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SPECIAL COMMITTEE ON PRINCIPLES OF
INTERNATIONAL LAW CONCERNING FRIENDLY
RELATIONS AND CO-OPERATION AMONG STATES

NETHERLANDS: WORKING PAPER

The Question of Methods of Fact-finding

In order to channel and facilitate the discussion on agenda item 6.II, Consideration of the Question of Methods of Fact-finding in accordance with General Assembly resolution 1967 (XVIII) of 16 December 1963,* the Netherlands delegation deems it useful to submit in advance the following views and considerations.

1. Both in the field of the settlement of disputes and in the framework of inter-governmental organization and multilateral treaties, a distinction should be made between:

- (a) decision-making functions;
- (b) inquiry, by a person or a body of recognized standing and the highest reliability and impartiality;
- (c) technical collection and examination of factual evidence by experts in the field.

Any international fact-finding organ or centre should comprise function (b) and (c), with (c) subordinated to (b).

* Report of the Secretary-General, document A/584, paras. 1 and 2.

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2. It follows from the foregoing that any fact-finding body should never have decision-making functions and should always be an auxiliary or subsidiary body either to higher, decision-making organs or to the parties in a dispute. It could never operate unless under the authority of such a higher organ or on the request of the parties. Consequently, a fact-finding body could never encroach upon the authority of organs like the General Assembly or the Security Council.

3. In the view of the Netherlands delegation an international fact-finding body should not supersede the existing schemes in so far as those are specially adapted to the requirements of one particular organization or convention. Furthermore, the services of a fact-finding body should be subject to voluntary acceptance by the decision-making parties or body.

4. In view of the fact that, owing to the lack of time, the study prepared by the Secretary-General (A/5694) does not deal with international inquiry, as envisaged in some treaties as a means of ensuring their execution or within the framework of international organizations, and in view of the rather limited number of comments received from Governments, the Netherlands delegation will not in the present working paper submit concrete proposals to the Committee.

It wishes, however, to give an outline of several modalities, possibilities and particular aspects of establishing a special organ for fact-finding which might be considered.

A. Procedures for establishing a special organ

(a) Departing from existing arrangements or frameworks.

1. Revision of the Hague Treaty of 1907.
2. Revision of the General Act of 1949
3. Revision of resolution 268 D (III) establishing a Panel of Enquiry and Conciliation.

(b) Establishment of a new organ which would not confine its activities to fact-finding as a means of settlement of disputes.

1. By a resolution of the General Assembly on the recommendation of the Sixth Committee and in pursuance of Articles 7, 2 and/or 22 of the Charter.
2. Through a diplomatic conference on the basis of a text prepared by the ILC, the Sixth Committee or an ad hoc body.

B. Relationship and subordination to the United Nations and in particular the General Assembly, the Security Council, the Secretary-General and the International Court of Justice

C. Terms of reference of a special fact-finding organ

1. Investigation of facts, events, situations and circumstances on behalf of the United Nations and its organs, the specialized agencies and other international organizations for the purpose of policy-planning, programming and decision-making.
2. Investigation of facts, events, situations and circumstances in the area of treaty compliance on behalf of the parties or the international organizations concerned.
3. Investigation of facts, events, situations and circumstances in the area of peaceful settlement of disputes and matters of peace and security on behalf of the parties concerned and international organizations and particularly the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice or international arbitral tribunals.
4. Other possibilities.

D. The composition of a special organ for fact-finding

1. Permanent Secretariat under the Secretary-General.

2. (a) Panel of highly regarded and qualified persons, appointed by the Secretary-General, who would be readily available and who could utilize the services of individual experts or investigators;
- (b) Council for fact-finding composed of X members and an equal number of alternate members, both elected for a certain number of years by the General Assembly; this council could utilize the services of individual experts or investigators;
- (c) Other possibilities.