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THE POLICIES OF APARTHEID OF THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA*

QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION**

Consultation with the International Bank for Reconstruction
and Development

Report of the Secretary-General

1. In its resolution 2184 (XXI) of 12 December 1966 entitled "Question of Territories under Portuguese administration", the General Assembly requested the Secretary-General "to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution".
2. In its resolution 2202 (XXI) of 16 December 1966 entitled "The policies of apartheid of the Government of the Republic of South Africa", the General Assembly requested the Secretary-General "to consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with those of the present resolution, and to report to the General Assembly at its twenty-second session".
3. On 15 December 1966 the Secretary-General addressed a letter to the President of the Bank transmitting a copy of Assembly resolution 2184 (XXI) and requesting his views regarding the timing and modalities for the carrying out of the

* Item 35 of the provisional agenda.

** Item 67 of the provisional agenda.

consultations. A copy of Assembly resolution 2202 (XXI) was also transmitted to the Bank by a letter dated 29 December.

4. At a meeting held on 20 December between the Secretary-General and the President of the Bank and after discussions between officials of the Secretariat of the United Nations and the Bank, it was decided that a written exchange of views should take place.

5. By a letter dated 6 March 1967, the Legal Counsel of the United Nations forwarded to the General Counsel of the Bank a paper entitled "The International Bank for Reconstruction and Development and Implementation of United Nations General Assembly resolutions to withhold assistance of any kind to the Governments of Portugal and South Africa" prepared by the United Nations Secretariat. This paper is reproduced as annex I to the present report.

6. By a letter dated 5 May, the General Counsel of the Bank transmitted to the United Nations Secretariat a paper containing comments of the Legal Department of the Bank on the Secretariat paper. A relevant extract from the letter of transmittal together with the paper from the Bank is reproduced as annex II to the present report.

7. In a letter dated 20 July to the General Counsel of the Bank, the Legal Counsel of the United Nations replied to the General Counsel's letter of transmittal dated 5 May. The letter from the Legal Counsel of the United Nations is reproduced as annex III.

8. On 18 August 1967 the President of the Bank addressed a letter to the Secretary-General on the matter to which the Secretary-General replied by a letter dated 23 August 1967. These two letters are reproduced as annexes IV and V, respectively, to the present report.

9. The Secretary-General feels that the discussion with the Bank has clarified the respective legal positions of the United Nations and the Bank and he hopes that the exchange of letters referred to in paragraph 8 above between the President and himself will contribute to closer mutual understanding and co-operation.

ANNEX I

Memorandum by the Secretariat

3 March 1967

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I. INTRODUCTION

1. On 20 December 1966, the President of the International Bank for Reconstruction and Development conferred with the Secretary-General of the United Nations, and they agreed that early consultations should be held between the two organizations regarding the question of the implementation of resolutions of the General Assembly of the United Nations which call for the withholding of assistance of any kind to the Governments of Portugal and South Africa. Subsequently, two meetings were held at which representatives of the Secretary-General of the United Nations and representatives of the President of the Bank agreed on an exchange of written views relating to the powers of and duties on the Bank to give due regard and effect to General Assembly resolutions requesting the Bank to refrain from granting assistance to the Governments of Portugal and South Africa.
2. The present paper sets forth the views of the United Nations Secretariat pursuant to the above-mentioned decision. The paper commences with a recapitulation of the relevant United Nations resolutions, the steps taken by the United Nations to obtain compliance with them, and the response of the Bank. Thereafter it examines the present position of the Bank in the light of what the United Nations Secretariat considers to be the correct legal interpretation of the relevant instruments.

II. BACKGROUND TO THE QUESTION

- A. Establishment 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 (General Assembly resolutions 1514 (XV) of 20 December 1960 and 1654 (XVI) of 27 November 1961)
3. On 20 December 1960 the General Assembly adopted a resolution (1514 (XV)) entitled, "Declaration on the granting of independence to colonial countries and peoples" (appendix 1). This resolution declares inter alia "colonialism" to be contrary to the United Nations Charter and requires that immediate steps be taken to transfer power to the people in all Trust and Non-Self-Governing Territories.

In implementation of this resolution at its next session the General Assembly, on 27 November 1961, adopted resolution 1654 (XVI) entitled, "The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples". This resolution established a Special Committee

"to examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration, and to report to the General Assembly at its 17th session".

In operative paragraph 8 of the same resolution the General Assembly requested the

"specialized agencies concerned to assist the Special Committee in its work within their respective fields".

B. Initial contacts with a view to obtaining the assistance of the Bank in the work of the Special Committee

4. On 15 March 1962 the United Nations Secretariat wrote to the President of the International Bank for Reconstruction and Development enclosing a copy of General Assembly resolution 1654 (XVI) and drawing the President's attention especially to operative paragraph 8. The Bank acknowledged receipt of this letter "regarding operative paragraph 8 of General Assembly resolution 1654 (XVI)" on 19 March 1962.

5. At the 277th meeting of the Special Committee, on 3 July 1964, the representative of Syria asked the Secretary-General to obtain information on loans made by the Bank to Portugal and in particular "whether or not a representative of the Bank could be invited to enlighten the Committee on this question". On 16 July 1964 the United Nations Secretariat wrote to the President of the Bank and, after referring to what had occurred in the Special Committee, requested the Bank for its observations on the points raised and inquired as to "the possibility of a representative of the Bank appearing before the Committee in order to provide clarification".

6. The United Nations Secretariat wrote a further letter to the President of the Bank on 17 July 1964, informing him of a decision taken by the Special Committee on 3 July to study the "activities of foreign, economic and other interests, which are impeding the implementation of the Declaration on the granting of independence in the Territories under Portuguese administration and invited the President of the

Bank to comment "as to what assistance you might be able to provide in connexion with this preliminary work". On 28 July 1964 the Bank furnished the information sought by the Special Committee on loans to Portugal and, in response to the United Nations letter of 17 July 1964, stated that it had no information which would be of assistance in the study referred to.

7. On 10 August 1964, as the Bank had not commented on the invitation extended in the United Nations letter of 16 July 1964 to send a representative to appear before the Special Committee, the United Nations Secretariat addressed a further letter to the Bank informing it of the date on which the Special Committee would resume consideration of the Territories under Portuguese administration and asking the Bank to comment on the invitation extended to it. The Bank replied, on 14 August 1964, stating that it had not planned to send a representative to appear before the Special Committee, but added, "if there are any developments which call for further information or clarification on the part of the Bank, please let us know, and we shall be pleased to co-operate with the Committee in any way that we can".

8. On 10 June 1965 the Special Committee adopted a resolution containing an appeal addressed to the specialized agencies, including the International Bank. In this resolution entitled, "Territories under Portuguese administration" (A/AC.109/124 and Corr.1), the Committee, after condemning the colonial policy of Portugal and its refusal to carry out the resolutions of the General Assembly, the Security Council and the Special Committee,

"6. Appeals to all the specialized agencies of the United Nations and in particular the International Bank for Reconstruction and Development and the International Monetary Fund, and requests them to refrain from granting Portugal any financial, economic or technical assistance so long as the Portuguese Government fails to renounce its colonial policy, which constitutes a flagrant violation of the Charter of the United Nations."

The text of this resolution was forwarded to the Bank on 17 June 1965 by the United Nations Secretariat, the Bank's attention being drawn in particular to operative paragraph 6. The Bank acknowledged receipt on 30 June 1965.

C. General Assembly resolutions 2054 A (XX), 2105 (XX) and 2107 (XX) of 15, 20 and 21 December 1965

9. On 15 December 1965 the General Assembly adopted resolution 2054 A (XX) entitled, "The policies of apartheid of the Government of the Republic of South Africa" (appendix 2).^{a/} This resolution after expressing concern at the continued implementation of apartheid by the Government of South Africa in violation of its obligations under the Charter and in defiance of resolutions of the Security Council and the General Assembly and after drawing the attention of the Security Council to the situation in South Africa as being a threat to international peace and security,

"Invites the specialized agencies: to take the necessary steps to deny technical and economic assistance to the Government of South Africa...."

10. On 20 December 1965 the General Assembly adopted resolution 2105 (XX) entitled, "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 3). This resolution after referring to the continuation of colonial rule and the practice of apartheid as being "a threat to international peace and security" and "constituting a crime against humanity",

"Requests all States and international institutions including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination."

11. On 21 December 1965 the General Assembly adopted resolution 2107 (XX) entitled, "Question of Territories under Portuguese administration" (appendix 4).

^{a/} Previously, on the same subject, the General Assembly had, inter alia, established a Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa (resolution 1761 (XVII) of 6 November 1962) to keep the racial policies of that Government under review when the Assembly was not in session and to report to the General Assembly and the Security Council, as may be appropriate, from time to time. By its resolution 1978 (XVIII) of 16 December 1963, the General Assembly invited "the specialized agencies and all Member States to give the Special Committee their assistance and co-operation in the fulfilment of its mandate".

This resolution after condemning the colonial policy of Portugal and its refusal to carry out the resolutions of the General Assembly and the Security Council,

"Appeals to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)."

D. Further contacts with a view to obtaining the assistance of the Bank in the work of the Special Committee

12. On 10 January 1966 the Secretary-General transmitted the text of General Assembly resolution 2054 (XX) to the President of the Bank and on 27 and 31 January 1966 respectively the United Nations Secretariat forwarded to the Bank the texts of General Assembly resolutions 2105 (XX) and 2107 (XX). The Bank replied in all these cases that it had taken note of their contents.

13. At its 415th meeting on 18 May 1966 the Special Committee requested the Secretary-General to communicate with the specialized agencies in order to ascertain whether the requests and appeals addressed to them by the General Assembly and the Special Committee had been brought before their respective organs for decisions, and what action had been taken or was contemplated in respect to such requests and appeals. Pursuant to the Special Committee's request the United Nations Secretariat, on 6 June 1966, wrote to the President of the Bank and after advising him of the information sought by the Special Committee and referring to the material General Assembly and Special Committee resolutions, requested the President to furnish the Secretary-General with any information relevant to the Special Committee's inquiries.

14. On 14 June 1966 the Bank entered into two agreements granting loans to Portuguese companies, one with the Hydro-Electrica Do Douro S.A.R.L. (Loan No. 452 P.O.) lending \$US20 million, the other with the Empresa Termoelectrica Portuguesa S.A.R.L. (Loan No. 453 P.O.) lending \$US10 million and on the same date the Republic of Portugal entered into two agreements with the Bank guaranteeing the above two loans. On 8 September 1966, pursuant to an announcement made in July 1966, the Bank entered into an agreement with the South African Electricity Supply Commission granting a loan in the amount of \$US20 million and on the same date the Republic of South Africa entered into an agreement with the Bank guaranteeing this loan.

15. On 5 July 1966 the General Counsel of the Bank, in a written reply to the United Nations Secretariat's letter of 6 June 1966, stated that copies of General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) had been circulated on 21 March 1966 to the Bank's Executive Directors. He did not indicate whether the Special Committee's resolution A/AC.109/124 forwarded to the Bank on 17 June 1965 had also been similarly circulated (see para. 8 above).

E. Statements made on behalf of the Bank at the twenty-first regular session of the General Assembly

16. On 28 November 1966, in response to an invitation, the General Counsel of the Bank attended a meeting of the Fourth Committee of the General Assembly which was considering the question of Territories under Portuguese administration and a report of the Special Committee established under General Assembly resolution 1654 (XVI). At this meeting the General Counsel explained the lending policies pursued by the Bank vis-à-vis Portugal. He stated inter alia that,

"Early in 1966 the Bank had been informed of the adoption by the General Assembly of resolutions 2105 (XX) and 2107 (XX) appealing to specialized agencies to withhold assistance from Portugal and South Africa. It was a matter of public record that the Bank had made loans for two projects in metropolitan Portugal and one project in South Africa after those resolutions had been adopted and brought to the Bank's attention."

He also explained that copies of General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) had been circulated to the Bank's Executive Directors on 21 March 1966. On 29 March 1966 the President of the Bank, having referred the Directors to these resolutions and having informed them that the Bank was currently studying loan applications for projects in Portugal and South Africa, had made the following statement,

"The Bank's articles provide that the Bank and its officers shall not interfere in the political affairs of any member and that they shall not be influenced in their decisions by the political character of the member or members concerned. Only economic considerations are to be relevant to their decisions. Therefore, I propose to continue to treat requests for loans from these countries in the same manner as applications from other members."

The General Counsel further quoted the President as also having said on the same occasion,

"I am aware that the situation in Africa could affect the economic development, foreign trade and finances of Portugal and South Africa. It will therefore be necessary, in reviewing the economic position and prospects of these countries, to take account of the situation as it develops."

17. The General Counsel then informed the Committee that some months later when the economic and project studies had been concluded, the President of the Bank had presented loan proposals to the Executive Directors for the two projects in Portugal and one in South Africa, and that these loans were approved by the Executive Directors. The General Counsel also explained that the Bank had felt free to grant the loans to Portugal and South Africa in 1966 without formal "consideration" of the recommendations contained in General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) on the ground that, because of lack of prior consultations, the Bank had not regarded such resolutions as being "formal recommendations" within the meaning of article IV, paragraph 2, of the Agreement between the United Nations and the International Bank for Reconstruction and Development which governs the relationship of the two bodies. In reply to questions, the General Counsel further explained that the Bank had not informed the Secretary-General of the United Nations of the reasons why it could not act on the General Assembly resolutions because these resolutions had not seemed to the Bank to be "formal recommendations" within the meaning of this article. He also said that even if these resolutions had been regarded as formal recommendations, the Bank would have still considered itself precluded from taking such recommendations into account in reaching a decision whether or not to grant loans to Portugal or South Africa because of the provisions of paragraph 10 of article IV of the Bank's own Articles of Agreement which deal with political activity by the Bank and its officers.

18. On 8 December 1966 the General Counsel wrote to the Chairman of the Special Political Committee of the General Assembly (A/SPC/115 dated 10 December 1966) (appendix 5) which was considering the policies of apartheid of the Government of South Africa. After referring to General Assembly resolution 2054 A (XX), he stated that his remarks in the Fourth Committee as to the Bank's position in regard to loans to Portugal were of equal application in regard to loans by the Bank to South Africa as the issues raised were identical in both cases.

F. General Assembly resolutions 2184 (XXI), 2189 (XXI) and 2202 (XXI) of 12, 13 and 16 December 1966 and steps taken to implement them

19. On 12 December 1966 the General Assembly adopted resolution 2184 (XXI) entitled, "Question of Territories under Portuguese administration" (appendix 6). This resolution in paragraph 9,

"Appeals once again to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance as long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV),"

and further in paragraph 10,

"Requests the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution."

20. The Secretary-General of the United Nations wrote to the President of the Bank (appendix 7), on 15 December 1966, enclosing a copy of General Assembly resolution 2184 (XXI), drawing attention in particular to paragraphs 9 and 10 thereof, requesting the President's views regarding the timing and modalities for carrying out of the consultations referred to, expressing the view that such consultations fell within article IV, paragraph 2, of the Relationship Agreement and suggesting that the consultations should be held without delay.

21. On 13 December 1966 the General Assembly adopted resolution 2189 (XXI) entitled, "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 8). This resolution in paragraph 6,

"Declares that the continuation of colonial rule threatens international peace and security and that the practice of apartheid, as also all forms of racial discrimination, constitutes a crime against humanity,"

and in paragraph 9,

"Requests all States, directly and through action in the international institutions of which they are members, including the specialized agencies, to withhold assistance of any kind to the Governments of Portugal and South Africa...."

22. On 16 December 1966 the General Assembly adopted resolution 2202 (XXI) entitled, "The policies of apartheid of the Government of the Republic of South Africa" (appendix 9). This resolution in paragraph 1,

"Condemns the policies of apartheid practised by the Government of South Africa as a crime against humanity,"

and in paragraph 6,

"Requests the Secretary-General:... (d) to consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and also those of the present resolution, and to report to the General Assembly at its twenty-second session."

The Secretary-General wrote on 29 December 1966 to the President of the Bank enclosing a copy of resolution 2202 (XXI) and drawing attention inter alia to paragraph 6 (d) thereof.

23. It is against this background that the Secretary-General and the President of the Bank met on 20 December 1966 and agreed upon the consultations from which it was decided that the present written exchange of views should take place.

III. EXAMINATION OF THE POSITION ADOPTED BY THE BANK

24. From the statements of the General Counsel of the Bank to the Fourth Committee (see paras. 16-18 above), there appear to be two principal reasons advanced by the Bank for its failure to give effect to the relevant recommendations of the General Assembly. The first of these reasons relates to the requirement of "prior consultation" before either organization makes formal recommendations to the other, under article IV of the Agreement bringing the Bank into relationship with the United Nations, which was concluded pursuant to Articles 57 and 63 of the Charter of the United Nations, and which came into force on 15 November 1947 (United Nations Treaty Series 1948, Volume 16, page 346). The second reason is based upon the Bank's interpretation of its own Articles of Agreement, which came into force on 27 December 1945 (United Nations Treaty Series, 1947, Volume 2, page 134), in particular section 10 of article IV thereof which prohibits political activities by the Bank and its officers. These two reasons are examined separately below.

A. The question of "reasonable prior consultation" under article IV of the Relationship Agreement

25. In regard to loans made to Portugal during 1966 after the text of General Assembly resolutions 2105 (XX) and 2107 (XX) had been communicated to it, the Bank's position appears to be that as, in its view, there had been no consultation with the Bank prior to the adoption of these two resolutions by the General Assembly, the subsequent communication of the text of the resolutions did not have the effect of converting them into "formal recommendations" within the meaning of article IV, paragraph 2, of the Agreement between the United Nations and the Bank. In these circumstances the Bank did not feel obliged or free to give such resolutions the "consideration" required by paragraph 2 of article IV of the said Agreement.

26. Article IV of the Relationship Agreement reads as follows:

"1. The United Nations and the Bank shall consult together and exchange views on matters of mutual interest.

"2. Neither organization, nor any of their subsidiary bodies, will present any formal recommendations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.

"3. The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgement in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms of conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects."

27. From the text of the above article, and the records of the discussion preceding its adoption, it is clear that the "reasonable prior consultation" is not a mere formality, but is required before formal recommendations are made by one organization to the other, so as to permit the latter to submit any views it may have on why such recommendations should not be made. However, there is nothing in the records or in the Agreement itself which assists in an interpretation as to what form, kind, or extent of "reasonable prior consultation" is necessary in order to comply with the requirements of paragraph 2 of article IV.

28. As the records do not disclose what constitutes "reasonable prior consultation", this point is open to interpretation. In the light of the continued efforts of the Special Committee and the United Nations Secretariat from 15 March 1962, through transmission of resolutions, requests for information and invitations for the Bank to appear before the Committee, it may well be argued that reasonable consultation had taken place before Assembly resolutions 2105 (XX) and 2107 (XX) were adopted. Furthermore, the Bank had full knowledge of the type of recommendation contained in these resolutions prior to their adoption, as the United Nations Secretariat had previously transmitted to the Bank resolution A/AC.109/124 whereby the Special Committee appealed to and requested it to refrain from granting Portugal any financial assistance. However, the Bank failed to take advantage of the opportunity provided by the transmission of this resolution to indicate that it had reservations regarding the possibility of its giving effect to a resolution of this nature. It may therefore be maintained with some cogency that the Bank was under an obligation to treat resolutions 2105 (XX) and 2107 (XX) as "formal recommendations" to be considered as soon as possible by the appropriate organs of the Bank. Even if the argument is not accepted, the wording of paragraph 2 of article IV of the Relationship Agreement does not preclude the Bank from considering and giving effect to recommendations which are not "formal recommendations", particularly in the circumstances here involved where the Bank was fully aware throughout of the developments taking place in the United Nations regarding Portugal and South Africa.

29. While it may be necessary to **define** what constitutes "reasonable prior consultation" for the future, it is no longer at issue in the existing situation. The present position appears to be that the discussion at the 1645th meeting of the Fourth Committee in which the General Counsel participated as representative of the Bank, must be regarded as constituting the prior consultation required by paragraph 2 of article IV of the Relationship Agreement, at least in respect of General Assembly resolution 2184 (XXI). Similarly, adequate prior consultation has taken place regarding General Assembly resolution 2202 (XXI), the General Counsel of the Bank having communicated in writing (appendix 5) with the Special Political Committee of the Assembly when that Committee was considering the adoption of that resolution. Resolutions 2184 (XXI) and 2202 (XXI) both request

/...

the Secretary-General to obtain the Bank's compliance with the earlier General Assembly resolutions 2105 (XX) and 2107 (XX). Accordingly, it would seem that, as of the present time, objection by the Bank as to lack of prior consultation cannot be maintained and the Bank should properly under article IV, paragraph 2 of the Relationship Agreement consider giving effect to the resolutions in question.

B. The question of the prohibition of political activities under section 10 of article IV of the Bank's Articles of Agreement

30. The question remaining to be examined is the second aspect of the Bank's present position, namely, that in any event, its compliance with the relevant resolutions of the General Assembly to refrain from granting loans to Portugal and South Africa would be a breach of its own constitution and in particular an infringement of the requirements of section 10 of article IV of the Bank's Articles of Agreement. It is clear from the terms of this section that it applies to the President and other senior members of the staff, and also to the Bank as an institution together with its organs, the Board of Governors and the Executive Directors. However, the scope attributed by the Bank to the words "political affairs", "political character of the member" and "economic considerations", all of which appear in that section, does not appear to be justified by the history, wording or context of section 10.

31. In stating its position the Bank appears to claim firstly that the conduct of the Governments of Portugal and South Africa in failing to observe their international obligations under the United Nations Charter to give effect to Security Council and General Assembly resolutions relating to the maintenance of peace and security is a "political affair" or a reflection of the "political character" of those countries and secondly that the last sentence of section 10 of article IV requires the Bank to exclude from its consideration of loan applications all matters other than economic considerations and this provision in itself precludes the Bank from taking account of the relevant resolutions.

32. Section 10 of article IV of the Bank's Articles of Agreement reads as follows:

"Section 10. Political Activity Prohibited.

"The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the

political character of the member or members concerned. Only economic considerations shall be weighed impartially in order to achieve the purposes stated in Article I."

It is submitted that, contrary to the position presently adopted by the Bank, the sole purpose of section 10 is to prohibit interference in the internal political affairs of a Member State and discrimination against any member country because of the political character of its government. This is probably one of the reasons why the section goes on to provide, in contradistinction, that only "economic considerations" shall be relevant to the decisions of the Bank and its officers. This latter provision, therefore, merely serves to elaborate and emphasize those factors which must be excluded from consideration (internal political affairs) by making express reference to certain factors (economic considerations) which obviously must be taken into consideration. Thus the last sentence of the section should not be regarded in isolation from the first sentence and interpreted as expressly confining the Bank to a consideration of nothing but the economic facts relevant to a particular loan and obliging it to disregard other material factors such as the international conduct of a member country and its repercussions upon international peace and security. That the Bank does not disregard other material factors is clear from the resolution it adopted regarding General Assembly resolution 377 (V), entitled "Uniting for Peace", which is referred to in greater detail in paragraph 38 below.

33. In support of this interpretation of section 10 of article IV of the Articles of Agreement it is of interest to consider the legislative history of this section. The original draft, submitted as section 11 to the United Nations Monetary and Financial Conference held at Bretton Woods in July 1944 reads as follows:

"Section 11. Political Activity Prohibited.

"The Bank and its officers shall scrupulously avoid interference in the political affairs of any member. This provision shall not limit the right of an officer of the Bank to participate in the political life of his own country.

"The Bank shall not be influenced in its decisions with respect to applications for loans by the political character of the government of the member concerned with the loan. Only economic considerations shall be relevant to the Bank's decision.

"The Bank, acting with the strictest impartiality, shall pay particular regard, both in selecting the place of its borrowing and of its lending to maintaining the equilibrium of the international balance of payments of members."

During the Conference, for reasons which the available records do not disclose, the passage relating to officers of the Bank being permitted to engage in the political affairs of the officer's country and the words "of the Government" after the words "political character" were omitted. None the less, their inclusion in the original draft supports the view that the primary intention of this section of article IV is to prohibit actions by the Bank or its officers which involve a participation or interference in the internal political life of a member country and also to ensure that the type or nature of the government within a member country is of no consequence to the Bank or its officers.

34. The relevant General Assembly resolutions deal, however, not with internal political affairs but with situations threatening international peace and security arising from the failure of Portugal and South Africa to observe their obligations under the Charter and international law. For example, General Assembly resolution 2105 (XX) in its preamble deplores

"the negative attitude of certain colonial Powers, and in particular the unacceptable attitude of the Governments of Portugal and South Africa, which refuse to recognize the right of colonial peoples to independence",

and later specifically stresses that

"the continuation of colonial rule and the practice of apartheid as well as all forms of racial discrimination threaten international peace and security and constitute a crime against humanity".

General Assembly resolution 2107 (XX) also in its preamble recites the General Assembly's conviction that,

"The attitude of Portugal towards the African population of its colonies and of the neighbouring states constitutes a threat to international peace and security,"

and goes on to condemn

"The colonial policy of Portugal and its persistent refusal to carry out the resolutions of the General Assembly and the Security Council".

Finally, General Assembly resolution 2184 (XXI) expresses deep concern

"at the critical and explosive situation which is threatening peace and security owing to the intensification of the measures of oppression and military operation against the people of the territories under Portuguese administration".

35. Security Council resolutions 180 (1963) of 31 July 1963 (appendix 10), 181 (1963) of 7 August 1963, 182 (1963) of 4 December 1963, 191 (1964) of 18 June 1964 and 218 (1965) of 23 November 1965 (appendix 11), also recognize the situation in South Africa and the situation resulting from the policies of Portugal as seriously disturbing international peace and security and in resolution 218 (1965) the Security Council expressed its conviction that the implementation of its pertinent resolutions and those of the General Assembly was the only means to achieve the peaceful solution of the question of Portuguese Territories.

36. Neither the prohibition on political activity nor the enjoinder to have regard to economic considerations only, contained in section 10 of article IV of the Bank's Articles of Agreement, preclude a consideration by the Bank of the international conduct of a member country condemned in relevant General Assembly resolutions as being in violation of that country's fundamental Charter obligations and as threatening international peace and security. Therefore section 10 is not a sufficient legal justification for the Bank's failure to comply with General Assembly resolutions adopted in discharge of the Assembly's function in connexion with the maintenance of international peace and security and the observance of international law.

37. Acceptance of an interpretation of section 10 of article IV of the Articles of Agreement which does not preclude the Bank from taking into account conduct of a member country in the international field which is in breach of that State's obligations under the Charter relating to the maintenance of peace and security is consistent with the acceptance by the Bank representatives and the adoption by the Board of Governors of article VI of the Relationship Agreement which provides as follows:

"1. The Bank takes note of the obligations assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also

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members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

38. It is clear that under this Article the Bank, in addition to taking note of the separate obligations of its members under the Charter, itself assumed an obligation to have due regard, in the conduct of its activities, for the decisions of the Security Council relating to matters of peace and security. Is this "due regard" confined to decisions of the Security Council under Articles 41 and 42 of the United Nations Charter? Considerations of principle and of practice indicate that this question should be answered in the negative. As a matter of principle, article IV of the Relationship Agreement provides for the consideration of recommendations by the United Nations other than decisions of the Security Council under Articles 41 and 42 of the Charter. As a matter of practice, it is highly material to note that on 13 September 1951, without any relevant amendment of its Articles of Agreement, the Bank considered itself empowered to pass a resolution to the effect that "the Bank, in the conduct of its activities, shall have due regard for recommendations of the General Assembly made pursuant" to General Assembly resolution 377 (V), "Uniting for Peace" resolution. This action by the Board of Governors, the organ of the Bank expressly charged under article IX of the Bank's Articles of Agreement with authority to interpret those articles, is the strongest possible evidence that there is no constitutional objection to the Bank, in its "consideration" of General Assembly resolutions relating to Portugal and South Africa, having due regard for and complying with the recommendations contained in such resolutions.

39. By agreeing to the inclusion of article VI in the Relationship Agreement the Bank accepted in principle that in the case of Security Council decisions relating to the maintenance of peace and security, section 10 of article IV of its Articles of Agreement did not preclude the Bank from having regard to the international conduct of a Member State. Likewise, by its resolution of 13 September 1951, the Bank recognized in principle that section 10 did not prevent it from having due regard to recommendations of the General Assembly relating to international peace and security. It is therefore inconsistent for the Bank now to insist that having

regard to General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) which relate to the international conduct of Portugal and South Africa and the threat which such conduct poses to international peace and security would be a breach of its obligations under section 10 of article IV of its Articles of Agreement. If it is not a breach in the case of Security Council decisions, how can it in principle be a breach in the case of General Assembly resolutions relating to the same matters, namely maintenance of international peace and security, particularly as the Bank has already recognized that it is not a breach in relation to another General Assembly resolution relating to international peace and security?

40. From the foregoing examination of the Bank's present position it appears that the interpretation of section 10 of article IV presently adopted by the Bank extends the scope of that section unnecessarily. Furthermore, such an interpretation is not consistent with the principle accepted by the Bank and adopted in article VI of the Relationship Agreement and evidenced by the resolution passed by the Bank on 13 September 1951. On the other hand, a more reasonable interpretation properly can be given to section 10 of article IV of the Articles of Agreement, which would reflect the principle underlying article VI of the Relationship Agreement, be in accord with the Board of Governors' decision of 13 September 1951, and at the same time permit the Bank to have regard for and comply with the relevant General Assembly resolutions requesting it to refrain from granting any form of economic assistance to Portugal and South Africa.

41. Against the above legal background, it may also be useful to take account of the Bank's position as a member of the United Nations family of institutions. It seems hardly likely that the Bank would wish to ignore entirely the virtually unanimous condemnation by the international community, expressed through the United Nations as the organ having primary responsibility in this field, of the international conduct of Portugal and South Africa. The international institutions created after the Second World War were intended to work in harmony in the maintenance of international peace and security and not in conflict. In the circumstances, it seems incongruous that, on the one hand the General Assembly of the United Nations has found that the policies of certain States threaten

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international peace and security and that they are guilty of practices constituting "a crime against humanity", and on the other, the Bank feels bound to grant loans to those States on the basis solely of the economic considerations that the projects involved are sound and that repayment is guaranteed.

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APPENDIX 1

General Assembly resolution 1514 (XV)

Declaration on the Granting of Independence to
Colonial Countries and Peoples

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds, directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

947th plenary meeting,
14 December 1960.

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APPENDIX 2

General Assembly resolution 2054 (XX)

The policies of apartheid of the Government
of the Republic of South Africa

A

The General Assembly,

Recalling its resolutions on the policies of apartheid of the Government of the Republic of South Africa,

Having considered the reports of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa,^{a/}

Considering the recommendations and conclusions contained in the report^{b/} of the Group of Experts established under Security Council resolution 182 (1963) of 4 December 1963,

Recalling Security Council resolution 191 (1964) of 18 June 1964,

Gravely concerned at the aggravation of the explosive situation in the Republic of South Africa as a result of the continued implementation of the policies of apartheid by the Government of South Africa in violation of its obligations under the Charter of the United Nations and in defiance of the resolutions of the Security Council and the General Assembly,

Profoundly disturbed at the fact that the policies and actions of the Government of South Africa are thus aggravating the situation in neighbouring territories in southern Africa,

a/ Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 12, documents A/5692, A/5707, A/5825 and Add.1; *ibid.*, Twentieth Session, Annexes, agenda item 36, documents A/5932 and A/5957.

b/ See Official Records of the Security Council, Nineteenth Year, Supplement for April, May and June 1964, document S/5658, annex.

Noting the measures taken by Member States in pursuance of the resolutions of the General Assembly and the Security Council,

Having studied the notes, annexed to the Special Committee's report of 17 June 1965, on the build-up of military and police forces in the Republic of South Africa and on recent investments by foreign-owned corporations in that country,^{c/}

Considering that prompt and effective international action is imperative in order to avert the grave danger of a violent racial conflict in Africa, which would inevitably have grave repercussions throughout the world,

Recalling its resolution 1761 (XVII) of 6 November 1962 recommending the application of economic and diplomatic sanctions against South Africa,

1. Urgently appeals to the major trading partners of the Republic of South Africa to cease their increasing economic collaboration with the Government of South Africa, which encourages that Government to defy world opinion and to accelerate the implementation of the policies of apartheid;

2. Expresses its appreciation to the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa and requests it to continue to perform its functions;

3. Decides to enlarge the Special Committee by the addition of six members, to be appointed by the President of the General Assembly on the basis of the following criteria:^{d/}

(a) Primary responsibility with regard to world trade;

(b) Primary responsibility under the Charter of the United Nations for the maintenance of international peace and security;

(c) Equitable geographical distribution;

4. Condemns the Government of South Africa for its refusal to comply with the resolutions of the Security Council and the General Assembly and its continued implementation of the policies of apartheid;

c/ Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 36, document A/5932, annexes I and II.

d/ See A/6226.

5. Firmly supports all those who are opposing the policies of apartheid and particularly those who are combating such policies in South Africa;

6. Draws the attention of the Security Council to the fact that the situation in South Africa constitutes a threat to international peace and security, that action under Chapter VII of the Charter is essential in order to solve the problem of apartheid and that universally applied economic sanctions are the only means of achieving a peaceful solution;

7. Deplores the actions of those States which, through political, economic and military collaboration with the Government of South Africa, are encouraging it to persist in its racial policies;

8. Again requests all States to comply fully with all the resolutions of the Security Council on this question and to halt forthwith the sale and delivery to South Africa of arms, ammunition of all types, military vehicles, and equipment and materials intended for their manufacture and maintenance;

9. Requests the Secretary-General, in consultation with the Special Committee, to take appropriate measures for the widest possible dissemination of information on the policies of apartheid of the Government of South Africa and on United Nations efforts to deal with the situation, and requests all Member States, specialized agencies and non-governmental organizations, to co-operate with the Secretary-General and the Special Committee in this regard;

10. Invites the specialized agencies:

(a) To take the necessary steps to deny technical and economic assistance to the Government of South Africa, without, however, interfering with humanitarian assistance to the victims of the policies of apartheid;

(b) To take active measures, within their fields of competence, to compel the Government of South Africa to abandon its racial policies;

(c) To co-operate with the Special Committee in the implementation of its terms of reference;

11. Requests the Secretary-General to provide the Special Committee with all the necessary means, including appropriate financial means, for the effective accomplishment of its task.

APPENDIX 3

General Assembly resolution 2105 (XX)

Implementation of the Declaration on the Granting of
Independence to Colonial Countries and Peoples

The General Assembly,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and its resolutions 1654 (XVI) of 27 November 1961, 1810 (XVII) of 17 December 1962 and 1956 (XVIII) of 11 December 1963,

Recalling also its resolutions 1805 (XVII) of 14 December 1962 and 1899 (XVIII) of 13 November 1963 by which it assigned to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples tasks relating to South West Africa, and its resolution 1970 (XVIII) of 16 December 1963 by which it entrusted to the Special Committee additional functions relating to information transmitted under Article 73 e of the Charter of the United Nations,

Having considered the reports prepared by the Special Committee for the years 1964^{a/} and 1965,^{b/}

Noting with deep regret that five years after the adoption of the Declaration many Territories are still under colonial domination,

Deploping the negative attitude of certain colonial Powers, and in particular the unacceptable attitude of the Governments of Portugal and South Africa, which refuse to recognize the right of colonial peoples to independence,

Concerned about the policy of colonial Powers to circumvent the rights of colonial peoples through the promotion of the systematic influx of foreign immigrants and the dislocation, deportation and transfer of the indigenous inhabitants,

a/ Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 8 (part I) (A5800/Rev.1).

b/ Ibid., Twentieth Session, Annexes, addendum to agenda item 23 (A/6000/Rev.1).

Noting the action taken and envisaged by the Special Committee regarding the list of Territories to which the Declaration is applicable,

Deploing further the attitude of certain States which, despite the resolutions of the General Assembly and of the Special Committee, continue to co-operate with the Governments of Portugal and South Africa and even to provide them with aid which is being used by the two Governments to intensify the repression of the oppressed African populations,

Fully aware that the continuation of colonial rule and the practice of apartheid as well as all forms of racial discrimination threaten international peace and security and constitute a crime against humanity,

Having adopted resolutions on specific Territories considered by the Special Committee,

1. Reaffirms its resolutions 1514 (XV), 1654 (XVI), 1810 (XVII) and 1956 (XVIII);
2. Notes with appreciation the work accomplished by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and congratulates it on the efforts it has made to implement the Declaration:
3. Approves the reports of the Special Committee and again invites the administering Powers to implement the recommendations contained therein;
4. Deeply regrets the refusal of certain colonial Powers to co-operate with the Special Committee and their continued disregard of the resolutions of the General Assembly;
5. Calls upon the colonial Powers to discontinue their policy of violating the rights of colonial peoples through the systematic influx of foreign immigrants and the dislocation, deportation and transfer of the indigenous inhabitants;
6. Requests the Special Committee to continue to perform its task and to continue to seek the best means for the immediate and full application of resolution 1514 (XV) to all Territories which have not yet attained independence;
7. Approves the programme of work envisaged by the Special Committee during 1966, including the possibility of holding a series of meetings in Africa and the sending of visiting groups to Territories, particularly in the Atlantic, Indian and Pacific Ocean areas;

8. Requests the Special Committee to pay particular attention to the small Territories and to recommend to the General Assembly the most appropriate ways, as well as the steps to be taken, to enable the populations of those Territories to exercise fully their right to self-determination and independence;

9. Requests the Special Committee, whenever it considers it appropriate to recommend a deadline for the accession to independence of each Territory in accordance with the wishes of the people;

10. Recognizes the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence and invites all States to provide material and moral assistance to the national liberation movements in colonial Territories;

11. Requests all States and international institutions, including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination;

12. Requests the colonial Powers to dismantle the military bases installed in colonial Territories and to refrain from establishing new ones;

13. Requests the Special Committee to apprise the Security Council of developments in any Territory examined by it which may threaten international peace and security and to make suggestions which might assist the Council in considering appropriate measures under the Charter of the United Nations;

14. Requests the Secretary-General to take all necessary measures to promote the large-scale dissemination of the Declaration and of the work of the Special Committee, in order that world opinion may be sufficiently informed of the serious threat to peace posed by colonialism and apartheid, and calls upon all administering Powers to co-operate with the Secretary-General in his efforts;

15. Requests the Secretary-General to continue to provide the Special Committee with all the facilities and personnel necessary for the implementation of its mandate.

1405th plenary meeting,
20 December 1965.

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APPENDIX 4

General Assembly resolution 2107 (XX)

Question of Territories under Portuguese administration

The General Assembly,

Having examined the chapters of the reports 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 relating to the Territories under Portuguese administration,^{a/}

Having heard the statements of the petitioners,

Recalling its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recalling also Security Council resolutions 163 (1961) of 9 June 1961, 180 (1963) of 31 July 1963, 183 (1963) of 11 December 1963 and 218 (1965) of 23 November 1965, and General Assembly resolutions 1807 (XVII) of 14 December 1962, 1819 (XVII) of 18 December 1962 and 1913 (XVIII) of 3 December 1963, as well as the relevant resolutions of the Special Committee, adopted on 3 July 1964^{b/} and 10 June 1965.^{c/}

Noting with deep concern that, in spite of the measures laid down by the Security Council in the aforementioned resolutions, the Government of Portugal is intensifying the measures of repression and military operations against the African people of these Territories with a view to defeating their legitimate aspirations to self-determination, freedom and independence,

Further noting with deep concern that the activities of the foreign financial interests in these Territories are an impediment to the African people in the realization of their aspirations to freedom and independence,

a/ Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 8 (part I) (A/5800/Rev.1), chapter V; *ibid.*, Twentieth Session, Annexes, addendum to agenda item 23 (A/6000/Rev.1), chapter V.

b/ Ibid., Nineteenth Session, Annexes, annex No. 8 (part I) (A/5800/Rev.1), chapter V, para. 352.

c/ Ibid., Twentieth Session, Annexes, addendum to agenda item 23 (A/6000/Rev.1), chapter V, para. 415.

Considering that the evidence submitted by the petitioners confirmed that the Government of Portugal has continued to use the aid and weapons that it receives from its military allies against the populations of Angola, Mozambique, so-called Portuguese Guinea and other Territories under its administration,

Convinced that the attitude of Portugal towards the African population of its colonies and of the neighbouring States constitutes a threat to international peace and security,

1. Reaffirms the right of the peoples of the African Territories under Portuguese administration to freedom and independence and recognizes the legitimacy of their struggle to achieve the rights laid down in the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples;

2. Approves the chapters of the reports 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 relating to the Territories under Portuguese administration and endorses the conclusions and recommendations contained therein;

3. Appeals to all States, in co-operation with the Organization of African Unity, to render the people of the Territories under Portuguese administration the moral and material support necessary for the restoration of their inalienable rights;

4. Condemns the colonial policy of Portugal and its persistent refusal to carry out the resolutions of the General Assembly and the Security Council;

5. Condemns the policy of the Government of Portugal which violates the economic and political rights of the indigenous population by the establishment, on a large scale, of foreign immigrants in the Territories and by the exporting of workers to South Africa;

6. Requests all States to prevent such activities on the part of their nationals in the foreign financial interests which are an impediment to the attainment by the people of their legitimate rights of freedom and independence;

7. Urges Member States to take the following measures, separately or collectively:

(a) To break off diplomatic and consular relations with the Government of Portugal or refrain from establishing such relations;

(b) To close their ports to all vessels flying the Portuguese flag or in the service of Portugal;

(c) To prohibit their ships from entering any ports in Portugal and its colonial territories;

(d) To refuse landing and transit facilities to all aircraft belonging to or in the service of the Government of Portugal and to companies registered under the laws of Portugal;

(e) To boycott all trade with Portugal;

8. Requests all States, and in particular the military allies of Portugal within the framework of the North Atlantic Treaty Organization, to take the following steps:

(a) To refrain forthwith from giving the Portuguese Government any assistance which would enable it to continue its repression of the African people in the Territories under its administration;

(b) To take all the necessary measures to prevent the sale or supply of arms and military equipment to the Government of Portugal;

(c) To stop the sale or shipment to the Government of Portugal of equipment and materials for the manufacture or maintenance of arms and ammunition;

9. Appeals to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV);

10. Requests the United Nations High Commissioner for Refugees, the specialized agencies concerned and other international relief organizations to increase their assistance to the refugees from the Territories under Portuguese administration and to the people who have suffered from military operations;

11. Requests the Security Council to consider putting into effect against Portugal the appropriate measures laid down in the Charter, for the purpose of carrying out its resolutions concerning the Territories under Portuguese domination;

12. Decides to include the question of the Territories under Portuguese administration in the provisional agenda of its twenty-first session.

1407th plenary meeting,
21 December 1965.

APPENDIX 5

Letter dated 8 December from the General Counsel of the
International Bank for Reconstruction and Development to
the Chairman of the Special Political Committee a/

Our representative at the United Nations, Mr. Federico Consolo, has reported that he has learned that the Special Political Committee of the General Assembly has commenced consideration of the question of apartheid in South Africa. From our reading of the annual report to the General Assembly of the Special Committee on the Policies of Apartheid of the Government of South Africa (United Nations document S/7565, 25 October 1966), it would appear that members of the Special Political Committee may well refer to the loan operations in South Africa of the International Bank for Reconstruction and Development in the context of General Assembly resolution 2054 A (XX).

On 28 November 1966, on the invitation of the Chairman of the Fourth Committee, I made a statement on behalf of the International Bank for Reconstruction and Development to the Committee during its consideration of the question of the Portuguese Territories in Africa. The record of this statement and of the subsequent questions of delegates and of my answers is to be found in United Nations document A/C.4/SR.1645, 1 December 1966. My statement also covered the question of the Bank's loan operations in South Africa. The question of the Bank's position with respect to General Assembly resolutions 2105 (XX) and 2107 (XX) was subsequently also discussed at some length at the 1653rd meeting of the Fourth Committee on 3 December 1966, at which meeting Mr. Constantin A. Stavropoulos, Legal Counsel of the United Nations participated. The summary record of this meeting has not yet been received by us. You will also see that this question is reflected in the draft report of the Fourth Committee to the General Assembly (United Nations document A/C.4/L.846, 5 December 1966), and in the draft resolution on this item, as adopted by the Fourth Committee (United Nations document A/C.4/L.842/Rev.1, 5 December 1966).

a/ Previously issued under the symbol A/SPC/115.

The issues raised with respect to the Bank's loan operations in metropolitan Portugal are identical to those regarding loan operations in South Africa. I therefore thought it proper to bring the foregoing to your attention and I would be grateful if this letter could be circulated as a Committee document.

(Signed) A. BROCHES
General Counsel

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APPENDIX 6

General Assembly resolution 2184 (XXI)

Question of Territories under Portuguese administration

The General Assembly,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territories under Portuguese administration,^{a/}

Having heard the statements of the petitioners,

Recalling its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recalling also Security Council resolutions 163 (1961) of 9 June 1961, 180 (1963) of 31 July 1963, 183 (1963) of 11 December 1963 and 218 (1965) of 23 November 1965,

Recalling further General Assembly resolutions 1807 (XVII) of 14 December 1962, 1819 (XVII) of 18 December 1962, 1913 (XVIII) of 3 December 1963 and 2107 (XX) of 21 December 1965, as well as the relevant resolution of the Special Committee adopted on 22 June 1966,^{b/}

Deeply concerned at the critical and explosive situation which is threatening peace and security owing to the intensification of the measures of repression and military operation against the people of the Territories under Portuguese administration,

Noting with deep concern that the activities of the foreign financial interests in these Territories which impede the African people in the realization of their aspirations to freedom and independence continue undiminished,

a/ Official Records of the General Assembly, Twenty-first Session, Annexes, addendum to agenda item 23 (A/6300/Rev.1), chapter V.

b/ Ibid., para. 675.

Further noting with deep concern that Portugal continues to use the aid and weapons that it receives from its military allies against the population of these Territories,

1. Reaffirms the inalienable right of the peoples of the Territories under Portuguese domination to freedom and independence, in accordance with General Assembly resolution 1514 (XV), and recognizes the legitimacy of their struggle to achieve this right;

2. Approves the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territories under Portuguese administration and endorses the conclusions and recommendations contained therein;

3. Condemns, as a crime against humanity, the policy of the Government of Portugal, which violates the economic and political rights of the indigenous population by the settlement of foreign immigrants in the Territories and by the exporting of African workers to South Africa;

4. Further condemns the activities of the financial interests operating in the Territories under Portuguese domination which exploit the human and material resources and impede the progress towards freedom and independence of the peoples of the Territories;

5. Calls upon Portugal to apply immediately the principle of self-determination to the peoples of the Territories under its administration, in accordance with General Assembly resolution 1514 (XV) and Security Council resolutions 183 (1963) and 218 (1965);

6. Appeals to all States to give the peoples of the Territories under Portuguese domination the moral and material support necessary for the restoration of their inalienable rights and to prevent their nationals from co-operating with the Portuguese authorities, especially in regard to investment in the Territories;

7. Recommends to the Security Council that it make it obligatory for all States, directly and through their action in the appropriate international agencies of which they are members, to implement the measures contained in General Assembly resolution 2107 (XX), and in particular those mentioned in paragraph 7 thereof;

8. Requests all States, and in particular the military allies of Portugal within the framework of the North Atlantic Treaty Organization, to take the following steps:

(a) To desist forthwith from giving the Portuguese Government any assistance which enables it to continue its repression of the African peoples in the Territories under its domination;

(b) To take all necessary measures to prevent the sale or supply of arms and military equipment to the Government of Portugal;

(c) To stop the sale or shipment to the Government of Portugal of equipment and materials for the manufacture or maintenance of arms and ammunition;

(d) To take the necessary measures to put an end to such activities as are referred to in paragraph 4 above;

9. Appeals once again to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance as long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV);

10. Requests the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution;

11. Expresses its appreciation to the United Nations High Commissioner for Refugees, the specialized agencies concerned and other international relief organizations for the aid they have extended so far, and requests them, in co-operation with the Organization of African Unity, to increase their assistance to the refugees from the Territories under Portuguese domination and to the people who have suffered and are still suffering owing to military operations;

12. Decides to include the question of the Territories under Portuguese administration in the provisional agenda of its twenty-second session.

1490th plenary meeting,
12 December 1966.

APPENDIX 7

Letter dated 15 December 1966 from the Security Council
to the President of the International Bank for
Reconstruction and Development

..... I have the honour to transmit herewith a copy of resolution 2184 (XXI) on the question of Territories under Portuguese administration adopted by the General Assembly at its 1490th plenary meeting, on 12 December 1966.

In forwarding this resolution, I wish to draw your attention, in particular, to operative paragraphs 9 and 10. In the former, the General Assembly appeals once again to all the specialized agencies, and the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting any financial, economic or technical assistance to Portugal so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV).

In operative paragraph 10 of resolution 2184 (XXI), the General Assembly "requests the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) and 2107 (XX) and with the present resolution". The relevant operative paragraphs of General Assembly resolutions 2103 (XX) and 2107 (XX) read as follows:

[Resolution 2103 (XX)]

"11. Requests all States and international institutions, including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination;"

[Resolution 2107 (XX)]

"9. Appeals to all specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV);"

As you know, the present resolution was adopted after the Fourth Committee of the General Assembly had invited and had consulted with a representative of the International Bank in accordance with Article II, paragraph 3, and Article IV, paragraph 2, of the Agreement of 15 November 1947. Copies of the records of the debate and other relevant documents are being sent to you under separate cover.

In accordance with the request addressed to the Secretary-General in operative paragraph 10 of resolution 2184 (XXI), I have the honour to solicit your views regarding the timing and modalities for the carrying out of the consultations referred to. Such consultations would, in my opinion, fall within the framework of Article IV, paragraph 2 of the Agreement of November 1947, which provides that any formal recommendations made by either organization after consultation will be considered as soon as possible by the appropriate organ of the other.

Since General Assembly resolution 2184 (XXI) will be discussed by the Committee of Twenty-Four during its session commencing on 20 February 1967, and since the Rapporteur of the Fourth Committee expressed the hope of many delegations at the 1490th plenary meeting of the General Assembly that the results of the proposed consultations would be reported to the Special Committee of Twenty-Four as a matter of urgency, I consider that it would be desirable for the consultations to begin without delay.

(Signed) U Thant
Secretary-General

APPENDIX 8

General Assembly resolution 2189 (XXI)

Implementation of the Declaration on the Granting
of Independence to Colonial Countries and Peoples

The General Assembly,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 October 1960,

Recalling its resolutions 1654 (XVI) of 27 November 1961, 1810 (XVII) of 17 December 1962, 1956 (XVIII) of 11 December 1963 and 2105 (XX) of 20 December 1965,

Recalling also its resolutions 1805 (XVII) of 14 December 1962 and 1899 (XVIII) of 13 November 1963, by which it assigned to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples tasks relating to South West Africa, and its resolution 1970 (XVIII) of 16 December 1963, by which it entrusted to the Special Committee additional functions relating to information transmitted under Article 73 (e) of the Charter of the United Nations,

Having considered the report of the Special Committee covering its work during 1966,^{a/}

Noting with deep regret that six years after the adoption of the Declaration many Territories are still under colonial domination, and deploring the negative attitude of certain colonial Powers, and in particular the intransigent attitude of the Governments of Portugal and South Africa, which refuse to recognize the right of colonial peoples to self-determination and independence,

Concerned at the policy followed by colonial Powers to circumventing the rights of colonial peoples through the promotion of the systematic influx of foreign immigrants and the displacement, deportation or transfer of the indigenous inhabitants,

Bearing in mind that the preservation of colonialism and its manifestations, including racism and apartheid, and the attempts of some colonial Powers to suppress

^{a/} Official Records of the General Assembly, twenty-first session, annexes, addendum to agenda item 23 (A/6300/Rev.1)

national liberation movements by repressive activities and the use of armed force against peoples are incompatible with the Charter and the Declaration,

Deploing the attitude of certain States which, despite the resolutions of the General Assembly and of the Special Committee, continue to co-operate with the Governments of Portugal and South Africa and with the illegal racist minority régime of Southern Rhodesia, which are continuing to repress the African populations,

Having considered the sections of the report of the Special Committee dealing with the activities of foreign economic and other financial interests operating in South West Africa, the Territories under Portuguese domination and Southern Rhodesia, and the conclusions and recommendations contained therein,

Convinced that further delay in the complete and universal implementation of the Declaration remains a source of international conflicts and differences, which are seriously impeding international co-operation and endangering world peace and security,

Noting the action taken and envisaged by the Special Committee with respect to the list of Territories to which the Declaration applies,

Having adopted resolutions on specific Territories considered by the Special Committee,

1. Reaffirms its resolutions 1514 (XV), 1654 (XVI), 1810 (XVII), 1956 (XVIII) and 2105 (XX);
2. Notes with satisfaction the work accomplished by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and expresses its appreciation to that Committee for its efforts to secure the implementation of the Declaration;
3. Approves the report of the Special Committee covering its work during 1966 and again invites the administering Powers to implement the recommendations contained therein;
4. Approves the action taken and envisaged by the Special Committee for the year 1967 with respect to the list of Territories to which the Declaration applies;
5. Approves the programme of work envisaged by the Special Committee during 1967, including the sending of visiting missions and the possibility of holding a series of meetings away from Headquarters, and requests the administering Powers to allow visiting missions to be sent to the Territories under their administration;

6. Declares that the continuation of colonial rule threatens international peace and security and that the practice of apartheid, as also all forms of racial discrimination, constitutes a crime against humanity;

7. Reaffirms its recognition of the legitimacy of the struggle of the peoples under colonial rule to exercise their right to self-determination and independence and urges all States to provide material and moral assistance to the national liberation movements in colonial Territories;

8. Requests the United Nations High Commissioner for Refugees and other international relief organizations and the specialized agencies concerned to increase their economic, social and humanitarian assistance to the refugees from those Territories;

9. Requests all States, directly and through action in the international institutions of which they are members, including the specialized agencies, to withhold assistance of any kind to the Governments of Portugal and South Africa and to the illegal racist minority régime of Southern Rhodesia until they renounce their policy of racial discrimination and colonial domination;

10. Draws the attention of all States to the grave consequences of the formation in the southern part of Africa of an entente between the Governments of South Africa and Portugal and the illegal racist minority régime of Southern Rhodesia, and calls upon all States to withhold any support or assistance to this entente, whose existence and activities run counter to the interests of international peace and security;

11. Requests the colonial Powers to dismantle their military bases and installations in colonial Territories and to refrain from establishing new ones and from using those that still exist to interfere with the liberation of the peoples in colonial Territories in the exercise of their legitimate rights to freedom and independence;

12. Condemns the activities of those foreign financial and economic interests in colonial Territories, in particular in South West Africa, Southern Rhodesia and the Territories under Portuguese domination, which support colonial régimes and thus constitute a serious obstacle to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and calls upon the Governments concerned to take the necessary measures to put an end to those activities;

13. Condemns the policies pursued by certain administering Powers in the Territories under their domination of imposing non-representative régimes and constitutions, strengthening the position of foreign financial and economic interests, misleading world public opinion and encouraging the systematic influx of foreign immigrants whilst displacing, deporting and transferring the indigenous inhabitants to other areas, and calls upon those Powers to desist from such manoeuvres;

14. Requests the Special Committee to apprise the Security Council of developments in any Territory examined by the Committee which may threaten international peace and security and to make any concrete suggestions which may assist the Council in considering appropriate measures under the Charter of the United Nations;

15. Invites the Special Committee, whenever it considers it proper and appropriate, to recommend a deadline for the accession to independence of each Territory in accordance with the wishes of the people and the provisions of the Declaration;

16. Invites the Special Committee to pay particular attention to the small Territories and to recommend to the General Assembly the most appropriate methods and also the steps to be taken to enable the populations of those Territories to exercise fully the right to self-determination and independence;

17. Requests the Special Committee to continue to perform its tasks and to seek suitable means for the immediate and full implementation of the Declaration in all Territories which have not yet attained independence;

18. Requests the Secretary-General to promote, through the various organs and agencies of the United Nations, the continuous and large-scale publicizing of the Declaration and of the work of the Special Committee, in order that world opinion may be sufficiently aware of the situation in the colonial Territories and of the continuing struggle for liberation waged by the colonial peoples;

19. Requests the Secretary-General to continue to provide the Special Committee with all the financing and facilities necessary for the implementation of its mandate;

20. Decides to include in the provisional agenda of its twenty-second session an item entitled "Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other Territories under colonial domination".

1492nd plenary meeting,
13 December 1966.

APPENDIX 9

General Assembly resolution 2202 (XXI)

The policies of apartheid of the Government of the
Republic of South Africa

A

The General Assembly,

Recalling its resolutions on this question, in particular resolutions 1761 (XVII) of 6 November 1962, 2054 (XX) of 15 December 1965 and 2144 (XXI) of 26 October 1966,

Recalling the provisions of Security Council resolutions 181 (1963) of 7 August 1963, 182 (1963) of 4 December 1963, 190 (1964) of 9 June 1964 and 191 (1964) of 18 June 1964,

Taking note of the reports of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa^{a/} and endorsing its proposals for an international campaign against apartheid under the auspices of the United Nations,

Taking note with satisfaction of the report of the Seminar on Apartheid, held at Brasilia from 23 August to 4 September 1966,^{b/}

Gravely concerned at the intensification of the policies of apartheid in South Africa and the direct support given by the Government of South Africa to the colonialist and racist régimes on its borders, thus aggravating the situation in southern Africa,

Noting with concern that the policies of the Government of South Africa aim at perpetuating apartheid in South Africa, that they strengthen the colonialist and racist régimes on its borders and that they threaten the integrity and sovereignty of the neighbouring independent States,

a/ Official Records of the General Assembly, twenty-first session, annexes, agenda item 34, documents A/6356 and A/6486.

b/ ST/TAO/HR/27.

1. Condemns the policies of apartheid practised by the Government of South Africa as a crime against humanity;
2. Reaffirms that the situation in South Africa and the resulting explosive situation in southern Africa continue to pose a grave threat to international peace and security;
3. Deplores the attitude of the main trading partners of South Africa, including three permanent members of the Security Council, which, by their failure to co-operate in implementing resolutions of the General Assembly, by their refusal to join the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa and by their increasing collaboration with the Government of South Africa, have encouraged the latter to persist in its racial policies;
4. Draws the attention of the main trading partners of South Africa to the fact that their increasing collaboration with the Government of South Africa despite repeated appeals by the General Assembly has aggravated the danger of a violent conflict, and requests them to take urgent steps towards disengagement from South Africa and to facilitate effective action, under the auspices of the United Nations, to secure the elimination of apartheid;
5. Appeals to all States:
 - (a) To comply fully with the decisions duly taken by the Security Council which solemnly call on them to cease forthwith the sale and delivery to South Africa of arms, ammunition of all types, military vehicles and equipment and materials intended for their manufacture and maintenance;
 - (b) To discourage immediately the establishment of closer economic and financial relations with South Africa, particularly in investment and trade, and also to discourage loans by banks in their countries to the Government of South Africa or South African companies, and to submit reports to the Secretary-General on steps taken in this respect, such reports to be transmitted by the Secretary-General to the General Assembly and the Special Committee;
 - (c) To consider effective political, moral and material assistance to all those combating the policies of apartheid, in the light of the recommendations of the international seminar on apartheid;

(d) To make adequate and generous contributions to humanitarian programmes designed to assist the victims of apartheid;

(e) To endeavour to grant asylum and extend travel facilities and educational and employment opportunities to refugees from South Africa;

6. Requests the Secretary-General:

(a) To organize as soon as possible, in consultation with the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, an international conference or seminar on the problems of apartheid, racial discrimination and colonialism in southern Africa, and to transmit the report of that conference or seminar to the General Assembly at its twenty-second session;

(b) To take steps, in consultation with the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa, for the periodic publication of statistics on South Africa's international trade;

(c) To provide all the necessary assistance to the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa in publicizing and reporting on any tightening of economic and financial relations between other States and South Africa;

(d) To consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and also those of the present resolution, and to report to the General Assembly at its twenty-second session;

(e) To provide the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa with all the necessary means, including appropriate financial means, for the effective accomplishment of its task;

7. Once again draws the attention of the Security Council to the fact that the situation in South Africa constitutes a threat to international peace and security, that action under Chapter VII of the Charter of the United Nations is essential in order to solve the problem of apartheid and that universally applied mandatory economic sanctions are the only means of achieving a peaceful solution;

8. Invites the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa to continue to take all steps to discharge its mandate more effectively and, to that end, authorizes it:

(a) To hold sessions away from Headquarters or to send a sub-committee on a mission to consult specialized agencies, regional organizations, States and non-governmental organizations on ways and means to promote the international campaign against apartheid and to investigate various aspects of the problem of apartheid;

(b) To continue and increase co-operation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples with a view to the consideration of the activities of foreign economic interests in southern Africa which impede the efforts to eliminate apartheid, racial discrimination and colonialism in the region;

9. Requests the Secretary-General and the specialized agencies to consider appropriate assistance for the employment in their secretariats and programmes of qualified South Africans who are victims of apartheid;

10. Invites the specialized agencies, regional organizations, States and non-governmental organizations to co-operate with the Secretary-General and the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa in the accomplishment of their tasks under the present resolution.

1496th plenary meeting,
16 December 1966.

B

The General Assembly,

Recalling its resolution 2054 B (XX) of 15 December 1965 establishing the United Nations Trust Fund for South Africa,

Taking note of the report of the Secretary-General,^{c/} to which is annexed the report of the Committee of Trustees of the United Nations Trust Fund for South Africa,

c/ Official Records of the General Assembly, Twenty-first Session, Annexes,
agenda item 34, document A/6494.

1. Commends the Secretary-General and the Committee of Trustees of the United Nations Trust Fund for South Africa for their efforts to promote the Fund;
2. Expresses its appreciation to the Governments, organizations and individuals that have contributed to the Fund;
3. Renews its appeal to Governments, organizations and individuals to contribute generously to the Fund.

1496th plenary meeting,
16 December 1966.

APPENDIX 10

Security Council resolution 180 (1963)

The Security Council,

Having examined the situation in the Territories under Portuguese administration as submitted by the thirty-two African Member States,^{a/}

Recalling its resolution 163 (1961) of 9 June 1961 and General Assembly resolutions 1807 (XVII) of 14 December 1962 and 1819 (XVII) of 18 December 1962,

Recalling General Assembly resolution 1542 (XV) of 15 December 1960, which declares the Territories under Portuguese administration to the Non-Self-Governing Territories within the meaning of Chapter XI of the Charter of the United Nations, as well as resolution 1514 (XV) of 14 December 1960, by which the General Assembly declares inter alia that immediate steps shall be taken to transfer all powers to the peoples of those Territories, without any conditions or reservations, in accordance with their freely expressed wishes, without distinction as to race, creed or colour, in order to enable them to enjoy complete freedom and independence,

1. Confirms General Assembly resolution 1514 (XV);

2. Affirms that the policies of Portugal in claiming the Territories under its administration as "overseas territories" and as integral parts of metropolitan Portugal are contrary to the principles of the Charter and the relevant resolutions of the General Assembly and of the Security Council;

3. Deprecates the attitude of the Portuguese Government, its repeated violations of the principles of the Charter and its continued refusal to implement the resolutions of the General Assembly and of the Security Council;

4. Determines that the situation in the Territories under Portuguese administration is seriously disturbing peace and security in Africa;

5. Urgently calls upon Portugal to implement the following:

(a) The immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence;

(b) The immediate cessation of all acts of repression and the withdrawal of all military and other forces at present employed for that purpose;

a/ Official Records of the Security Council, Eighteenth Year, Supplement for July, August and September 1963, document S/5347.

(c) The promulgation of an unconditional political amnesty and the establishment of conditions that will allow the free functioning of political parties;

(d) Negotiations, on the basis of the recognition of the right to self-determination, with the authorized representatives of the political parties within and outside the Territories with a view to the transfer of power to political institutions freely elected and representative of the peoples, in accordance with General Assembly resolution 1514 (XV);

(e) The granting of independence immediately thereafter to all the Territories under its administration in accordance with the aspirations of the peoples;

6. Requests that all States should refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the peoples of the Territories under its administration, and take all measures to prevent the sale and supply of arms and military equipment for this purpose to the Portuguese Government;

7. Requests the Secretary-General to ensure the implementation of the provisions of the present resolution, to furnish such assistance as he may deem necessary and to report to the Security Council by 31 October 1962.

1049th meeting,
31 July, 1963.

APPENDIX 11

Security Council resolution 218 (1965)

The Security Council,

Having examined the question of the situation in the Territories under Portuguese administration submitted by thirty-two African States,

Recalling its resolutions 180 (1963) of 31 July 1963 and 183 (1963) of 11 December 1963,

Noting with deep concern the continual refusal of Portugal to take the necessary steps to implement the aforementioned resolutions of the Security Council,

Considering that in spite of the measures laid down by the Security Council in paragraph 5 of resolution 180 (1963), the Government of Portugal is intensifying its measures of repression and military operations against the African population with a view to defeating their legitimate hopes of achieving self-determination and independence,

Convinced that the implementation of the pertinent resolutions of the Security Council and the General Assembly, and in particular Council resolutions 180 (1963) and 183 (1963), is the only means to achieve a peaceful solution of the question of Portuguese Territories in accordance with the principles of the Charter of the United Nations,

Recalling General Assembly resolution 1514 (XV) of 14 December 1960,

1. Affirms that the situation resulting from the policies of Portugal both as regards the African population of its colonies and the neighbouring States seriously disturbs international peace and security,

2. Deplores the failure of the Government of Portugal to comply with previous resolutions of the Security Council and the General Assembly and to recognize the right of the peoples under its administration to self-determination and independence;

3. Reaffirms the interpretation of the principle of self-determination as laid down in General Assembly resolution 1514 (XV) and in Security Council resolution 183 (1963);

4. Calls upon Portugal to give immediate effect to the principle of self-determination as referred to in paragraph 3 above in the Territories under its administration;

5. Reaffirms its urgent demand to Portugal for:

(a) The immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence;

(b) The immediate cessation of all acts of repression and the withdrawal of all military and other forces at present employed for that purpose;

(c) The promulgation of an unconditional political amnesty and the establishment of conditions that will allow the free functioning of political parties;

(d) Negotiations, on the basis of the recognition of the right to self-determination, with the authorized representatives of the political parties within and outside the Territories with a view to the transfer of power to political institutions freely elected and representative of the peoples, in accordance with General Assembly resolution 1514 (XV);

(e) The granting of independence immediately thereafter to all the Territories under its administration in accordance with the aspirations of the peoples;

6. Requests all States to refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the people of the Territories under its administration, and take all the necessary measures to prevent the sale and supply of arms and military equipment to the Portuguese Government for this purpose, including the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition to be used in the Territories under Portuguese administration;

7. Requests all States to inform the Secretary-General on whatever measures are undertaken towards implementation of paragraph 6 of the present resolution;

8. Requests the Secretary-General to ensure the implementation of the provisions of this resolution, to provide such assistance as he may deem necessary and to report to the Security Council not later than 30 June 1966.

ANNEX II

Extract from a letter dated 5 May 1967 from the General Counsel of the International Bank for Reconstruction and Development to the United Nations Secretariat transmitting a paper containing comments of the Legal Department of the Bank on the memorandum prepared by the Secretariat

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"I attach six copies of a memorandum of the Legal Department of the Bank containing detailed comments on the arguments set forth in the Secretariat memorandum; these comments, I believe, conclusively show that the prohibition contained in Section 10 of Article IV of the Articles of Agreement is clear and unequivocal.

"I should like to add that, in my opinion, the prohibition contained in express terms in Section 10 of Article IV of the Articles of Agreement of the Bank is no more than a reflection of the technical and functional character of the Bank as it is established under its Articles of Agreement.

"The purposes of the Bank set forth in Article I of the Articles of Agreement are limited and the Bank must be guided in the exercise of its functions by those purposes alone. The member governments of the Bank have not deemed it appropriate to grant the Bank a larger function in the international community and the characterization of the Bank as a financial and economic agency and not a political one was explicitly recognized by the United Nations in its Relationship Agreement with the Bank.

"The recommendations contained in the resolutions under consideration raise an important question of interpretation and application of the Bank's Articles of Agreement which, in my opinion, would have to be resolved before any decision on the merits of the recommendations themselves could be taken. As you know, questions of interpretation of the Bank's Articles are to be decided by the Executive Directors in accordance with the provision of the Articles. In order to enable the Executive Directors to become familiar with the legal problems involved, I believe that it would be useful if I could distribute to them, with your permission, copies of the Secretariat memorandum of 3 March 1967 along with the comments of the Legal Department of the Bank." a/

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a/ The Legal Counsel of the United Nations agreed to the distribution of the Secretariat memorandum as proposed by the General Counsel of the Bank.

I

The confidential memorandum (hereinafter the "Secretariat memorandum") dated 3 March 1967, prepared by the United Nations Secretariat, is divided into three parts. The short introduction (Part I) notes that, pursuant to operative paragraph 10 of General Assembly resolution 2184 (XXI) and operative paragraph 6 (d) of General Assembly resolution 2202 (XXI), the Secretary-General of the United Nations and the President of the International Bank for Reconstruction and Development agreed that as soon as possible consultations would be held between the two Organizations regarding questions arising in connexion with the General Assembly resolutions calling on the Bank to withhold assistance to Portugal and South Africa. The memorandum also notes that in the course of meetings between representatives of the two Organizations it was agreed that there should be a written exchange of views on the issues raised by these resolutions by virtue of the respective constitutional instruments of the two Organizations and by virtue of the terms of the Relationship Agreement between them.

The memorandum goes on to state that in setting forth the views of the United Nations Secretariat it would:

(a) Recapitulate the relevant United Nations resolutions and "the steps taken by the United Nations to obtain compliance with them, and the response of the Bank" (Part II); and

(b) Examine the position taken by the Bank on the issues raised by these resolutions "in the light of what the United Nations Secretariat considers to be the correct legal interpretation of the relevant instruments" (Part III).

Part II of the Secretariat memorandum thus provides a recapitulation of the history of the resolutions adopted by various United Nations organs on the question of South Africa and Portuguese territories in Africa and in particular of those resolutions which requested the withholding of all assistance from South Africa and Portugal.

Part III of the memorandum then goes on to state the Secretariat's views on the Bank's position with respect to the relevant paragraphs of General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) as represented by the Bank's General Counsel in the course of his participation in the discussions of the Fourth Committee on the General Assembly. In the words of the memorandum:

"From the statements of the General Counsel of the Bank to the Fourth Committee there appear to be two principal reasons advanced by the Bank for its failure to give effect to the relevant recommendations of the General Assembly." (para. 24, p. 11)

The memorandum identifies the two principal issues as relating to:

(a) Whether these resolutions had been preceded by "prior consultation" as required by Article IV of the Relationship Agreement between the United Nations and the Bank;^{b/} and

(b) The proper interpretation of Article IV, Section 10, of the Articles of Agreement of the Bank which came into force on 27 December 1945.^{c/}

While the views expressed in the Secretariat memorandum on the nature and timing of the consultation which must precede formal recommendations addressed by one organization to the other cannot be accepted without a number of reservations, the issue does not appear to have practical importance at this juncture. The Secretary-General of the United Nations and the President of the Bank having agreed to enter into consultation on the substance of the resolutions, this memorandum will only deal with the second principal issue discussed in the Secretariat memorandum which relates to the interpretation of Article IV, Section 10, of the Bank's Articles of Agreement.

II

Section 10 of Article IV reads as follows:

"Section 10. Political activity prohibited.

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I." ^{d/}

^{b/} Agreement of 15 November 1947, 16 U.N.T.S. 346 (1948).

^{c/} 2 U.N.T.S. 134 (1947).

^{d/} The Secretariat memorandum (at p. 14), in reproducing Section 10, inadvertently omitted the underscored language.

Article I of the Articles of Agreement of the Bank provides:

"The purposes of the Bank are:

- (i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
- (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.
- (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate post-war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above."

The Secretariat memorandum states that the Bank's position is that:

"... its compliance with the relevant resolutions of the General Assembly to refrain from granting loans to Portugal and South Africa would be a breach of its own constitution and in particular an infringement of the requirements of Section 10 of Article IV of the Bank's Articles of Agreement."
(p. 14)

This view of Article IV, Section 10, is dependent upon an interpretation of the words "political affairs", "political character of the member" and "economic considerations" which according to the Secretariat memorandum do not "appear justified by the history, wording or context of Section 10". (p. 14) The

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Secretariat memorandum relies, for its view that Section 10 does not preclude the Bank from complying with the relevant General Assembly resolutions, upon:

- (a) the actual wording of the Section;
- (b) the drafting history of the Section; and
- (c) the subsequent conduct of the parties - that is to day, of the members of the Bank acting through their representatives on the Board of Governors and the Board of Executive Directors.

This memorandum will in turn comment upon these arguments in the order followed in the Secretariat memorandum.

(a) Actual wording of the Section

In examining the wording of Section 10, the Secretariat memorandum asserts that the Bank wrongly classifies the General Assembly resolutions as "political" and therefore as falling within the prohibition set out in Section 10. The memorandum argues that the real intent and meaning of the term "political", as it is used in the context of Section 10 (the "political affairs of any member" and "the political character of the member or members concerned"), "... is to prohibit interference in the internal political affairs of a Member State and discrimination against any member country because of the political character of its government." (p. 15, emphasis added)

There is no justification for imparting to the term "political", as the Secretariat memorandum does, the qualification "internal". The prohibition against interference "in the political affairs of any member" is not limited to interference in a member's internal political affairs but extends as well to the relations of a member with other States, i.e. its external political affairs. Just as the Bank is precluded in making decisions on loans or guarantees from interfering in the domestic political activities of a member Government, so it is precluded from interfering or attempting to interfere with the foreign policy of that Government. The adjective "political", as used in Section 10, refers not only to those matters which relate to "politics" in the narrow (and sometimes derogatory) meaning of the word, but to all matters which pertain to the constitution of an organized society and the manner in which it manages its affairs. In this sense the relevant resolutions of the General Assembly do indeed deal with the political

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affairs of the Governments of Portugal and South Africa and the conduct of the Portuguese and South African Governments condemned in those resolutions was in fact their political conduct. The policies and the conduct which are being condemned by the General Assembly constitute an essential element of the "political character" of those States.^{e/}

The Bank may and does take into consideration, and is influenced in its lending decisions by, the economic effects which stem from the political character of a member and from the censures and condemnations of that member by United Nations organs.^{f/} However, by virtue of Article IV, Section 10, of its Articles of Agreement, the Bank, in exercising its judgement, must consider such economic effects together with all other relevant economic factors, in the light of the purposes of the Organization. What it is precluded from considering is the political character of a member as an independent criterion for decision.

The Secretariat memorandum states (at p. 15) that one of the reasons why the second sentence of Section 10 provides that only economic considerations shall be relevant to the Bank's decisions and that such considerations should be weighed impartially, is simply:

"... to elaborate and emphasize those factors which must be excluded from consideration (internal political affairs) by making express reference to certain factors (economic considerations) which obviously must be taken into consideration."

In this argument the word "internal" is interposed for the purpose of explaining the meaning of the adjective "political". There is no basis for such interposition, for the meaning of the adjective "political", which may not by

^{e/} The practice of United Nations organs with respect to Article 2 (7) of the Charter serves to confirm the difficulty of delimiting a country's domestic affairs from its international and foreign affairs. See Repertory of the Practice of United Nations Organs, Vol. 1, pp. 55-159 (1955) and Supplement No. 1 (to Vol. 1), pp. 25-71 (1958).

^{f/} In particular the Bank has agreed that in the conduct of its activities it will have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter and has undertaken to have due regard for the recommendations of the General Assembly made pursuant to the Uniting for Peace resolution for the maintenance of international peace and security (see infra).

itself be precise, becomes clear in the context of Section 10 which, after expressing the negative injunction against interfering with political affairs or being influenced by the political character of a member, sets forth the positive injunction that only economic considerations are relevant to the Bank's decisions. The contrast is between "political" and "economic" judgements and not between "internal" and "external" affairs. Section 10 thus confirms the non-political, technical and functional nature of the Bank.

(b) Drafting history of the Section

In support of its reading of Section 10 the Secretariat memorandum relies in part upon a particular facet of the legislative history of Section 10, namely, the language of the first two paragraphs of Section 11 of the preliminary draft of the Articles of Agreement for the Bank, as presented to the United Nations Monetary and Financial Conference at Bretton Woods in July 1944. These paragraphs read:

"Section 11. Political Activity Prohibited

The Bank and its officers shall scrupulously avoid interference in the political affairs of any member. This provision shall not limit the right of an officer of the Bank to participate in the political life of his own country.

The Bank shall not be influenced in its decisions with respect to applications for loans by the political character of the government of the member concerned with the loan. Only economic considerations shall be relevant to the Bank's decisions." g/

On this point it must be noted that the above comments on the meaning of the terms "political affairs" and "political character" are equally applicable to the language of Section 11 of the preliminary draft. The draft Section 11 does not utilize the term "internal" and it clearly distinguishes between the respective requirements of: scrupulous non-interference in the political affairs of a member country; avoidance of discrimination based upon the political character of the member concerned; and, that "... Only economic considerations" should be relevant to the Bank's decision.

g/ The full drafting history of Article IV, Section 10, is to be found in Vol. 1 Proceedings and Documents of United Nations Monetary and Financial Conference 1948 at pp. 202 (Section 11 of the preliminary draft), and 386, 496, 567, 569, 596, 613, 724, 848, 1027 and 1061.

These two paragraphs of Section 11 followed an earlier draft prepared by the United States Treasury Department after discussion with the United Kingdom authorities. Their purpose is explained in a commentary paper prepared by the United States Treasury and entitled Questions and Answers on the Bank for Reconstruction and Development (June 10, 1944). At page 74 of this paper it is stated:

"... The Bank is designed to be an international economic agency to facilitate productive international investment without regard to political considerations. In deciding on loan applications, the Bank is not to be influenced by the political character of the country requesting the credits. This provision is part of the general requirement that the Bank shall scrupulously avoid interference in the political affairs of member countries (IV-19)."

The same passage went on to stress (at p. 74) that only economic considerations should be taken into account in deciding whether or not to make a loan. It provided two important reasons why the Bank would be able to avoid political considerations in framing its loan policy:

"The character of the bank's operations should give further assurance that political considerations will not affect the decisions of the Bank. The greater part of the Bank's operations will be directed toward encouraging and facilitating international lending by private investors.... It is reasonable to assume that private investment institutions would not give weight to political factors except as the stability of the government of the borrowing country affects the risk element in all foreign loans.

The international character of the Bank is also a protection against loans made for political purposes as previously discussed.... h/ The Bank itself

h/ At this point the United States Treasury paper refers to a prior passage in which there is a discussion of the question "why is an international agency necessary to encourage and facilitate the provision of long-term credits for international investment" (at pp. 48-50). In that passage it is explained that an impartial international financial agency would encourage and facilitate the efficient use of international investment capital, in part because:

"If national agencies should be established generally for the purpose of encouraging international investment it is doubtful whether countries could altogether escape the use of their lending agencies for the purpose of furthering national political interests. The extension of credit to a particular country becomes a political matter to be settled by negotiation between the borrowing country and the lending country. Even if such political considerations could be kept to a minimum, it is doubtful whether national agencies would be as helpful as an international agency in developing international trade and removing the restrictive bilateralism that grew up in the decades before the war."

can have no policy outside the purely financial sphere. So far as concerns individual member countries, they do undoubtedly have important international political interests. However, it would be quite difficult for any member to utilize the Bank for furthering its political interests." (At p. 75, emphasis added.)

The interposition of the term "internal" into the clear language of Section 10 and the reading of the second sentence in such a way as to justify this interposition finds no valid basis, therefore, in the legislative history of Article IV, Section 10. On the contrary, the intentions of those who prepared the original draft would appear to have been to ensure that the Bank did not become a forum for the settlement of political disputes or its loans and guarantees instruments of political negotiation and pressure.

(c) Subsequent conduct of the parties

The Secretariat memorandum cites certain subsequently adopted decisions of the Bank as further support for the Secretariat's interpretation of Section 10 (see p. 17, para. 37). The memorandum states that acceptance of the view that Section 10 does not preclude the Bank from taking into account the international conduct of a State^{1/} would be "consistent with the acceptance by the Bank representatives and the adoption by the Board of Governors of Article VI of the Relationship Agreement". The memorandum then goes on to quote from this particular provision of the Agreement between the Bank and the United Nations.

Article VI of the Relationship Agreement provides:

"1. The Bank takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter by such of its members as are also members of the United Nations, to carry out decisions of the Security Council through their action in the appropriate specialized agencies of which they are members and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

^{1/} It should be kept in mind that General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) do something more than call into account "the international conduct" of certain States. They also seek to prescribe the Bank's loan policy towards these States. Thus resolutions 2184 (XXI) and 2202 (XXI) call for consultations between the United Nations and the Bank in order "to secure" the Bank's "compliance with" General Assembly resolutions.

In considering the relevance of Article VI of the Relationship Agreement to any interpretation of Article IV, Section 10, of the Articles of Agreement based on a theory of interpretation such as that of the subsequent conduct of the parties it is also necessary to consider certain other provisions of the Relationship Agreement, namely Articles I (2) and IV (2) and (3).

ARTICLE I

GENERAL

.....

"2. The Bank is a specialized agency established by agreement among its member Governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. By reason of its international responsibilities and the terms of its Articles of Agreement, the Bank is, and is required to function as, an independent international organization." (Emphasis added)

ARTICLE IV

CONSULTATION AND RECOMMENDATIONS

.....

"2. Neither organization, nor any of their subsidiary bodies, will present any formal recommendations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.

"3. The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgement in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms and conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction and development plans, programmes or projects." (Emphasis added)

The Secretariat memorandum maintains that the terms of Article VI of the Relationship Agreement confirm the validity of its interpretation of Article IV, Section 10, of the Articles of Agreement and constitute:

"the strongest possible evidence that there is no constitutional objection to the Bank, in its 'consideration' of General Assembly resolutions relating to Portugal and South Africa, having due regard for and complying with the recommendations contained in such resolutions." (At page 18, emphasis added)

On the contrary, Article VI of the Relationship Agreement when considered (i) in the light of the legislative history of the Relationship Agreement and of Article VI in particular; (ii) in the light of the language employed in Article VI; and (iii) in the light of the functional needs of the Bank, negates the Secretariat's interpretation of Section 10.

(i) Legislative history of the Relationship Agreement. The legislative history of the Relationship Agreement and of Article VI in particular confirms the interpretation of Article IV, Section 10, of the Bank's Articles of Agreement given by the General Counsel of the Bank to the Fourth Committee.

The Bank entered into the Relationship Agreement on the basis of the express and carefully limited authority set out in Article V, Section 8 (a), of its Articles of Agreement which provides:

"The Bank, within the terms of this Agreement, shall co-operate with any general international organization and with public international organizations having specialized responsibilities in related fields." (Emphasis added)

The importance which the signatories of the Articles of Agreement attached to this limitation is underscored by the provision in the same Section that "any arrangements for such co-operation which would involve a modification of any provision of the Agreement may be effected only after amendment of the Agreement under Article VIII". (Emphasis added) Under Article VIII, a majority of three fifths of the members having four fifths of the total voting power is required for such amendment. It may also be recalled that, under Article V, Section 2 (b) (v), power to make formal arrangements to co-operate with other international organizations is reserved to the Board of Governors and cannot be delegated to the Executive Directors.

After several months of discussions, final negotiation of the Relationship Agreement took place on 15 August 1947, between delegations representing the Bank

/...

and the International Monetary Fund and the ECOSOC Committee on Negotiations.^{j/}
The negotiators had before them two documents, a joint draft prepared after earlier discussions between the Bank and the Fund^{k/} and a counter-draft prepared by the United Nations.

The joint draft prepared by the Fund and the Bank contained a provision on the Security Council which reflected both organizations' unwillingness to accept the version of this section suggested by the United Nations Secretariat during the preliminary discussions. The 13 June 1947 United Nations draft of the Relationship Agreement^{l/} had provided:

ARTICLE V

ASSISTANCE TO THE SECURITY COUNCIL

"The Bank agrees to co-operate to the greatest extent possible within the terms of its Articles of Agreement in rendering such assistance to the Security Council as that Council may request, including assistance in carrying out decisions of the Security Council for the maintenance of international peace and security."

As can be seen from the language of the joint draft submitted by the Bank and the Fund for discussion during the formal negotiations this latter provision had not proved acceptable to the Bank and the Fund. Article V of the Bank's version of the joint Bank and Fund draft provided:

^{j/} The history of the negotiations can be found in the minutes of ECOSOC Committee on Negotiations with Specialized Agencies (United Nations documents E/C.1/SR.40, 41, 46, 54, 55, 56, 57 and 58).

^{k/} The Bank's version of the joint draft differed from that of the Fund in certain minor respects and by the inclusion of an additional paragraph in Article IV, which became Article IV, paragraph 3 of the final Relationship Agreement between the Bank and the United Nations.

^{l/} The text of this United Nations draft was attached to the letter dated 13 June 1947, from Mr. David Weintraub acting on behalf of the Assistant Secretary-General of the United Nations in charge of Economic Affairs (United Nations Ref. No. 463-5-3 GEY).

ARTICLE V

SECURITY COUNCIL

"1. In determining whether a loan application falls within the purposes of the Bank as set forth in its Articles of Agreement and satisfies the conditions on which the Bank may guarantee, or make or participate in a loan, the Bank will pay due regard to any measures being taken pursuant to decisions of the Security Council under Articles 41 and 42 of the Charter of the United Nations for the maintenance or restoration of international peace and security." m/

It is significant to note that, in contrast, the provision on the Security Council in the United Nations counter-draft, also presented for discussion at the formal negotiations, provided:

ARTICLE VI

SECURITY COUNCIL

"1. In determining whether any particular loan application falls within the purposes of the Bank, as set forth in its Articles of Agreement, and satisfies the conditions which such Articles of Agreement require to be met when the Bank guarantees, participates in or makes any loan, the Bank will recognize the obligations which are imposed upon members of the United Nations by Article 48 of the Charter to carry out decisions of the Security Council, for the maintenance of international peace and security, both directly and through their action in the appropriate international agencies of which they are members." (United Nations document E/C.1/35, 14 August 1947)

From the outset, the Bank's representative stressed the independent character of the Bank which resulted from its basic document, the time and conditions in which it was set up and its special, unique and delicate tasks and responsibilities.^{n/}
He explained that:

m/ This is a translation from the French version of the draft which was submitted (in English) by the President of the Bank to the United Nations by letter dated 21 July 1947 (United Nations document E/C.1/20, 22 juillet, 1947 - French). It was not possible to find the original English version of the draft.

n/ The representative of the Fund at this point stressed that the Fund had similar institutional characteristics which had an important bearing on the extent and form of its co-operation with the United Nations and added that "the two institutions were established simultaneously at Bretton Woods, and as independent economic organizations motivated solely by economic considerations. The nature of the institutions as then defined could not now be contravened." (Emphasis added)

"The Bank was dependent upon its good relations with the investing public and upon the assurance of the latter that the Bank would only make productive loans on a business basis without regard to political considerations. Any suggestion which would have the effect of bringing the Bank's independence into question would jeopardize the Bank's ability to market its securities."

The foregoing serves to indicate that, whereas the Bank entered into negotiations with the United Nations with the aim of ensuring the greatest possible degree of co-operation between the two Organizations, it had no intention, in negotiating the terms of the Relationship Agreement, of disregarding the letter and spirit of its Articles of Agreement. In stressing its non-political nature and independence, the Bank was simply seeking to ensure non-involvement in international political affairs, which were recognized as the essential function of the United Nations but which, by virtue of the Bank's Articles of Agreement, the Bank was precluded from taking into consideration.

The Bank's inability to agree to any commitment which ran counter to the letter and spirit of its Articles of Agreement explains the position taken by the Bank's representative on the subject of the Article relating to the Security Council.^{o/} At the afternoon negotiation meeting, the United Nations introduced a new version of Article VI (the Security Council). Commenting on this new version of Article VI, the Bank's representative felt that "the suggested wording, however, carried the indication that the Bank recognized as its own obligation the obligation of the Members under the Charter of the United Nations." He therefore proposed the wording which was ultimately accepted:

"The Bank takes note of the obligation assumed under paragraph 2 of Article 48 of the United Nations Charter by such of its Members as are also Members of the United Nations to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will in the conduct of its activities have due regard for the decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

^{o/} During the item by item discussion of the proposed Relationship Agreement the Bank consistently maintained the position that it was required to exercise its judgement solely on the basis of its Articles of Agreement.

In reply to a question from the Negotiating Committee's representative as to the relevance of the reference to Article 42 of the Charter, the Bank's representative "explained that if the measures provided for in Article 41 proved inadequate, the Security Council might take military action and this military action might have some economic effects" (emphasis added). The matter of Article VI was thereupon postponed until the evening session of the negotiations at which time it was "announced that the Negotiating Committee would accept the draft of this Article including the reference to Article 42 of the Charter." It was explained, however, that in the opinion of the Committee on Negotiations the first line should read "The Bank recognizes the obligations assumed by the Member States of the United Nations." In response, the Bank's representative indicated a preference for the word "notes" to the word "recognizes" on the ground that the word "recognizes" has "a technical connotation in law of the assumption of obligation." The representative of the Negotiating Committee "assured the representative of the Bank that no such connotation existed in this case, and accepted the words 'takes note'." The final text as adopted, therefore, remained that of the above quoted Bank proposal.

The legislative history of the Relationship Agreement and of Article VI in particular thus shows that the representatives of both sides recognized that Article VI would not impose a duty on the Bank in any way in conflict with the letter and spirit of Article IV, Section 10, of the Bank's Articles of Agreement.

(ii) Language of Article VI of the Relationship Agreement. These conclusions drawn from the legislative history of the Relationship Agreement are also confirmed by the subsequent discussions in the United Nations prior to the ratification of the Agreement by the General Assembly. The debate in both the Economic and Social Council and in the Joint Committee of the Second and Third Committees of the General Assembly^{p/} shows that many delegations were conscious

p/ See especially United Nations Official Records of the Second Session of the General Assembly, Joint Committee of the Second and Third Committees, Summary Record of Meetings 8 October-5 November 1947.

of the differences between the Agreements negotiated with the Fund and the Bank and those negotiated with other specialized agencies.^{q/}

The Report to the Second Regular Session of the General Assembly of the Economic and Social Council, in recommending approval of the draft agreements with the Bank and the Fund, recognized the differences between these agreements and those negotiated with other specialized agencies and stressed that the differences stemmed from the constitutional requirements of the two organizations.^{r/} In its report to the General Assembly, the Joint Second and Third Committees of the Assembly also referred to the unique characteristics of the Agreements negotiated with the Bank and Fund.^{s/}

The texts of the provisions relating to the Security Council in the various relationship agreements between the United Nations and other specialized agencies are particularly significant in this connexion, in that they reveal a sharp distinction between the language used in Article VI of the Bank and Fund Agreements and that used in the equivalent provisions of the other agreements. Thus for example the ILO, FAO, UNESCO and ICAO Agreements contain an undertaking whereby the agency:

^{q/} This view is also supported by most commentaries on the Charter: Alf Ross, Constitution of the United Nations, pp. 52-53 (1950); Arechaga, Derecho Constitucional de las Naciones Unidas 430 (1958); Russell and Muther, A History of the United Nations Charter 797 and 802 (1958); Goodrich and Hambro, Charter of the United Nations, p. 351 (1949); and see especially Jenks, "Co-ordination: A New Problem of International Organization", 77 Hague Recueil des Cours, vol. 11, pp. 157-301, particularly 187 and 217-218 (1950).

^{r/} See especially paragraph 162 of the report:

"As regards the draft agreements with the Bank and the Fund, the Committee on Negotiations with Specialized Agencies had regard to the responsibilities placed upon the two organizations by their Articles of Association as regards the nature and method of their operations." (Emphasis added).

^{s/} United Nations Document A/449, 7 November 1947.

"agrees to co-operate with the Economic and Social Council in furnishing such information and rendering such assistance to the Security Council as that Council may request, including assistance in carrying out the decisions of the Security Council for the maintenance of international peace and security." (Emphasis added) t/

The wording of Article VI of the Bank's Relationship Agreement with the United Nations is in contrast with the foregoing.^{u/} It states that the Bank will "take note" of the obligations of members of the United Nations in accordance with Article 48 (2) of the Charter and that it will have "due regard" in the conduct of its activities for decisions of the Security Council pursuant to Articles 41 and 42 of the Charter. The Bank is thus credited with the knowledge that certain of its members, also members of the United Nations, have certain specific obligations which by virtue of Article 48 (2) of the Charter might result in a conflict with their obligations under its Articles of Agreement.^{v/} The record of the negotiations shows clearly that the words "take note" were specifically intended to avoid any possible suggestion that there was any obligation between the two Organizations.

The fact that Article VI of the Relationship Agreement was not meant to derogate from Article IV, Section 10, of the Articles of Agreement of the Bank was subsequently confirmed by the United Nations General Assembly's Collective Measures Committee. In its Report to the General Assembly and Security Council this Committee referred specifically to the phrase "due regard" in the Bank and Fund Relationship Agreements and noted that:

"151. Both the Bank and Fund have included in their special agreements with the United Nations a provision that their operations would be carried on with 'due regard' to decisions of the Security Council, retaining the right

t/ The WHO and IMCO Agreements contain simpler language to the same effect.

u/ This is also the view of Goodrich and Hambro (op. cit., supra) who view Article VI of both the Fund and Bank Relationship Agreements as among their distinctive features (at p. 346 and 352).

v/ Article 48 (2) of the Charter does not impose any obligation on the specialized agencies, but creates an obligation for members of the United Nations. This was clearly recognized at San Francisco, see The Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State (Dept. of State Publication 2349, Conference Series 71) p. 99 (June 26, 1945). See also Jenks op cit. supra p. 185, Arechaga, op. cit. supra p. 392, Kelsen, The Law of the United Nations p. 745 (1950). Since the Secretariat memorandum did not go into the matter, this memorandum does not cover the question of the possibility of a conflict of obligations for members of the United Nations also members of the Bank.

of final decision for themselves, even though their member nations would be bound by such decisions." (Emphasis added) /General Assembly Official Records: Sixth Session, Supplement No. 13 (A/1891) p. 19/.

The Secretariat memorandum also cites the fact that by a resolution of the Bank's Board of Governors dated 13 September 1951, the Bank unilaterally undertook in the conduct of its activities to have due regard for recommendations of the General Assembly made pursuant to General Assembly resolution 377 (V) (for "Uniting for Peace" resolution). The Secretariat memorandum cites this resolution of the Bank's Board of Governors as "the strongest possible evidence that there is no constitutional objection to the Bank, in its 'consideration' of General Assembly resolutions relating to Portugal and South Africa, having 'due regard' for and complying with the recommendations contained in such resolutions". (at p. 18, emphasis added).

The willingness to have "due regard" for Uniting for Peace recommendations has the same meaning and effect as the acceptance of the "due regard" provision in Article VI of the Relationship Agreement. Since the Bank had agreed to have "due regard" for Security Council actions under Articles 41 and 42 it was logical that it should also note that developments in the structure and operations of the United Nations in the period between 1947 and 1951 had made it more likely that the United Nations would in the future take measures of the type envisaged under Articles 41 and 42 by recommendations of the General Assembly under the "Uniting for Peace" resolution.

The Secretariat memorandum suggested, in this connexion, that the inclusion of Article VI in the Relationship Agreement and the Board of Governors' resolution on the "Uniting for Peace" resolution indicate that the Bank itself feels that there is no constitutional bar to the Bank's "complying" with the recommendations contained in General Assembly resolutions. It should be noted, however, that no suggestion of an undertaking to "comply with" in the sense of carrying out and giving effect to decisions and recommendations can be read into the words "have due regard". Such an interpretation, which would run counter to the provisions of the Articles of Agreement, the legislative history of the Relationship Agreement and the practice of the Bank, is not supported by the plain and ordinary meaning of the actual language of the provisions in question.

(iii) Functional considerations. The Bank, in entering into a Relationship Agreement with the United Nations within the terms of its Articles of Agreement, did not and could not modify its character as a technical and financial organization which was specifically enjoined by its member Governments from playing any political role. In imposing such a restriction on the Bank, the signatory Governments had a two-fold purpose in mind.

First, in creating an organization to which member Governments with different political characters and aims or interests were about to furnish sizeable but limited resources to be used for economic reconstruction and development, it was thought necessary to prevent the use of the leverage that would be provided by the granting or withholding of financial assistance to a particular member for the furtherance of the political aims of any member or any group of members, no matter how worthwhile such aims might appear to be.

Secondly, it was thought to be essential for the ability of the Bank to raise large amounts of capital from the savings of the investing public to assure that public that economic and not political considerations would influence and determine the Bank's financial decisions.

It should be noted in this connexion that the Relationship Agreement between the United Nations and the Bank was intended to describe the legal rights and obligations of the two Organizations arising from the relationship and therefore tends to emphasize the outside limits of their co-operation rather than the actual contents thereof. In fact, this co-operation has been intensive, has covered a wide range of matters of common concern and, in the Bank's opinion at least, has been highly beneficial for the countries which are members of the two Organizations.

In practice, cases in which the Bank cannot respond affirmatively to a request or appeal of a United Nations organ are rare; the case of the resolutions of the General Assembly now under consideration is one of them, for the General Assembly's request is concerned with matters which have been deliberately kept outside the scope of the Bank's function and responsibilities by the signatories of its Articles of Agreement.

ANNEX III

Letter dated 20 July 1967 from the Legal Counsel of the United Nations
to the General Counsel of the International Bank for Reconstruction
and Development

I refer to your letter of 5 May 1967 and to our subsequent telegrams regarding the opportunity for further observations.

It is a matter for regret that the respective views on this important issue remain so far apart as to afford little prospect of their being reconciled by further legal argument.

It appears that your position rests on the acceptance of an interpretation of the Bank's Constitution and the Relationship Agreement which accords to the Bank, in the conduct of its activities, a positive independence of the need to have regard to any considerations other than economic considerations. In this connexion, the only observation I wish to make at this time is that such a measure of independence would, in my opinion, not only exceed that enjoyed by any national banking institution, but would seem difficult to reconcile with the common dedication of members of the United Nations system to the fulfilment of the purpose of the United Nations Charter.

ANNEX IV

Letter dated 18 August 1967 from the President of the
International Bank for Reconstruction and Development
to the Secretary-General of the United Nations

The Legal Counsel of the United Nations has, as you know, sent us a paper containing a closely reasoned legal argument why the World Bank should take certain actions under the General Assembly's requests for the withholding of economic assistance to Portugal and South Africa. The Bank's General Counsel has replied with legal arguments to show that, under the terms of its Agreement with the United Nations, the Bank is not obligated to comply with such requests and, indeed, under the terms of its own Articles of Agreements, is not free to do so. The Legal Counsel of the United Nations has since written that he continues to adhere to his original views, to which the United Nations organs concerned will doubtless give great weight. However, the Executive Directors of the Bank who, as you know, are responsible for interpreting the Articles of Agreement, having carefully considered all the arguments advanced, have, although with some dissents, endorsed the position taken by the Bank's General Counsel. It seems to me unlikely that additional legal argumentation would change the situation.

In the circumstances, I should like at this point to leave legal argumentation aside and to assure you - and through you the various United Nations organs concerned - that the World Bank is keenly aware and proud of being part of the United Nations family. Its earnest desire is to co-operate with the United Nations by all legitimate means and, to the extent consistent with its Articles of Agreement, to avoid any action that might run counter to the fulfilment of the great purposes of the United Nations. I give you this assurance in the hope that it may be helpful in dissipating any misunderstanding of the Bank's attitude.

ANNEX V

Letter dated 23 August 1967 from the Secretary-General of the
United Nations to the President of the International Bank for
Reconstruction and Development

Thank you for your letter of 18 August, which I am transmitting to the members of the Committee of Twenty-Four and to the General Assembly for their information.

I welcome the assurance you have been good enough to convey to me and through me to the United Nations organs concerned, of the Bank's desire to co-operate with the United Nations by all legitimate means and, to the extent consistent with its Articles of Agreement, to avoid any action that might run counter to the fulfilment of the great purposes of the United Nations.

In view of the differences which exist regarding the interpretation of the basic legal texts, I share your feeling that additional legal argumentation would not be productive at the present stage, although this is an aspect on which I naturally cannot prejudge the views of the competent United Nations organs concerned. In welcoming your desire to clarify the attitude of the Bank, I need hardly stress how heavily the United Nations relies on the co-operation and support of all organizations which are members of the United Nations family.
