

I. SESSIONS

REGULAR SESSIONS

Opening date

Rule 1¹

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

Place of meeting

Rule 3

The Gea15 TI Assembly shall meet at

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

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"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.

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

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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.

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, otherwise.

(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 Comm

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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.

Summoning at the request of the Security Council or Members

Rule 8¹

Request by Members

Rule 9¹

(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 10¹

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.

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

Rule 13

STATUS OF A DRAFT RESOLUTION SUBMITTED AT A PREVIOUS SESSION OF

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

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

Ceylon and Ecuador (A/C.2/L.806/Rev.1) 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 *proposals* 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.

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'

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

* Not reproduced herein.

Additional items

Rule 15¹

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 16¹

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.

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
østg-ae items

Additional items

Rule 19¹

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.

REGULAR AND SPECIAL SESSIONS

Explanatory memorandum

Rule 20¹

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 21¹

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 22¹

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

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 25¹

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 precedent15 3 0 TD6es of Tc.835 .

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 bei

(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

Alternates

Rule 26

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

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

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

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

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;

RULES OF PROCEDURE FOR THE MEETINGS OF THE PARTIES TO TREATIES
QUESTION WHETHER TO DELETE FROM THE RULES OF PROCEDURE FOR
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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.

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

RULE 13 OF THE RULES OF PROCEDURE OF THE UNITED NATIONS
CONFERENCE ON TRADE AND DE

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

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

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 admi

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'

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.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 "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 (it9-1.question of re)]TJ-0. e 6gj.3 6 isf re

"4. *Declares* that the attitude

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

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

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

"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

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

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 ASSEMBLY 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

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

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

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."

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.

Temporary President

Rule 31¹

If, at the opening of a session of the Ge

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.

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 36¹ [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.

VI. GENERAL COMMITTEE

Composition

Rule 38¹

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.

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 39¹

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.

Functions

Rule 40¹

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 ofn of to8C59da.000is.0014 Tw -1 eachT4 1 TfachT4 1in w[a15 upoThe General Comme be

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-Sec

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

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

(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

(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

Rule 41¹

The General Committee shall make recommendations to the General Assembly

Rule 42¹

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.

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.

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 ATTACK AGAINST ITS SOVEREIGNTY AND TERRITORIAL INTEGRITY IN VIOLATION OF THE PRINCIPLES OF THE CHARTER— SECRETARIAT SHOULD NOT CIRCULATE DOCUMENT CONTAINING BLATANTLY

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

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

Notification under Article 12 of the Charter

Rule 49¹

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 A

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 issue 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.

Regulations concerning the Secretariat

Rule 50¹

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 51¹

Interpretation

Rule 52¹

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

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

Rule 53¹

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 54¹

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 55¹

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

Languages of resolutions and other documents

Rule 56¹

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

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

Publications in languages other than the languages of the General Assembly

Rule 57¹

Documents of the General Assembly, its committees and its subcommittees shall, if the Assembly so decides, be published in

IX. RECORDS

Records and sound recordings of meetings

Rule 58¹

(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.

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

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.

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, Commlto vote. Ac.ly, m15

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 62¹

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.

¹ See introduction, para. 7.

XII. PLENARY MEETINGS

CONDUCT OF BUSINESS

Emergency special sessions

Rule 63³¹

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.

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 Commission

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 66¹

Discussion of a report of a Main Committee in a plenary meeting of the General

Quorum

Rule 67¹ [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 68¹ [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

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 71¹ [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.

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

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 72¹ [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 73¹ [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 74¹ [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.

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 aof

Closure of debate

Rule 75¹ [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

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*

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 ve

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 interval between such votes (i.e., between two cle1 be9(day.9(r

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.

Suspension or adjournment of the meeting

Rule 76¹ [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.

¹ See introduction, para. 7.

Proposals and amendments

Rule 78¹ [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 79¹ [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
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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

delegation of Kampuchea. Under rule 81 of the Assembly rules such a motion required a

"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 82¹ [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

"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.

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

RIGHT TO VOTE OF A UNION OR

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

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 General¹

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

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

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

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

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

them by the Secretariat. Members unable to participate in meetings can address written communications to the organs concerned, wh

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 su

Two-thirds majority

Rule 83¹

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 requiring¹ 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.C.J. Reports 1962, p. 151). While recognizing the wide powers conferred by Article 17 of the Charter on the General Assembly¹, 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."

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

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

Simple majority

Rule 85¹ [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

USE IN RESOLUTIONS, DECISIONS OR CONCLUSIONS ADOPTED BY THE

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 87¹ [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.

4. The majority required for decisions of the General Assembly is specified

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 Ced am(ange the seosacosal.)Tj7y 0 0 ,9s hat would com2T4 0.59998 refBTnge the seosacosb Tml0 ,9s hat would cT

(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.

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

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 88¹ [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-amendments¹, 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

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 pr

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 interval between such votes (i.e., between two cle1 be9(day.9(r

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 5-1.IDt
floor to the proposer or co-sponsor.

19 October 1966

Division of proposals and amendments

Rule 89¹ [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

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 90¹ [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.

¹ See introduction, para. 7.

Voting on proposals

Rule 91 [131]

If two or more proposals relate to the

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

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

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 92¹ [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

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

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 97¹

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.

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 98¹

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).

¹ See introduction, paras. 17, 30 and 44; see also annex IV, paras. 29-38.

Organization of work

Rule 99¹

(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.

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

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, unle

Subcommittees

Rule 102¹

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 103¹ [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

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 105¹ [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.

¹ See introduction, para. 30.

Functions of the Chairman

Rule 106¹ [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

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

Rule 107¹ [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 108¹ [67]

The Chairman may declare a meeting open and permit the debate to proceed when at least one quarter of the

Speeches

Rule 109¹ [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.

¹ See annex III, para. (g), (ii), annex IV, paras. 69-71, and annex VI, para. 6.

Congratulations

Rule 110¹

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.

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 113¹ [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

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 r

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.

Time limit on speeches

Rule 114¹ [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 115¹ [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.

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, memb

Adjournment of debate

Rule 116¹ [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.

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 aof

Closure of debate

Rule 117¹ [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.

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*

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 ve

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 interval between such votes (i.e., between two cle1 be9(day.9(r

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 118¹ [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 120¹ [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 give

Decisions on competence

Rule 121¹ [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.

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
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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

delegation of Kampuchea. Under rule 81 of the Assembly rules such a motion required a

"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

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

RIGHT TO VOTE OF A UNION OR

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

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 General¹

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

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

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 obj8.5vsto al-5.48()JTJ0 -1.15

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

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

them by the Secretariat. Members unable to participate in meetings can address written communications to the organs concerned, wh

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

VOTING REQUIREMENTS IN MAIN

Meaning of the phrase “members present and voting”

Rule 126 [86]

For the purposes of these rules, the ph

Method of voting

Rule 127¹ [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 ~~W~~orded vote shall replace a any representative m

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.

¹ At the date of drafting of the above opinion, th

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

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.

(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:

Conduct during voting

Rule 128¹ [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-amendments¹, 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

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 pr

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 interval between such votes (i.e., between two cle1 be9(day.9(r

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 129¹ [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.

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 130¹ [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.

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

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.1/L.644/Corr.1 under the names of 32 sponsors, and the other draft was re-published as document A/C.1/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

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

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 134¹

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

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 Secr

Notification of applications

Rule 135¹

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 137¹

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.

¹ See introduction, para. 4.

Notification of decision and effective date of membership

Rule 138¹

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-
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24 March 1964

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:

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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 Sti 0 TD-0.cil is notaamsse94 unnhe Council coevc-l opiexpandin

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

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

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"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:

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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.

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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.

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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 gal connice t-0.6r

SECURITY COUNCIL

Annual elections

Rule 142¹

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

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)

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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.

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Qualifications for membership

Rule 143¹

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 144¹

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 145¹

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

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.”

suggested. Such an arrangement would only be possible, perhaps by analogy to by-

TRUSTEESHIP COUNCIL

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 1 January following their election.

Terms of office and re-eligibility

Rule 148¹

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).

INTERNATIONAL COURT OF JUSTICE

Method of election

Rule 150

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 COUN

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

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 thus5 TD0.E ta

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

¹ For the Financial Regulations of the United Nations, see ST/SGB/Financial Rules/1/Rev.3.

Financial implications of resolutions

Rule 153¹

QUESTION WHETHER THE UNITED NATI

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, the magnitude of which would depend on the terms and conditions to be established by the Assembly” (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: the amount of that provision would depend on the

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 Comm7.9(err96(ly shoue)-6.3(d))TJ183695 -1.15 T

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

"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 a[l/amve(units ov1.1 pr[(oe sractical)]Ta)-56.505 -1.15 T32o6

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 ACABEo2nd 27.3-20.285 -1.15

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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 154¹

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,
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24 November 1982

ADVISORY COMMITTEE ON ADMINISTRATIVE
AND BUDGETARY QUESTIONS

Appointment

Rule 155¹

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 156¹

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.

¹ See introduction, paras. 19 and 36.

Functions

Rule 157¹

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.

¹ See introduction, para. 36.

² ST/SGB/Financial Rules/1/Rev.3 and Amend. 1.

COMMITTEE ON CONTRIBUTIONS

Appointment

Rule 158¹

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

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

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 taxes on Entsch. 82 (1903) ex 0.168tions s7

Composition

Rule 159¹

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.

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

GEOGRAPHICAL GROUPS AND CONTRIBUTIONS BY MEMBER STATES TO
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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 from 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 161¹

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.

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

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

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 163¹

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.

¹ See annex II, para. I (c).