

## SIXTH COMMITTEE

## SUB-COMMITTEE ON PRIVILEGES AND IMMUNITIES

AGREEMENT BETWEEN THE UNITED NATIONS AND THE UNITED STATES OF  
AMERICA REGARDING THE HEADQUARTERS OF THE UNITED NATIONS

## Draft Report of the Rapporteur

1. By Resolution No. 99 (1) adopted by the General Assembly on 14 December 1946, the General Assembly, in view of its decision that the permanent headquarters of the United Nations should be located in the City of New York, recognized that the draft agreement regarding the headquarters of the United Nations which had resulted from discussions between the Secretary-General and the negotiating committee on the one hand and the authorities of the United States of America on the other hand (document A/67) needed to be adapted to the circumstances of the new site. It accordingly authorized the Secretary-General to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of permanent headquarters of the United Nations in New York, and further laid it down that, in negotiating this agreement, the Secretary-General should be guided by the provisions of the draft agreement (A/67) and that the new agreement negotiated by the Secretary-General should not come into force until approved by the General Assembly.

2. The same Resolution provided that, pending the coming into force of this Headquarters Agreement, the Secretary-General was authorized to conclude arrangements with the appropriate authorities of the United States of America to determine on a provisional basis the privileges and immunities and facilities needed in connexion with the temporary headquarters of the United Nations which are also situated in the state of New York.\*

\* The sub-committee were informed that negotiations have been initiated between the Secretary-General and the United States Authorities and that an early and successful conclusion can be anticipated.

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It is true that the official printed copy of paragraph 4 of the Resolution actually uses the words "permanent headquarters of the United Nations", but the Committee is satisfied that there has been a simple clerical error and that paragraph 4 of the resolution intended to refer to the temporary headquarters at Lake Success and at Flushing.

3. In accordance with the authority given to him by paragraph 1 of the Resolution of 14 December, the Secretary-General, after negotiations, signed an agreement on 26 June last with the Secretary of State of the United States of America and, in accordance with paragraph 3 of the resolution, this Agreement provided (Section 28) that it should be brought into effect by an exchange of notes between the Secretary-General, duly authorized pursuant to the Resolution of the General Assembly of the United Nations, and the appropriate executive officer of the United States, duly authorized pursuant to appropriate action of Congress. Accordingly, the Secretary-General has now presented this Agreement to the General Assembly for approval, and the question is whether the Secretary-General should be authorized to proceed to an exchange of notes bringing the Agreement into force.

4. In submitting the text of the Agreement the Secretary-General also submitted a covering report (A/371) which, amongst other things, showed that the Congress of the United States had taken the action necessary to authorize the Secretary of State to bring the Agreement into force. Copies of the S. J. Resolution 144, now Public Law 357, passed by the United States Congress for this purpose having been transmitted semi-officially by the legal Adviser of the State Department to the Assistant Secretary-General, the Assistant Secretary-General placed copies thereof at the disposal of the sub-committee. While approving of this action by the secretariat, the sub-committee were, however, of the opinion that it was neither necessary nor appropriate for the United Nations to take official cognizance of this Resolution of Congress on the ground that the Agreement alone contained the obligations between the parties and that the actual contents of the Resolution of Congress was a domestic matter for the United States of America.

5. The sub-committee studied the text of the Agreement and compared it with the draft Agreement (A/67) referred to in the Assembly's resolution of last year. This examination showed that, though there were a considerable number of changes, all the changes which resulted, with certain exceptions to be mentioned later, were either simple adaptations rendered necessary by the fact that the headquarters district now decided on is a small area in the middle of the City of New York, whereas the previous draft agreement had in mind a much larger area in rural surroundings, or else mere changes of arrangement and drafting involving no difference in meaning.

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6. Of the changes which do not fall into these categories, certain constituted improvements on the position from the point of view of the United Nations, in particular in the matter of telecommunications (section 4), establishment of a postal service (section 6), persons invited to the headquarters district but not covered by the original draft (section 11).

7. The provisions of Section 13 (b) and (c) fall, however, into a different category. They deal with a matter which had not been dealt with in detail either in the draft agreement (A/67) or in the General Convention on the Privileges and Immunities of the United Nations. These provisions give the right to the Government of the United States ultimately to require an official of the United Nations or the representative of a member government or a member of a representative's staff to leave the territory of the United States if he, in matters in no way connected with his official duties, engages in activities, which, in the case of an unprivileged person, would render him liable to deportation. This ultimate right of the United States Government is surrounded by a number of safeguards and, in particular, where the individual concerned possesses diplomatic immunity it is specified that he shall not be required to leave the United States "otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States."

8. The sub-committee were of the opinion that these provisions, referring to a case which would only be expected to arise very rarely, if ever, in practice, were reasonable and should be accepted. It was, however, pointed out that if these provisions were properly applicable in connexion with the Headquarters Agreement of the United Nations, consideration should be given to the same problem in the case of the specialized agencies and that account should therefore be taken of it in another item of the Committee's work which refers to a draft of a General Convention for the specialized agencies (A/C.6/SC.4/W.10). Further, it might be proper also to consider this point in connexion with the General Convention of the United Nations, seeing that the same point might conceivably arise in the territories of members of the United Nations other than the United States.

9. In the course of the discussion of the provisions of the Agreement, certain points arose which it was agreed should be mentioned in the Report. These points are as follows:

(a) In connexion with Section 11 it was pointed out that the expression "representatives of members", which is not defined in the Headquarters Agreement itself, finds its appropriate definition in Section 16 of the General Convention, the two instruments being complementary to each other.

(b) In connexion with Section 12, it was agreed that though this

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provision is by its own terms only applicable to Section 11, no inference could be drawn, in the basis of the e contrario principle of interpretation, affecting the meaning of any other sections of the Agreement.

(c) Section 15 was particularly discussed in connexion with the proposal of the Argentine Delegation (document A/378). As a result of a full discussion and explanations with regard to 15 (2), the Argentine Delegation declared themselves satisfied and withdrew their proposal. It was, however, felt that sub-section (2) should be interpreted liberally and that Section 16 of the General Convention might afford a convenient guide in considering what classes of persons on the staff of delegations might be included in the lists to be drawn up by agreement between the Secretary-General, the Government of the United States and the Government of the member state concerned.

(d) It was also agreed that the position of a person who was designated by a Member as *Chargé d'Affaires* of its permanent delegation to the United Nations was satisfactorily covered, according to the facts of the case, either by sub-section (1) or by sub-section (2), because if the *Chargé d'Affaires* was merely ad interim during the absence of the Head of the Delegation he would necessarily be a person who was included in the list agreed under sub-section (2)

(e) In connexion with Section 16 (a), it was agreed that the expression "on the boundaries of the headquarters district" meant just outside those boundaries.

(f) Section 20 provides for the conclusion between the Secretary-General and the appropriate United States authorities of any supplemental agreements that may be necessary to fulfill the purposes of the Headquarters Agreement. It was agreed that the Secretary-General should have authority to conclude such supplemental agreements and that the General Assembly should in all cases be informed of their contents. In any case, however, where the proposed supplemental agreement involved any question of importance for which he had not already received authority, the Secretary-General should obtain the approval of the General Assembly before the supplemental agreement became operative.

(g) With regard to Section 28, it was agreed that the notes exchanged for the purposes of bringing the Headquarters Agreement into force should be limited to effecting this purpose and should not contain any other matter having any effect by way of interpretation or otherwise on the provisions of the Headquarters Agreement.

10. The most complicated question which the sub-committee had to consider arose in connexion with Section 26, which provides that the provisions

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of the Headquarters Agreement are complementary to the provisions of the General Convention, and Section 1 (1) (c), which states that the expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations "as acceded to by the United States". It had not been contemplated that the Headquarters Agreement would be submitted to the General Assembly for approval before the United States Government had deposited its instrument of accession to the General Convention. In fact, although the United States Government submitted both instruments to Congress promptly after the signature of the Headquarters Agreement, the legislative process has not yet been completed in the case of the General Convention. In order that the United Nations can be satisfied that its position with regard to its headquarters is satisfactorily assured, it should be in a position to know that the United States is or will shortly be a party to the General Convention and upon what terms.

11. Correspondence, which was brought to the attention of the sub-committee, disclosed that it was probable that the United States Government would be obliged to make reservations to (b) and (c) of Section 18 of the General Convention, in so far as those sections apply to United States nationals employed by the United Nations, and further, that the United States Government was disposed to put upon the provisions of Article VII, relating to the United Nations laissez-passer, an interpretation which would greatly diminish the value of the laissez-passer and might in a purely hypothetical case mean that movements of officials in and out of the United States might be impeded, although they were being sent abroad on official duties and United Nations business.

12. It was, however, agreed that none of these three points affected the provisions of the special agreement in such a manner that the General Assembly need hesitate to approve it and authorize the Secretary-General to bring it into force. On the other hand, if, in the improbable event of other reservations to the General Conventions being made on the part of the United States, a new situation would be created which should entitle the United Nations to re-open the matter.

13. On the substance of these reservations the sub-committee did not feel entitled to make any observations with regard to Section 18 (b) (exemption from taxation of the salaries and emoluments paid to officials by the United Nations) because this is a matter which lies within the scope of another committee. With regard to Section 18 (c) (immunity of officials from national service obligations), the sub-committee were of opinion that, if the complete exemption of all officials of United States Nationality from such obligations could not be accepted, it was most desirable that there should be no possibility of the work of the United Nations being hampered

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by the calling up of such officials, and commended this point for further discussion between the Secretary-General and the proper authorities of the United States.

14. With regard to the laissez-passer, the sub-committee noted that, from the point of view of the United States, this was not a matter of legislation but of administration, and expressed the hope that further discussions on this point between the Secretary-General and the appropriate authorities of the United States might lead to a modification of the views of the United States Government as hitherto expressed to the Secretary-General, with the result that the provisions of Article VII relating to the laissez-passer should produce the full effects which they were designed to secure.

15. It was further pointed out that there is no right on the part of any member to make unilateral reservations to the General Convention, but on the other hand the procedure set forth in Section 36 affords a method by which such reservations may be accepted with the approval of the General Assembly.

16. On the other hand, it was the opinion of some members of the sub-committee that any United States reservations to Section 18 (b) and (c) which might be accepted should rather take the ultimate form of amendments to the General Convention itself, seeing that the position with regard to the liability of officials of the United Nations both to taxation and to military service obligations should be the same in the territories of all members of the United Nations.

17. Being of the opinion, therefore, for the reasons which have been explained above, that the Headquarters Agreement should be approved and brought into force as soon as possible, the sub-committee submits to the Sixth Committee the attached draft resolution for this purpose.

/THE GENERAL ASSEMBLY

THE GENERAL ASSEMBLY

WHEREAS the Secretary-General pursuant to Resolution No. 99 (1) of 14 December 1946 signed with the Secretary of State of the United States of America on 26 June 1947 an Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations; and

WHEREAS the Secretary-General in accordance with the said Resolution has submitted the said Agreement to the General Assembly;

HAVING STUDIED the report prepared on this matter by the Sixth Committee;

APPROVES the Agreement signed on 26 June 1947; and

AUTHORIZES the Secretary-General to bring that Agreement into force in the manner provided in Section 28 thereof, and to perform on behalf of the United Nations such acts or functions as may be required by that Agreement.

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