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COMMITTEE ON CONTRIBUTIONS
Thirty-eighth session
New York

QUESTION OF A SUBSTITUTE FOR MR. DAVILA MENDOZA

Note by the Secretariat

1. In a letter dated 17 February 1978, Mr. Dávila Mendoza informed the Chairman of the Committee on Contributions that owing to his assumption of new functions it would be impossible for him to attend the thirty-eighth session of the Committee on Contributions. At the same time, he proposed that Mr. Marco Antonio Cubillas Estrada of the Ministry of Finance of the Mexican Government, serve as his representative at that session. Mr. Dávila also stated that in order to permit Mr. Cubillas' effective participation in the work of the Committee, he would remain in communication with Mr. Cubillas.

2. In the foregoing connexion, there is reproduced below the text of a decision taken by the Committee on Contributions at its 349th meeting on 8 May 1975, which text the Committee requested the Secretariat to retain as a matter of record.

"Following discussion of the question of substitute members on the basis of a report before the Committee on the subject (A/CN.2/R.332), the Committee decided that no substitute members would be accepted at its future sessions.

"Four members were not in agreement with the foregoing decision."

3. In responding to Mr. Dávila on 24 March 1978, the Chairman of the Committee on Contributions referred to the decision taken by the Committee in 1975. At the same time he informed Mr. Dávila that the matter of his substitute representation would be placed before the Committee as a whole and that the decision of the Committee would be conveyed to him at the earliest opportunity.

4. For the convenience of the Committee, the report on which the decision cited in paragraph 2 above was based (A/CN.2/R.332) is appended as an annex to this document.

Annex

QUESTION OF SUBSTITUTE MEMBERS
OF THE COMMITTEE ON CONTRIBUTIONS

1. Rules 158 and 159 of the rules of procedure of the General Assembly provide as follows:

COMMITTEE ON CONTRIBUTIONS

Appointment

Rule 158

The General Assembly shall appoint an expert Committee on Contributions consisting of thirteen members.

Composition

Rule 159

The members of the Committee on Contributions, no two of whom shall be nationals of the same State, shall be selected on the basis of broad geographical representation, personal qualifications and experience and shall serve for a period of three years corresponding to three financial years, as defined in the Financial Regulations of the United Nations. Members shall retire by rotation and shall be eligible for reappointment. The General Assembly shall appoint the members of the Committee on Contributions at the regular session immediately preceding the expiration of the term of office of the members or, in case of vacancies, at the next session.

2. The Committee on Contributions met for the first time in June 1946, following action taken by the General Assembly, at its thirty-first plenary meeting held on 13 February 1946, to elect specifically designated members of that Committee. Between the years 1946 and 1974, thirty-four sessions of the Committee have been convened. At twenty-nine such sessions, up to three, and on one occasion four members designated substitutes to serve in their stead. In each case, the Committee accepted such designations.
3. During the sixth session of the General Assembly, the representative of Brazil (at the 319th meeting of the Fifth Committee on 18 December 1951) asked whether, in case of absence, it was possible for an expert, elected in a personal

capacity to one of the subsidiary bodies of the General Assembly, to be replaced by a substitute. That had already occurred, but he wondered whether the procedure was in order. In reply, the Chairman of the Fifth Committee read the following opinion which had been provided by the Office of Legal Affairs:

"The question has been raised as to whether members of the Advisory Committee on Administrative and Budgetary Questions, the Committee on Contributions and the other expert bodies, may appoint substitutes to take their place in case of absence. In the opinion of the Legal Department this would not be permissible under the existing General Assembly rules of procedure and resolutions. The rules make it clear that the members of these bodies are appointed on the basis of personal qualifications and experience and serve in their individual capacity. Moreover, the General Assembly appoints only certain named persons and has made no provision for these persons to appoint substitutes.

"It is true that one of these bodies, the Committee on Contributions, has on occasion adopted a procedure whereby the members appointed substitutes. The fact that this practice was followed and mentioned in the report of the Committee to the General Assembly does not have the effect of changing the General Assembly's resolutions and rules on this point.

"It is, therefore the conclusion of the Legal Department that the members of these expert bodies may not appoint substitutes to take their place, in the absence of authorization from the General Assembly."

The representative of Brazil agreed unreservedly with the foregoing opinion, stating that unless the Fifth Committee thought otherwise, the legal opinion should henceforth have the force of law. The representative of the Union of Soviet Socialist Republics, on the other hand, did not consider it desirable for the Committee to take an immediate decision on the matter, stating that in the past it had been considered normal procedure to appoint a substitute when an expert who was a member of a subsidiary body of the General Assembly was unable to participate in the work of that body. In agreeing to postpone further debate on the subject, the Brazilian representative stated that he wished to make it clear that he would never accept the appointment of substitutes for members of subsidiary bodies when such members had been appointed by the Assembly. In his view such action was incompatible with a procedure which called for the Fifth Committee and the General Assembly to make their decisions by secret ballot, having particular regard to the individual qualities of candidates.

4. At the same session of the Assembly, the Chairman of the Committee on Contributions made a statement to the Fifth Committee at its 341st (closing) meeting. The summary record of that statement follows:

"Miss WITTEVEEN (Netherlands), Chairman of the Committee on Contributions, said that since its inception the Committee had followed the practice of accepting substitute members. Any case of a substitute acting for a member appointed by the General Assembly was always mentioned in the Committee's report and no criticism of that procedure had so far been voiced in the General Assembly.

"Any member who had been unable to attend a meeting of the Committee on Contributions had designated an expert to act for him, and such designation was subsequently considered and approved by the Committee without prejudice to future decisions which the Committee might wish to take.

"The Committee had repeatedly emphasized, when it had discussed the question, that it was essential that members should attend the Committee's meetings except when prevented by circumstances beyond their control. It had, however, been found of value to the Committee's work, and therefore to that of the General Assembly, to accept the substitutes proposed as the Committee benefited from their special knowledge of certain regions."

The representative of Brazil reiterated his disagreement with the practice of substituting members duly elected by the Assembly. However, no action on the matter was taken by the Fifth Committee or the General Assembly.

5. The Committee on Contributions again considered the matter at its twelfth session in 1953 (in connexion with the designation by a member of a substitute to attend that session) as a result of which a further legal opinion was sought on the question of substitute members. In an opinion dated 28 August 1953, which was submitted to the Committee, the Office of Legal Affairs indicated that the statement provided to the Chairman of the Fifth Committee at its 319th meeting (as quoted under paragraph 3 above) correctly expressed the legal situation.

The opinion went on to state as follows:

"It will be recalled that following the reading of this opinion, the representative of Brazil expressed his agreement. The representative of the USSR said that it was not desirable for the Committee to take a decision at once on the opinion put forward by the Legal Department and the Chairman then pointed out there was no question of making a final decision immediately. Subsequently, at the 341st meeting the Chairman of the Committee on Contributions pointed out that the Committee had followed the practice of accepting substitute members, that such cases were always mentioned in the Committee's report, and no criticism of that procedure had been voiced in the General Assembly prior to the Sixth Session. The representative of Brazil reiterated his objection to this procedure and no further action was taken on the question.

"These circumstances show that while no objection had been raised prior to the Sixth Session, at that time definite disagreement was manifested and a decision expressly put off. It is, therefore, difficult at this time to rely on an implied exception to the rules of procedure on this point.

"Consequently, if the Committee on Contributions considers that there is a practical necessity for permitting substitutes in certain cases, the desirable procedure would seem to be to submit the question to the General Assembly with appropriate recommendations."

The Committee decided to follow the same procedure as in previous cases and to report its acceptance of the substitute member to the General Assembly. The relevant paragraph of the Committee's report^{1/} stated that the substitute member had participated in the work of the Committee throughout its session on behalf of the member, with whom he had remained in constant consultation. The Committee also decided to take no further action at that time.

6. On the occasion of its fourteenth session in 1955, the Committee added, in its report to the General Assembly^{2/} that its acceptance of a substitute member was "on the understanding" that such substitute would remain in consultation with the member he represented. At its twentieth session in 1961, some members of the Committee believed that the admission of substitutes designated by appointed members should be more restrictive and it was so stated in the Committee's report to the Assembly.^{3/} With effect from its twenty-sixth session in 1967, the Committee, in its report to the Assembly,^{4/} stressed the importance of elected members attending Committee sessions. However, as indicated above, in no case was a substitute member excluded from a Committee session.

7. In order to assist the Committee in its present review of the question of substitute members, the Office of Legal Affairs was requested to provide the Secretariat with its current views on the subject. In an opinion dated 24 March 1975, that Office stated as follows:

"While it has been the practice of the Committee on Contributions to permit its members to appoint their own substitutes and so far that practice has not given rise to objections in the General Assembly, the legal position remains to be that expressed in our opinion of 28 August 1953. Confirmation of this position may also be found in an earlier opinion dated 18 December 1951, which dealt with the Advisory Committee on Administrative and Budgetary Questions, the Committee on Contributions and the other expert bodies, as well as in a further opinion dated 29 November 1957 ^{5/} which once more dealt with the Committee on Contributions. To our knowledge, no expert bodies other than the Committee on Contributions have permitted their members to appoint substitutes."

^{1/} Official Records of the General Assembly, Eighth Session, Supplement No. 10 (A/2461), para. 2.

^{2/} Ibid., Tenth Session, Supplement No. 10 (A/2951), para. 2.

^{3/} Ibid., Sixteenth Session, Supplement No. 10 (A/4775), para. 2.

^{4/} Ibid., Twenty-second Session, Supplement No. 10 (A/6710), para. 2.

^{5/} The opinion of 29 November 1957 merely reiterated the views previously expressed.