations contained in the Charter and, in the judgment of the Organization, are able and willing to carry out those obligations. The only explicit provisions of the Charter on geographical distribution concern the election of the 10 non-permanent members of the Security Council (Article 23. para. 1) and the recruitment of the staff of the Organization (Article 101, para. 3). It should be noted in this context that, since 1963, the General Assembly has adopted geographical distribution patterns for electing officers and members of various organs. While there is no classification based upon formal membership in a geographical group. Member States are characterized in these geographic patterns as African States, Asian States, Eastern European States, Latin American States, and Western European and other States.

In the practice of the United Nations, regional groups corresponding to the aforementioned geographic patterns have evolved as informal arrangements among Member States. The latter groups are based entirely on the agreement of Member States and serve as a mechanism for consultation and coordination among them, particularly on matters relating to elections and candidatures, in the light of the requirement for equitable geographical balance or regional rotation and distribution in United Nations organs and bodies. The members of certain regional groups also use the groups for discussion and consultation on policy issues. Moreover, since groupings of Member States by geographical region have evolved as an informal arrangement for a number of practical purposes, different groupings are sometimes used for different purposes, or in the context of different United Nations bodies.

The composition of the various groups is entirely in the hands of the groups themselves, and as such, is not a matter for the Secretariat. The current chairman of a specific group informs the Secretariat about changes in the composition of the group. As you may know, a country may belong to different groups for different purposes. For example, Turkey is a member of the Asian Group except for electoral purposes, in which case it is a member of the Group of Western European and Other States. It derives from the foregoing that it is up to the regional group concerned to decide whether a particular State should be included among the members of that group. The practice shows that a

State cannot unilaterally decide to be considered as a member of a regional group without having obtained the assent of the group.

With respect to our second query, pursuant to Article 17, paragraph 2, of the Charter, "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". For this purpose, rule 158 of the rules of procedure of the General Assembly provides that the Assembly "shall appoint an expert Committee on contributions consisting of eighteen members." In accordance with rule 160, "the Committee on Contributions shall advise the General Assembly concerning the apportionment of the expenses of the Organization among Members, broadly according to capacity to pay" (emphasis added). Further to rule 160, "the scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantial changes in relative capacity to pay". The Committee also advises the Assembly on the assessments to be fixed for new Members, on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter.

It should be pointed out in this context that, pursuant to Article 19 of the Charter, "a Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have not vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contribution due form it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member" (emphasis added).

26 February 1996

Composition

Rule 159[1]

The members of the Committee on Contributions, no two of whom shall be nationals of the same State, shall be selected on the basis of broad geographical representation, personal qualifications and experience and shall serve for a period of three years corresponding to three calendar years. Members shall retire by rotation and shall be eligible for reappointment. The General Assembly shall appoint the members of the Committee on Contributions at the regular session immediately preceding the expiration of the term of office of the members or, in case of vacancies, at the next session.

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[1] See introduction, para. 37.

Functions

Rule 160

The Committee on Contributions shall advise the General Assembly concerning the apportionment, under Article 17, paragraph 2, of the Charter, of the expenses of the Organization among Members, broadly according to capacity to pay. The scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantial changes in relative capacity to pay. The Committee shall also advise the General Assembly on the assessments to be fixed for new Members, on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter.

GEOGRAPHICAL GROUPS AND CONTRIBUTIONS BY MEMBER STATES TO THE EXPENSES OF THE ORGANIZATION
ARTICLES 17 AND 19 OF THE CHARTER OF THE UNITED NATIONS
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In the practice of the United Nations, regional groups corresponding to the aforementioned geographic patterns have evolved as informal arrangements among Member States. The latter groups are based entirely on the agreement of Member States and serve as a mechanism for consultation and coordination among them, particularly on matters relating to elections and candidatures, in the light of the requirement for equitable geographical balance or regional rotation and distribution in United Nations organs and bodies. The members of certain regional groups also use the groups for discussion and consultation on policy issues. Moreover, since groupings of Member States by geographical region have evolved as an informal arrangement for a number of practical purposes, different groupings are sometimes used for different purposes, or in the context of different United Nations bodies.

The composition of the various groups is entirely in the hands of the groups themselves, and as such, is not a matter for the Secretariat. The current chairman of a specific group informs the Secretariat about changes in the composition of the group. As you may know, a country may belong to different groups for different purposes. For example, Turkey is a member of the Asian Group except for electoral purposes, in which case it is a member of the Group of Western European and Other States. It derives from the foregoing that it is up to the regional group concerned to decide whether a particular State should be included among the members of that group. The practice shows that a

State cannot unilaterally decide to be considered as a member of a regional group without having obtained the assent of the group.

With respect to our second query, pursuant to Article 17, paragraph 2, of the Charter, "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". For this purpose, rule 158 of the rules of procedure of the General Assembly provides that the Assembly "shall appoint an expert Committee on contributions consisting of eighteen members." In accordance with rule 160, "the Committee on Contributions shall advise the General Assembly concerning the apportionment of the expenses of the Organization among Members, broadly according to capacity to pay" (emphasis added). Further to rule 160, "the scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantial changes in relative capacity to pay". The Committee also advises the Assembly on the assessments to be fixed for new Members, on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter.

It should be pointed out in this context that, pursuant to Article 19 of the Charter, "a Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have not vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contribution due form it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member" (emphasis added).

26 February 1996

Establishment and rules of procedure

Rule 161[1]

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.[2] The rules relating to the procedure of committees of the General Assembly, as well as rules 45 and 60, shall apply to the procedure of any subsidiary organ unless the Assembly or the subsidiary organ decides otherwise.

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[1] See annex VI, para. 11 and annex VII, para. 7.

[2] Sentence reproducing textually a provision of the Charter (Art. 22).

OFFICERS OF SUBSIDIARY ORGANS OF THE GENERAL ASSEMBLY UNDER THE RULES OF PROCEDURE OF THE ASSEMBLY, SUCH OFFICERS ARE ELECTED AS INDIVIDUAL REPRESENTATIVES

Memorandum to the Secretary of the Working Group on the financing of UNRWA

1. The Working Group on the Financing of UNRWA[1] is a subsidiary organ of the General Assembly and under rule 163 of the rules of procedure of the Assembly the rules relating to the procedure of committees of the General Assembly apply, unless the Assembly or the subsidiary organ decides otherwise. The General Assembly has taken no contrary decision and consequently unless the Working Group were itself to decide otherwise, the election of officers is governed by rule 105 of the rules of procedure of the General Assembly.[2] This rule provides, *inter alia*, that "in the case of Committees], each shall elect a Chairman, one or more Vice-Chairmen and a Rapporteur. These officers shall be elected on the basis of equitable geographical distribution, experience and personal competence . . ."

2. Under this rule, and in accordance with normal practice for Committees and subsidiary organs of the General Assembly, the Chairman and other officers are elected as individual representatives and not as Member States or delegations. This is indicated by the rule which includes individual qualifications ("experience and personal competence") among the criteria for selection. The procedure under General Assembly Rule 105 is in contrast with the practice in the Security Council where the presidency, under rule 18 of procedure of the Council, is held in turn by member States on the Security Council. The Security Council thus has no provision for Vice-President since it is the delegation which holds the presidency. In this connexion, it will be noted that in General Assembly Committees and subsidiary organs, under rule 107, it is a Vice-Chairman and not another member of the Chairman's delegation who is designated to serve in the absence of the Chairman.

3. It should also be noted that under rule 107, if any officer of the Committee is unable to perform his functions, a new officer is to be elected for the unexpired term. While, in practice, it very often occurs that the new officer is a member of the same delegation as his predecessor, under the rules this is by election (which in some cases may take the form of explicit or tacit confirmation) and not by automatic succession.

4. Of course the subsidiary organ under rule 163 is free to depart from this normal procedure if it so decides and there are cases in which subsidiary organs have adopted other procedures with respect to the Chairman. The United Nations Commission for the Unification and Rehabilitation of Korea, for example, adopted a method of rotation modeled on that of the Security Council. In practice the vast majority of the subsidiary organs apply rule 105 and elect their officers as individual representatives.

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[1] Established by General Assembly resolution 2656 (XXV) of 7 December 1970.

[2] This rule has since been amended by the General Assembly. Rules 105, 107 and 163 referred to in this memorandum are numbered 103, 105 and 161 respectively in the current version of the rules of procedure of the General Assembly.

5. As to the terms of office, there is no uniform practice. Some subsidiary organs re-elect officers each year, while others continue with the same officers. This depends on the decision or the practice of the subsidiary organ concerned.

12 January 1973

MEANING OF THE TERM "SUBSIDIARY BODY" QUESTION WHETHER THE GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME IS A SUBSIDIARY BODY OF THE GENERAL ASSEMBLY OR THE ECONOMIC AND SOCIAL COUNCIL

Letter to the Associate Administrator, United Nations Development Programme

This is in response to the second question raised in your letter of 19 January 1989, and further to my letter to you of the same date.

The second question raised in your letter was whether the Governing Council of UNDP is a subsidiary body of the General Assembly or a subsidiary body of the Economic and Social Council.

As will be noted, the General Assembly in its resolution 2029 (XX) of 22 November 1965 decided, on the recommendation of the Economic and Social Council, to combine the United Nations Expanded Programme of Technical Assistance and the United Nations Special Fund into a single programme, the United Nations Development Programme, which the Assembly then created in resolution 2029 (XX). The Assembly, in the same resolution, established the Governing Council of UNDP and requested the Economic and Social Council to elect the members of the Governing Council.

The term "subsidiary body" is not defined either in the Charter of the United Nations or in General Assembly resolutions, or in the rules of procedure of the General Assembly. However, the Office of Legal Affairs has always advised that one body is a "subsidiary" of another if it has in fact been "established" by the other body: the regional commissions, for example, were established by the Economic and Social Council and are thus "subsidiary bodies" of the Council.

As we understand it, the above is also the sense in which the term "subsidiary body" is used in United Nations practice. You will note, for example, that the Governing Council of UNDP is listed as a subsidiary body of the General Assembly in the *Repertory of Practice of United Nations Organs* (Supplement No. 3, vol. I, p. 458), which covers the period from 1959 to 1966.

Thus, notwithstanding the fact that UNDP was established on the recommendation of the Economic and Social Council and the fact that elections to the Governing Council of UNDP are conducted in the Economic and Social Council, it is the view of the Office of Legal Affairs that, as UNDP and its Governing Council were "established" by the General Assembly, UNDP and its Governing Council are subsidiary bodies of the General Assembly and not subsidiary bodies of the Economic and Social Council.

This having been said, I would like to add the following: the General Assembly in resolution 2029 (XX), paragraph 4", when establishing the Governing Council of UNDP provided that the Governing Council "shall meet twice a year and shall submit reports and recommendations ... to the Economic and Social Council for consideration by the

Council at its summer session". Hence, notwithstanding the fact that the Governing Council is a subsidiary body of the General Assembly, there is ground for the view that the reports of the Governing Council should be placed before the Economic and Social Council, at its summer session, in such a manner as to enable the latter body to study and consider the Council's report in a timely and meaningful way. However, since UNDP and its Governing Council are subsidiary bodies of the General Assembly and not of the Economic and Social Council, and since, therefore, General Assembly decision 43/432 of 20 December 1988 [endorsing Economic and Social Council resolution 1988/77] does not apply, the eight-weeks rule provided for in [Council resolution 1988/77] does not apply to UNDP.

25 January 1989

Italicized headings

Rule 162

The italicized headings of these rules, which were inserted for reference purposes only, shall be disregarded in the interpretation of the rules.

Rule 163[1]

These rules of procedure may be amended by a decision of the General Assembly, taken by a majority of the members present and voting, after a committee has reported on the proposed amendment.

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[1] See annex II, para. I (*c*).