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CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING
FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE
WITH THE CHARTER OF THE UNITED NATIONS

Report of the Secretary-General on methods of fact-finding

(Study prepared in pursuance of resolution 1967 (XVIII)
of the General Assembly)

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INTRODUCTION

I. Consideration of the "question of methods of fact-finding" in the General Assembly

1. On 18 December 1962, at its seventeenth session, the General Assembly adopted resolution 1815 (XVII) entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". In operative paragraph 3 of that resolution, the Assembly decided to place the item on the provisional agenda of its eighteenth session in order to study a number of principles of international law embodied in the Charter, including "the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered".

2. Pursuant to that resolution, the General Assembly, at its 1210th plenary meeting held on 20 September 1963, placed the item on the agenda of its eighteenth session and referred it to the Sixth Committee, which considered it at its 802nd to 825th meetings, held from 29 October to 3 December and at its 829th and 831st to 834th meetings, held on 6, 9, 10 and 11 December 1963. During the discussion of the item, which also covered the principle of the peaceful settlement of disputes, the "question of methods of fact-finding" was raised and debated, and a joint draft resolution on the question was submitted by Canada, Cyprus, Jamaica, Liberia, Mexico, Netherlands, Pakistan and Sweden (A/C.6/L.540 and Add.1-2). The views expressed on the subject by representatives are summarized in paragraphs 72 and 76-79 of the report of the Sixth Committee to the General Assembly (A/5671), the full text of which is reproduced below:

"72. Some representatives also stated that States should be encouraged to resort to the Panel for Inquiry and Conciliation contemplated in General Assembly resolution 268 D (III). Certain representatives emphasized the role which the Security Council, the General Assembly, and the Secretary-General could play in the peaceful settlement of disputes.

"76. Some representatives were of the opinion that application of the principle of the peaceful settlement of disputes could be facilitated by the establishment of a specialized fact-finding body whose functions would be complementary to the arrangements already in operation for that purpose;

that body would be available to the parties to future treaties or to existing treaties which had no fact-finding provisions as well as to international organizations and would not supersede existing effective machinery. In the case of very specialized inquiries of an economic or scientific nature, for example, the fact-finding centre could call upon an individual, body, commission or organization to carry out an inquiry. Those representatives pointed out that several international agreements, namely, those which had established the three European communities and the European Convention on Human Rights, provided for such bodies.

"77. Other representatives maintained that the proposal to establish a fact-finding body constituted a first step towards a judicial or quasi-judicial settlement of disputes which would be compulsory and therefore unacceptable. Moreover, that proposal was not on the Committee's agenda and it should therefore not be discussed.

"78. Some representatives pointed out that all disputes were not likely to affect the maintenance of peace to the same extent and that the flexibility of the Charter was reflected in the fact that it provided in Articles 14 and 34 and in Chapter VII for different measures to be taken by different bodies, according to the seriousness of the dispute.

"79. Several representatives concluded that the Charter provided adequate legal and constitutional bases for productive diplomatic action; they mentioned the practical measures taken by the United Nations since its foundation, such as the organization of truces, the dispatch of commissions of observation, inquiry or good offices, its economic and social activities; and its actions under Article 81 concerning the administration of a Trust Territory. Accordingly, they thought that, here too, it was useless and dangerous to seek to amend the Charter by devious means."

3. At its 834th meeting held on 11 December 1963, the Sixth Committee adopted the eight-Power draft resolution (A/C.6/L.540 and Add.1-2) which, after its adoption by the General Assembly, became the resolution which is the subject of the following paragraph.

II. General Assembly resolution 1967 (XVIII) on the
"question of methods of fact-finding"

4. At its 1281st plenary meeting held on 16 December 1963, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 1967 (XVIII) entitled "Question of methods of fact-finding, which reads as follows:

"The General Assembly,

"Recalling that in its resolution 1815 (XVII) of 18 December 1962 the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered is mentioned as one of the principles to be studied at the eighteenth session of the General Assembly,

"Recognizing the need to promote further development and strengthening of various means of settling disputes, as described in Article 33 of the Charter of the United Nations,

"Considering that, in Article 33 of the Charter, inquiry is mentioned as one of the peaceful means by which the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution,

"Considering further that inquiry, investigation and other methods of fact-finding are also referred to in other instruments of a general or regional nature,

"Believing that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions,

"Taking into account that, with regard to methods of fact-finding in international relations, a considerable practice is available to be studied for the purpose of the progressive development of such methods,

"Believing that such a study might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek other peaceful means of settlement of their own choice,

"1. Invites Member States to submit in writing to the Secretary-General, before 1 June 1964, any views they may have on this subject and requests the Secretary-General to communicate these comments to Member States before the beginning of the nineteenth session;

"2. Requests the Secretary-General to study the relevant aspects of the problem under consideration and to report on the results of such study to the General Assembly at its nineteenth session and to the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States established under General Assembly resolution 1966 (XVIII) of 16 December 1963;

"3. Requests the Special Committee to include in its deliberations the subject-matter mentioned in the last preambular paragraph of the present resolution."

III. Subject and limitations of the study

5. The subject of this study, prepared in pursuance of operative paragraph 2 of the above resolution, is international inquiry as a peaceful means of settling disputes or adjusting situations. The third preambular paragraph of the resolution points out "that, in Article 33 of the Charter, inquiry is mentioned as one of the peaceful means by which the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution". One of the means for the peaceful settlement of disputes mentioned in that Article is "conciliation". It will be seen in the course of this study that as the procedure of inquiry evolved, particularly within the framework of treaties, it gave rise to the procedure of conciliation with which it is still usually linked. The commissions originally established with an exclusively fact-finding mission were later envisaged differently, being given new functions and an additional power of conciliation. In dealing with the procedure of inquiry, this study will therefore inevitably deal with the procedure of conciliation, the two having been combined, particularly during the period preceding the establishment of the United Nations. It will also refer to the bodies set up by the principal organs of this Organization for the purposes not only of "inquiry" or "investigation" but also of "observation".

6. Since the subject of this study is the institution of inquiry in so far as it relates to the peaceful settlement of international disputes, this institution will be considered from the time of its creation by the Hague Conventions of 1899 and 1907.

7. Owing to lack of time, the study will not deal with international inquiry as envisaged in some treaties as a means of ensuring their execution. This aspect of international inquiry dates back still further. It was provided for in the Mainz Convention of 31 March 1831 concerning the navigation of the Rhine and in many other later conventions. These conventions, which are generally multilateral, establish bodies responsible for supervising or checking on their application

by inquiry or other means. Similarly, Article 22 of the League of Nations Covenant concerning the Mandate System, Chapters XI, XII and XIII of the United Nations Charter concerning Non-Self-Governing Territories and the International Trusteeship System, and the treaties establishing certain specialized agencies or regional organizations establish control and supervision systems in which inquiry plays an important part.^{1/}

8. Nor will the study deal with the subject mentioned in the last preambular paragraph of General Assembly resolution 1967 (XVIII), namely the feasibility and desirability of establishing a special international body for fact-finding or of entrusting fact-finding responsibilities to an existing organization. Besides, under that resolution, the study does not necessarily have to cover that question which, in the opinion of the Secretary-General, should be dealt with by the General Assembly. The Special Committee established under resolution 1966 (XVIII), which is requested by resolution 1967 (XVIII) to include this subject in its deliberations, could make the necessary recommendations to that effect.

IV. Plan of the study

9. Part I will consider the institution of international inquiry under the Hague Conventions of 1899 and 1907 and other treaties^{2/} concluded before 1919; it will also mention some of the cases in which it was applied during that period. Part II will be devoted to the institution in the context and during the lifetime of the League of Nations; it will deal with the procedure of inquiry under the League of Nations Covenant and other multilateral and bilateral treaties concluded before 1940;^{2/} some examples of inquiry or conciliation effected within the framework of the League of Nations or outside it will also be given. Part III will deal with international inquiry since the establishment of the United Nations; it will concentrate mainly on the Organization's practice in the matter; it will give the information available about some regional organizations and will also mention the treaties of inquiry or conciliation concluded after 1940. Lastly, in Part IV, a brief account will be given of the evolution of the institution of international inquiry as a peaceful means for settling disputes or adjusting situations.

^{1/} For this aspect of the question, see: Carl W.A. Schurmann, A Center for International Fact-Finding: A Review and a Proposal, School of International Affairs, Columbia University, July 1963.

^{2/} As a rule, only treaties which have entered into force have been considered. However, mention of certain treaties does not imply that they are necessarily still in force or that they were in force at a particular time.

PART I

INTERNATIONAL INQUIRY UNDER THE HAGUE CONVENTIONS OF 1899 AND 1907
AND OTHER TREATIES CONCLUDED BEFORE 1919

10. Inquiry as a means for the peaceful settlement of international disputes was first provided for in the first Hague Conventions of 1899 and 1907. Under these two conventions (the second of which superseded the first), the method was several times used with success. Consideration was then given to giving the institution greater importance and enlarging its field of application. Accordingly, commencing in 1913, the Government of the United States of America, on the initiative of its Secretary of State, Mr. W.J. Bryan, concluded, first with other American States and later with European States, a number of treaties which gave the commissions of inquiry established under them broader scope than that given to the commissions of inquiry established by the Hague Conventions. Other treaties similar to the Bryan treaties were concluded before 1919. In the present part of this document the Hague Conventions, their application, the Bryan treaties and the other treaties concluded on the subject before 1919 will be discussed.

I. THE HAGUE CONVENTIONS OF 1899 AND 1907 FOR THE
PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

11. The international commissions of inquiry as instituted under the two Hague Conventions have the following general characteristics: resort to them is voluntary; they may act only to settle questions of fact in disputes of an international nature involving neither honour nor vital interests; they are temporary bodies established to decide the question for which they were set up; they are so constituted as to ensure the predominance of the neutral element; and their report is in no way binding.

A. The Convention of 1899^{3/}

12. Title III of this Convention, entitled "On International Commissions of Inquiry" consists of six articles (articles 9-14), the provisions of which are set forth below under appropriate headings for convenience of reference.

13. Institution of an international commission of inquiry. Its nature and purpose. Differences referable to it. Article 9 provides as follows:

"In differences of an international nature involving neither honour nor vital interests, and arising from a difference of opinion of points of fact, the Signatory Powers recommend that the parties who have not been able to come to an agreement by means of diplomacy should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation."

14. Constitution of international commissions of inquiry by special agreements.

Under the provisions of article 10, the commissions are constituted by special agreement between the parties in conflict. The Convention for an inquiry defines the facts to be examined and the extent of the commissioner's powers. It settles the procedure. On the inquiry, both sides must be heard. The form and the periods to be observed, if not stated in the inquiry convention, are decided by the commission itself.

15. Composition of the commissions. The commissions are constituted on the model of arbitration tribunals. According to article 11, they "are formed,

^{3/} J.B. Scott, The Hague Peace Conferences of 1899 and 1907, vol. II, 1909, p. 80 et seq.

unless otherwise stipulated, in the manner fixed by article 32^{4/} of the present Convention."

16. Duties of the Powers in dispute in regard to the commission. Article 12 requires the Powers in dispute to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

17. Communication and signature of the commission's report. Under article 13, the commission communicates its report to the conflicting Powers, signed by all the members of the commission.

18. Contents and nature of the commission's report. Under article 14, the commission's report "is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement."

B. Cases in which the provisions of the 1899 Convention were applied

19. The procedure of international inquiry, as provided for in the 1899 Convention, was applied in the "Hull" or "Dogger Bank" case, a brief summary of which is given below.

^{4/} Article 32: "The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the Members of the Permanent Court of Arbitration established by the present Act. Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued: Each party appoints two Arbitrators, and these latter together choose an Umpire. In case of equal voting, the choice of Umpire is intrusted to a third Power, selected by the parties by common accord. If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected."

International commission of inquiry constituted under the declaration
of 12 November 1904 between Great Britain and Russia

The "Hull" or "Dogger Bank" case

20. History.^{5/} On the night of 21-22 October 1904, during the Russo-Japanese War, the Russian Baltic Fleet opened fire on an English trawler fleet from Hull, taking the vessels to be Japanese torpedo boats. Several fishermen were killed and damage was caused to the vessels. The situation was serious, and in order to remedy it, France offered its good offices and suggested resort to an international commission of inquiry as provided for in the Convention for the Pacific Settlement of International Disputes adopted at The Hague in 1899. The suggestion was accepted by Great Britain and Russia, which on 12 November 1904 signed a Declaration^{6/} constituting an agreement for inquiry, the provisions of which are given under the following headings.

21. Constitution of an international commission of inquiry; definition of the subject matter of the dispute to be settled. In the preamble of the Declaration, Great Britain and Russia agreed to entrust to an international commission of inquiry, assembled conformably to Articles 9 to 14 of the Hague Convention of 1899, the task of elucidating by means of an impartial and conscientious investigation the questions of fact connected with the incident which occurred during the night of 21-22 October 1904 in the North Sea (on which occasion the firing of the guns of the Russian fleet caused the loss of a boat and the death of two persons belonging to a British fishing fleet, as well as damages to other boats of that fleet and injuries to the crews of some of those boats).

22. Composition of the commission. Article 1 of the Declaration provided for an international commission of inquiry composed of five members - two officers of high rank in the British and Imperial Russian Navies, respectively; two to be selected by the Governments of France and the United States of America from among their naval officers of high rank; and the fifth to be chosen by agreement between the four members above-mentioned. Failing an agreement, the fifth member was to have been selected by the Emperor of Austria, King of Hungary. Each of

^{5/} J.B. Scott, The Hague Court Reports, 1916, p. 403, et seq.

^{6/} J.B. Scott, ibid., p. 410. See also, British and Foreign State Papers, vol. 97, p. 77; American Journal of International Law, vol. 2, 1908, p. 929.

the parties was entitled to appoint a legal assessor to advise the commissioners and an agent officially empowered to take part in the labours of the commission. The five members of the commission were Vice-Admirals Sir Lewis Beaumont (Great Britain), Doubassoff (Russia), and Fournier (France), selected by the British, Russian and French Governments respectively, Rear-Admiral Davis (United States) appointed by the United States, and the Austro-Hungarian Admiral Baron Spaun, who was elected by the first four members. Vice-Admiral Fournier acted as President.^{7/}

23. Powers of the commission. Under the Declaration, the commission was given the power not only to elucidate the facts but also to establish where responsibility lay and to fix the degree of blame attaching to the persons found responsible. Thus, article 2 of the Declaration provided as follows:

"The commission shall inquire into and report on all the circumstances relative to the North Sea incident, and particularly on the question as to where the responsibility lies and the degree of blame attaching to the subjects of the two high contracting Parties or to the subject of other countries in the event of their responsibility being established by the inquiry."

24. The commission's rules of procedure. Article 3 of the Declaration left it to the commission to settle the details of its procedure. In accordance with that article, the commission drew up and adopted its rules of procedure^{8/}, which provided for the appointment of a secretary-general to assist the President of the commission in carrying out certain of his duties, and included detailed provisions establishing rules of procedure to govern the commission's meetings, the submission of statements of facts and supporting documents, depositions by and interrogation of witnesses, the submission of statements and observations by the parties' agents, and the preparation of the report.

25. The commission's decisions. Under article 7 of the Declaration, the commission was to arrive at all its decisions by a majority vote of the five commissioners.

^{7/} Revue générale de droit international publique, vol. XII, 1905, pp. 184 and 360.

^{8/} Ibid., p. 357.

26. Duty of the States in dispute during the inquiry. Under article 4 of the Declaration, the parties undertook "to supply the international commission of inquiry, to the greatest possible extent, with all the means and facilities necessary to enable it to thoroughly investigate and correctly estimate the matters in dispute".

27. Costs of the inquiry. Under article 8 of the Declaration, the parties undertook to bear, each on its part, the expenses of the inquiry made by it previously to the assembly of the commission. The expenses incurred by the commission, after the date of its assembly, in organizing its staff and in conducting the investigations which it would have to make, were to be shared equally by the parties.

28. Place and date of meeting of the commission. These were fixed under article 5 of the Declaration, which provided that "The commission shall assemble at Paris as soon as possible after the signature of this agreement". In point of fact, the commission met at Paris from 22 December 1904 to 26 February 1905.

29. The commission's report. On 26 February 1905, the commission presented its report^{9/}, signed by all its members in accordance with article 6 of the Declaration. In an introductory paragraph, the nature of the report was defined as follows:

"The commissioners, after a minute and prolonged examination of the whole of the facts brought to their knowledge in regard to the incident submitted to them for inquiry by the declaration of St. Petersburg of 12 November 1904, have proceeded to make, in this report, an analysis of these facts in their logical sequence.

"By making known the prevailing opinion of the commission on each important or decisive point of this summary, they consider that they have made sufficiently clear the causes and the consequences of the incident in question, as well as the deductions which are to be drawn from them with regard to the question of responsibility."

The commission's finding was that there had been no torpedo boats among the trawlers and that the opening of fire by the Russian Admiral had not been justifiable. The commission did not, however, pronounce any censure of Admiral Rojdestvensky, stating

^{9/} Text in J.B. Scott, The Hague Court Reports, 1916, p. 404.

that his conduct was not "of a nature to cast any discredit upon the military qualities or the humanity of Admiral Rojdestvensky, or of the personnel of his squadron". Following the presentation of the report, Russia paid compensation for the damages sustained.^{10/}

C. The Convention of 1907^{11/}

30. The 1907 Convention superseded the 1899 Convention. It preserved intact the juridical basis of the institution of international inquiry provided for in the latter. However, it defined it in more precise terms and improved it in some respects, especially as regards procedure. The relevant part consists of twenty-eight articles (articles 9-36), which form part III, dealing with international commissions of inquiry. The provisions of these articles will be found below under appropriate titles.

31. Institution of an international commission of inquiry. Nature and function of the commission. Disputes referable to it. Article 9 of the Convention reproduces verbatim the provisions of article 9 of the 1899 Convention, except for the addition of the words "and desirable" after the word "expedient". From the report to the Conference from the First Commission on the Revision of the Convention of 1899^{12/}, it may be seen that these words were added to give the inquiry procedure greater flexibility, encourage more frequent resort to it and invite nations more strongly to resort to this peaceful method of settling their disputes, while at the same time preserving its voluntary nature.

32. Constitution of international commissions of inquiry by special agreement. The main principle embodied in article 10 of the 1899 Convention is reproduced, with greater precision and detail, in article 10 of the 1907 Convention, which reads as follows:

"International commissions of inquiry are constituted by special agreement between the parties in dispute.

"The inquiry convention defines the facts to be examined; it determines the mode and time in which the commission is to be formed and the extent of the powers of the commissioners.

^{10/} J.B. Scott, The Hague Court Reports, 1916, p. 403.

^{11/} J.B. Scott, The Hague Peace Conferences of 1899 and 1907, vol. II, 1909, p. 308.

^{12/} J.B. Scott, Reports to The Hague Conferences of 1899 and 1907, Carnegie Endowment for International Peace, p. 312. /...

"It also determines, if there is need, where the commission is to sit, and whether it may remove to another place, the language the commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

"If the parties consider it necessary to appoint assessors, the convention of inquiry shall determine the mode of their selection and the extent of their powers."

33. Place of meeting and languages of the commissions. Article 11 provided that if the inquiry convention had not determined where the commission was to sit, it would sit at The Hague. It was understood that the place of meeting, once fixed, could not be altered by the commission except with the assent of the parties. If the inquiry convention had not determined what languages were to be employed, the question would be decided by the commission.

34. Composition of the commission. Article 12 reproduces article 11 of the 1899 Convention almost word for word. There is only one addition, which concerns the rules to be followed in selecting the President. Article 12 reads as follows: "Unless an undertaking is made to the contrary, commissions of inquiry shall be formed in the manner determined by articles 45^{13/} and 57^{14/} of the present convention."

13/ Article 45: When the contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the arbitrators called upon to form the tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the court. Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued: Each party appoints two arbitrators, of whom one only can be its national, or chosen from among the persons who have been selected by it as members of the Permanent Court. These arbitrators together choose an umpire. If the votes are equally divided, the choice of the umpire is entrusted to a third Power, selected by the parties by common accord. If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected. If, within two months' time, these two Powers can not come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be umpire.

14/ Article 57: The umpire is President of the tribunal ex officio. When the tribunal does not include an umpire, it appoints its own President.

35. Replacement of commissioners. Article 13 adopts the same rules for cases in which a member of the commission dies, resigns or is unable to discharge his functions as those applying to members of an arbitration tribunal. The article reads as follows:

"Should one of the commissioners or one of the assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him."

36. Agents and counsels of the parties. Under article 14 the parties are entitled to appoint special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission. They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the commission.

37. Registry of the commission. Articles 15 and 16 provide that the International Bureau of the Permanent Court of Arbitration is to act as registry for the commissions which sit at The Hague. "If the commission meets elsewhere than at The Hague, it appoints a secretary-general, whose office serves as registry. It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the commission, the preparation of the minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague."

38. Rules for the inquiry procedure. It is above all in questions of procedure that the 1907 Convention differs from the 1899 Convention. While the latter almost entirely lacks rules of procedure, the gap was filled in the 1907 Convention by the adoption of eighteen articles (article 17 to 34) which carefully regulated various questions of a procedural nature. It may perhaps be useful at this point to quote the text of these articles in full:

"Article 17. In order to facilitate the constitution and working of commissions of inquiry, the contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

"Article 18. The commission shall settle the details of the procedure not covered by the special inquiry convention or the present convention, and shall arrange all the formalities required for dealing with the evidence.

"Article 19. On the inquiry both sides must be heard.

"At the dates fixed, each party communicates to the commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

"Article 20. The commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the States on whose territory it is proposed to hold the inquiry..

"Article 21. Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

"Article 22. The commission is entitled to ask from either party for such explanations and information as it considers necessary.

"Article 23. The parties undertake to supply the commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand the facts in question.

"They undertake to make use of the means at their disposal, under their municipal law, to ensure the appearance of the witnesses or experts who are in their territory and have been summoned before the commission.

"If the witnesses or experts are unable to appear before the commission, the parties will arrange for the evidence to be taken before the qualified officials of their own country.

"Article 24. For all notices to be served by the commission in the territory of a third contracting Power, the commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

"The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They can not be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

"The commission will equally be always entitled to act through the Power on whose territory it sits.

"Article 25. The witnesses and experts are summoned on the request of the parties or by the commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

"The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the commission.

"Article 26. The examination of witnesses is conducted by the President.

"The members of the commission may, however, put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

"The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

"Article 27. The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

"Article 28. A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

"When the whole of his statement has been read to the witness, he is asked to sign it.

"Article 29. The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

"Article 30. The commission considers its decisions in private and the proceedings are secret.

"All questions are decided by a majority of the members of the commission.

"If a member declines to vote, the fact must be recorded in the minutes.

"Article 31. The sittings of the commission are not public, nor the minutes and documents connected with the inquiry published except in virtue of a decision of the commission taken with the consent of the parties.

"Article 32. After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the commission adjourns to deliberate and draw up its report.

"Article 33. The report is signed by all the members of the commission.

"If one of the members refuses to sign, the fact is mentioned; but the validity of the report is not affected.

"Article 34. The report of the commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

"A copy of the report is given to each party."

39. Content and nature of the commission's report. Article 35 provides that the commission's report is limited to a statement of facts, and has in no way the character of an award. It leaves to the parties entire freedom as to the effect to be given to the statement".

40. Costs of the inquiry. Under article 36, each party pays its own expenses and an equal share of the expenses incurred by the commission.

D. Cases in which the provisions of the 1907 Convention
were applied

41. Under the 1907 Convention, the international inquiry procedure was applied on a number of occasions. It was used in the Tavignano, Camouna and Gaulois case and the Tubantia case. A brief account of each of these cases follows.

1. International commission of inquiry constituted under the agreement of 20 May 1912 between France and Italy.

The Tavignano, Camouna and Gaulois Case

42. History.^{15/} On 25 January 1912, during the Turco-Italian war, the French mail steamer Tavignano was seized by the Italian torpedo boat Fulmine off the coast of Tunis and conducted to Tripoli under suspicion of having on board contraband of war. The suspicion proved to be unwarranted and the vessel was released on the following day. On the same date, in the same waters, the two Tunisian mahones Camouna and Gaulois were fired upon by the Italian torpedo boat Canopo. The French Government claimed indemnity for these acts from the Italian Government on the ground that the vessels when encountered were within the territorial waters of Tunis and were not,

^{15/} J.B. Scott, The Hague Court Reports, 1916, p. 413.

according to international law, subject to either attack or capture. On the other hand, Italy maintained that the acts complained of took place on the high seas and that no rule of international law had been violated. The cases were submitted to an international commission of inquiry by an agreement signed on 20 May 1912.^{16/}

43. Constitution of the commission. Definition of the subject-matter of the dispute to be settled. According to the preamble of the agreement, the Governments of France and Italy, "equally desirous of settling the dispute caused by the capture and temporary detention of the French mail steamer Tavignano, on January 25, 1912, by the Royal Italian naval vessel Fulmine, as well as the firing upon the mahones Camouna and Gaulois, on January 25, 1912, by the Italian torpedo boat Canopo; have resolved, conformably to Part III of the Hague Convention of October 18, 1907, for the pacific settlement of international disputes, to confide to an international commission of inquiry the task of clearing up the actual circumstances under which the said capture and detention, and the said firing took place".

44. Composition of the commission. Article 2 provided for the establishment of an international commission of inquiry composed of three commissioners, of which two were to be national naval officers of France and Italy and the third, who would act as president, was to be chosen by the United Kingdom Government from among its naval officers. The three commissioners were Captains G. Genoese Zerbi, Somborn and Segrave.

45. Powers of the commission. Article 1 gave the commission the power: "I. To investigate, mark and determine the exact geographic point where occurred: (1) the capture of the French mail steamer Tavignano by the Royal Italian naval vessel Fulmine, on January 25, 1912; (2) the pursuit of the mahones Camouna and Gaulois by the same vessel and also by the Royal Italian naval vessel Canopo, and the firing by the latter upon the said mahones; II. To determine exactly the hydrography, configuration and nature of the coast and of the neighboring banks, the distance between any points which one or the other of the commissioners might deem useful to mark, and the distance from these points to those where the above-mentioned deeds occurred; III. To make a written report of the result of its investigation."

^{16/} Ibid., p. 417.

46. Sources of information available to the commission. Under the first paragraph of article 3, the commission was entitled "to secure all information, interrogate and hear all witnesses, to examine all papers on board either of the said ships, vessels and mahones, to proceed, if necessary, with sounding, and, in general, to resort to all sources of information calculated to bring out the truth".

47. Obligations of the parties towards the commission. The second paragraph of article 3 imposed an obligation on the two Governments "to furnish the commission with all possible means and facilities, particularly those of transportation, to enable it to accomplish its task".

48. Place and time of meeting of the commission. Under article 4, the commission was to meet at Malta as soon as possible and to "have the power to change its place of meeting conformably to article 20 of the Hague Convention of October 18, 1907, for the pacific settlement of international disputes".

49. Language of the commission. Article 5 stated that the French language was to be used by the commission but authorized the commissioners to use their respective languages in their deliberations.

50. Time-limit for the presentation of the commission's report. Under article 6, the commission was to arrive at the conclusions of its report and communicate them to each of the two Governments within a period not to exceed fifteen days from the date of its first meeting.

51. Cost of the inquiry. Under article 7, each party was to pay its own expenses and an equal share of the expenses of the commission.

52. Procedure of the commission. Article 8 made the provisions of the Hague Convention of 1907 applicable to the commission with respect to all points not covered by the convention of inquiry, especially those relating to the procedure of inquiry.

53. Report of the commission. The commission made its report on 23 July 1912.^{17/} As no definite conclusion was reached, however, a compromis was signed on 8 November submitting the case for arbitration to the tribunal in charge of the Carthage and Manouba cases.^{18/} No decision was rendered by the tribunal, the

^{17/} Text in: J.B. Scott, op. cit., p. 417.

^{18/} For these two cases see: J.B. Scott, op. cit., pp. 329, 341.

matter being finally settled out of court by a special agreement dated 2 May 1913.^{19/} Under the terms of this agreement, Italy agreed to pay an indemnity to the French Government.

2. International commission of inquiry constituted under the agreement for inquiry dated 30 March 1921 between the Netherlands and Germany.

The Tubantia Case

54. History. The Netherlands steamer Tubantia went down during the night of 16 March 1916 not far from the Netherlands coast. There was suspicion that it had been torpedoed by a German submarine. After prolonged negotiations the German and Netherlands Governments concluded an agreement^{20/} on 30 March 1921 submitting question of the cause of the loss of the vessel to an international commission of inquiry constituted in accordance with chapter III of the Hague Convention of 1907 for the Pacific Settlement of International Disputes.

55. Constitution of the commission. In virtue of the preamble of the Convention, the two parties to the dispute agreed to submit to an international commission of inquiry the dispute as to the cause of the sinking of the Netherlands steamer Tubantia on 16 March 1916.

56. Composition of the commission. Under article 2, the commission was to consist of five members, two appointed by the parties, two by the Danish and Swedish Governments and the fifth, the chairman, by the Swiss Government. The commission accordingly consisted of Mr. Hoffmann, sometime member of the Swiss Federal Council, President, Rear-Admiral Surie, of the Netherlands Navy, Captain Ravn, of the Danish Navy, Frigate Captain Unger, of the Swedish Navy, and Corvette Captain Gayer, of the German Navy.

57. Agents and counsel. Article 3 gave the parties the right to appoint special agents to represent them before the commission and to serve as intermediaries between them and it. It also authorized them to appoint counsel to state and protect their interests before the commission.

^{19/} Ibid., p. 421.

^{20/} Text in J.B. Scott, The Hague Court Reports, 1932, p. 143.

58. Powers of the commission. The commission's task was limited by article 1 to ascertaining "the cause of the sinking of the Dutch steamer Tubantia on March 16, 1916".

59. Place of meeting of the commission. Under article 4, the commission was to meet at The Hague. Its meetings were in fact held in the Palace of the Permanent Court of Arbitration, from 18 January to 27 February 1922.

60. Languages and rules of procedure of the commission. Articles 5, 6, 7 and 8 of the Convention provided as follows:

"The memorials of the parties may be presented in French, German or Dutch. If they are submitted in the German or Dutch language, a French translation shall be attached. The commission shall decide what language it will employ, and what language may be used in the proceedings.

"The first exchange of memorials shall take place four months after the signing of this protocol, and the exchange of the counter-memorials within two months thereafter. The chairman of the commission may extend this period, or require a further exchange of memorials.

"The memorials shall be deposited in fourteen copies with the Bureau of the Permanent Court of Arbitration at The Hague. The Bureau will immediately transmit three copies to the opposite party and two copies to each commissioner. One copy shall remain in the archives of the Bureau.

"The period for oral proceedings shall be determined by the chairman.

"The meetings of the commission shall not be public, nor shall the protocols and documents of the commission be published. The final report of the commission, however, shall be read in a public session and shall be published.

"The provisions of the third chapter of the Hague Convention for the Pacific Settlement of International Disputes, October 18, 1907, in so far as they are not at variance with the provisions of this convention, shall be applicable to the procedure of the commission, especially as regards the production of evidence and the form and effect of the report to be made by the commission."

61. Report of the commission. The commission submitted its report^{21/} on 27 February 1922. In it the commission came to the following conclusion: "After weighing all the proofs, the commission has reached the conviction that the

^{21/} English and French texts in: J.B. Scott, op. cit., 1932, pp. 135 and 211.

Tubantia was sunk on March 16, 1916, by the explosion of a torpedo launched by a German submarine. The question of determining whether the torpedoing took place knowingly or as the result of an error of the commander of the submarine must remain in suspense. It has not been possible to determine that the loss of the Tubantia was caused by striking a torpedo that had remained afloat. Although it can not be denied that a certain number of indications militate in favor of the latter possibility, the commission, after examining them conscientiously and comparing them with the other proofs, can not recognize that these indications are conclusive and have the force of proof. No indication permitting the assumption of any other cause for the loss of the Tubantia could be produced." As a result of this report the German Government paid compensation for the damage sustained.^{22/}

^{22/} Carl W.A. Schurmann, A Center for International Fact Finding: a Review and a Proposal, School of International Affairs, Columbia University, July 1963, p. 16.

II. THE BRYAN TREATIES, 1913-1915

62. Between 1913 and 1915, as indicated above (para. 10), the United States, on the initiative of Secretary of State Bryan, concluded a large number of bilateral treaties with other American States and a few European States^{23/} setting up international commissions of inquiry. These commissions have the following general characteristics: they are established on a permanent basis and are composed of five members; recourse to them is binding; they are entitled to initiate action; they deal with all disputes of whatever nature, whether as to points of law or questions of fact - although under the terms of some of these treaties disputes capable of arbitration cannot be referred to them; the rules of procedure are left to the choice either of the parties or of the commissions themselves; the commissions' reports are not binding on the parties; and the parties agree not to declare war or begin hostilities during the investigation and before the report is submitted.

^{23/} The more than thirty treaties signed included the following, which were in force at various times and are to be found in Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers: Bolivia, 22 January 1914 (vol. III, p. 2499); Brazil, 24 July 1914 (*ibid.*, p. 2505); Chile, 24 July 1914 (*ibid.*, p. 2509); China, 15 September 1914 (*ibid.*, p. 2514); Costa Rica, 13 February 1914 (*ibid.*, p. 2545); Denmark, 17 April 1914 (*ibid.*, p. 2556); France, 15 September 1914 (*ibid.*, p. 2587); Guatemala, 20 September 1913 (*ibid.*, p. 2666); Honduras, 3 November 1913 (*ibid.*, p. 2690); Italy, 5 May 1914 (*ibid.*, p. 2701); Netherlands, 18 December 1913 (vol. IV, p. 4504); Norway, 25 June 1914 (vol. III, p. 2745); Paraguay, 26 March 1913 (*ibid.* p. 2783); Peru, 14 July 1914 (*ibid.*, p. 2795); Portugal, 4 February 1914 (*ibid.*, p. 2809); Russia, 1 October 1914 (*ibid.*, p. 2815); Spain, 15 September 1914 (*ibid.*, p. 2841); Sweden, 13 October 1914 (*ibid.*, p. 2854); United Kingdom, 15 September 1914 (*ibid.*, p. 2642); Uruguay, 20 July 1914 (*ibid.*, p. 2860); Venezuela, 21 March 1914 (*ibid.*, p. 2865).

The treaty with the United Kingdom was amended on 6 September 1940 by three separate treaties concluded with Australia (U.S. Treaty Series, 974), Canada (*ibid.*, 975) and New Zealand (*ibid.*, 976). The treaties with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua were combined into a single convention concluded between the United States and these five other American States (*infra*, para. 106).

63. The Bryan treaties, which seem never to have been applied in practice,^{24/} are not necessarily identical. But the rules they lay down are generally the same. We reproduce below the provisions of the treaty concluded with Guatemala on 20 September 1913. Taking this as a standard, we shall point out any important variants in the other treaties.

Treaty of 20 September 1913 between the United States of America and
Guatemala

64. Like all the other Bryan treaties, this one is quite short. In addition to the preamble, it contains three articles dealing with the constitution of the International Commission of Inquiry.

65. Constitution of an International Commission of Inquiry. Function and nature of the Commission. Disputes to be submitted to it. Duties of the parties during the inquiry. Under the terms of article I, "the high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an International Commission, to be constituted in the manner prescribed in the next succeeding Article; and they agree not to declare war or begin hostilities during such investigation and report".

66. The treaty with the United Kingdom bars the Commission from investigating disputes that come within the jurisdiction of a court of arbitration (article I). Similarly, the only disputes that the treaty with the Netherlands expressly states must be submitted to the Commission are those to the settlement of which previous arbitration treaties do not apply in their terms or are not applied in fact. Article I of this treaty provides as follows: "The High Contracting Parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods or adjustments have failed, be referred for investigation and report to a Permanent International Commission".

^{24/} Carl W.A. Schurmann, A Center for International Fact Finding: A Review and a Proposal, School of International Affairs, Columbia University, July 1963, p. 16.

67. This same article contains another feature which distinguishes the treaty with the Netherlands from the treaty with Guatemala. The former expressly states that the International Commission of Inquiry is a permanent one, whereas the latter implies rather than states it (see para. 68).

68. Composition and expenses of the Commission. Date of appointment. Article II provides that the Commission "shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments. The expenses of the Commission shall be paid by the two Governments in equal proportion. The International Commission shall be appointed within four months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment".

69. Thus under this treaty only one of the two members each party is entitled to appoint is to be of its nationality. The treaty with Russia, on the other hand, is worded so as to allow each party to choose both members from among its nationals. Article II of the treaty provides as follows: "The International Commission shall be composed of five members appointed as follows: Each Government shall designate two members; the fifth member shall be designated by common consent and shall not belong to any of the nationalities already represented on the Commission; he shall perform the duties of President ...".

70. This article illustrates a second difference between the two treaties, in connexion with the choice of the fifth member. The treaty with Guatemala, while making the appointment of the fifth member subject to the agreement of the parties, does not, like the treaty with Russia, bar them from choosing him from among their own nationals. Article II contains yet a third feature which distinguishes the treaty with Russia from that of Guatemala. Whereas the former expressly provides that the fifth member "shall perform the duties of President", the latter is silent on this point. It should be noted, also, that the treaty with France states that if the parties are unable to agree on the choice of the fifth member, "the provisions of article 45 of The Hague Convention of 1907 shall be applied".

71. Referral to the Commission. Initiation of proceedings by the Commission.
Time-limit for presentation of the report. Nature of the report. Under the terms of article III, "In case the high contracting parties shall have failed to adjust

a dispute by diplomatic methods, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, act upon its own initiative, and in such case it shall notify both Governments and request their co-operation in the investigation. The report of the International Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files. The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the Commission shall have been submitted".

72. Article 3 of the treaty with France provides as follows: "In case a dispute should arise between the High Contracting Parties which is not settled by the ordinary methods, each Party shall have a right to ask that the investigation thereof be intrusted to the International Commission charged with making a report. Notice shall be given to the President of the International Commission, who shall at once communicate with his colleagues. In the same case the President may, after consulting his colleagues and upon receiving the consent of a majority of the members of the Commission, offer the services of the latter to each of the Contracting Parties. Acceptance of that offer declared by one of the two Governments shall be sufficient to give jurisdiction of the case to the Commission in accordance with the foregoing paragraph".^{25/}

73. Rules of procedure of the Commission. The treaty with Guatemala says practically nothing on this subject. Article III of the treaty with Italy provides that "in the absence of an agreement to the contrary between the High Contracting Parties, the Commission will itself adopt regulations governing its procedure". Article 5 of the treaty with France provides that "as regards the procedure which it is to follow, the Commission shall as far as possible be guided by the provisions contained in articles 9 to 36 of The Hague Convention of 1907.

74. Right of the parties to state the subject-matter of the dispute. Provisional measures. Unlike the treaty with Guatemala, which contains no provision on this subject, the treaty with France states in article 4 that "The two High Contracting

^{25/} French text in Martens, Nouveau Recueil Général de Traités, vol. IX, p. 108.

Parties shall have a right, each on its own part, to state to the President of the Commission what is the subject-matter of the controversy. No difference in these statements, which shall be furnished by way of suggestion, shall arrest the action of the Commission. In case the cause of the dispute should consist of certain acts already committed or about to be committed, the Commission shall as soon as possible indicate what measures to preserve the right of each Party ought, in its opinion to be taken provisionally and pending the delivery of its report".

75. Obligations of the parties towards the Commission. Article III of the treaty with Bolivia contains a provision absent from the treaty with Guatemala, under which "The High Contracting Parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report".

76. The treaty with Italy imposes the same obligation on the parties "provided that in their judgement this does not conflict with the laws or with the supreme interests of the State, and provided that the interests and rights of third States shall not thereby suffer damage" (article III).

77. Number of votes required for the adoption of the Commission's conclusions and terms of its report. Signature of the report. While the treaty with Guatemala contains no provision on this subject, the treaty with Sweden states in article 5 that "The conclusion of the Commission and the terms of its report shall be adopted by a majority. The report, signed only by the President acting by virtue of his office, shall be transmitted by him to each of the Contracting Parties".

78. Place of meeting of the Commission. On this point also, the treaty with Guatemala has nothing to say. The treaty with France, on the other hand, provides in article 3 that "The place of meeting shall be determined by the Commission itself". Under article II of the treaty with Chile, "The Commission shall determine the country wherein it will sit, taking into consideration the greater facilities for the investigation.

III. OTHER TREATIES CONCLUDED BEFORE 1919

79. On 27 February 1915, at Montevideo, Chile and Uruguay concluded a treaty for the peaceful settlement of their disputes by an international commission of inquiry.^{26/} This treaty is similar in its general outline to the Bryan treaties. It includes, however, one important point which deserves a mention. Article IV states that "After receiving the report of the Commission the two Governments shall allow a period of six months in order to endeavour to obtain a new settlement of the dispute based on the conclusions of the Commission; and if during this fresh extension the two Governments shall not be able to arrive at a friendly solution, the dispute shall be referred to the Permanent Court of Arbitration of The Hague".

80. On 25 May 1915, a tripartite treaty was concluded between Argentina, Brazil and Chile at Buenos Aires.^{27/} This treaty, while similar in many respects to the Bryan treaties, has certain essential differences. There is no provision enabling the Commission to take up disputes on its own initiative. There is no provision by which the parties reserve the right, after the Commission has made its report, to take whatever action they think necessary to settle the dispute. The preamble, however, states that the purpose of the treaty is to establish a procedural means of facilitating the friendly settlement of disputes not subject to arbitration under the existing treaties between the parties. The Commission is composed of three members instead of five, one to be appointed by each party. The treaty itself specifies the meeting place of the Commission (Montevideo).

^{26/} British and Foreign State Papers, vol. 109, p. 885.

^{27/} French text in: Revue générale de droit international public, vol. XXII, p. 475.

PART II

INTERNATIONAL INQUIRY DURING THE LEAGUE OF NATIONS PERIOD AND WITHIN THE LEAGUE FRAMEWORK

81. After the First World War, the institution of international inquiry began to take on a new aspect. The Bryan treaties had already carried the development of the institution a stage forward; it will have been noted how under those treaties commissions of inquiry had begun to be transformed into commissions of conciliation - without, however, losing their original character. With the establishment of the League of Nations, this trend was to become increasingly marked; the inquiry procedure, combined with conciliation procedure, was now to emerge as an organized system. Under the terms of the Covenant itself, it became an instrument of preliminary investigation available to the Council and the Assembly as central organs of conciliation. The Covenant was no sooner drawn up than attempts were made to decentralize the exercise of the functions vested in these organs in this connexion. At its very first session, the Assembly of the League of Nations had before it a number of draft amendments, submitted by Norway and Sweden,^{28/} the purpose of which was to amend Articles 12 and 15 of the Covenant so as to provide that disputes should be submitted in the first instance to permanent Commissions of Conciliation, which would apparently operate in a similar manner to international commissions of inquiry, in particular to the commissions provided for in the Bryan treaties. Although the Assembly was in favour of the procedure of conciliation, it rejected these draft amendments. Subsequently, on 22 September 1922, the Assembly adopted a resolution aimed at promoting the development of the procedure of conciliation in accordance with the spirit of the Covenant.^{29/} Inquiry and conciliation procedure as provided for in the Covenant was used by the Council of the League of Nations for the settlement of a number of cases. In addition, a great number of treaties - generally bilateral, but in some cases collective - making provision for the inquiry-conciliation procedure were concluded between 1919 and 1940. In the following pages we shall outline successively the

^{28/} League of Nations, Official Journal, No. 6, September 1920, p. 353.

^{29/} Ibid., Records of the Third Assembly, Plenary Meetings, vol. I, p. 199.

relevant provisions of the Covenant; the resolution of 22 September 1922 adopted by the Third Assembly; a number of commissions of inquiry set up by the Council; the broad terms of the treaties concluded between 1919 and 1940; and a number of commissions of inquiry and conciliation set up under some of those treaties.

I. INTERNATIONAL INQUIRY WITHIN THE LEAGUE OF NATIONS FRAMEWORK

A. Articles 12, 15 and 17 of the Covenant

32. Article 12 and, in particular, Article 15 of the Covenant of the League of Nations were to give considerable impetus to the use of the inquiry procedure, which since the Bryan treaties had already become linked to conciliation procedure. The Covenant maintained its general applicability to all disputes, irrespective of their nature, with the exception of cases where the parties to a dispute preferred to resort to arbitration or judicial settlement. It also extended the procedure to all Members of the League and even, under the terms of Article 17, to non-member States. It empowered both the Council and the Assembly to endeavour to effect a settlement of disputes submitted to them or, if such efforts were unsuccessful, to publish the facts of the dispute and the recommendations which they deemed just and proper in regard thereto. The following is the complete text of Articles 12, 15 and 17 of the Covenant:

"Article 12

"1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry 30/ by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.

"2. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

"Article 15

"1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

30/ This foot-note does not apply to the English text.

"2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

"3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

"4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

"5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

"6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

"7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

"8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

"9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

"10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

"Article 17

"1. In the event of a dispute between a Member of the League and a State which is not a member of the League, or between States not members of the League, the State or States not members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

"2. Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

"3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

"4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute."

B. Resolution adopted by the Third Assembly of the League of Nations
on 22 September 1922

83. This resolution had its origin in the draft amendments to the Covenant of the League of Nations submitted to the First Assembly of the League by Norway and Sweden.^{31/} The Second Assembly rejected the draft amendments, but it invited the Council to form a special committee to study the various procedures of conciliation in international disputes. After numerous discussions, the Special Committee submitted a report, which was examined by the Council and was submitted to the Third Assembly. On the recommendation of its First Committee, to which the report was referred for consideration, the Third Assembly adopted, on 22 September 1922, the following resolution:^{32/}

^{31/} League of Nations, Official Journal, No. 6, September 1920, p. 353.

^{32/} Ibid., Records of the Third Assembly, Plenary Meetings, vol. I, p. 199.

"With a view to promoting the development of the procedure of conciliation in the case of international disputes, in accordance with the spirit of the Covenant, the Assembly recommends the Members of the League, subject to the rights and obligations mentioned in Article 15 of the Covenant, to conclude conventions with the object of laying their disputes before Conciliation Commissions formed by themselves.

"The organisation of these Commissions, their competence and procedure to be followed before them shall be freely determined by the Contracting Parties. The Parties are recommended in this connection to look for guidance to the provisions contained in the Hague Convention of October 18th, 1907, for the pacific settlement of international disputes, and, in particular, to the provisions concerning the hearing of witnesses, procedure by employment of experts, rogatory commissions, inspection of places, replacement of members of the Commission.

"The rules laid down in the following articles, in particular, are recommended to the Members of the League for adoption. At the request of the Members concerned, the Secretary-General may offer them the assistance of the Secretariat for the conclusion of conciliation conventions.

"Apart from the other means placed at its disposal by the Covenant to assure the maintenance of peace, the Council may, if necessary, have recourse to the service of the Conciliation Commission formed by the Parties; it may invite them to bring their disputes before the Commission or it may refer to the Commission any dispute which may have been submitted to it by one of the Parties in virtue of Article 15 of the Covenant.

"A conciliation convention concluded between two States of which one only is a Member of the League of Nations, or of which neither is a Member of the League, will be applicable subject to the procedure established by Article 17 of the Covenant.

"The Assembly expresses the hope that the competence of Conciliation Commissions will extend to the greatest possible number of disputes, and that the practical application of particular Conventions Between States, as recommended in the present resolution, will, in the near future, make possible the establishment of a general convention open to the adhesion of all States.

"Rules

"Article 1

"The Conciliation Commission shall be constituted as follows:

"Each Party shall appoint two members, one from among **its** own nationals, the other from among the nationals of a third State. The two Parties shall jointly appoint the Chairman of the Commission from among the nationals of a third State.

"The Parties may appoint the members of the Commission beforehand and for a period which they themselves shall determine. They may also confine themselves to appointing only the Chairman beforehand, in which case the other members shall be appointed after consultation with the Chairman at the moment when a dispute arises, their mandate being limited to the settlement of such dispute.

"Article 2

"Disputes which fall within the competence of the Conciliation Commission shall be referred to it for consideration by means of a notification made by one of the Contracting Parties to the Chairman of the Commission and to the other Party.

"The notification shall be communicated to the Secretary-General of the League.

"If all the members of the Commission have been appointed beforehand, the Chairman shall convene the Commission as soon as possible. If they have not been so appointed, the Chairman shall invite the Parties to appoint the other members within a period laid down by the Convention.

"Article 3

"The Conciliation Commission shall meet at the seat of the League unless the Parties have fixed a different place of meeting in the Convention concluded by them or for the purposes of a particular case. The Commission, if it considers it necessary, may meet at a different place. The Commission may in all circumstances ask the Secretary-General to render it assistance in its work.

"Article 4

"Subject to the right of the Parties and of the Commission itself to extend this period, the Conciliation Commission shall complete its work within a period of six months from the day on which it first met.

"Article 5

"Both Parties shall be heard by the Commission.

"The Parties shall furnish the Commission with all the information which may be useful for the enquiry and the drawing up of the report, and shall in every respect assist it in the accomplishment of its task.

"The Commission shall itself regulate all details of procedure not provided for in the Convention, and establish rules of procedure for the obtaining of evidence.

"Article 6

"The Commission shall take its decisions by a majority vote of its members; the presence of all the members is required for a valid decision. Each member shall have one vote.

"Article 7

"The Commission shall make a report on each dispute submitted to it. In proper cases the report shall include a proposal for the settlement of the dispute. The reasoned opinion of the members who are in the minority shall be recorded in the report.

"The Chairman of the Commission shall immediately bring the report to the knowledge of the Parties and of the Secretary-General of the League.

"Article 8

"The report of the Conciliation Commission may be published by one of the Parties before the settlement of the dispute only if the other Party gives its consent.

"The Commission may, by unanimous vote, decree the immediate publication of its report.

"Article 9

"Each Party shall pay the allowances of the members of the Commission which it has appointed and shall pay half of the allowances of the Chairman.

"Each Party shall bear the costs of procedure which it has incurred and half of those which the Commission may declare to be joint costs."

C. Commissions of inquiry appointed by the Council of the League of Nations

84. In its efforts to find solutions to certain disputes submitted to it, the Council of the League of Nations resorted either on its own initiative or at the request of one of the parties to the dispute to the appointment of ad hoc commissions outside the Council, which it invited to make a thorough study on the spot and to propose appropriate solutions.. An account is given below of the commissions appointed with a view to the settlement of the following disputes: the dispute between the United Kingdom and Turkey concerning the frontiers of Iraq (1924), the Demir-Kapu dispute between Bulgaria and Greece (1955), and the Sino-Japanese dispute (1931).

1. Commission appointed in the dispute between Great Britain and Turkey concerning the frontiers of Iraq, 1924 33/

85. History. At its session opening on 29 August 1924, the Council of the League of Nations had before it the question of the frontier between Iraq and Turkey. The question was submitted by the British Government in accordance with the provisions of article 3, paragraph 2, of the Treaty of Lausanne of 24 July 1923, under which the frontier between Turkey and Iraq was to be laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months, and, in the event of no agreement being reached between the two Governments within the time mentioned the dispute was to be referred to the Council of the League of Nations. On 30 September 1924, the Council, on the proposal of its Rapporteur, decided^{34/} to appoint a Commission to assist the Council in collecting the facts and data required for the fulfilment of its mission.

86. Powers of the Commission. Under the terms of the Council's decision, the Commission was to lay before the Council all information and all suggestions which might be of a nature to assist it in reaching a decision. It was to give due consideration to the existing documents and to the views expressed by the interested parties both as regards the procedure and as regards the substance of the question. It was to receive all communications which the parties might wish to transmit to it. It was empowered to proceed to investigations on the spot and in that case to avail itself of the services of advisers appointed respectively by each of the two Governments concerned.

87. Composition of the Commission. The Commission was to consist of three members. In accordance with the Council's decision, the Acting President of the Council and the Rapporteur on the question requested Count Teleki, former Prime Minister of Hungary, Mr. af Wirsén, Minister Plenipotentiary of Sweden, and Colonel Paulis, of Belgium, to serve on the Commission, which elected Mr. Af Wirsén as its President.

33/ Monthly Summary of the League of Nations, August 1924, p. 157; September 1924, p. 195; October 1924, p. 239; August 1925, p. 198; September 1925, p. 231.

34/ League of Nations, Official Journal, October 1924, p. 1360.

88. Secretariat, procedure and costs of the Commission. The Commission was to fix its own procedure. The Secretary-General was instructed to furnish it with the necessary staff and to advance the funds which it might require. Such advances were to be refunded to the League in equal proportions by the Governments concerned.

89. Report of the Commission.^{35/} In a report of ninety pages, signed by the three members on 16 July 1925, the Commission described its work during its visit to the Vilayet of Mosul and analysed the question from the geographical, ethnic, historical, economic, strategic and political standpoints. The report contained conclusions and recommendations.

90. Decision of the Council of the League of Nations.^{36/} On 4 September 1925, the Council appointed a Committee of its members to consider information furnished by the Commission and the parties. The Committee was composed of: Mr. Unden (Sweden), Mr. Guani (Uruguay), and Mr. Quinones de León (Spain). The Committee followed the dispute until it was settled by the Council.

2. Commission appointed in the Demir-Kapu dispute
between Bulgaria and Greece, 1925

91. History.^{37/} As the result of an incident on 19 October 1925 on the frontier between Bulgaria and Greece, in the vicinity of Demir-Kapu, hostile acts began between the two countries. At the request of Bulgaria, the Council of the League of Nations was convened to meet in extraordinary session on 26 October. The Council after obtaining from both parties an assurance that they would carry out its recommendation concerning the cessation of hostilities and the withdrawal of troops, decided on 29 October^{38/} to appoint a Commission to make a full inquiry into the incident and to ascertain as exactly as possible the origin of the incident and all the facts in relation thereto.

^{35/} League of Nations, C. 400, M.147. 1925, VII.

^{36/} Monthly Summary of the League of Nations, September 1925, p. 232, December 1925, p. 324.

^{37/} Monthly Summary of the League of Nations, October 1925, p. 256.

^{38/} League of Nations, Official Journal, November 1925, p. 1712.

92. Powers of the Commission. Under the terms of the Council's decision, the Commission was, in particular, to establish the facts enabling the responsibility to be fixed and to supply the necessary material for the determination of any indemnities or reparation. Further, in order that the Council might be in a position to make suitable recommendations to the Governments concerned, it was to submit to the Council any suggestions as to measures which in its opinion would eliminate or minimize the general causes of incidents similar to that referred to the Council or prevent their recurrence.

93. Composition of the Commission. President: Sir Horace Rumbold, British Ambassador at Madrid; Members: General Serrigny (French), General Ferrario (Italian), Mr. De Adlercreutz, Swedish Minister at The Hague, and Mr. Fortuyn, Member of the Netherlands Parliament.

94. Secretariat. In accordance with the Council's decision, the Secretary-General of the League of Nations appointed the Secretary and Assistant Secretaries of the Commission from among the staff of the League Secretariat.

95. Place and date of the Commission's meetings. The Commission was directed to assemble at Geneva on 6 November 1925. It was asked to conduct its investigations both on the spot and at the seats of the two Governments concerned.

96. Report of the Commission.^{39/} The Commission was to submit its report before the end of November, and in fact did so on 28 November. The report, which comprised fourteen pages, was signed by the President and the other four members of the Commission. In addition to an introduction containing details of the Commission's movements during its on-the-spot inquiry and of its talks with the Bulgarian and Greek authorities at Athens and Sofia, it consisted of three main sections entitled "Enquiry", "Responsibilities and Indemnities", and "Recommendations".

97. Decision of the Council of the League of Nations.^{40/} In its decision of 14 December 1925, the Council noted that the Commission had fixed the amount of compensation to be paid by Greece to Bulgaria as reparation for damage. It also adopted, with certain modifications agreed to by the Governments concerned, the military and political recommendations made by the Commission. The decision was accepted by the two parties.

^{39/} League of Nations, C. 727. M. 270, 1925.VII.

^{40/} Monthly Summary of the League of Nations, December 1925, p. 330; February 1926, p. 45.

3. Commission appointed in the Sino-Japanese dispute, 1931

98. History.^{41/} On 21 September 1931, the representative of the Chinese Government addressed to the Secretary-General of the League of Nations a note requesting him to bring to the Council's attention the dispute which had arisen between China and Japan as a result of the events at Mukden during the night of 18-19 September. He asked the Council, on the basis of Article 11 of the Covenant, "to take immediate steps to prevent the further development of a situation endangering the peace of nations". The Council held several meetings to consider the dispute. On 10 December it adopted, on the proposal of the representative of Japan, a resolution^{42/} by which it appointed a Commission of Inquiry, whose functions and composition are described below.

99. Powers of the Commission. The Commission was instructed to study on the spot and to report to the Council on any circumstances which, affecting international relations, threatened to disturb peace between China and Japan, or the good understanding between them upon which peace depended. In the event that the two parties initiated any negotiations, these did not fall within the scope of the terms of reference of the Commission, nor was it within the competence of the Commission to interfere with the military arrangements of either party.

100. Composition of the Commission. The five prospective members of the Commission were selected by the President of the Council. After the approval of the two parties had been obtained, the membership of the Commission, approved by the Council, was as follows: Count Aldrovandi (Italian), Général de Division Claudel (French), the Earl of Lytton (British), Major General Ross McCoy (United States of America) and Mr. Schnee (German). Lord Lytton was elected Chairman by the Commission. The parties had the right to nominate one assessor to assist the Commission.

101. Secretariat of the Commission. The Secretary-General of the League of Nations designated a member of his staff to act as Secretary-General of the Commission.

^{41/} Monthly Summary of the League of Nations, September 1931, p. 246.

^{42/} League of Nations, C.663, M.320. 1932. VII, page 6.

102. Report of the Commission. The Commission submitted its report^{43/} on 4 September 1932. In this report of 148 pages, signed by the five members, the Commission gave details of its visit to the scene. It described its conception of its mission, under the resolution which had established it, as follows:^{44/}

"The Commission's conception of its mission, which determined the programme of its work and itinerary, has equally guided the plan of its Report.

"First, we have tried to provide an historical background by describing the rights and interests of the two countries in Manchuria, which provide the fundamental causes of the dispute; the more recent specific issues which immediately preceded the actual outbreak were then examined, and the course of events since September 18th, 1931, described. Throughout this review of the issues, we have insisted less on the responsibility for past actions than on the necessity of finding means to avoid their repetition in the future.

"Finally, the Report concludes with some reflections and considerations which we have desired to submit to the Council upon the various issues with which it is confronted, and with some suggestions regarding the lines on which it seemed to us possible to effect a durable solution of the conflict and the re-establishment of a good understanding between China and Japan."

103. Decisions of the Council and Assembly of the League of Nations. On 26 November 1932 the Council decided^{45/} to refer the whole Sino-Japanese dispute to the Assembly of the League, in conformity with Article 15, paragraph 9, of the Covenant. On 9 December, the Assembly requested its Special Committee to study the report of the Commission of Inquiry, the observations of the parties and the opinions and suggestions expressed in the Assembly, and to draw up and submit, at the earliest possible moment, proposals with a view to the settlement of the dispute. The attempts of the Special Committee to propose a procedure for settling the dispute having proved fruitless, the Assembly adopted on 24 February 1933 a draft report prepared by the Committee in conformity with Article 15, paragraph 4, of the Covenant.

^{43/} League of Nations, C.663, M.320. 1932.VII.

^{44/} Ibid., p. 12.

^{45/} Monthly Summary of the League of Nations, November 1932, p. 330, December 1932, p. 357; January 1933, p. 16; February 1933, p. 27.

II. INTERNATIONAL INQUIRY UNDER THE TREATIES CONCLUDED BETWEEN 1919 AND 1940

104. During this period, more than 200 treaties of inquiry, conciliation, conciliation and arbitration, or conciliation, arbitration and judicial settlement were concluded.^{46/} There are very few treaties of inquiry properly so called, that is treaties instituting commissions with the sole task of "inquiry" or "investigation" (see infra, paras. 107, 108 and 120). However, the procedure of inquiry is still closely linked with the procedure of conciliation provided for by the other treaties, which generally use one or other of the following phrases or similar phrases defining the task of the commissions: "for investigation and settlement by conciliation";^{47/} "to promote the settlement of the dispute by an impartial and conscientious examination of the facts and by submitting proposals with a view to settling the case";^{48/} "draw up a report which shall determine the facts of the case and shall contain proposals for settling the dispute";^{49/} "to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement".^{50/}

A. Collective treaties

105. The treaties concluded between 1919 and 1940 include a number of collective treaties.^{51/} The relevant provisions of the Geneva General Act of 1928 will be

^{46/} Most of these treaties were registered with the Secretariat of the League of Nations. The Dictionnaire diplomatique, I, p. 517, gives a list of 118 treaties of this kind signed between 1919 and 1930.

^{47/} E.g., the Convention between Finland and Norway of 27 June 1924, art. 1 (League of Nations, Treaty Series, vol. XXIX, p. 416).

^{48/} E.g., the treaty between Hungary and Switzerland of 18 June 1924, art. 6 (ibid., vol. XXXIV, p. 389).

^{49/} E.g., the treaty between Germany and Switzerland of 3 December 1921, art. 15 (ibid., vol. XII, p. 281).

^{50/} E.g., the General Act of 26 September 1928, art. 15 (ibid., vol. XCIII, p. 345).

^{51/} In addition to the collective treaties mentioned in the following paragraphs, mention may be made of the following two treaties: the Convention of 17 January 1925 between Estonia, Finland, Latvia and Poland (League of Nations, Treaty Series, vol. XXXVIII, p. 359); the General Act of 21 May 1929 between Romania, the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia (ibid., vol. XCVI, p. 313).

given later in the study. Only the general lines of the following collective treaties will be indicated here:

106. (a) The Convention for the Establishment of International Commissions of Inquiry, concluded at Washington on 7 February 1923, between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the United States of America^{52/} combines and extends the sphere of application of the Bryan treaties concluded by the United States with each of those countries on 13 February 1914, 7 August, 20 September, 3 November and 17 December 1913 respectively. It institutes a Commission of Inquiry with the power not only to examine questions of fact but also to recommend any solution it considers just and advisable. The Commission of Inquiry, which is formed only on a temporary basis at the request of one of the interested Parties, is constituted as follows: each of the Parties interested in the dispute chooses one member from the permanent list of five persons nominated in advance from among its nationals. The Commissioners thus selected choose a third member by common accord who must be one of the persons on the permanent list submitted by a Government which has no interest in the dispute. The competence of the Commission extends to all disputes "originating in some divergence or difference of opinion regarding questions of fact, relative to failure to comply with the provisions of any of the treaties or conventions existing between [the parties]" and which affect neither the sovereign and independent existence of any of the signatory Republics nor their honour or vital interests".

107. (b) The Treaty to avoid or prevent conflicts between the American States, signed at Santiago on 3 May 1923^{53/} institutes a Commission of "investigation" and "inquiry" composed of five members, all nationals of American States: each Party appoints two members, only one of whom may be a national of its country. The fifth member is chosen by common accord by those already appointed and performs the duties of President. The Commission is of a temporary character. It may be convened by one of the Parties directly interested in the dispute. The request for a convocation must be submitted to the other Party and to one of the two Permanent Commissions established with their seats at Washington and at Montevideo

^{52/} M.O. Hudson, International Legislation, vol. II, p. 985

^{53/} League of Nations, Treaty Series, vol. XXXIII, p. 36.

respectively, which are composed of the three American diplomatic agents longest accredited in the said capitals. The functions of these two Commissions are limited to receiving from the interested Parties the request for a convocation of the Commission of Inquiry and to notifying the other Party thereof immediately. The Commission of Inquiry is empowered to consider all controversies which it has been impossible to settle through diplomatic channels or to submit to arbitration in accordance with existing treaties. It is understood that in disputes arising between nations which have no general treaties of arbitration, investigation shall not take place in questions affecting constitutional provisions nor in questions already settled by other treaties.

108. The Treaty of 1923 was amended by the General Convention of Inter-American Conciliation signed at Washington on 5 January 1929.^{54/} This Convention, which was concluded with the aim of "giving additional prestige and strength to the action of the commissions established by" the Treaty, was in turn amended by an Additional Protocol signed at Montevideo on 26 December 1933.^{55/} As a result of these amendments, the commissions established by the Treaty of 1923 acquired the following characteristics: The Commission of Inquiry was made permanent; it and the two Permanent Commissions of Montevideo and Washington were empowered to exercise conciliatory functions; thenceforward, the first Commission was known as the "Commission of Investigation and Conciliation" and the other two were known as "Permanent Diplomatic Commissions of Investigation and Conciliation".

General Act for the Pacific Settlement of International Disputes
1928/1949

109. On 26 September 1928, the Assembly of the League of Nations adopted this Act which it opened for accession by States and which entered into force on 16 August 1929.^{56/} In the course of its study of methods for the promotion of

^{54/} Ibid., vol. C, p. 400.

^{55/} Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, vol. IV, p. 4798.

^{56/} League of Nations, Treaty Series, vol. XCIII, p. 345. Signatory States: Australia, Belgium, Canada, Denmark, Esthonia, Ethiopia, Finland, France, Greece, India, Ireland, Italy, Latvia, Luxembourg, Netherlands, New Zealand, Norway, Peru, Spain (subsequently denounced), Sweden, Switzerland, Turkey, United Kingdom.

international co-operation in the political field, the United Nations General Assembly decided to restore to the General Act its original efficacy by introducing into its text a number of amendments taking into account the fact that the organs of the League of Nations and the Permanent Court of International Justice had ceased to function. However, in adopting the amendments and instructing the Secretary-General to prepare a revised text of the General Act and to hold it open for accession by States, the General Assembly, in its resolution 268 A (III) of 28 April 1949, made it clear that "these amendments will only apply as between States having acceded to the General Act as thus amended and, as a consequence, will not affect the rights of such States, parties to the Act as established on 26 September 1928, as should claim to invoke it in so far as it might still be operative". The Revised General Act^{57/} came into force on 20 September 1950. A general description of the procedure of conciliation established by this Act is given below.

110. Disputes to be submitted to the procedure of conciliation. According to article 1, this covers all disputes of every kind between two or more Parties to the General Act which it has not been possible to settle by diplomacy. The obligation to submit such disputes to the procedure of conciliation is conditional upon such reservations as may be made under the General Act. According to article 39, these reservations may be such as to exclude certain categories of disputes both from the procedure of conciliation and from the procedures of judicial settlement and arbitration.

111. Constitution of a permanent conciliation commission. Under the terms of article 3, "On a request to that effect being made by one of the Contracting Parties to another party, a permanent conciliation commission shall be constituted within a period of six months".

112. Composition of the Commission. Unless the parties concerned agree otherwise, the Commission, according to article 4, "shall be composed of five members. The parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement

^{57/} United Nations, Treaty Series, vol. 71, p. 102. Signatory States (up to January 1964): Belgium, Denmark, Luxembourg, Norway, Sweden, Upper Volta.

from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties. The parties shall appoint the President of the Commission from among them."

113. Constitution of a special commission when no permanent conciliation commission is in existence. According to article 5, if when a dispute arises "no permanent conciliation commission appointed by the parties is in existence, a special commission shall be constituted for the examination of the dispute within a period of three months from the date at which a request to that effect is made by one of the parties to the other party".

114. Referral of disputes to the Commission. In accordance with article 7, "Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties".

115. Powers of the Commission. Article 15 gives the Commission the power "to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision".

116. Procedure of the Commission. Under article 11, in the absence of agreement to the contrary between the parties, the Commission is to lay down its own procedure. In regard to inquiries, unless it decides unanimously to the contrary, it is to act in accordance with the provisions of the Hague Convention of 1907.

117. Decisions of the Commission. According to article 12, in the absence of agreement to the contrary between the parties, the decisions of the Commission are to be taken by a majority vote.

118. Duties of the parties towards the Commission. Under article 13, the parties have the obligation to facilitate the work of the Commission and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

B. Bilateral treaties

119. When the Assembly of the League of Nations adopted the General Act on 26 September 1928, it adopted at the same time three model bilateral conventions for conciliation, arbitration and judicial settlement^{58/} which States could use as a basis, should they wish to conclude individual treaties with each other for the pacific settlement of international disputes. Both before and after the adoption of these models by the Assembly, a very large number of bilateral treaties making provision for the procedure of inquiry, usually in combination with the procedure of conciliation, were concluded. There follows below an account of the general characteristics of the commissions of inquiry and conciliation set up under bilateral treaties concluded between 1919 and 1940.

120. Functions of the commissions. There are very few treaties setting up commissions whose functions are confined to merely reporting on the circumstances of the dispute.^{59/} The commissions set up under most treaties may - and in some cases must - go further and suggest a solution to the disputes submitted to them, either in the form of general recommendations or, if necessary, by spelling out the terms of a settlement more precisely to the parties. Thus, under some treaties,^{60/} the task of the commissions is to "render a report" and also to "submit, if necessary, a scheme for the settlement of the dispute". Under some other treaties,^{61/} the report must include "a proposal for the settlement of the dispute if a settlement is possible and if at least three members [of the commission, which usually consists of five members] agree to the proposals". Under some treaties,^{62/} the report must in all cases include recommendations: "It shall be the duty of the Conciliation Commission to consider the various questions submitted to it, and to embody the results of its enquiry in a report, the object

^{58/} League of Nations. C.536. M.163. 1928. IX, page 16.

^{59/} The treaty of 4 April 1919 between Brazil and the United Kingdom, article 1 (League of Nations, Treaty Series, vol. V, p. 46) and the treaty of 22 October 1928 between the United States of America and Albania (U.S. Treaty Series, No. 771) established commissions whose role was simply one of "investigation" and "study".

^{60/} E.g., the treaty of 26 March 1920 between Chile and Sweden, art. 12 (League of Nations, Treaty Series, vol. IV, p. 273).

^{61/} E.g., the treaty of 27 June 1924 between Denmark and Sweden, art. 14 (ibid., vol. XXXIII, p. 158).

^{62/} E.g., the treaty of 20 April 1926 between Spain and Switzerland, art. 6 (ibid., vol. LX, p. 30).

of which shall be to elucidate questions of fact and thus facilitate the settlement of disputes. In its report it shall state the controversial issues which the aforesaid questions raise, and shall then proceed to make such recommendations as would, in its opinion, be calculated to lead to an agreement between the Parties." This formula is found in other treaties^{63/} which, however, place more emphasis on the conciliatory function of the commission set up for that purpose. Under these treaties, the commission's task is "to elucidate questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the Parties to an agreement. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it, and lay down a period within which they are to make their decision."

121. Disputes which may be submitted to the commissions. Under some treaties,^{64/} "any dispute which cannot be referred to arbitration" must be submitted to the procedure of conciliation. Under others,^{65/} the disputes to be submitted to this procedure are "all disputes of any nature whatever which it has not been possible to settle within reasonable time through diplomatic channels, and which should not, under the terms of the Statute of the Permanent Court of International Justice or of any other agreement between the Parties, be submitted either to the Permanent Court or to a Court of Arbitration". Some treaties^{66/} leave each of the parties free "to decide at what period the procedure of conciliation may be substituted for diplomatic negotiations". Under some treaties, the parties "may agree that a dispute which is capable of judicial settlement under Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice shall be previously submitted to the procedure of conciliation". There are some treaties^{67/} which

^{63/} E.g., the Locarno Treaties concluded by Germany in 1925 with Belgium, France, Poland and Czechoslovakia respectively, art. 8 (*ibid.*, vol. LIV, pp. 303-353).

^{64/} E.g., the treaty of 3 December 1921 between Switzerland and Germany, art. 13 (*ibid.*, vol. XII, p. 280).

^{65/} E.g., the treaty of 27 June 1924 between Denmark and Sweden, art. 1 (*ibid.*, vol. XXVIII, p. 158).

^{66/} E.g., the treaty of 2 June 1924 between Sweden and Switzerland, art. 1 (*ibid.*, vol. XXXIII, p. 200).

^{67/} E.g., the treaty of 7 March 1925 between Poland and Switzerland, art. 1 (*ibid.*, vol. L, p. 263).

exclude from the purview of either conciliation commissions or arbitral tribunals any questions "which, according to international law, come within the exclusive competence of individual States". There are others^{68/} which make the following reservation: "In the case of a dispute, the occasion of which, according to the law of one of the Parties, falls within the competence of a judicial authority, the defendant Party may oppose the submission of the dispute to a procedure of conciliation and if necessary to judicial settlement, until a final judgement has been delivered by the aforesaid judicial authority. If the plaintiff Party desires to contest such judgement, the dispute shall be submitted to the procedure of conciliation at latest one year from the date of its delivery."

122. Submission of disputes and spontaneous action by the commissions. Under some treaties,^{69/} "the Commission shall be seized of a question by an application addressed to its President by one of the Contracting Parties. This application shall be notified at the same time to the opposing Party by the Party which is requesting the institution of the procedure of conciliation." Under other treaties,^{70/} the commissions are seized of a question "by means of a request addressed to the President by the two Parties acting in agreement, or in the absence of such agreement, by one or other of the Parties. The request, after having given a summary account of the subject of the dispute, shall contain the invitation to the commission to take all necessary measures with a view to arriving at an amicable settlement. If the request emanates from only one of the Parties, notification thereof shall be made without delay to the other Party." The following formula is used in some treaties:^{71/} "When one of the Parties desires to submit a dispute to the Commission, it shall notify the President. The other Party shall also be informed at once of such notification. The President shall convene

^{68/} E.g., the treaty of 16 November 1927 between Finland and Switzerland, art. 2 (*ibid.*, vol. LXXVII, p. 95).

^{69/} E.g., the treaty of 11 October 1924 between Austria and Switzerland, art. 4 (*ibid.*, vol. XXXIII, p. 428).

^{70/} E.g., the Locarno Treaty of 1925 concluded by Germany with Belgium, France, Poland and Czechoslovakia respectively, art. 6 (*ibid.*, vol. LIV, pp. 303-353).

^{71/} E.g., the treaty of 27 June 1924 between Denmark and Finland, art. 7 (*ibid.*, vol. XXXIII, p. 144)

the Commission as soon as possible. The Party which has submitted the dispute to the Commission shall notify the Secretary-General of the League of Nations." Another formula used, which allows the Commission to open the proceedings of conciliation on its own initiative, is the following:^{72/} "When one of the two Contracting States desires that a dispute which has arisen between them shall be submitted to the Commission, it shall notify both the opposing Party and the President of the Commission. The latter shall convene the Commission as soon as possible. The Commission shall also be able on its own initiative to offer its services with a view to the opening of proceedings of enquiry. Its decision on the matter is valid only if unanimous. It shall be communicated to the two Parties. It shall be void if neither of the Parties submits the dispute to the Commission as a result of such decision." Clauses authorizing the commissions to act spontaneously are found, in particular, in treaties relating to investigation. Article 3 of the treaty of 28 March 1919 between Chile and Great Britain,^{73/} for instance, provides as follows: "The Commission may, however, spontaneously, by unanimous agreement, offer its services to that effect, and in such cases it shall notify both Governments and request their co-operation in the investigation". An identical clause is found in the treaty of 22 October 1928 between Albania and the United States of America.^{74/}

123. Composition of the commissions. Commissions are generally composed of five members, among whom the "neutral" element predominates. There are, however, some exceptions to the general rule of five members. The treaty of 18 June 1924 between Hungary and Switzerland^{75/} entrusts "conciliation" to "a single Commissioner appointed for each particular case by joint agreement between the Contracting Parties", who "must not be a national of the Contracting Parties, nor be domiciled in their territory, nor be employed in their service". The treaty of 11 October 1924 between Austria and Switzerland^{76/} establishes a commission composed of three members. Each party "shall appoint one member of its own choosing, and the two

^{72/} E.g., the treaty of 26 March 1920 between Chile and Sweden, arts. 5 and 6 (*ibid.*, vol. IV, p. 273).

^{73/} G.B., Treaty Series, 1920, No. 3 (Cmd.518).

^{74/} U.S. Treaty Series, No. 771.

^{75/} League of Nations, Treaty Series, vol. XXXIV, p. 389.

^{76/} *ibid.*, vol. XXXIII, p. 428.

Parties shall appoint the President by joint agreement"; the President "shall not be a national of the Contracting States, nor be domiciled in their territory, nor be employed in their service". Again, under the treaty of 5 April 1927 between Hungary and Italy,^{77/} a commission of three members is set up in each particular case. Each of the parties appoints one commissioner from among its nationals and the president is appointed by common agreement between the parties from among the nationals of third Powers. Article II of the treaty of 29 November 1932 between France and the Union of Soviet Socialist Republics^{78/} establishes a commission of four members - two French nationals and two nationals of the Union of Soviet Socialist Republics - appointed for each session by their respective Governments. The commission chooses its president, for each session, from among those of its members who are nationals of the country in whose territory it is sitting. The seat of the commission is specified in the treaty itself, which provides that it shall meet alternately at Paris and at Moscow, the first meeting being held at Moscow (article III).

124. Permanency of the commissions. As a rule, the commissions are established in advance and are of a permanent nature, there being very few exceptions to this rule. Mention has been made in the preceding paragraph of the treaty of 18 June 1924 between Hungary and Switzerland, which provides for the appointment of a single commissioner for each particular case. It was also noted in the same paragraph that the commission provided for in the treaty of 5 April 1927 between Hungary and Italy was of a temporary nature, in that its members were to be appointed in each particular case. The treaty of 29 November 1932 between France and the Union of Soviet Socialist Republics^{79/} provides for a commission of a special kind. Article II states simply that the commission is to be composed of members appointed for each session. Article III goes on to say that the commission is to meet once a year on a date fixed jointly by the parties; the latter may, in case of urgency, decide jointly to convene an extraordinary session of the commission; the duration of each session may not exceed fifteen days, unless an extension is agreed to by the parties.

^{77/} Ibid., vol. LXVII, p. 400.

^{78/} Ibid., vol. CLVII, p. 428.

^{79/} Ibid., vol. CLVII, p. 428.

125. Nature of the commissions' reports. According to the rule laid down in every treaty without exception, the reports of the commissions are not of a binding nature. "The report" - it is stated in several treaties - "shall not be in the nature of an arbitral award, as regards either the statement of facts or the legal considerations."^{80/}

126. Obligations of the parties towards the commissions. The great majority of the treaties impose an obligation on the parties to facilitate the work of the commissions therein established. In this connexion, some treaties^{81/} use the following formula: "The High Contracting Parties undertake to furnish the Commission with all information which may be of use in the enquiry and the drawing up of its report, and in all respects to facilitate its task." In some other treaties,^{82/} the following formula is used: "The Contracting Parties undertake to facilitate the work of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to enable it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses or experts, and to visit the localities in question." The following is yet another formula that is used:^{83/} "The contracting Parties undertake in all circumstances to give all possible assistance to the Commission in its work and in particular, to employ all the means they possess, under their municipal law, to invest it with the same powers as their Supreme Courts as regards the calling and hearing of witnesses and experts, and the carrying out of investigations in situ."

127. Procedure of the commissions. Some treaties leave the commissions free to determine their own procedure.^{84/} Others make reference to the procedure laid down in the Hague Convention of 1907; indeed, many treaties mention that Convention:

^{80/} E.g., the treaty of 2 June 1924 between Sweden and Switzerland, art. 12 (ibid., vol. XXXIII, p. 200).

^{81/} E.g., the treaty of 24 February 1923 between Sweden and Uruguay, art. 8 (ibid., vol. LXIII, p. 250).

^{82/} E.g., the treaty of 26 April 1928 between Spain and Sweden, art. 15 (ibid., vol. LXXVII, p. 7)).

^{83/} E.g., the treaty of 20 April 1926 between Spain and Switzerland, art. 5 (ibid., vol. LX, p. 30).

^{84/} E.g., the treaty of 4 April 1919 between Brazil and Great Britain, art. 2 (ibid., vol. V, p. 46).

"In the absence of an agreement to the contrary the procedure of conciliation shall be governed by the Hague Convention of October 18, 1907, for the pacific settlement of international disputes."^{85/} Another formula used is the following: "In proceedings before the Commission of Conciliation both Parties shall be heard. The Commission shall itself determine the procedure, being guided (unless it unanimously decides to the contrary) by the provisions of Chapter III of the Hague Convention of October 18, 1907."^{86/} Yet another formula is as follows: "In proceedings before the Commission both Parties shall be heard. The regulations laid down in Chapter III of the Hague Convention of 1907, for the Pacific Settlement of International Disputes, shall be applied as regards the hearing of witnesses, expert enquiries, commissions rogatoires, and investigations on the spot. The Commission shall settle all details of procedure not provided for above, and shall observe all the formalities necessary for the production of evidence."^{87/} The following formula is also found: "Failing any special provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both Parties being heard. In regard to enquiries, the Commission, unless it unanimously decides otherwise, shall act in accordance with the provisions of Chapter III [of the Hague Convention]."^{88/}

128. Obligations of the parties in the event of failure by the commissions. Some treaties^{89/} contain clauses providing for recourse to the Council of the League of Nations if the parties have not agreed to submit the dispute to an arbitral award: "If within the three months following the proceedings of the Permanent Conciliation Commission, the Parties have not agreed to submit the dispute to an arbitral award, the matter may, by simple request from either Party (who in such case should immediately notify the other Party), be brought before the Council of the League

^{85/} E.g., the treaty of 11 October 1924 between Austria and Switzerland, art. 8 (ibid., vol. XXXIII, p. 428).

^{86/} E.g., the treaty of 23 April 1925 between Poland and Czechoslovakia, art. 8 (ibid., vol. XLVIII, p. 385).

^{87/} E.g., the treaty of 24 February 1923 between Sweden and Uruguay, art. II (ibid., vol. LXIII, p. 250).

^{88/} E.g., the treaty of 5 February 1927 between Belgium and Switzerland, art. 9, (ibid., vol. LXVIII, p. 47).

^{89/} E.g., the treaty of 10 July 1929 between Spain and France, art. 20 (ibid., vol. CXLVIII, p. 370). Similar provisions are found in the Locarno Treaties of 1925, art. 18, (ibid., vol. LIV, pp. 305-353).

of Nations, which shall decide in accordance with the Covenant of the League of Nations." Some other treaties^{90/} establishing commissions whose decisions must be unanimous provide for a dispute to be resubmitted to the Commission at an extraordinary session: "If, during a session, the Commission does not succeed in making a unanimous proposal concerning one of the questions on the agenda, that question may, at the request of one of the parties, be submitted to the Commission again at an extraordinary session, opened four months at latest after the close of the previous session. Each of the two High Contracting Parties undertakes to inform the other, within a period of three months, whether it accepts the proposals submitted by the Commission."

C. Some examples of inquiry and conciliation

129. Although a great number of treaties of inquiry and conciliation were concluded between the two world wars, actual instances of inquiry or conciliation were rare. Two cases will be mentioned here,^{91/} one of which arose pursuant to a special treaty establishing a Commission of Inquiry whose jurisdiction was confined to the dispute to be resolved, the other in application of a previous treaty establishing a permanent Commission. These are respectively the Grand Chaco case between

^{90/} E.g., the treaty of 29 November 1932 between France and the USSR, art. VI (ibid., vol. CLVII, p. 428).

^{91/} Mention may also be made of the conciliation case which was settled by the Franco-Siamese Conciliation Commission established following the signing by the French and Siamese Governments of the agreement of 17 November 1946 (United Nations Treaty Series, vol. 344, p. 68). This Commission was established pursuant to article 21 of the treaty between France and Siam of 7 December 1937 (League of Nations, Treaty Series, Vol. CCI, p. 114), whereby the Parties agreed to apply the provisions of the General Act of Geneva of 26 September 1928. The Commission's report, dated 27 June 1947, is published in Documentation française, notes documentaires et études, no. 811. In addition to this case, of which a study was made by Mme. S. Bastid in La technique et les principes du droit public, Études en l'honneur de G. Scelle, Vol. I, p. 1, reference may also be made to two conciliation cases, one of which was dealt with in 1952 by the Commission established under the treaty of 3 March 1927 between Belgium and Denmark (see H. Rolon, Revue générale de droit international public, 3rd series, Vols. XXIV and LVII, 1953, p. 353), and the other in 1954 by the Commission established under the treaty of 6 April 1925 between France and Switzerland (see F.M. van Asbeck, Nederlands Tijdschrift voor Internationaal Recht, Vol. 3, 1956, pp. 1-9 and 209-219).

Bolivia and Paraguay, which was submitted to a Commission of Inquiry established under a Protocol concluded between those two countries on 3 January 1929, and the case concerning the liability of Swiss nationals for payment of the special Italian property tax, which was referred in 1956 to the Permanent Conciliation Commission established by the treaty of 20 September 1924 between Italy and Switzerland.

1. Commission of inquiry and conciliation constituted under the Protocol of 3 January 1929 between Bolivia and Paraguay

Grand Chaco case

130. History.^{92/} While the Pan-American Conference on Conciliation and Arbitration was in session at Washington a conflict broke out between Bolivia and Paraguay over the territory known as the Grand Chaco, which for more than a century had been a subject of controversy. In view of the critical state of affairs efforts were made by the Conference and also by the League of Nations to induce the parties to settle their affair peacefully.^{93/} Through the action of these two bodies, the parties agreed, by a Protocol signed on 3 January 1929,^{94/} to submit the question of the cause of the outbreak to a Commission of Inquiry.

131. Constitution of a Commission of Inquiry and Conciliation. In the preamble to the Protocol, the two parties deemed it "desirable that a commission of inquiry and conciliation establish the facts which have caused the recent conflicts which have unfortunately occurred".

132. Composition of the Commission. Under the first paragraph of the Protocol, the Commission was to consist of the following: "(a) Two delegates each from the Governments of Bolivia and Paraguay, and (b) one delegate appointed by the Governments of each of the following five American Republics: United States of America, Mexico, Colombia, Uruguay and Cuba".

^{92/} N.L. Hill, "International Commissions of Inquiry and Conciliation", International Conciliation, Carnegie Endowment for International Peace, 1932, p. 102, American Journal of International Law, vol. 23, p. 273.

^{93/} Proceedings of the International Conference of American States on Conciliation and Arbitration, 1928-1929, p. 288.

^{94/} French text, ibid., p. 163; English text in American Journal of International Law, Supplement, vol. 23, p. 98.

133. Powers of the Commission. These were defined in the second, fifth and sixth paragraphs of the Protocol, as follows: "The commission of inquiry and conciliation shall undertake to investigate, by hearing both sides, what has taken place, taking into consideration the allegations set forth by both parties, and determining in the end which of the parties has brought about a change in the peaceful relations between the two countries. Once the investigation has been carried out, the commission shall submit proposals and shall endeavour to settle the incident amicably under conditions which will satisfy both parties. If this should not be possible, the commission shall render its report setting forth the result of its investigation and the efforts made to settle the incident. The commission is empowered, in case it should not be able to effect conciliation, to establish both the truth of the matter investigated and the responsibilities which, in accordance with international law, may appear as a result of its investigation."

134. Time-limit for fulfilment of the Commission's mission. Procedure. Place of meeting. Under the third, fourth and seventh paragraphs of the Protocol, the Commission was to fulfil its mission within the period of six months from the date of its organization, that the procedure was to be that agreed upon by the Commission itself, and that the Commission was to begin its labours in Washington.

135. Obligation of the parties during the inquiry and conciliation procedure. Under the eighth paragraph of the Protocol, the parties were obligated "to suspend all hostilities and to stop all concentration of troops at the points of contact of the military outposts of both countries, until the Commission renders its findings; the commission of inquiry and conciliation shall be empowered to advise the parties concerning measures designed to prevent a recurrence of hostilities".

136. Result of the conciliation attempt. It appears from the information available with respect to this case that the Commission "succeeded in conciliating the two disputants. An agreement was procured between them to return to the status quo ante and to renew negotiations to settle the boundary dispute. Each of the five neutral members recommended to his respective State that it hold itself in readiness to proffer good offices to the disputants in the event that such action should seem desirable".^{95/}

^{95/} L.H. Hill, op. cit., p. 103; American Journal of International Law, vol. 24, p. 122; ibid., vol. 25, p. 332.

2. Conciliation Commission constituted under the
Treaty of 20 September 1924 between Italy and
Switzerland

Case concerning the liability of Swiss nationals for payment
of the special Italian property tax 96/

137. History. A dispute that had arisen between the two parties regarding the liability of Swiss nationals for payment of the special Italian property tax was placed before the Italo-Swiss Permanent Conciliation Commission provided for in the Treaty of conciliation and judicial settlement between Italy and Switzerland, signed on 20 September 1924. The attempts of the parties to settle the dispute through diplomatic channels having proved unsuccessful, the Permanent Conciliation Commission was accordingly called upon to perform its function for the first time since 1924. This was done at the request of the Swiss Government, which instituted the conciliation procedure by an application dated 30 January 1956.

138. Composition of the Commission. In conformity with article 3 of the Treaty of 20 September 1924 between Italy and Switzerland, the Commission was composed of five members. The three members appointed by joint agreement were: G. Gidel (President), Professor de Yanguas Messia of the University of Madrid and Professor Fernand de Visscher of the University of Louvain. The two national members were Professor Roberto Ago, of Rome University, for Italy, and Professor Paul Carry, of Geneva University, for Switzerland. The parties were represented by their agents, in accordance with article 9 of the 1924 Treaty.

139. Place of meeting of the Commission. The Commission held a preliminary meeting in Paris on 4 and 5 July 1956, in order to study the procedure to be followed pursuant to the provisions of the 1924 Treaty. It met again from 10 to 31 October 1956 at Aix-en-Provence, in premises made available to it in the Law School, to consider the substance of the dispute.

140. Procedure followed by the Commission. After hearing the oral statements of the experts for both parties, the Commission decided to hold an initial exchange of views

96/ The information about this case has been taken from the following publication: Commissione permanente di conciliazione fra la Repubblica italiana e la Confederazione svizzera, Atti relativi alla vertenza per l'applicazione ai cittadini svizzeri dell'imposta straordinaria italiana sul patrimonio, Rome, 1960.

at which the agents would not be present. The provisional results of the Commission's deliberations on the legal issues involved were communicated to the agents of the parties, no reference being made, however, to the legal arguments. The President confined himself to stating that the Commission had discussed the question fairly thoroughly but without taking a final position on the subject matter of the dispute. The Commission then heard the economic and financial experts who accompanied the agents, after which it decided to establish a sub-commission consisting of two national commissioners assisted by the experts of the parties. 141. Report of the Commission^{97/} and draft settlement attached thereto.^{98/} The sub-commission drew up a draft text which was submitted to the agents by the President of the Commission. It was this draft which, following its approval by the agents and with some purely formal amendments made by the plenary Commission, subsequently became the text of the settlement annexed to the Commission's report. A new sub-commission, consisting of the President and two commissioners appointed by agreement between the parties, was then set to draft the Commission's report. After certain details had been amended by the Commission, the report was adopted unanimously. In contrast to the procedure followed in the case of the draft settlement, it was not formally submitted to the agents before being accepted by the Commission. At its last meeting, which took place on 31 October 1956, the Commission delivered its report, together with the annexed settlement, to the agents. In conformity with article 13 of the 1924 Treaty, it granted the parties a period of grace, which it fixed at six weeks, in which to take their decision with regard to the proposed settlement; in the meantime, the dispute remained on the Commission's agenda.

142. Acceptance of the draft settlement by the parties. Within the set time-limit, each of the two Governments announced that it accepted the Commission's proposal, which thereupon became binding on the parties.^{99/}

^{97/} Ibid., p. 183.

^{98/} Ibid., p. 193.

^{99/} The settlement was published on 17 January 1957 in the Recueil officiel des lois et ordonnances de la Confédération suisse (RO 1957, p. 44 et seqq.) and on 27 February 1958 in the Gazzetta Ufficiale della Repubblica Italiana (No. 50, p. 816 et seqq.), after having first been submitted, however, to the Chamber of Deputies and to the Senate of the Republic (Acts, No. 61).

PART III

INTERNATIONAL INQUIRY SINCE THE ESTABLISHMENT OF THE UNITED NATIONS

143. The period prior to the establishment of the United Nations was characterized by the large number of treaties which were concluded providing for inquiry or conciliation and by the relatively small number of cases of inquiries which were held, whether within the framework of the League of Nations or outside it. The period following the creation of the United Nations has witnessed a reverse trend. Only a few treaties have been concluded in the matter. On the other hand, a considerable number of cases of inquiry or conciliation have been conducted through the agency of the United Nations. A further point distinguishing the two periods lies in the fact that, whereas in the earlier period, commissions of inquiry evolved in such a manner as to increase in competence and to assume conciliatory functions, since the establishment of the United Nations such bodies have tended to be reduced to their initial fact-finding role. This tendency on the part of United Nations bodies has not, however, been a uniform one and a significant number of exceptions may be found.

144. As regards the practice developed by the United Nations, the fact-finding bodies established by the United Nations have formed a part of the general machinery - in a very broad sense - of the peace-keeping system created under the Charter. The fact that the body set up by the United Nations has been called upon to report to a permanent United Nations organ, usually the Security Council or the General Assembly, has at once avoided the need for the fact-finding, or fact-observing, mission itself to undertake diplomatic or political efforts, even assuming that it was empowered to do so, and has enabled the permanent United Nations organ to decide what course of action should be followed in the light of prevailing circumstances. While United Nations bodies have been most clearly successful when charged with a specific task relating, for example, to the investigation of a given range of incidents or to observing the implementation of the terms of a Security Council or General Assembly resolution, their role as a stabilizing factor in themselves, in situations potentially endangering the maintenance of international peace and security, should not be overlooked, nor the part which they have on occasions played in providing a means of liaison and communication between conflicting parties.

145. The General Assembly has established by far the largest number of United Nations bodies, two of which, the Panel for Inquiry and Conciliation and the Peace Observation Commission, were set up on a permanent basis.^{100/} During the period of its operation, the Interim Committee of the General Assembly was also given a general power to conduct investigations within the scope of its duties. Amongst the organs set up or authorized by the General Assembly to perform functions of a fact-finding nature in relation to a particular situation, those still in existence include the United Nations Emergency Force (UNEF) and the Secretary-General's Special Representative in Jordan. In a considerable number of cases the bodies established by the General Assembly have not succeeded in obtaining the full co-operation of the Member State or States involved, although they have nevertheless secured in some instances much of the information required under the pertinent General Assembly resolutions. Regarded in terms of subject-matter, two General Assembly bodies were concerned with the conditions for the holding of elections (the United Nations Temporary Commission on Korea and the United Nations Commission to investigate conditions for Free Elections in Germany) and several others dealt with the supervision and conduct of elections in Trust Territories.^{101/} Three bodies, the United Nations Commission on the Racial Situation in South Africa, the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa and the United Nations Fact-Finding Mission to South Viet-Nam, sought to examine situations involving racial or religious conflicts. Two Commissions, established after the deaths of Mr. Lumumba and Mr. Hammarskjöld, respectively, investigated the circumstances in which the two persons concerned, and their companions, had met their death; a third Commission, the United Nations Commission for Ruanda-Urundi, which had been supervising the conduct of elections in the then Trust Territory, was requested to examine the circumstances of the assassination of the Prime Minister of Burundi. The remaining bodies were set up on an ad hoc basis to deal with the circumstances of a particular situation or dispute.

^{100/} For the purposes of the present study, reference has not been made to periodic inquiries made and information supplied regarding Trust and Non-Self-Governing Territories, or concerning the observance of human rights.

^{101/} See United Nations Plebiscite Commissioner in Togoland, para. 190 infra and further references made there.

146. The study covers eleven fact-finding bodies established by the Security Council since 1946. Of these, eight were set up before 1949 and of the three established since that date (the United Nations Observation Group in Lebanon, the Security Council Sub-Committee on Laos and the United Nations Observation Mission in Yemen), the last mentioned was an endorsement of the proposals made by the Secretary-General on the basis of the agreement reached by the parties concerned. None of the bodies set up by the Security Council was expressed to be of a permanent nature. Three ad hoc bodies authorized by the Security Council are at present in existence, the United Nations Military Observer Group in India and Pakistan and the United Nations Truce Supervision Organization, both of which date from 1948, and the United Nations Observation Mission in Yemen, which was established in 1963. It may be noted that in several instances, as in the case of the United Nations Commission of Investigation into the death of Mr. Lumumba and the Sub-Committee on the Situation in Angola, the body concerned was established or endorsed both by the Security Council and by the General Assembly.

147. In addition to referring to the powers of the International Court of Justice to entrust any individual or body with the task of carrying out an inquiry, the study also covers cases where fact-finding missions have been conducted under the Secretary-General's own authority. Each instance dealt with, namely the Secretary-General's Special Representative to Oman, the United Nations Malaysia Mission, the Secretary-General's Special Representative to Cambodia and Thailand and the United Nations Observer in Cyprus, arose out of the direct invitation of the State or States concerned.

148. The study concludes with a summary of certain regional agreements which have been entered into, providing for procedures of inquiry and conciliation, and of some of the pertinent treaties which have been concluded since 1940. A short account has been given of the considerable practice developed by the Organization of American States in relation to the establishment of investigating commissions to conduct on-the-spot inquiries regarding disputes. As indicated in the general introduction, various European bodies have also been empowered to conduct investigations, either of a technical or economic nature, as in the case of the European Atomic Energy Community and the European Coal and Steel Community, or into complaints regarding human rights, as in the case of the European Commission

and European Court of Human Rights, or in order to supervise the level of armaments, as in the case of the Western European Union. In addition, a number of specialized agencies have carried out detailed investigations of a fact-finding nature relating to topics within their competence. It has not proved possible within the time available for the preparation of this study to give an account of such developments on a regional and international basis.

I. PRACTICE OF THE UNITED NATIONS

A. The General Assembly

1. Charter Provisions

149. Article 10. The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

150. Article 11. 1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and except as provided in Article 12, may make recommendations with regard to any such question to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

151. Article 14. Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

152. Article 22. The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

2. Standing bodies

The Interim Committee of the General Assembly

153. In resolution 111 (II), adopted on 13 November 1947, the Interim Committee of the General Assembly was established as a subsidiary organ of the General Assembly in accordance with Article 22 of the Charter. Each Member State was given the right to appoint a representative to the Committee. Its task was to assist the General Assembly by discharging certain duties during the period between the end of the second and the opening of the third regular sessions of the General Assembly. Amongst the tasks allowed to the Committee was:

"To conduct investigations and appoint commissions of inquiry within the scope of the Committee's duties, as it may deem useful and necessary, provided that decisions to conduct such investigations or inquiries shall be made by a two-thirds majority of the members present and voting. An investigation or inquiry elsewhere than at the headquarters of the United Nations shall not be conducted without the consent of the State or States in whose territory it is to take place."

154. This provision was repeated when the Interim Committee was re-established for the period between the third and fourth sessions of the Assembly, in resolution 196 (III).

155. No action was taken or initiated under this provision by the Interim Committee, which adjourned sine die following the opening of its fourth session on 17 March 1952.

The Panel for Inquiry and Conciliation

156. On 28 April 1949, the General Assembly adopted resolution 263 (III), entitled "Study of methods for the promotion of international co-operation in the political field", based on the report of the Ad Hoc Political Committee. Section D of the resolution provided for the creation of a Panel of Inquiry and Conciliation. The Panel was set up in accordance with the terms of the resolution and information concerning its composition has been communicated periodically to the General Assembly and the Security Council. The most recent list of names of persons whose designations by Member States for inclusion in the Panel are in effect is contained in a note by the Secretary-General dated 20 January 1961.^{102/}

^{102/} Panel for Inquiry and Conciliation created by General Assembly resolution 268 D (III) of 28 April 1949. Revised list of persons designated by Member States (A/4686, S/4632).

157. In view of the similarity between the Panel and more recent proposals relating to fact-finding missions, section D, together with the annex articles, is reproduced below in its entirety.

"D

Creation of a Panel for Inquiry and Conciliation

The General Assembly,

Mindful of its responsibilities, under Articles 13 (1a) and 11 (1) of the Charter to promote international co-operation in the political field and to make recommendations with regard to the general principles of the maintenance of international peace and security,

Deeming it desirable to facilitate in every practicable way the compliance by Member States with the obligation in Article 33 of the Charter first of all to seek a solution of their disputes by peaceful means of their own choice,

Noting the desirability, as shown by the experience of organs of the United Nations, of having qualified persons readily available to assist those organs in the settlement of disputes and situations by serving on commissions of inquiry or of conciliation,

Concluding that to make provision for a panel of persons having the highest qualifications in this field available to any States involved in controversies and to the General Assembly, the Security Council and their subsidiary organs, when exercising their respective functions in relation to disputes and situations, would promote the use and effectiveness of procedures of inquiry and conciliation,

1. Invites each Member State to designate from one to five persons who, by reason of their training, experience, character and standing are deemed to be well fitted to serve as members of commissions of inquiry or of conciliation and who would be disposed to serve in that capacity;

2. Directs the Secretary-General to take charge of the administrative arrangements connected with the composition and use of the panel;

3. Adopts the annexed articles relating to the composition and use of the Panel for Inquiry and Conciliation.

ANNEX

Articles relating to the composition and use
of the Panel for Inquiry and Conciliation

Article 1

The Panel for Inquiry and Conciliation shall consist of persons designated by Member States who, by reason of their training, experience, character and standing, are deemed to be well fitted to serve as members of commissions of inquiry or of conciliation and who would be disposed to serve in that capacity. Each Member State may designate from one to five persons, who may be private persons or government officials. In designating any of its officials, a State shall agree to make every effort to make such person available if his services on a commission are requested. Two or more States may designate the same person. Members of the panel shall be designated for a term of five years and such designations shall be renewable. Members of commissions appointed in these articles shall not in the performance of their duties, seek or receive instructions from any Government. Membership in the panel shall not, however, render a person ineligible for appointment, as representative of his Government or otherwise, on commissions or other bodies not formed under these articles.

Article 2

The Secretary-General of the United Nations shall have general responsibility for the administrative arrangements connected with the panel. Each Government shall notify him of each designation of a person for inclusion in the panel, including with each notification full pertinent biographical information. Each Government shall inform him when any member of the panel designated by it is no longer available due to death, incapacity or inability to serve.

The Secretary-General shall communicate the panel and any changes which may occur in it from time to time to the Member States, to the Security Council, the General Assembly and the Interim Committee. He shall, where necessary, invite Member States promptly to designate replacements to fill any vacancies on the panel which may occur.

Article 3

The panel shall be available at all times to the organs of the United Nations in case they wish to select from it members of commissions to perform tasks of inquiry or conciliation in connexion with disputes or situations in respect of which the organs are exercising their functions.

Article 4

The panel shall be available at all times to all States, whether or not Members of the United Nations, which are parties to any controversy, for the purpose of selecting from the panel members of commissions to perform tasks of inquiry or conciliation with a view to settlement of the controversy.

Article 5

The method of selecting members of a commission of inquiry or of conciliation from the panel shall be determined in each case by the organ appointing the commission or, in the case of commissions appointed by or at the request of States parties to a controversy, by agreement between the parties.

Whenever the parties to a controversy jointly request the Secretary-General, the President of the General Assembly or the Chairman of the Interim Committee to appoint under these articles a member or members of a commission to perform tasks of inquiry or conciliation in respect of the controversy, or whenever such request is otherwise made pursuant to the provisions of a treaty or agreement registered with the Secretary-General of the United Nations, the officer so requested shall appoint from the panel the number of commissioners required.

Article 6

In connection with the constitution of any commission under these articles, the Secretary-General shall give the United Nations organ concerned or the parties to the controversy every assistance, by the performance of such tasks as ascertaining the availability of individuals selected from the panel, and making arrangements for the time and place of meeting of the persons so selected.

Article 7

Members of commissions constituted pursuant to these articles by United Nations organs shall have the privileges and immunities specified in the General Convention on the Privileges and Immunities of the United Nations. Members of commissions constituted by States under these articles should, so far as possible, receive the same privileges and immunities.

Article 8

Members of commissions constituted under these articles shall receive appropriate compensation for the period of their service. In the case of commissions constituted under article 4, such compensation shall be provided by the parties to the controversy, each party providing an equal share.

Article 9

Subject to any determinations that may be made by the United Nations organ concerned or by the parties to a controversy in constituting commissions under articles 3 and 4 respectively, commissions constituted under these articles may meet at the seat of the United Nations or at such other places as they may determine to be necessary for the effective performance of their functions.

Article 10

The Secretary-General shall assign to each commission constituted by a United Nations organ under these articles, staff adequate to enable it to perform its duties and shall, as necessary, seek expert assistance from specialized agencies brought into relationship with the United Nations. He shall enter into suitable arrangements with the proper authorities of states in order to assure the commission, so far as it may find it necessary to exercise its functions within their territories, full freedom of movement and all facilities necessary for the performance of its functions. The Secretary-General shall, at the request of any commission appointed by parties to a controversy pursuant to article 4, render this assistance to the commission to the extent possible.

Upon completion of its proceedings each commission appointed by a United Nations organ shall render such reports as may be determined by the appointing organ. Each commission appointed by or at the request of parties to a controversy pursuant to article 4, shall file a report with the Secretary-General. If a settlement of the controversy is reached, such report will normally merely state the terms of settlement."

The Peace Observation Commission

158. In the "Uniting for peace" resolution 377 A (V), adopted on 3 November 1950, the General Assembly established a Peace Observation Commission composed of fourteen Members, including the permanent members of the Security Council. The functions of the Commission are to:

"... observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security. Upon the invitation or with the consent of the State into whose territory the Commission would go, the General Assembly, or the Interim Committee when the Assembly is not in session, may utilize the Commission if the Security Council is not exercising the functions assigned to it by the Charter with respect to the matter in question. Decisions to utilize the Commission shall be made on the affirmative vote of two-thirds of the members present and voting. The Security Council may also utilize the Commission in accordance with its authority under the Charter."

The other pertinent sections of the resolutions are as follows:

"The General Assembly

...

4. Decides that the Commission shall have authority at its discretion to appoint sub-commissions and to utilize the services of observers to assist it in the performance of its functions;

5. Recommends to all governments and authorities that they co-operate with the Commission and assist it in the performance of its functions;

6. Requests the Secretary-General to provide the necessary staff and facilities, utilizing, where directed by the Commission, the United Nations Panel of Field Observers envisaged in General Assembly resolution 297 B (IV)."

159. In accordance with the request of the General Assembly in resolution 508 B (VI) of 7 December 1951, the Peace Observation Commission established a Balkan Sub-Commission; the General Assembly authorized the Sub-Commission to despatch observers "to any area of international tension in the Balkans on the request of any State or States concerned, but only to the territory of States consenting thereto". Military observers stationed in Greece submitted periodic reports concerning frontier incidents, which were considered by the Peace Observation Commission up until 1955, when the Sub-Commission was discontinued. The Peace Observation Commission, however, has remained in existence.

3. Ad hoc bodies

The United Nations Special Committee on Palestine^{103/}

160. History. In response to a request from the representative of the United Kingdom, the Secretary-General summoned the first special session of the General Assembly on 28 April 1947. The sole item on the agenda was that submitted by the United Kingdom, namely, "Constituting and instructing a special Committee to prepare for the consideration of the question of Palestine at the second regular session." The question was submitted to the First Committee and, upon its recommendation, the General Assembly adopted resolution 106 (S-1) on 15 May 1947, constituting and instructing the Special Committee.

161. Composition. Under the terms of the resolution the Committee was composed of the representatives of eleven States - Australia, Canada, Czechoslovakia, Guatemala, India, Iran, Netherlands, Peru, Sweden, Uruguay. and Yugoslavia - the States concerned were selected on a basis of geographical distribution. Following discussion by the First Committee it was decided that permanent members of the Security Council should be excluded from membership. The representative of Sweden was elected Chairman.

^{103/} See United Nations, Organization and Procedure of United Nations Commissions, III. The United Nations Special Committee on Palestine, United Nations Publication, Sales No. 1949.X.5.

162. Terms of Reference. Paragraph 6 of the resolution provided that:

"The Special Committee shall prepare a report to the General Assembly and shall submit such proposals as it may consider appropriate for the solution of the problem of Palestine."

The Committee was required to submit its report to the Secretary-General, together with its proposals, by 1 September 1947. The Committee was given "the widest powers to ascertain and record facts and to investigate all questions and issues relevant to the problem of Palestine". Paragraph 5 of the resolution specified that the Committee should give "most careful consideration to the religious interests in Palestine of Islam, Judaism and Christianity".

163. Procedure. The Special Committee determined its own procedure in accordance with paragraph 3 of the resolution. Provisional rules of procedure were adopted, based on the rules of the General Assembly and supplemented by special rules designed to meet the particular requirements of the Committee, such as the appointment of liaison offices, receipt of oral and written testimony, etc. Decisions of the Committee were taken by majority vote.

164. Methods of operation. Paragraph 4 specified that the Special Committee might,

"... conduct investigations in Palestine and wherever it may deem useful, receive and examine written or oral testimony, whichever it may consider appropriate in each case, from the mandatory Power, from representatives of the population of Palestine, from Governments and from such organizations and individuals as it may deem necessary."

The Committee attempted to arrive at an understanding of the issues involved in the Palestine problem by conducting a preliminary survey of the land, its peoples and their aspirations, and of the social, economic and religious systems. The itinerary of the survey, which lasted twelve days, was approved by the Committee itself and covered both Arab and Jewish areas. Secondly, the Committee carried out investigations of the factual information presented by the parties and of the views of the parties on the problem of Palestine. At its first meeting in Palestine the Committee was informed by the Secretary-General of the decision of the Arab Higher Committee to abstain from collaboration in its work. Hearings were granted, however, to political organizations representative of considerable groups of the population of Palestine; to other organizations representing

viewpoints of particular interest; and to individuals and authorities of the various religions having relevant information, in the light of paragraph 5 of the General Assembly resolution. The Government of Palestine and the Jewish Agency submitted a number of background documents, factual statements and maps in support of their point of view. Extensive efforts were also made to gather informal evidence. In all, thirteen public and thirty-nine private meetings were held between 26 May and 31 August 1947, in New York, Jerusalem, Beirut and Geneva. The meetings in Beirut were devoted to hearing the views of the Governments of Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen. While in Geneva the Committee created a sub-committee which visited a number of displaced persons' camps in Germany and Austria.

165. Report. Owing to major divisions in the Committee concerning the various proposals for the future government of Palestine, two proposals were put forward: three members placed themselves on record as favouring a federal state plan and seven members voted in favour of the principle of partition with economic union. One member abstained from voting on both plans. Agreement was reached, however, on twelve basic recommendations - eleven of which were adopted unanimously and the twelfth with two dissenting votes. The secretariat was authorized to prepare the factual chapters of the Committee's report. The approved text of the report was signed on 31 August 1947 and presented to the Secretary-General. In accordance with a decision reached at its 47th meeting, the Special Committee thereupon became functus officio.

The United Nations Special Committee on the Balkans^{104/}

166. History. On 21 October 1947, the General Assembly adopted resolution 109 (II) which called on Albania, Bulgaria and Yugoslavia, on the one hand, and Greece on the other, to co-operate in the settlement of their disputes by peaceful means. The following recommendations were made to the four Governments concerned:

^{104/} See United Nations, Organization and Procedure of United Nations Commissions, VI. The United Nations Special Committee on the Balkans (United Nations Publication, Sales No. 1949.X.1).

- "(1) That they establish normal diplomatic and good neighbourly relations among themselves as soon as possible;
- (2) That they establish frontier conventions providing for effective machinery for the regulation and control of their common frontiers and for the pacific settlement of frontier incidents and disputes;
- (3) That they co-operate in the settlement of the problems arising out of the presence of refugees in the four States concerned through voluntary repatriation wherever possible and that they take effective measures to prevent the participation of such refugees in political or military activity;
- (4) That they study the practicality of concluding agreements for the voluntary transfer of minorities."

At the same time the General Assembly established a Special Committee to observe the compliance by the Governments concerned with the recommendations.

167. Composition. According to resolution 109 (II) the Special Commission,

"shall consist of representatives of Australia, Brazil, China, France, Mexico, the Netherlands, Pakistan, the United Kingdom and the United States of America, seats being held open for Poland and the Union of Soviet Socialist Republics."

The latter two States declined to take up membership. The Chairmanship was held by rotation except for a six-month period in 1948-1949 when the Chairman was elected. Observers were also provided by the States represented on the Committee.

168. Terms of references. Under the terms of the Assembly resolution the Special Committee was established:

- "(1) To observe the compliance by the four Governments with the ... [Assembly] recommendations;
- (2) To be available to assist the four Governments concerned in the implementation of such recommendations."

Although also concerned with political negotiations, the Special Committee undertook certain functions in the nature of investigations or inquiries. The Special Committee was required to report to the General Assembly and to make "such recommendations to the General Assembly as it deems fit".

169. Procedure. Rules of procedure were adopted by the Special Committee, in accordance with paragraph 9 (4) of resolution 109 (II), permitting the Committee to determine its own procedure. Decisions were taken by a majority of the members present and voting.

170. Methods of operation. Besides efforts to undertake political negotiations, the Special Committee conducted area surveys in Greek territory and a number of investigations or inquiries regarding guerilla activities, frontier incidents, refugees and a similar matters affecting good relations between the Governments concerned. The surveys and investigations were made by observer groups acting under the authority of the Special Committee. The Governments of Albania, Bulgaria and Yugoslavia refused to recognize the legality of the Committee under the provisions of the Charter and consequently declined to admit it to their territories.

171. Reports. The Committee submitted a number of reports to the General Assembly at its third session. In resolution 193 (III), adopted on 27 November 1948, the General Assembly approved the reports and continued the Committee in being with the functions conferred upon it by resolution 109 (II). The Committee submitted a further series of reports until it was discontinued by resolution 508 (VI), adopted by the General Assembly on 7 December 1951.

The United Nations Temporary Commission on Korea^{105/}

172. History. In September 1947, the problem of Korean independence was brought before the General Assembly by the United States. After discussion in the First Committee, on 14 November 1947, the General Assembly adopted resolution 112 (II) which provided, inter alia, for the appointment of a Commission of nine members to observe elections to be held not later than 31 March 1948, throughout Korea on a basis of adult suffrage and by secret ballot.

173. Composition. Five representatives were from countries interested in the Pacific area - Australia, Canada, China, India and Philippines - with one from each of the following areas: Western Europe (France), Eastern Europe (Ukrainian Soviet Socialist Republic), Latin America (El Salvador), and the Middle East (Syria). The Ukrainian Soviet Socialist Republic declined to assume its seat on the Commission. A Chairman was elected, but following his departure from Korea the Commission was unable to agree on a successor and it was decided to institute the procedure of a rotating chairmanship. The period of rotation was fifteen days.

^{105/} See United Nations, Organization and Procedure of United Nations Commissions, VIII. The United Nations Temporary Commission on Korea (United Nations Publication, Sales No.: 1949.X.6).

174. Terms of reference. The Commission was set up by the General Assembly "for the purpose of facilitating and expediting" the participation by elected representatives of the Korean people in the task of establishing the freedom and independence of Korea. Besides observing the elections, the Commission was to consult with the national Government, if one were established, and to report, with its conclusions, to the General Assembly. The Commission was also permitted to consult with the General Assembly or the Interim Committee with respect to the application of the resolution. At an early stage in the work of the Commission it became apparent that it would be impossible to hold elections in the whole of Korea, and the question was raised whether in view of this fact the Commission had a right to observe elections in South Korea alone. The Commission therefore consulted with the Interim Committee regarding the matter.

175. Procedure. Rules of procedure were adopted which, though based on the rules of procedure of the General Assembly, also took into account the experience encountered in other United Nations Commissions in the field. Decisions were taken by majority vote although great efforts were made to preserve unanimity in voting.

176. Methods of operation. Two area surveys, made by the Secretariat before the Commission left for Korea, were made available to members, together with reference material which had been collected. The Commission held three types of hearings, divided among three Sub-Committees. In Sub-Committee 1, which dealt with the free atmosphere for elections, responsible authorities were heard on the interpretation and application of the pertinent laws and regulations in force in Korea. Sub-Committee 2 heard many Korean personalities, political leaders and representatives of various organizations whose views might be helpful to the Commission, in particular as regards the problem of separate elections in South Korea. Written communications were also received. The third Sub-Committee examined the electoral laws of North and South Korea and acquainted itself with the views of Korean officials and experts as well as of those of the occupying Governments. The authorities of the Union of Soviet Socialist Republics in North Korea refused to accept any communication addressed to them by the Commission. The elections in South Korea were observed by means of a Main Committee, functioning as a committee of the whole, which maintained continuous liaison with the National

Election Committee, and which operated locally by means of field observer groups. The observer groups undertook three series of observation tours: (i) during the registration period; (ii) during the period when the poll registrations were open to public inspection and the registration of candidates took place; and (iii) during the election day period itself.

177. Reports. The Secretariat prepared fortnightly information reports under the supervision of the Chairman and the heads of the Sub-Committees. The report of the Commission to the General Assembly was published in two parts. The first part, consisting of three volumes, was issued in Seoul on 21 July 1948. The second part of the report, in two volumes, was issued in New York on 15 October 1948.

The United Nations Commission to Investigate Conditions for Free
Elections in Germany

178. History. The Governments of France, Great Britain and the United States, acting on a proposal made by the Chancellor of the Federal Republic of Germany, brought before the General Assembly at its sixth session a request for the appointment of an international commission to carry out investigations in Germany in order to determine whether conditions existing there would make it possible to hold free elections. After discussions before the Ad Hoc Committee, the General Assembly agreed to the appointment of a commission in resolution 510 (VI), adopted on 20 December 1951.

179. Composition. The Commission was composed of representatives of Brazil, Iceland, the Netherlands, Pakistan and Poland. The Government of Poland declined to appoint a representative.

180. Terms of reference. The Commission was instructed to carry out immediately:

"a simultaneous investigation in the Federal Republic of Germany, in Berlin, and in the Soviet Zone of Germany to ascertain and report whether conditions in these areas are such as to make possible the holding of genuinely free and secret elections throughout these areas. The Commission shall investigate the following matters in so far as they affect the holding of free elections:

(a) The constitutional provisions in force in these areas and their application as regards the various aspects of individual freedom, in particular the degree to which, in practice, the individual enjoys freedom of movement, freedom from arbitrary arrest and detention, freedom of association and assembly, freedom of speech, press and broadcasting;

(b) Freedom of political parties to organize and carry out their activities;

(c) The organization and activities of the judiciary, police and other administrative organs."

Paragraph 4 of the resolution provided as follows:

"The General Assembly

.....

4. (a) Directs the Commission to report at the earliest practicable date to the Secretary-General, for the consideration of the four Powers and for the information of the other Members of the United Nations, on the results of its efforts to make the necessary arrangements with all the parties concerned to enable it to undertake its work according to the terms of the present resolution;

(b) Directs the Commission, if it is able to make the necessary arrangements throughout the areas concerned, similarly to report on the findings resulting from its investigation of conditions in these areas, it being understood that such findings may include recommendations regarding further steps which might be taken in order to bring about conditions in Germany necessary for the holding of free elections in these areas;

(c) Directs the Commission, if it is unable forthwith to make these arrangements, to make a further attempt to carry out its task at such time as it is satisfied that the German authorities in the Federal Republic, in Berlin, and in the Soviet Zone will admit the Commission, as it is desirable to leave the door open for the Commission to carry out its task;

(d) Directs the Commission in any event to report, not later than 1 September 1952, on the results of its activities to the Secretary-General, for the consideration of the four Powers and for the information of the other Members of the United Nations;"

181. Procedure. The Commission determined its own rules of procedure. Although the Commission agreed that decisions might be taken by majority vote, in practice decisions were taken unanimously. The Chairmanship was held in monthly rotation.

182. Methods of operation and reports. On 30 April 1952, the Commission submitted a unanimous report to the Secretary-General covering the period from 11 February to 30 April 1952, in accordance with paragraph 4 (a) of the resolution.^{106/}

The report stated that the Commission decided that the direction given to it by paragraph 4 (a) should take precedence and that its first task was to make arrangements with the parties concerned to enable it to carry out its work. The necessary arrangements included the grant of normal diplomatic facilities for the Commission and its staff; the right to travel freely throughout Germany; the right of free access to such persons, places and relevant documents as the Commission might consider necessary; the right to communicate freely with the people of Germany; and immunity for its communications from censorship, delay or suppression. The arrangements also concerned the right of the Commission to summon witnesses.

183. The report stated that during a visit to Germany the Commission had concluded satisfactory agreements concerning the required arrangements with the following authorities: (a) The Allied High Commission for Germany; (b) the Government of the Federal Republic of Germany; (c) the Allied Kommandatura in Berlin (in so far as the authority of that body extended over those areas of Berlin over which the French, United Kingdom and United States Commanders in Berlin exercised authority); and (d) the Government of the western sector of Berlin. However, the Commission was not able to establish contact with the authorities in the Soviet Zone of Germany or in the eastern sector of Berlin and was thus unable to make the necessary arrangements with them. In view of this fact, the Commission "to its regret", was obliged "to conclude that at present there is little prospect of its being able to pursue its task".

184. The Commission submitted a supplementary report, covering the period from May 1952 to August 1952,^{107/} briefly summarizing its views regarding developments in the German situation in so far as they could be regarded as having a bearing on the specific task entrusted to the Commission. The Commission determined that, since in its view there was little prospect that it would be able to carry out its task beyond the extent to which it had been able to do in the preliminary period, it would adjourn sine die following the submission of its supplementary report.

^{107/} A/2122/Add.2.

The United Nations Commission on the Racial Situation in the
Union of South Africa

185. History. Having taken note of a communication^{108/} dated 12 September 1952, addressed to the Secretary-General by the delegations of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, regarding the question of racial conflict in South Africa resulting from the policies of apartheid of the Government of South Africa, the General Assembly adopted resolution 616 A (VII) on 5 December 1952, establishing a Commission to study the racial situation in South Africa.

186. Composition. In accordance with the terms of the resolution the Commission consisted of three persons. The General Assembly decided on the proposal of the President, that the Commission should be composed of Mr. Ralph Bunche, Mr. Hernán Santa Cruz and Mr. Jaime Torres Bodet. Mr. Bunche and Mr. Torres Bodet were unable to accept the appointment. The General Assembly thereupon appointed Mr. Dantès Sellegarde and Mr. Henri Laugier. Mr. Santa Cruz was elected Chairman.

187. Terms of reference. Paragraph 1 of resolution 616 A (VII) provided that the Commission was:

"to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 16 b, Article 55 c, and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session."

188. Methods of operation. In its report to the General Assembly^{109/} the Commission noted that the Union of South Africa had maintained its position that the resolution establishing the Commission was ultra vires and consequently had declined to recognize the Commission or to allow it to enter South African territory. The report of the Commission was therefore based largely on an analysis of the relevant legislation in force in South Africa; on a study of other

^{108/} Official Records of the General Assembly, Seventh Session Annexes, agenda item 66, document A/2183.

^{109/} Ibid., Eighth Session, Supplement No. 16 (A/2505 and A/2505/Add.1)

written materials, including the declarations of South African politicians, regarding the situation in South Africa; and on oral and written statements made by non-governmental organizations and private individuals. In addition, the Commission examined memoranda communicated by certain Member States. In accordance with the terms of the resolution, the Commission studied the extent to which the Articles of the Charter referred to by the General Assembly might determine or restrict the competence of the United Nations. The Commission concluded that:

"The Assembly, assisted by the commissions which it establishes and authorizes, is permitted by the Charter to undertake any studies and make any recommendations to Member States which it may deem necessary in connexion with the application and implementation of the principles to which the Member States have subscribed by signing the Charter." 110/

The major section of the Commission's report was concerned with the substantive aspects of the racial situation in South Africa.

189. Report. In accordance with resolution 616 A (VII), the Commission submitted its report to the eighth session of the General Assembly. Following discussion by the Ad Hoc Political Committee, the General Assembly adopted resolution 721 (VIII) which, inter alia, called on the Committee to continue its work and to report to the General Assembly at its ninth session. The Commission accordingly submitted a second report^{111/} to the General Assembly. In resolution 820 (IX) the General Assembly requested the Commission to keep under review the problem of race conflict in South Africa and to submit a further report. The Commission therefore submitted its final report^{112/} to the tenth session of the General Assembly, which in resolution 917 (IX) noted the report and commended the Commission for its constructive work.

110/ Ibid., para. 893.

111/ Ibid., Ninth Session, Supplement No. 16 (A/2719).

112/ Ibid., Tenth Session Supplement No. 14 (A/2953).

The United Nations Plebiscite Commissioner in Togoland^{113/}

190. On the recommendation of the Trusteeship Council, in resolution 944 (X), adopted on 15 December 1955, the General Assembly appointed a United Nations Plebiscite Commissioner to exercise supervisory functions with respect to a plebiscite to be held in the Trust Territory of Togoland under British administration. The General Assembly also recommended that the consultation of the inhabitants of the Trust Territory under French administration should take place under United Nations supervision. In resolution 1182 (XII), adopted on 29 November 1957, the General Assembly appointed a Commissioner to perform supervisory functions with respect to elections to be held in the Trust Territory of Togoland under French administration.

The United Nations Emergency Force

191. History. On 4 November 1956, the General Assembly requested^{114/} the Secretary-General to submit within forty-eight hours a plan for the setting up, with the consent of the nations concerned, of an emergency international United Nations force. The purpose of the force was to "secure and supervise the cessation of hostilities" in Egypt. Following the submission of the Secretary-General's first report^{115/} on 4 November, the General Assembly adopted resolution 1000 (ES-I) on 5 November, noting with satisfaction the submission of the first report of the Secretary-General and establishing the United Nations Command. At a meeting on 7 November the General Assembly approved^{116/} the

^{113/} In resolution 1350 (XIII) the General Assembly appointed a Commissioner to supervise the elections in the Northern and Southern Cameroons under British administration and to report on the organization of the elections, their conduct and result. In resolution 1473 (XIV) the General Assembly dealt with the question of a further plebiscite in the Northern Cameroons. A Commissioner was appointed to supervise the elections in Western Samoa in resolution 1569 (XV). In resolutions 1579 (XV) and 1605 (XV), a United Nations Commission for Ruanda Urundi was appointed to supervise elections there and to attend conferences and to follow events. See also paragraphs 214-217 below.

^{114/} Resolution 998 (ES-I).

^{115/} Official Records of the General Assembly, First Emergency Special Session, Annexes, agenda item 5 (A/3289).

^{116/} Resolution 1001 (ES-I).

guiding principles laid down in the second report^{117/} submitted by the Secretary-General, which stated that the functions of the United Nations Emergency Force would be to enter Egyptian territory, with the consent of the Egyptian Government, when a cease-fire was established, in order to help maintain quiet during and after the withdrawal of non-Egyptian troops, and to secure compliance with the other terms established in resolution 1000 (ES-I). After the Egyptian Government had given its consent, units of the Force began to arrive in Egypt and to take up their positions. After March 1957, when all non-Egyptian forces had been withdrawn, the Force was deployed along the Israeli-Egyptian demarcation line.

192. Composition. The Force consists of some 5,000 men in national contingents, under the command of a United Nations Chief of Staff.

193. Methods of operation. During its initial operations the Force supervised the cessation of hostilities and the withdrawal of non-Egyptian forces. Besides investigating renewed outbreaks of fighting, the Force ensured that the withdrawal of troops took place smoothly by taking over local administration on a temporary basis. Since being stationed on the demarcation line the Force has carried out patrols along the demarcation line and reported any incidents which have occurred; such incidents have for the most part been investigated by military observers of the United Nations Truce Supervision Organization.^{118/}

194. Reports. The Secretary-General has submitted periodic and, since 2 February 1957, annual reports to the General Assembly regarding the operations of the Force.

Investigation by the Secretary-General of the situation in Hungary

195. History. Following the outbreak of fighting in Hungary the General Assembly, at its second emergency session, adopted resolution 1004 (ES-II) of 4 November 1956, in which it requested the Secretary-General to investigate the situation in Hungary. This request was substantially repeated in resolution 1005 (ES-II) of 9 November 1956.

196. Composition. The Secretary-General appointed three persons to form a group to assist him in his investigatory duties: Mr. Oscar Sundersen (Norway);

^{117/} Official Records of the General Assembly, First Emergency Special Session, Annexes, agenda item 5, document A/3302.

^{118/} See paragraphs 288-294 below.

Mr. Arthur Lall (India); and Mr. Alberto Lleras (Colombia) designated as experts under United Nations rules and regulations.^{119/}

197. Methods of operation. The investigatory group examined all material available to the Secretariat and came to the conclusion that:

"Until it is possible to open up further sources of reliable material through observation on the spot in Hungary and by the co-operation of the Governments directly concerned, there would be little purpose in our attempting an assessment of the recent situation or of recent events." ^{120/}

The Secretary-General therefore suggested that the Assembly might wish to establish an ad hoc committee which would take over the activities of the investigatory group whilst acting under broader terms of reference.^{121/} This suggestion was adopted by the General Assembly in resolution 1132 (XI).^{122/}

The United Nations Special Committee on Hungary

198. History. After the group appointed by the Secretary-General to assist him in his investigation of the Hungarian situation had stated that it felt unable to pursue its task without further facilities for on-the-spot observations, the Secretary-General suggested that the General Assembly might wish to consider the establishment of a committee to carry out the same activities under broader terms of reference.^{123/} This suggestion was adopted by the General Assembly which, in resolution 1132 (XI) of 10 January 1957, established a Special Committee for this purpose.

199. Composition. The Committee was composed of representatives of Australia, Ceylon, Denmark, Tunisia and Uruguay.

200. Terms of reference. The Committee was established for the purpose of ensuring that the General Assembly and all Member States should "be in possession of the fullest and best available information" regarding the situation in Hungary "as well as regarding developments relating to the recommendations of the General Assembly on this subject".

^{119/} Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 67, document A/3359.

^{120/} Ibid., document A/3485.

^{121/} Ibid.

^{122/} See paragraphs 198-202 below.

^{123/} Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 67, document A/3485.

Its tasks were:

"to investigate, and to establish and maintain direct observation in Hungary and elsewhere, taking testimony, collecting evidence and receiving information, as appropriate, in order to report its findings to the General Assembly at its eleventh session, and thereafter from time to time to prepare additional reports for the information of Member States and of the General Assembly if it is in session."

201. Methods of operation.^{124/} The Committee made a preliminary survey of the immediately available information, in order to establish a basis for the examination of witnesses and to ascertain what additional information of other types would be necessary. The Committee then heard witnesses at closed and open meetings. It received information from certain Member States and expressed its desire that Member States having diplomatic representatives in Budapest at the time of the events in question might transmit any special knowledge in their possession to the Committee. The Committee attempted unsuccessfully to secure the permission of the Hungarian Government to enter its territory.

202. Report. The Special Committee submitted an interim report on 20 February 1957 and a further report on 12 June 1957. The General Assembly endorsed the unanimous report^{125/} of the Special Committee in resolution 1133 (XI), adopted on 14 September 1957. In paragraph 9 of the resolution the General Assembly requested the President of the eleventh session, Prince Wan Waithayakon of Thailand, as the General Assembly's special representative on the Hungarian problem to take such steps as he deemed appropriate in view of the Committee's findings to achieve the objectives of the United Nations.^{126/} The final report of the Committee, dated 14 July 1958,^{127/} was endorsed by the General Assembly in resolution 1312 (XIII), adopted on 12 December 1958.

^{124/} Ibid., document A/3546.

^{125/} Ibid., Eleventh Session, Supplement No. 18 (A/3592).

^{126/} Sir Leslie Munro succeeded Prince Wan Waithayakon in 1958. A number of reports were submitted until the function of Special Representative was discontinued by the General Assembly in resolution 1857 (XVII) of 20 December 1962.

^{127/} Official Records of the General Assembly, Thirteenth Session, Annexes, agenda item 69, document A/3849.

The Secretary-General's Special Representative
in Jordan

203. In a letter dated 17 July 1958, the representative of Jordan requested the inclusion in the agenda of the Security Council, for urgent consideration, of the item entitled: "Complaint by the Hashemite Kingdom of Jordan of interference in its domestic affairs by the United Arab Republic". After the Security Council had failed to reach agreement the matter was considered by the third emergency special session of the General Assembly, convened by the Secretary-General on 8 August 1958, in accordance with the resolution adopted by the Security Council on 7 August 1958. On 21 August 1958, the General Assembly adopted resolution 1237 (ES-III) which, inter alia, requested the Secretary-General to make forthwith, in consultation with the Governments concerned and in accordance with the Charter, such practical arrangements as would adequately help to uphold the purposes and principles of the Charter in relation to Jordan, and thereby facilitate the early withdrawal of foreign troops from that country.

204. On 29 September 1958 the Secretary-General submitted his first report^{128/} in accordance with resolution 1237 (ES-III). He stated that Jordan had indicated its willingness to serve as a host country for a United Nations representative, properly staffed, to serve "as a Special Representative of the Secretary-General to assist in the implementation of the resolution, specifically with a view to help in upholding the purposes and principles of the Charter in relation to Jordan in the present circumstances". Ambassador Spinelli, Under-Secretary in charge of the United Nations Office in Geneva, was designated to serve as the Secretary-General's Special Representative, reporting to the Secretary-General.

The United Nations Commission of Investigation into the
Death of Mr. Lumumba

205. History. Following the killing of the Congolese leaders, Mr. Patrice Lumumba, Mr. Maurice Mpolo and Mr. Joseph Okito, the Security Council adopted a resolution

^{128/} Document A/564 and Rev.1.

at its 942nd meeting on 20-21 February 1961; in part A, paragraph 4, of the resolution, the Council decided that an immediate and impartial investigation should be held in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues. The Secretary-General referred the question to the Advisory Committee on the Congo, which recommended that a Commission should be established to carry out the investigation, composed of members nominated by the Governments of Burma, Ethiopia, Mexico and Togo.^{129/} The General Assembly, taking into consideration the views expressed by the Advisory Committee on the Congo, established the Commission by resolution 1601 (XV) of 15 April 1961.

206. Composition. The Governments of Burma, Ethiopia, Mexico and Togo nominated as members of the Commission Mr. Justice Aung Khine, Ato Teshome Hailemeriam, Dr. Salvador Martínez de Alva and Maître Ayité d'Almeida respectively.

Mr. Justice Aung Khine was elected Chairman and Maître Ayité d'Almeida, Rapporteur.

207. Terms of reference. The terms of reference of the Commission were defined in the Security Council's resolution of 20-21 February 1961 as being to hold "an immediate and impartial investigation in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues". The Advisory Committee on the Congo recommended that, in particular, "the Commission will endeavour to ascertain the events and circumstances relating to and culminating in the death of Mr. Lumumba and his colleagues and to fix responsibility thereof".^{130/} The Commission itself stated that it conceived its function as being:

"one of ascertaining the facts which will illuminate the circumstances immediately preceding, actually attendant to and following the death of Mr. Lumumba and his colleagues. Since such a fact-finding function is distinct from the purely judicial, it has been considered not necessary to formulate any strict rules of evidence and procedure for the Commission's work." ^{131/}

208. Methods of operation and report. The Commission examined documentary material furnished by the Secretary-General. In addition Member States were requested to forward any relevant information in their possession. A number of witnesses gave

^{129/} Official Records of the Security Council, Sixteenth Year, Supplement for January, February and March 1961, documents S/4771 and Add.1-3.

^{130/} Ibid.

^{131/} Ibid., Supplement for October, November and December 1961, document A/4964-S/4976, para. 7.

statements to the Commission in the course of hearings conducted in Belgium and Geneva. The Commission was unable to visit the Congo, initially upon the advice of three ONUC officials charged with the task of assisting at efforts at reconciliation and the convening of Parliament, that it would be unwise for the Commission to do so at that particular juncture, and subsequently in view of the wishes of the Government of the Congo. The Commission submitted its report on 11 November 1961.^{132/}

The Sub-Committee on the Situation in Angola

209. History. Following the outbreak of disturbances in Angola in February 1961, the General Assembly adopted resolution 1603 (XV) on 20 April 1961, establishing a Sub-Committee to examine the situation in Angola. By its resolution of 9 June 1961, the Security Council, inter alia, reaffirmed the General Assembly resolution 1603 (XV) and requested the Sub-Committee to implement its mandate without delay.

210. Composition. The President of the General Assembly appointed Bolivia, Dahomey, Malaya, Finland and the Sudan, as members of the Committee. The representatives of Bolivia and Finland were elected Chairman and Vice-Chairman respectively.

211. Terms of reference. The Sub-Committee was instructed:

"to examine the statements made before the Assembly concerning Angola, to receive further statements and documents, to conduct such inquiries as it may deem necessary and to report to the Assembly as soon as possible."

212. Methods of operation. The Sub-Committee endeavoured to obtain the co-operation of the Portuguese Government and, in particular, the agreement of that Government to a visit to Angola. The Portuguese Government refused, however, to allow the Sub-Committee to proceed to Angola although it invited the Chairman to visit Lisbon in order to hold talks with various members of the Portuguese Government. As a result of this visit the Portuguese Government communicated

^{132/} Ibid., document A/4964-S/4976.

documentary information relating to Angola to the Sub-Committee. The Vice-Chairman of the Sub-Committee, together with the representatives of Dahomey and the Sudan, visited the Republic of the Congo (Leopoldville) between 9 and 18 August 1961, at the invitation of the Congolese Government. They gave hearings to representatives of seven Angolan groups and to Angolan refugees in Leopoldville and in other places in the Congo where large numbers of refugees from Angola were located. In addition to the information obtained as a result of the visit to the Republic of the Congo (Leopoldville) and from the Portuguese Government, the Sub-Committee received information from specialized agencies of the United Nations, from non-governmental organizations and from individuals with first-hand information on Angola.

213. Report. The Sub-Committee submitted its unanimous report, containing its observations, findings and conclusions, to the President of the General Assembly on 20 November 1961.^{133/} After examining the report, the General Assembly adopted resolution 1742 (XVI) on 30 January 1962, urging Portugal to undertake reforms in the territory. The Sub-Committee was entrusted with the study of ways and means of implementing the resolution.

United Nations Commission for Ruanda Urundi: investigation of the
assassination of the Prime Minister of Burundi

214. At its 1041st plenary meeting on 23 October 1961, the General Assembly adopted unanimously resolution 1627 (XVI), the operative part of which reads as follows:

"The General Assembly,

.....

1. Expresses its sense of shock and abhorrence at the murder of the Prime Minister of Burundi;

2. Requests the United Nations Commission for Ruanda Urundi to visit the scene immediately in order to carry out without delay an investigation of the circumstances of the Prime Minister's tragic death and to submit a preliminary report to the General Assembly as soon as possible."

133/ Official Records of the General Assembly, Sixteenth Session, Supplement
No. 16, (A/4978).

215. The Commission received the Assembly's instruction while in Geneva, where it was engaged in preparing its report regarding the legislative elections in Ruanda Urundi and the referendum which had been held in Ruanda. After holding brief consultations in Brussels the Commission left for Usumbura on 28 October 1961.

216. In accordance with the provisions of the Trusteeship Agreement, the Trusteeship authorities were also responsible for the administration of justice in the Trust Territory. The Commission therefore considered that,

"...it should limit its field of action in accordance with the following principles: the Commission, in making its investigation, should take care not to interfere in any way with the course of justice, the legal proceedings should take their normal course, and the independence of the judiciary should be upheld." 134/

217. The report of the Commission contained a statement of facts and circumstances surrounding the Prime Minister's death as revealed by the official statements made to the Commission. From these it appeared that the act of assassination had been committed by a Greek national born in Ruanda Urundi, who had made a full confession. The Commission also presented the main trends of opinion circulating in Burundi regarding the reasons for the crime.

The United Nations Commission of investigation into
the death of Mr. Hammarskjöld

218. History. At its 1042nd plenary meeting on 26 October 1961, the General Assembly adopted a fourteen-Power draft resolution expressing its profound shock and sorrow at the death of Mr. Hammarskjöld and the persons who died with him in the service of the United Nations. Under this resolution 1628 (XVI), the General Assembly decided that an international investigation should be held in the circumstances surrounding the tragedy.

219. Composition. In accordance with the terms of the resolution, which specified that "five eminent persons" should carry out the investigation, the General Assembly at its 1074th plenary meeting held on 8 December 1961 appointed the

134/ Official Records of the General Assembly, Sixteenth Session, Annexes, agenda item 49, document A/5086, para. 29.

following members of the Commission, upon the recommendation of the President of the Assembly: Mr. S.B. Jones (Sierra Leone); Mr. Raul Quijano (Argentina); Mr. Alfred Emil Sandström (Sweden); Mr. Rishikesh Shaha (Nepal); and Mr. Nikola (Yugoslavia). Mr. Shaha was elected Chairman and Mr. Quijano Rapporteur, by the Commission. Members of the Secretariat were designated to assist the Commission.

220. Terms of reference. Resolution 1628 (XVI) provided that:

"The General Assembly

.....

3. Decides that an investigation of an international character, under the auspices of the United Nations, should be held immediately into all the conditions and circumstances surrounding this tragedy, and more particularly as to:

(a) Why the flight had to be undertaken at night without escort;

(b) Why its arrival at Ndola was unduly delayed as reported;

(c) Whether the aircraft, after having established contact with the tower at Ndola lost that contact, and the fact of its having crashed did not become known until several hours afterwards, and if so, why;

(d) Whether the aircraft, after the damage it was reported to have suffered earlier from firing by aircraft hostile to the United Nations, was in a proper condition for use."

221. Methods of operation. After an organizational session held in New York, the Commission met in Leopoldville from 24 to 30 January 1962, in Salisbury from 31 January to 16 February, and in Geneva from 21 February to 8 March. It had before it the reports and proceedings of the Rhodesian Board of Investigation and the Rhodesian Commission of Inquiry, as well as all exhibits submitted to the latter. The Commission heard some ninety witnesses whom it thought might yield new information or whose appearance was essential for the purpose of forming a judgement about earlier testimony. Certain additional tests were carried out on the wreckage.

222. Report. In accordance with resolution 1628 (XVI), the report of the Commission, containing answers to the four specific questions asked by the

General Assembly and the Commission's general findings, was submitted to the President of the General Assembly.^{135/} The General Assembly took note of the report in resolution 1759 (XVII), adopted on 26 October 1962.

The Special Committee for South West Africa

223. History. Following the submission of a special report by the Committee on South West Africa,^{136/} the General Assembly adopted resolution 1702 (XVI) on 19 December 1961, establishing a Special Committee for South West Africa. The tasks entrusted to the Special Committee included making a visit to South West Africa as well as securing more general objectives with a view to preparing the Territory for full independence.

224. Composition. In accordance with resolution 1702 (XVI) the Committee consisted of the representatives of seven Member States nominated by the President of the General Assembly. The Member States selected by the President were: Brazil, Burma, Mexico, Norway, Philippines, Somalia and Togo. The Special Committee elected Mr. Victorio D. Carpio (Philippines) as Chairman, Mr. Salvador Martínez de Alva (Mexico) as Vice-Chairman, and Mr. Hassan Nur Elmi (Somalia), who was succeeded by Mr. Omar Artah (Somalia), as Rapporteur.

225. Terms of reference. The tasks entrusted to the Special Committee by resolution 1702 (XVI) included making a visit to South West Africa and the discharge of certain responsibilities which had been assigned to the Committee on South West Africa by the Assembly in sub-paragraphs (a), (b), and (c) of paragraph 12 of its resolution 749 (VIII) of 28 November 1953. The latter included the examination, within the scope of the questionnaire adopted by the Permanent Mandates Commission of the League of Nations, of the information available in respect of the Territory.

226. Methods of operation. Following an exchange of correspondence, the Government of South Africa agreed to allow the Chairman and Vice-Chairman, though not the Committee as a whole, to visit the Union of South Africa in order to review the

^{135/} Ibid., Seventeenth Session, Annexes, agenda item 22, document A/3069 and Add.1.

^{136/} Ibid., Sixteenth Session, Supplement No. 12, (A/4926).

matter at issue with the Government on an informal basis, and to visit South West Africa. The Committee decided that this invitation should be accepted. The Chairman and Vice-Chairman accordingly proceeded to South Africa on 5 May 1962, where discussions were held with the Prime Minister, the Minister for Foreign Affairs, and other members of the Government. The Chairman and Vice-Chairman also met privately with representatives of the Liberal Party and with a joint deputation of the South African Indian Congress, the Coloured Congress, and the Congress of Democrats. They paid a nine-day visit to South West Africa in order to acquaint themselves directly with the Territory and its peoples. In the course of their itinerary the Chairman and Vice-Chairman were denied the opportunity of addressing the mass gatherings of Africans who greeted them on their arrival at various places. They did, however, have the opportunity of meeting privately with a considerable number of individuals and with deputations who wished to present their views. After returning to South Africa, the Chairman and Vice-Chairman resumed their discussions with the South African authorities. The Chairman and Vice-Chairman submitted a report to the Special Committee on their visit; the report was included as an integral part of the report of the Special Committee to the General Assembly. The Special Committee received a large number of petitions and communications from various individuals and groups, and also conducted oral hearings of spokesmen of organizations in South West Africa.

227. Report. The Special Committee submitted its unanimous report to the General Assembly at its seventeenth session.^{137/} The General Assembly, having noted with appreciation the report, decided in resolution 1806 (XVII) that the Special Committee should be dissolved and that the tasks assigned to it should be assumed 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.

The Special Committee on the Policies of apartheid of the
Government of the Republic of South Africa

228. History. On 1 November 1962, the Special Political Committee adopted a draft resolution put forward by thirty-four African and Asian States which,

^{137/} Ibid., Seventeenth Session, Supplement No. 12, (A/5212 and document A/5212/Add.1 and 2).

in a series of proposals concerning the policies of apartheid of the South African Government, proposed that a Special Committee should be established to keep the racial policies of the South African Government under review when the General Assembly was not in session. The draft resolution was adopted by the General Assembly on 6 November 1962 (resolution 1761 (XVII)).

229. Composition. In accordance with the terms of the General Assembly resolution the President of the General Assembly announced on 18 February 1963, the appointment of the following Member States to serve on the Committee: Algeria, Costa Rica, the Federation of Malaya, Ghana, Guinea, Haiti, Hungary, Nepal, Nigeria, the Philippines and Somalia. The representatives of Guinea and Costa Rica were elected Chairman and Vice-Chairman respectively and the representative of Nepal was elected Rapporteur.

230. Terms of reference. Under resolution 1761 (XVII) the Special Committee was established with the following terms of reference:

"(a) To keep the racial policies of the Government of South Africa under review when the Assembly is not in session;

(b) To report either to the Assembly or to the Security Council or to both, as may be appropriate, from time to time."

231. Procedure. The Committee adopted its own rules of procedure. Decisions were taken unanimously.

232. Methods of operation. The Special Committee took account of the previous consideration of the question by United Nations organs and the reports submitted by the United Nations Commission on the Racial Situation in the Union of South Africa.^{138/} In view of the conclusions reached by the General Assembly and the Security Council, the Special Committee determined that its task was not to review the relevant information regarding the policies of apartheid of the Government of South Africa but to provide a basis for further efforts by Member States to secure a speedy and effective solution of the grave situation in South Africa. The Committee sent letters to the Government of the Republic of South Africa and to the Governments of Member States, inviting their co-operation and assistance in the accomplishment of its task. The Government of the Republic of South Africa

^{138/} See paragraphs 185-189 above.

categorically refused to co-operate or assist the Special Committee, claiming that the adoption of resolution 1761 (XVII), including the establishment of the Special Committee, was contrary to the provisions of the Charter. The Special Committee then proceeded with an examination of recent developments concerning the racial policies of the South African Government, with particular reference to the adoption of further discriminatory and repressive measures and the build-up of military and police forces in South Africa. The Committee's findings were based on official documentary sources, press reports, memoranda received from organizations and individuals and on hearings granted to persons and representatives of organizations.

233. Report. The Special Committee submitted two interim reports to the General Assembly and the Security Council.^{139/} The Security Council noted with appreciation the two reports in a resolution adopted on 7 August 1963, and on 4 December 1963 adopted a resolution in which further measures were proposed. The Committee's major report, dated 16 September 1963, was also noted by the General Assembly in resolutions 1881 (XVIII) and 1978 (XVIII), adopted during the Assembly's eighteenth session. In resolution 1978 (XVIII) the General Assembly requested the Special Committee "to continue to follow constantly the various aspects of this question and to submit reports to the General Assembly and to the Security Council whenever necessary".

The United Nations Fact-Finding Mission to South Viet-Nam

234. History. At its 1232nd plenary meeting held on 7 October 1963, the General Assembly considered item 77 of the agenda of its eighteenth session, "The violation of human rights in South Viet-Nam". The President of the General Assembly read two letters from the head of the Special Mission of the Republic of Viet-Nam, one of which contained an invitation for the representatives of several Member States to visit Viet-Nam so that they might examine for themselves the relations between the Government of Viet-Nam and the Buddhist community there. Following the withdrawal of a draft resolution, the President of the Assembly stated at the 1234th plenary meeting that, in the absence of any objection, he presumed that it was the wish of the Assembly that he should act in accordance with the letter.

^{139/} A/5497 and Add.1 - S/5426 and Add.1, annexes III and IV.

135. Composition. At the 1239th plenary meeting of the General Assembly, the President stated as follows:

"In virtue of the authority vested in me by the Assembly at the 1234th plenary meeting to act in accordance with the letter dated 4 October 1965 from the head of the Special Mission of the Republic of Viet-Nam transmitting his Government's invitation to the representatives of several Member States to visit Viet-Nam in the very near future, I have appointed a mission composed of the representatives of the following Member States: Afghanistan, Brazil, Ceylon, Costa Rica, Lanomey, Morocco and Nepal."

Ambassador Pashwak of Afghanistan was appointed Chairman of the Mission. The Secretary-General designated members of the Secretariat to assist the Mission.

136. Terms of reference. In rule 11 of its rules of procedure, the Mission gave the following formulation to its terms of reference:

"The Mission is an ad hoc fact-finding body and has been established to ascertain the facts of the situation as regards the alleged violations of human rights by the Government of the Republic of Viet-Nam in its relations with the Buddhist community of that country."

137. Procedure. The Mission adopted its own rules of procedure. Provision was made for decisions to be taken by a majority of the members present and voting. In practice all decisions were taken unanimously.

138. Methods of operation. The Mission's activities fell under four headings: the collection of information; on-the-spot investigations; petitions; and the hearing of witnesses. The relevant rules of procedure provided as follows:

"Collection of information"

1. The Mission in collecting information shall keep itself informed on:

- (a) the provisions of the law and regulations in force in the Republic of Viet-Nam;
- (b) writings and articles in the press;
- (c) activities of organizations interested in the observance of human rights.

On-the-spot investigations

15. The Mission shall carry out on-the-spot verifications and investigations.
16. The itinerary for the visits shall be drawn up on the basis of a detailed study of the regions and the incidents in respect of which complaints are presented to the Mission.

Petitions

17. The Mission shall receive petitions from individuals, groups or associations.
18. The Mission shall proceed in private session to examine petitions and subject their acceptance to a preliminary examination. The petitions should indicate the date, the place and the facts to which the precise allegations relate.

Hearing of witnesses

19. The Mission shall decide on the witnesses from whom it shall hear evidence. Such witnesses may include persons under restriction and the Mission shall make arrangements to hear such persons under conditions as it may deem necessary.
20. Each witness before testifying shall take an oath."

The rules cited above were adhered to as closely as possible during the Mission's visit to Viet-Nam. Discussions were held with leading members of the Vietnamese Government and with Buddhist monks and other members of the Buddhist community, before the coup d'état on 1 November. The Mission left Viet-Nam on 3 November, having completed its investigation.

239. Report. The report of the Mission was submitted to the General Assembly at its eighteenth session.^{140/}

^{140/} Official Records of the General Assembly, Eighteenth Session, Annexes,
agenda item 77, document A/5630.

B. The Security Council

1. Charter provisions

240. Article 29. The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

241. Article 33.1 The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary call upon the parties to settle their dispute by such means.

242. Article 34. The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

2. Ad hoc bodies

The Security Council Sub-Committee on the Spanish question

243. History. In April 1946 Poland drew the attention of the Security Council to the situation in Spain.^{141/} On 29 April 1946, the Security Council adopted a proposal put forward by Australia, establishing a Sub-Committee to conduct further studies regarding the question.

244. Composition. The Sub-Committee was composed of five members of the Security Council. On the proposal of the President of the Council, the representatives of Australia, Brazil, China, France and Poland were chosen. The representative of Australia was made Chairman of the Sub-Committee.

245. Terms of reference. The Security Council resolution of 29 April 1946, provided as follows:

^{141/} Official Records of the Security Council, First Year, First Series, Supplement No. 2, annexes 3 a and 3 b.

"... the Security Council ...

Hereby resolves: to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take.

To this end, the Security Council appoints a Sub-Committee of five of its members and instructs this Sub-Committee to examine the statements made before the Security Council concerning Spain, to receive further statements and documents, and to conduct such inquiries as it may deem necessary, and to report to the Security Council before the end of May."

246. Procedure. The Sub-Committee adopted its own rules of procedure.

247. Methods of operation. The Sub-Committee met at United Nations Headquarters. Its examination of the facts was based mainly on documents received from Member States in response to a request to them to supply all relevant information; a questionnaire was also sent to Member States regarding specific issues. A public announcement was made that the Committee would welcome information from any source and an extensive submission was made in response to this invitation by the Spanish Republican Government. The facts ascertained by the Sub-Committee, covering an extremely wide field, were set out in the Sub-Committee's report.

248. Report. In its unanimous report of 1 June 1946, the Sub-Committee set out its findings and recommendations.^{142/} After the Security Council had failed to take action, the General Assembly adopted resolution 39 (I) on 12 December 1946, reiterating the main findings of the Sub-Committee and recommending that, unless certain conditions for political freedom in Spain were fulfilled, Member States should recall their diplomatic envoys accredited to Madrid.

The United Nations Commission of Investigation concerning
Greek Frontier Incidents^{143/}

249. History. The Commission of Investigation concerning Greek Frontier Incidents was established by resolution of the Security Council, adopted unanimously at its

^{142/} Official Records of the Security Council, First Year, First Series, Special Supplement (revised edition).

^{143/} The following account is taken from: United Nations, Organization and Procedure of United Nations Commission, I, United Nations Commission of Investigation concerning Greek Frontier Incidents (United Nations publication, Sales No. 1949.X.3).

87th meeting held on 19 December 1946. The establishment of the Commission of Investigation was the outcome of discussions in the Security Council following the submission of a complaint by Greece that Albania, Bulgaria and Yugoslavia were lending their support to guerillas in northern Greece. The Greek Government stressed the necessity of an investigation on-the-spot, alleging that if the situation were not promptly remedied it would endanger the maintenance of international peace and security.

250. Composition. Under the terms of the Security Council resolution the Commission was "composed of a representative of each of the members of the Security Council as it will be constituted in 1947". The Commission consisted accordingly of the representatives of Australia, Belgium, Brazil, China, Colombia, France, Poland, Syria, United Kingdom, Union of Soviet Socialist Republics and United States of America. The office of Chairman was held in weekly rotation.

251. Terms of reference.^{144/} The Commission was established under Article 34 of the Charter:

"to ascertain the facts relating to the alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other".

The President stressed that the Security Council was not prejudging the issues before it but was sending out a Commission to investigate the facts and to make a report.

252. The Commission was instructed to proceed to the area not later than 15 January 1947, and to submit a report to the Security Council on its findings by the earliest possible date. The Commission was authorized:

^{144/} During the period when the Commission was preparing its report, the Security Council adopted, at its 131st meeting held on 18 April 1947, a resolution establishing a subsidiary group of the Commission composed of a representative of each of the members of the Commission. The group was authorized to investigate only "such incidents as may be brought to its attention which have occurred since 22 March 1947". The group was instructed not to "hear evidence which was or could have been available to the Main Commission". The group submitted to the main Commission seven interim reports in connexion with alleged border incidents.

"to conduct its investigation in northern Greece and in such parts of Greece, in Albania, Bulgaria and Yugoslavia as the Commission considers should be included in its investigation in order to elucidate the causes and nature of the ... border violations and disturbances."

It was empowered:

"to call upon the Governments, officials and nationals of those countries, as well as such other sources as the Commission deems necessary" in relation to its investigation work.

253. The Governments concerned were requested to provide the Commission with the necessary facilities and to appoint a representative "to assist in the work of the Commission in a liaison capacity".

254. In addition to its powers of investigation, the Commission was also "invited to make any proposals that it may deem wise for averting a repetition of border violations and disturbances" in the areas where investigations were to be conducted.

255. Procedure. There were no written rules of procedure. Precedents and practices were established by general agreement and certain procedures based upon the rules of procedure of the Security Council were established by usage. Decisions were arrived at without voting whenever possible.

256. Methods of operation. The initial and general phase of the work of investigation took place at Athens and was largely confined to the hearing of the liaison representatives of Greek, Albanian, Bulgaria and Yugoslav Governments. Both oral and written statements were given. At a later stage representatives of non-governmental organizations and individuals were heard. The Commission determined the selection of witnesses who presented themselves, precedence being given, however, to those presented by the respective liaison representatives. Field and investigation trips were undertaken either by the Commission as a whole or, more commonly, by investigating teams of the Commission. Besides visiting given border localities in Greece, Albania and Yugoslavia, visits were also made to a number of Greek prisons. Meetings were held in Athens, Salonika, Sofia and Belgrade.

257. Report. The contents of the final report of the Commission were as follows: Introductory note, signed by the members of the Commission; Part I - Narrative account of the work of the Commission (approved unanimously); Part II - Survey of evidence (approved unanimously with the reservations of the delegations of the

United Kingdom and the Union of Soviet Socialist Republics); Part III - Conclusions subscribed by the majority of members, by minority groups, and reservations on each text of conclusions; Part IV - Proposals made in pursuance of the final paragraph of the Security Council resolution, designed to avert a repetition of border violations and disturbances, and reservations of delegations on these proposals.

258. Comprehensive lists of members of the Commission, teams, witnesses, bibliography, comments and oral statements of the liaison representatives of Albania, Bulgaria, Greece and Yugoslavia on parts I and II of the report, were contained in annexes.

259. The Commission presented its report to the Security Council at its 147th meeting on 27 June 1947. The Commission remained in existence until 15 September 1947, when the Security Council adopted a resolution to remove the Greek question from its agenda. The Commission of Investigation thereupon ceased to exist.

The Security Council Sub-Committee on Incidents in the Corfu Channel

260. History. In January 1947, the United Kingdom, acting under Article 35 of the Charter, brought to the attention of the Security Council its dispute with Albania regarding an incident in which two British ships had been damaged by mines in the Corfu Channel on 22 October 1946.^{145/} The Albanian Government denied responsibility for the incident and contended that British warships had subsequently violated Albanian sovereignty by sweeping its territorial waters for other mines.^{146/} The Security Council adopted its resolution on 27 February 1947, establishing a Sub-Committee to investigate the facts of the case.

261. Composition. The Sub-Committee was composed of three members, Australia, Poland and Colombia. The representative of Colombia was elected Chairman.

262. Terms of reference. Under the terms of the Security Council resolution the Sub-Committee was requested,

^{145/} Official Records of the Security Council, Second Year, Supplement No. 3, annex 8.

^{146/} Ibid., annex 9.

"to examine all the available evidence concerning the above-mentioned incidents, and to make a report to the Security Council not later than 10 March 1947, on the facts of the case as disclosed by such evidence.

"The Sub-Committee is empowered to request further information as it deems necessary from the parties to the dispute, and the representatives of the United Kingdom and Albania are requested to give every assistance to the Sub-Committee in its work."

The Sub-Committee declared that it proceeded,

"... on the principle that it was neither a commission of investigation nor a fact-finding sub-committee in the strict sense of the word. The main duty in this case was to examine the statements and evidence already submitted to the Security Council and to ascertain whether additional evidence existed."^{147/}

263. Procedure. The Sub-Committee adopted its own rules of procedure.

264. Methods of operation. The Sub-Committee held ten meetings. Certain of the meetings were devoted to interrogations of the representatives of Albania and the United Kingdom. The representative of Greece was also questioned. The remaining meetings were taken up with the study of the allegations and evidence submitted by the two parties.

265. Report. The Sub-Committee concluded in its report^{148/} that the first question for the Security Council to determine was whether or not, having regard to the nature and extent of the available evidence, the Council felt itself able to pronounce on the questions of whether the minefield existed and whether it had been laid by Albania or with its connivance. The Security Council adopted a resolution, put forward by the United Kingdom representative, on 3 April 1947, recommending that the two Governments should refer the dispute to the International Court of Justice.^{149/}

^{147/} Ibid., Supplement No. 10, document S/300.

^{148/} Ibid.

^{149/} The International Court of Justice gave judgement in the case in 1949, after sending a commission of inquiry to the spot to gather information.
I.C.J. Reports 1949, p. 4.

The Security Council Consular Commission at Batavia^{150/}

266. History. Following the Council's resolution of 1 August 1947, calling on Indonesia and the Netherlands "to cease hostilities forthwith" and "to settle their disputes by arbitration or by other peaceful means", the Security Council adopted a resolution at its 194th meeting, held on 25 August 1947, requesting the members of the Council which had career consular representatives in Batavia to instruct their consuls to prepare jointly, for the information and guidance of the Security Council, reports on the situation in the Republic of Indonesia. The reports of the Consular Commission were to cover the observance of the cease-fire and the conditions prevailing in areas which had come under military occupation or from which armed force might be withdrawn by agreement between the parties.

267. Composition. The Commission consisted of the career consular representatives in Batavia of Australia, Belgium, China, France, United Kingdom and United States of America. The office of Chairman was held in weekly rotation. The Commission obtained a number of military observers from the Governments of its members to assist it in its work of observing the cease-fire orders.

268. Terms of reference. The Commission was required:

"to prepare jointly for the information and guidance of the Security Council reports on the situation in the Republic of Indonesia following the resolution of the Council of 1 August 1947, such reports to cover the observance of the 'cease-fire' orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn by agreement between the parties."

Difficulty arose, however, from the fact that the Security Council gave instructions to the Committee of Good Offices^{151/} which to some extent overlapped with the directives which it had given to the Consular Commission. The Security Council therefore modified its previous directives in a comprehensive resolution adopted at its 406th meeting held on 28 January 1949. The new directive requested the Consular Commission:

"to facilitate the work of the United Nations Commission for Indonesia (previously called the Committee of Good Offices on the Indonesian Question) by providing military observers and other staff and facilities to enable the Commission to carry out its duties."

^{150/} The following account is taken from: United Nations, Organization and Procedure of United Nations Commissions, IV The Security Council Consular Commission at Batavia (United Nations publication, Sales No. 1949.X.6).

^{151/} See paragraphs 271-278 below.

The Consular Commission thereupon became an agency of the Council to provide military observers and other facilities to the United Nations Commission for Indonesia.

269. Methods of operations. Between 3 September 1947, and 27 September 1947, members of the Consular Commission made several visits to various areas in both Netherlands-controlled and Republican-controlled territories in Java and Sumatra. The military observers attached to the Commission also made tours of inspection in the principal areas of Java and Sumatra. Members of the Commission and its staff conferred with local officials and leaders and questioned individual members of the public.

270. Report. The Commission submitted several reports to the Security Council in pursuance of the instructions contained in the pertinent resolutions, the last report being dated 6 January 1949.

The Security Council Committee of Good Offices on
the Indonesian Question 152/

271. History. Hostilities in Java and Sumatra between the armed forces of the Netherlands and the Republic of Indonesia were halted following the adoption by the Security Council of a resolution on 1 August 1947, calling for a cease-fire. The Council continued its discussion of the question and adopted the following resolution at its 194th meeting held on 25 August 1947:

"The Security Council resolves to tender its good offices to the parties in order to assist in the pacific settlement of their dispute in accordance with paragraph (B) of the Resolution of the Council of 1 August 1947. The Council expresses its readiness, if the parties so request, to assist in the settlement through a committee of the Council consisting of three Members of the Council, each party selecting one, and the third to be designated by the two so selected."

The Committee of Good Offices was established after both parties had accepted the Council's offer.

152/ The following account is taken from: United Nations, Organization and Procedure of United Nations Commissions, V The Security Council Committee of Good Offices on the Indonesian Question (United Nations publication, Sales No. 1949.X.7).

272. Composition. The Netherlands selected Belgium and Indonesia selected Australia; Australia and Belgium agreed that the United States should form the third member of the Committee. The Chairmanship was held by weekly rotation.

273. Terms of reference. In a resolution adopted at its 219th meeting on 1 November 1947, the Security Council requested the Committee:

"to assist the parties in reaching agreement on an arrangement which will ensure the observance of the cease-fire resolution."

In two subsequent resolutions adopted on 28 February 1948, the Committee was asked to report to the Security Council regarding various political developments. In a resolution adopted at its 329th meeting on 6 July 1948, the Security Council asked for a report "on the existence of restrictions on the domestic and international trade of Indonesia and the reasons for the delay in the implementation of Article 6 of the Truce Agreement". The Committee was also instructed in a resolution adopted on 24 December 1948, to report urgently regarding a subsequent outbreak of fighting. Lastly, by a resolution adopted by the Security Council at its 406th meeting on 28 January 1948, the Committee was re-named the United Nations Commission for Indonesia, with the task of assisting in the transfer of sovereignty from the Netherlands to Indonesia.

274. Procedure. Draft rules of procedure were drawn up, in consultation with the parties, and adopted by the Committee. Decisions of the Committee were taken unanimously, great efforts being made to reach unanimous agreement on all important matters. Different voting rules were applied in the case of meetings of the Committee with both parties.

275. Methods of operation. In addition to negotiations of a political nature, the Committee carried out investigations of allegations of violations of the Security Council's cease-fire resolution and conducted an area survey. The investigations were carried out either by military assistants or by military observers.^{153/}

276. In dealing with the Security Council's request for special reports on political developments in certain areas and on trade restrictions, the Committee addressed a series of questions to the parties and set up a drafting Sub-Committee to meet with their representatives in an effort to reconcile any factual discrepancies in their answers.

^{153/} The military assistants or observers were made available by the Security Council Consular Commission at Batavia. See paragraphs 266-270 above.

277. The Committee's reports were based mainly on the information thus obtained, with the addition of some information gathered by the Committee independently.

The comments of the parties were invited and considered in preparing the final text, and, when they did not agree, both points of view were usually included.

278. Reports. The various reports of the Committee were submitted to the Security Council for its consideration.

The United Nations Commission for India and Pakistan^{154/}

279. History. The Security Council considered the India-Pakistan dispute over the situation in Jammu and Kashmir at a number of meetings held during 1948 and adopted four resolutions, three of which dealt with the establishment of a Commission of investigation and mediation and defined its terms of reference.^{155/}

280. Composition. The resolution of 20 January 1948, established a Commission of three members, one to be selected by India and one by Pakistan. By a subsequent resolution of 21 April 1948, the membership was enlarged to five. India and Pakistan selected Czechoslovakia and Argentina respectively. The Security Council nominated Belgium and Colombia. In accordance with the terms of the resolution of 21 April 1948, the President of the Security Council then designated the United States as the fifth member. The Chairmanship was held by rotation.

281. Terms of reference. The Commission was authorized to investigate the facts, pursuant to Article 34 of the Charter, and to exercise its good offices with a view to the restoration of peace and order and the holding of a plebiscite in order to decide whether the State of Jammu and Kashmir should accede to India or to Pakistan.

282. Procedure. The Commission adopted rules of procedure based on the procedure of the Security Council and the experience gained with other United Nations Commissions. The Security Council's resolution of 20 January 1948 instructed the Commission to take its decisions by majority vote; in practice all its decisions were taken unanimously.

^{154/} The following account is taken from: United Nations, Organization and Procedure of United Nations Commission, XI The United Nations Commission for India and Pakistan (United Nations publication, Sales No. 1950.X.1).

^{155/} Resolutions of 17 January, 20 January, 21 April and 3 June 1948.

283. Methods of operation. While the Commission directed most of its attention towards obtaining a cease-fire in Kashmir, it also endeavoured to ascertain the attitudes of the two States, as well as the views of the Government of the State of Kashmir and of the Azad leaders, concerning a plebiscite. With regard to the methods of inquiry, the Commission, at its discretion, invited or admitted representatives of Governments, organizations or private individuals to submit oral or written statements. In the course of consultations with the two Governments the Commission held formal hearings, informal meetings and personal conversations with civilian and military representatives. It submitted questionnaires to the representatives and military High Commands of the two States.

284. The Commission established a military mission which inspected parts of eastern and western Kashmir and reported to the Commission regarding the feasibility of a cease-fire. The Commission also sent a Sub-Committee to study and report on the political and economic conditions in the State of Jammu and Kashmir. The Sub-Committee submitted a questionnaire to the Government of the State; interviewed a number of ministers; conferred with non-official bodies, such as trade unions; inspected factories, co-operatives, food offices, devastated areas and a jail; and received letters. The Sub-Committee also reported to the Commission regarding administration in the Azad-controlled territory and the refugee situation in western Kashmir.

285. Reports. The Commission submitted a number of reports, setting out its findings and recommendations, to the Security Council. In the third report.^{156/} presented to the Security Council at its 457th meeting on 17 December 1949, the Commission reported that its function of investigating the facts had been completed and that further United Nations action should prove more effective on the foundation provided by the investigation. With a view to further mediatory activity, the Commission proposed that the Security Council should designate a single representative to replace the Commission. The Commission was accordingly terminated by the decision of the Security Council taken at its 470th meeting on 14 March 1950.

^{156/} Official Records of the Security Council, Fourth Year, Special Supplement No. 7 (S/1430).

The United Nations Military Observer Group in India and Pakistan

286. In a resolution adopted by the Security Council on 21 April 1948, the Council authorized the United Nations Commission for India and Pakistan to establish in Jammu and Kashmir "such observers as it may require of any of the proceedings in pursuance of the measures indicated" in the resolution. At its fortieth meeting on 13 August 1946, the United Nations Commission for India and Pakistan adopted a resolution relating to a cease-fire in Jammu and Kashmir. Part I, paragraph D of the resolution provided as follows:

"In its discretion and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order."^{157/}

287. Observer teams composed of officers from Belgium, Canada, Mexico, Norway and the United States, headed by the Commission's Military Adviser, succeeded in demarcating the cease-fire Line between the contending parties in close co-operation with the military authorities of India and Pakistan. After the termination of the United Nations Commission for India and Pakistan,^{158/} the Military Observer Group was maintained. Under the command of the Chief Observer, it has continued to supervise the observance of the cease-fire order and to investigate any violations which have occurred.

The United Nations Truce Supervision Organization

288. History. In resolution 186 (S-2), adopted on 14 May 1948, the General Assembly provided for a United Nations Mediator in Palestine^{159/} who would function "under such instructions as the General Assembly or Security Council may issue". Amongst the functions assigned to the Mediator and Acting Mediator by the Security Council Council^{160/} was that of the supervision of the two truces between the Arab States and Israel. The Security Council resolution of 29 May 1948, provided that the

^{157/} Ibid., Fourth Year, Special Supplement No. 7 (S/1430/Rev.1) p. 22.

^{158/} Security Council resolution, of 14 March 1950

^{159/} For an account, see United Nations, Organization and Procedure of United Nations Commissions. X. The United Nations Mediator (and Acting Mediator) for Palestine, United Nations publication, Sales No. 1950.X.3.

^{160/} Resolutions of 29 May and 15 July 1948.

Mediator, "shall be provided with a sufficient number of military observers" and that of 15 July 1948, requested the Secretary-General to provide the Mediator with the "necessary staff and facilities". During the first truce the Mediator obtained the services of a number of officers from the Member States of the Truce Commission Commission^{161/} (Belgium, France, United States) and from Sweden; in addition 51 guards, recruited from the Secretariat, were obtained from the Secretary-General. More elaborate preparations were made for the supervision of the second truce, as it was of indefinite duration, and 300 officers were furnished by the Member States of the Truce Commission, together with 300 enlisted men.

289. After the conclusion of the Armistice Agreements between Israel and Egypt, Jordan, Lebanon and Syria respectively, the Acting Mediator stated that he considered that the responsibilities vested in him had been discharged. Supervision of the execution of the provisions of each armistice agreement was made dependent, however, upon a Mixed Armistice Commission composed of five members (seven in the case of the Israeli-Egyptian Agreement) of whom the Israeli Government and the other Party concerned designated two each (three in the case of the Israeli-Egyptian Agreement). The United Nations Chief of Staff of the Truce Supervision Organization (or a Senior Officer from the observer personnel of that body designated by him, following consultations with both Parties to the Agreement) was made Chairman of each Mixed Armistice Commission. In a resolution adopted on 11 August 1949, the Security Council noted "with satisfaction" the conclusion of the armistice agreements and the functions given to the Chief of Staff with respect of the Mixed Armistice Commissions. In addition, the Security Council resolution provided as follows:

"The Security Council

.....

Requests the Secretary-General to arrange for the continued service of such of the personnel of the present Truce Supervision Organization as may be required in observing and maintaining the cease-fire, and as may be necessary in assisting the parties to the armistice agreements in the supervision of the application and observance of the terms of those agreements, with particular regard to the desires of the parties as expressed in the relevant articles of the agreements."

^{161/} For an account see: United Nations, Organization and Procedure of United Nations Commissions - IX. The Security Council Truce Commission for Palestine, United Nations publication, Sales No. 1949.X.2).

290. Composition. The Truce Supervision Organization consists of United Nations observers under the command of the United Nations Chief of Staff.

291. Terms of reference. The paragraph of the Security Council resolution quoted above entrusted the Secretary-General with a number of functions in relation to the observation and maintenance of the cease-fire and of the terms of the armistice agreements. In addition, besides his functions as Chairman of the Mixed Armistice Commissions, the United Nations Chief of Staff was requested:

"to report to the Security Council on the observance of the cease-fire in Palestine in accordance with the terms of this resolution; and to keep the Palestine Conciliation Commission informed of matters affecting the Commission's work under the General Assembly resolution of 11 December 1948."

292. Methods of operation. Each Mixed Armistice Commission examines claims or complaints presented by either Party relating to the application of the relevant armistice agreement and takes action on such claims and complaints by means of its observation and investigation machinery, of which the Truce Supervision Organization forms a major, if not the major, part. The observers employed by a Mixed Armistice Commission may be from among the military organizations of the parties or from the personnel of the Truce Supervision Organization, or from both. However, when a decision relating to the action to be taken on a given claim or complaint is reached by a majority vote, only United Nations observers may be employed in investigations. This excludes the possibility of observers other than United Nations observers participating without the consent of a party in an investigation conducted in territory under its control.

293. The Chief of Staff, in his capacity as Chairman of the Mixed Armistice Commissions, is also responsible for the implementation of the provisions of the armistice agreements relating to certain demilitarized areas and neutral zones. In addition, the Chief of Staff may carry out independent investigations regarding specific incidents.

294. Reports. The United Nations Chief of Staff has submitted reports to the Security Council regarding the operation of the Mixed Armistice Commissions and of the investigation of incidents which have been the subject of discussion by the Security Council.

The United Nations Observation Group in Lebanon

295. History. On 22 May 1958, Lebanon requested an urgent meeting of the Security Council to consider a "complaint by Lebanon in respect of a situation arising from the intervention of the United Arab Republic in the internal affairs of Lebanon, the continuance of which is likely to endanger the maintenance of international peace and security". After postponement to permit the Arab League to consider the matter, the Security Council began discussion of the question on 6 June. On 11 June 1958, the Security Council adopted a resolution by which it decided to dispatch urgently an observation group to Lebanon.

296. Composition. General Odd Bull (Norway), Mr. Rajeshwar Dayal (India) and Mr. Galo Plaza (Ecuador) were appointed as the three members of the Observation Group.^{162/} Mr. Plaza was designated Chairman and General Bull was designated as "executive member of the Observation Group, in charge of military observers". Military officers in the capacity of observers were appointed to assist the Group. By 17 November 1958, the date of the Observation Group's last report, its military observer staff had increased to 591, from twenty-one countries.

297. Terms of reference. The Security Council in its resolution of 11 June 1958 decided that the Group should:

"proceed to Lebanon so as to ensure that there is no illegal infiltration of personnel or supply of arms or other material across the Lebanese border."

The Group was instructed to keep the Security Council currently informed through the Secretary-General.

298. Procedure. The Observation Group had power to determine its own procedures.^{163/}

299. Methods of operation. Headquarters for the Group were set up in Beirut. Active reconnaissance by observer teams began on 13 June and a regular patrolling system, by means of jeeps, was quickly established. Means of aerial reconnaissance were also used, chiefly within areas under the control of the Lebanese Government. Permanent observation posts were set up at crucial points and a radio network was

^{162/} Official Records of the Security Council, Thirteenth Year, Supplement for April, May and June 1958, document S/4029.

^{163/} Ibid., para. 2.

installed. An evaluation team was set up at headquarters with the task of analysing and evaluating the information received from observers and other sources. Investigations were also made on a basis of reports received from the Lebanese Government regarding suspected infiltration.

300. Report. After the Secretary-General had submitted two reports on the initial implementation of the resolution adopted by the Security Council on 11 June 1958,^{164/} the Observation Group submitted a series of reports^{165/} setting out the problems of maintaining observation, methods adopted, its comments and the conclusions reached by the Group. The reports were submitted to the Security Council by the Secretary-General. After the Security Council had failed to reach agreement, the matter was considered by the General Assembly at its third emergency special session. In a letter dated 17 November 1958, to the President of the Security Council, the Minister of Foreign Affairs of Lebanon stated that cordial and close relations with the United Arab Republic had been resumed. He requested accordingly that the Lebanese complaint of 22 May 1958 should be deleted from the list of matters before the Council. Following this communication, and the recommendation of the Observation Group in its Fifth Report that its task under the resolution of 11 June might be regarded as completed, the Group was withdrawn.

The Security Council Sub-Committee on Laos

301. History. On 5 September 1959, the Secretary-General asked the President of the Security Council to convene the Council urgently in order to consider a communication from the Foreign Minister of Laos requesting that an emergency force should be dispatched to Laos at a very early date in order to halt acts of aggression which were being committed along the north-eastern frontier of Laos by elements from the Democratic Republic of Viet-Nam.^{166/} The Security Council considered the item at its 847th and 848th meetings held on 7 September 1959. In a resolution adopted at its 848th meeting the Security Council appointed a Sub-Committee to examine the question further.

^{164/} Ibid., and document S/4038.

^{165/} Official Records of the Security Council, Thirteenth Year, Supplement for July, August and September 1958, documents S/4040 and Add.1, S/4051, S/4052, S/4069, S/4085 and S/4100; ibid., Supplement for October, November and December 1958, document S/4114.

^{166/} Ibid., documents S/4212 and S/4213.

302. Composition. Under the terms of the Security Council resolution the Sub-Committee consisted of representatives of Argentina, Italy, Japan and Tunisia. The representative of Japan was elected Chairman.

303. Terms of reference. The Security Council instructed the Sub-Committee:

"to examine the statements made before the Security Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it may determine necessary and to report to the Security Council as soon as possible."

As interpreted by the Sub-Committee, its mandate was confined to the conduct of a fact-finding inquiry and did not extend to an investigation or to an examination of the substance of the issues involved.

304. Procedure. The Sub-Committee determined its own rules of procedure.

305. Methods of operation. After holding initial meetings in New York and examining the statements made before the Security Council and the documents available at United Nations Headquarters, at the invitation of the Laotian Government the Sub-Committee visited Laos between 15 September and 13 October 1959. The Sub-Committee met members of the Government and held consultations with the Liaison Committee, established by the Government, from which it received various documents and a number of clarifications. Two working parties of the Sub-Committee visited different areas of Laos. After receiving the "essential basic information for its fact-finding mission" the Sub-Committee returned to New York to draft its report, leaving two alternate representatives in Laos, with appropriate secretariat, to collect any additional information which might be required.

306. Report. The Sub-Committee submitted a unanimous report, giving an account of its operations and findings, to the Security Council on 3 November 1959.^{167/}

The United Nations Observation Mission in Yemen

307. History. Following the outbreak of fighting in Yemen, the Secretary-General reported to the Security Council on 29 April 1963 that he had received from the

^{167/} Ibid., document S/4236. Following the Secretary-General's visit to Laos in November 1959, a special consultant to the Secretary-General was appointed in February 1960 to co-ordinate United Nations activities in Laos.

Governments of the Arab Republic of Yemen, Saudi Arabia and the United Arab Republic, "formal confirmation of their acceptance of identical terms of disengagement in Yemen".^{168/} The terms of disengagement included the termination by the Government of Saudi Arabia of support to the Royalist forces in Yemen; the withdrawal from Yemen of the troops sent by the United Arab Republic at the request of the Republican Government of Yemen; and the establishment of a demilitarized zone at a distance of twenty kilometres on each side of the Saudi Arabian-Yemen border. It was suggested that impartial observers should be stationed in this zone to check the observance of the terms of disengagement and to observe the outward movement of the forces of the United Arab Republic. The Secretary-General stated that he had therefore requested Major General von Horn, Chief of Staff of the United Nations Truce Supervision Organization, to proceed to the three countries concerned in order to hold consultations regarding the nature and functioning of United Nations observers. In a further report submitted on 27 May 1963,^{169/} the Secretary-General concluded, on a basis of information provided by General van Horn, that a total of 200 personnel would be required for a maximum period of four months and that they should be dispatched to the area as soon as possible. The Security Council was convened to consider the reports of the Secretary-General. At its 1039th meeting on 11 June 1963 the Security Council adopted a resolution in which it noted with satisfaction the initiative of the Secretary-General and the acceptance by the parties concerned of disengagement. The Secretary-General was requested to establish the observation operation and to report to the Security Council regarding its implementation.

308. Composition. The Observation Mission consisted initially of approximately 200 personnel. This figure included "a small number of Officer-Observers; a ground patrol unit numbering about 100 men, in suitable vehicles, carrying arms for self-defence only; crews and ground crews for about eight small aircraft, fixed wing and rotary, for reconnaissance and transport; and personnel for such essential supporting services as communications, logistics, medical aid, transportation and administration".^{170/} The majority of these personnel were

^{168/} S/5298.

^{169/} S/5321.

^{170/} Ibid., para. 4 (c).

recruited from other United Nations bodies, such as the United Nations Truce Supervision Organization. In November 1963, the military components of the Mission were withdrawn and the main task of observation was taken over by the staff of twenty-five military observers. General von Horn acted as Commander of the Mission until his resignation on 20 August 1963. On 4 November 1963, the Secretary-General appointed Mr. Pier P. Spinelli to undertake an assignment as Special Representative of the Secretary-General for Yemen and Head of the Yemen Observation Mission. Colonel Pavlovic, who had previously held the post of Deputy Commander and who had twice been acting Commander, became Chief of Staff. He was succeeded by Colonel S.C. Sabharwal in January 1963.

309. Terms of reference. In the Secretary-General's initial report it was stated that observers would be stationed in the demilitarized zone "to check on the observance of the terms of disengagement" and that they would "have the responsibility of travelling beyond the demilitarized zone, as necessary, in order to certify the suspension of activities in support of the Royalists from Saudi Arabian territory and the outward movement of U.A.R. forces from the airports and seaports of Yemen."

310. Methods of operation. An advance party, led by General von Horn, arrived in Yemen on 13 June 1963, and established the headquarters of the Mission in Sana. Ground and air patrolling was undertaken along the demilitarized zone. After the withdrawal of the military components of the Mission, the majority of Observers have been stationed at the main border crossings from Saudi Arabia into Yemen to check on the nature of frontier crossings, making patrols at irregular intervals to the less frequented crossings. A smaller number have been stationed at Sada, Sana's and Hodeida to observe the extent to which the United Arab Republic forces have been withdrawn from Yemen. An air detachment with two aircraft provides logistic support as well as air observation.

311. Expenses of the Mission. In his report of 27 May 1963, the Secretary-General reported that he hoped that "the two parties principally involved, namely Saudi Arabia and the United Arab Republic, would undertake to bear the costs of the Mission and discussions toward this end are under way". The Secretary-General subsequently informed the Security Council that Saudi Arabia had agreed to accept

"a proportionate share" of the costs of the operation, while the United Arab Republic has agreed in principle to provide assistance in an amount equivalent to \$200,000 for a period of two months, approximately half the cost for that period.^{171/} These undertakings were noted with satisfaction by the Security Council in its resolution of 11 June 1963. After the expiry of the two-month period on 4 September the Secretary-General obtained oral assurances from the representatives of the two Governments that they would defray the expenses of the Observation Mission for a further period of two months.^{172/} The two Governments subsequently undertook to share the expenses for additional periods beyond 4 November.^{173/}

312. Reports. In accordance with the terms of the resolution of the Security Council of 11 June 1963, the Secretary-General had submitted reports to the Council regarding the functioning of the Mission and the implementation of the terms of disengagement.

^{171/} See S/5325.

^{172/} See S/5412.

^{173/} See S/5447 and Add.1, S/5501 and Add.1, S/5572.

C. The Secretary-General

The Secretary-General's Special Representative to
Cambodia and Thailand

313. In a letter dated 19 October 1962, the Secretary-General informed the members of the Security Council that the Governments of Cambodia and Thailand had requested him to appoint a Personal Representative to inquire into the difficulties which had arisen between them. The Secretary-General had therefore appointed Mr. Nils Gussing (Sweden) as his Personal Representative. In a further letter dated 18 December 1962,^{174/} the Secretary-General stated that Mr. Gussing had held discussions with the Prime Ministers, the Ministers of Foreign Affairs and other high officials of both countries. Mr. Gussing had also conducted a number of investigations in the border areas on both sides of the international frontier. The Secretary-General continued:

"Lately I have held further discussions with the Permanent Representatives of Cambodia and Thailand, as a result of which agreement was reached on the desirability of appointing a Special Representative of the Secretary-General in the area for a period of one year, beginning 1 January 1963. His terms of reference would, in general, require him to place himself at the disposal of the parties to assist them in solving all problems that have arisen or may arise between them."

314. The two Governments agreed to share on an equal basis all costs involved in the mission of the Special Representative and of his small staff. The Secretary-General informed the Security Council on 9 December 1963,^{175/} that the objectives of the mission had not yet been fully realized. Both Governments had agreed that the Special Representative should continue his activities during 1964.

The Secretary-General's Special Representative to Oman

315. History. On 11 December 1962, at the 1191st meeting of the General Assembly, the representative of the United Kingdom transmitted to the Secretary-General an

^{174/} S/5220.

^{175/} S/5479.

invitation from the Sultan of Muscat and Oman to send a representative on a personal basis "to visit the Sultanate during the coming year to obtain first-hand information as to the situation there".

316. Composition. The Secretary-General appointed Mr. Herbert de Ribbing (Sweden) as his Special Representative.

317. Terms of reference. The primary task of the mission was a fact-finding one. The Mission was requested by the Secretary-General to report "on such questions as the presence of foreign troops in Oman, any evidence of oppression, instances of sabotage and fighting, the existence of a 'rebel movement', and the existence of any 'rebel forces' actually in control of a particular area".^{176/}

318. Methods of operation. The Special Representative visited the Sultanate between 18 May and 1 July 1963. He held discussions with the Sultan and interviewed Government officials. In the course of travelling some 900 miles through the country, meetings were held with as many people as possible, particularly representative figures such as sheikhs and notables. After discussions with the British authorities in Bahrein, the Special Representative proceeded to Saudi Arabia where he called on the Prime Minister and met the Imam Ghalib ben Ali and his brother. The Special Representative then held discussions with officials in London before returning to New York.

319. Report. The Special Representative's report to the Secretary-General was made available to Member States "in view of the decision of the General Assembly to place the question of Oman on the agenda of its eighteenth session".^{177/} In resolution 1948 (XVIII), adopted on 11 December 1963, the General Assembly took note of the report and established an Ad Hoc Committee, composed of five Member States appointed by the President of the General Assembly, to examine the question of Oman.

^{176/} Official Records of the General Assembly, Eighteenth Session, Annexes, agenda item 78, document A/5562, para. 82.

^{177/} Ibid., note by the Secretary-General, para. 3.

The United Nations Malaysia Mission^{178/}

320. History. The Foreign Ministers of the Federation of Malaya, the Republic of Indonesia and the Republic of the Philippines, by a communication addressed to the Secretary-General of the United Nations on 5 August 1963, requested him to ascertain the wishes of the people of Sabah (North Borneo) and Sarawak in certain specified respects, prior to the establishment of the Federation of Malaysia. In his reply dated 8 August 1963, the Secretary-General accepted the request.

321. Composition. In accordance with the suggestion contained in the communication of 5 August 1963, the Secretary-General set up two working teams, consisting of eight members of the Secretariat and acting under the over-all supervision of the Secretary-General's Representative. The reply of the Secretary-General of 8 August 1963 also stated as follows:

"I note that the three Heads of Government deem it desirable to send observers to witness the carrying out of the task by the working teams. I wish to make it clear that the working teams working under the supervision of my Representative will be responsible directly and exclusively to me."

322. Terms of reference. The terms of reference of the Mission were set out in the exchange of communications referred to above. Paragraphs 4-7 of the Manila joint statement, quoted in the request from the three Governments of 5 August 1963, provided as follows:

"4. Pursuant to paragraphs 10 and 11 of the Manila Accord, the United Nations Secretary-General or his representative should ascertain, prior to the establishment of the Federation of Malaysia, the wishes of the people of Sabah (North Borneo) and Sarawak within the context of General Assembly resolution 1541 (XV), Principle IX of the Annex, by a fresh approach, which in the opinion of the Secretary-General is necessary to ensure complete compliance with the principle of self-determination within the requirements embodied in Principle IX, taking into consideration: (I) the recent elections in Sabah (North Borneo) and Sarawak but nevertheless further examining, verifying and satisfying himself as to whether: (a) Malaysia was a major issue if

^{178/} For further information see the report of the United Nations Malaysia Mission to the Secretary-General, final conclusions of the Secretary-General, issued in September 1963, from which the following account is taken.

not the major issue; (b) electoral registers were properly compiled; (c) elections were free and there was no coercion; and (d) votes were properly polled and properly counted; and (II) the wishes of those who, being qualified to vote would have exercised their right of self-determination in the recent elections had it not been for their detention for political activities, imprisonment for political offences or absence from Sabah (North Borneo) or Sarawak.

5. The Secretary-General will be requested to send working teams to carry out the task set out in paragraph 4.
6. The Federation of Malaya, having undertaken to consult the British Government and the Governments of Sabah (North Borneo) and Sarawak under paragraph 11 of the Manila Accord, on behalf of the three Heads of Government, further undertakes to request them to co-operate with the Secretary-General and to extend to him the necessary facilities so as to enable him to carry out his task as set out in paragraph 4.
7. In the interest of the countries concerned, the three Heads of Government deem it desirable to send observers to witness the carrying out of the task to be undertaken by the working teams, and the Federation of Malaya will use its best endeavours to obtain the co-operation of the British Government and the Governments of Sabah (North Borneo) and Sarawak in furtherance of this purpose."

In his letter of 8 August 1963 the Secretary-General made it clear that acceptance of the request was dependant upon the consent of the Government of the United Kingdom and of the Governments of Sabah (North Borneo) and Sarawak, to the proposed mission.

323. Methods of operation. The Mission visited the area between 16 August and 5 September. The Mission was divided into two teams, comprising four officers with additional administrative and secretarial staff; one team operated in Sarawak and the other in Sabah (North Borneo). In Sarawak, the widest possible publicity by means of radio, press and Government announcements was given regarding the Mission and its terms of reference. Elected representatives, leaders, representatives of groups and others gave their opinions to the Mission, either in writing or during a schedule of meetings which were arranged at different locations. The Mission also studied the election laws and other documentary material, including memoranda submitted by political parties. Arrangements similar to those in Sarawak were made in Sabah (North Borneo).

324. Report. The two working teams reported through the Secretary-General's Representative to the Secretary-General. On the basis of this report the Secretary-General communicated his final conclusions to the Governments of the Federation of Malaya, the Republic of Indonesia, the Republic of the Philippines and of the United Kingdom. The report of the Mission, and the Secretary-General's final conclusions were circulated to Member States.

The United Nations Observer in Cyprus

325. History. On 13 January 1964, the Secretary-General reported to the Security Council that, in the course of conversations which he had held with the representative of Cyprus, the latter had asked him to appoint a personal representative to look into the situation which had arisen in Cyprus.^{179/} In subsequent conversations the representatives of Greece, Turkey and the United Kingdom associated themselves with the above request to appoint a personal representative to act as United Nations Observer in Cyprus, whose task would be to "observe the progress of the peace-keeping operation and to report on it to me".^{180/} The first request was confirmed in writing by the United Kingdom.^{181/}

326. Composition. The Secretary-General appointed Lieutenant-General P.J. Gyani as his Special Representative in Cyprus. Lieutenant-General Gyani was assisted by a small staff.

327. Terms of reference. By a communication of 9 January 1964, the representative of Cyprus informed the Secretary-General that the following terms of reference regarding the functions to be performed by the Observer would be acceptable to the Government of Cyprus:

- "(1) To observe the peace-keeping operation and to report to Your Excellency thereon;
- "(2) For this purpose he would have access to the Government of Cyprus through the Ministry of Foreign Affairs of the Republic, to the President and Vice-President of the Republic or their representatives,

^{179/} S/5514, para. 1.

^{180/} Ibid., para. 2.

^{181/} S/5508.

to the British High Commissioner and the Greek and Turkish Ambassadors accredited to the Government of the Republic, and to the British commander of the peace-keeping force;

"(3) He would have freedom of movement and communications;

"(4) His personal security and that of his staff would be assured;

"(5) He should not receive any individual complaints of any breach of the cease-fire agreement." 182/

The representative of Cyprus also stated that the period of duty of the Representative as Observer in Cyprus would be three months and that the Government of Cyprus was ready to undertake all the cost involved. The representatives of Greece, Turkey and the United Kingdom confirmed their acceptance of the above terms of reference and their willingness to assist the Observer in the fulfilment of his mission.

328. Methods of operation. On 17 January 1964, the Secretary-General informed the Security Council that he had instructed Lieutenant-General Gyani to depart for Cyprus on that day, "to observe the progress of the peace-keeping operation for an initial period extending to the end of February 1964. Within this period, Lieutenant-General P.S. Gyani will report to me on how the United Nation Observer could function and be most effective in fulfilling the task as outlined in the request made by the Government of Cyprus and agreed to by the Governments of Greece, Turkey and the United Kingdom". 183/

182/ S/5514, para. 3.

183/ S/5516, para. 5.

D. The International Court of Justice

329. Under Article 50 of its Statute, the International Court of Justice "may ... entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion".^{184/}

^{184/} In the Corfu Channel Case, the Court entrusted the task of giving an expert opinion to a committee which was requested to proceed to the area in question in order to obtain the necessary facts (International Court of Justice, Corfu Channel Case, Judgement of 9 April 1949, Reports of Judgements, Advisory Opinions and Orders, 1949, p. 9); see paragraph 265 above.

II. REGIONAL ORGANIZATIONS

A. Organization of American States^{185/}

330. The Council of the Organization of American States has had recourse to the procedure of investigation in dealing with a number of matters which have come before it. On 30 April 1948, moreover, the Governments represented at the Ninth International Conference of American States signed the American Treaty on Pacific Settlement, the so-called "Pact of Bogotá", pursuant to Article 23 of the Charter of the Organization.

1. Practice of the Council of the Organization in investigations

Costa Rica and Nicaragua 1948-1949^{186/}

331. Following the submission of a complaint by the Government of Costa Rica that its territory had been "invaded by armed forces proceeding from Nicaragua", the Council of the Organization of American States met on 12 and 14 December 1948. At its meeting on 14 December 1948 the Council adopted a resolution in which it constituted itself as Provisional Organ of Consultation, in accordance with Article 12 of the Inter-American Treaty of Reciprocal Assistance, and appointed a Committee "to investigate on-the-spot the facts denounced and their antecedents".

332. The members of the Committee, who were appointed by the Chairman of the Council, consisted of the representatives of Brazil, Colombia, Mexico and of the United States, together with their civil and military advisers. The Representative of Brazil was appointed Chairman of the Committee. The Committee proceeded immediately to San José and Managua; at both places the Committee met leading members of the Government, as well as representatives of groups seeking to overthrow the Government of the other country. Full co-operation was shown

^{185/}See also Analysis of the Main Features of the Inter-American Peace System, Study of the United Nations Secretariat (A/AC.18/46/Add.1) and Memorandum on Recent Inter-American Experience in the Field of Pacific Settlement, prepared by the United Nations Secretariat (A/AC.18/SC.9/L.6).

^{186/}See: Pan American Union, Applications of the Inter-American Treaty of Reciprocal Assistance, 1948-1956, pp. 19-57.

by the authorities of the two States concerned. The Committee returned to Washington and presented its report to the Provisional Organ of Consultation on 24 December 1948. On a basis of the Committee's report the Provisional Organ of Consultation adopted a resolution on 24 December 1948, which called on the two Governments to do their utmost to prevent a renewal of hostilities. In order to ensure the fulfilment of the obligations laid down in the resolution the Provisional Organ of Consultation despatched an Inter-American Commission of Military Experts, consisting of five members, to the area where the frontier incidents had occurred. This Commission also reported to the Provisional Organ of Consultation. After the signature by the two States of a Pact of Amity and Friendship on 21 February 1949, as a result of negotiations, the Council informed the Governments of member States of the termination of the incident.

Situation in the Caribbean, 1950^{187/}

333. After an earlier complaint by the Haitian Government had been referred to the Inter-American Peace Committee, on 3 January 1950 the Haitian Government invoked the Inter-American Treaty of Reciprocal Assistance declaring that its territorial integrity and political independence were threatened as a result of an armed conspiracy against the Haitian Government involving officials of the Dominican Republic. At a meeting of the Council of the Organization of American States held on 6 January 1950, the Representative of the Dominican Republic denied the charges brought by Haiti and sought to invoke the Inter-American Treaty against Haiti which, he claimed, had supported activities hostile to the Dominican Government. The Council adopted a resolution constituting itself the Provisional Organ of Consultation under the Inter-American Treaty and established a Committee "to conduct an on the spot investigation of the facts and their antecedents". The Security Council of the United Nations was informed of the resolution and of all related activities.

334. The Committee consisted of the representatives of Bolivia, Colombia, Ecuador, the United States and Uruguay; the representative of Uruguay was elected Chairman. The Committee heard evidence in Washington and, on 22 January 1950,

^{187/} Ibid., pp. 69-149.

began its trip for the purpose of interviewing certain officials and private citizens of Haiti, the Dominican Republic, Cuba and Guatemala. The Committee also visited Mexico before returning to Washington on 15 February 1950. The report of the Committee, presented to the Provisional Organ of Consultation on 13 March 1950, dealt in detail with the specific charges made by Haiti and the Dominican Republic and recorded the Committee's findings. On 8 April 1950 the Organ of Consultation adopted a series of resolutions proposed by the Committee in which the Governments concerned were requested to take further steps to prevent renewed attempts from being made to investigate seditious movements and conspiracies against the security of the other country. The resolutions also provided for the appointment of a special provisional committee of five members to facilitate the observance of the resolutions by the parties. This Special Committee on the Caribbean had the same composition as the initial Committee. It submitted three reports to the Secretary-General of the Organization of American States, on 30 June and 31 October 1950, and on 14 May 1951.^{188/}

Costa Rica and Nicaragua, 1955^{189/}

335. On 11 January 1955, the Council met in emergency session in order to consider a complaint by the Government of Costa Rica that its independence was being threatened by acts of the Government of Nicaragua. Acting as the Provisional Organ of Consultation under the Inter-American Treaty of Reciprocal Assistance, the Council requested the Chairman "to appoint a Committee to conduct an on-the-spot investigation of the pertinent facts and submit a report thereon." The Committee was composed of the representatives of Brazil, Ecuador, Paraguay, Mexico and the United States; the representative of Mexico was elected Chairman. On 12 January 1955, the Council agreed to request Governments which were in a position to do so to place at the disposal of the Committee aircraft to make, in the name of the Committee and under its supervision, pacific observation flights over the regions affected, after prior notification had been given to the Governments whose territories were traversed. The Governments of Ecuador,

^{188/} Ibid., pp. 135-148.

^{189/} Ibid., pp. 157-223.

Mexico, the United States and Uruguay, informed the Council that they had placed aircraft at the disposal of the Committee. After examining the situation in Costa Rica the Committee cabled urgent reports to the Council, which, on 14 January 1955, requested the Committee "to send observers to all the airports in the region involved in the situation, as well as to any place that might be utilized for the transportation of military forces or material to Costa Rica, for the purpose of determining the origin of such forces and material". Following the purchase of four aircraft by Costa Rica from the United States, with the approval of the Council, on 16 January the Council resolved:

"to request the Investigating Committee that, in accordance with the wishes expressed by the Governments of Nicaragua and Costa Rica, it proceed with utmost urgency to prepare in consultation with the said Governments and to put into effect through the military advisers of the Commission a plan for effective surveillance of the common frontier of the two countries, reporting as frequently as is necessary to the Council, acting provisionally as Organ of Consultation, regarding the fulfilment of its mission."

336. The Committee accordingly issued instructions regarding the movement of land forces and the establishment of aerial security zones on both sides of the northeast section of the international boundary between Costa Rica and Nicaragua. The security zones were patrolled by aircraft under the control of the Committee; observers responsible to the Committee set up a system of boundary patrols and controlled the movement of Costa Rican and Nicaraguan troops near the frontier area. The Committee returned to Washington on 28 January 1955 and submitted a comprehensive report on 18 February 1955.^{190/} Amongst the recommendations of the Committee was that a bilateral Commission of Investigation and Conciliation should be established under the terms of the Pact of Bogota (which both States had ratified), to provide a permanent guarantee of the settlement of any future difficulties.

337. In a resolution adopted on 24 February 1955 the Council called upon the two Governments to appoint their respective Members of the Commission of Investigation and Conciliation. The Council also terminated the activities of the Investigating Committee and established a Special Committee of the Council to co-operate with the two Governments in securing the fulfilment of the operative terms of the

^{190/} Ibid., pp. 179-189.

resolution. The Special Committee was instructed to continue the functions of the military observers as long as appeared necessary; the military observers terminated their duties on 25 February 1955.

Request of the Government of Ecuador, 1955^{191/}

338. On 8 September 1955 the Government of Ecuador requested the Council to call an immediate meeting of Ministers of Foreign Affairs under the Inter-American Treaty of Reciprocal Assistance, in view of the serious threat to the territorial integrity of Ecuador caused by a concentration of Peruvian forces along the Ecuadorian-Peruvian border.

339. Under a treaty of 1942 between Ecuador and Peru the frontier had been guaranteed by four States: Argentina; Brazil; Chile; and the United States. The Council took no action on the formal request of the Government of Ecuador and asked the guarantor States to keep it informed of developments. The guarantor States appointed a Commission of Military Observers, composed of the Military Attachés of the four States concerned stationed at Lima and Quito, who conducted an on-the-spot investigation by means of air and land reconnaissance. The Military Observers reported on 26 September 1955 that nothing abnormal had been seen. Ecuador thereupon withdrew its complaint to the Council.

Honduras and Nicaragua, 1957^{192/}

340. On 30 April 1957 Honduras charged Nicaragua with aggression and submitted a complaint to the Council of the Organization of American States that its territory had been invaded by military forces from Nicaragua.

341. The Council met to consider the complaint on 1 and 2 May 1957. At the meeting on 2 May the Council also examined a counter-complaint from Nicaragua, charging Honduras with aggression and stating that Honduras had no right to claim that the territory in question was Honduran, since Nicaragua had been entitled to reject the 1906 arbitral award of the King of Spain, granting the

^{191/} Ibid., pp. 225-237.

^{192/} See Unión Panamericana, Aplicaciones del Tratado Interamericano de Asistencia Reciproca 1948-1960, pp. 217-292.

territory to Honduras. The Council constituted itself as Provisional Organ of Consultation under the Inter-American Treaty of Reciprocal Assistance and authorized the Chairman of the Council to designate a Committee which could carry out an on-the-spot investigation. The Chairman appointed the Representatives of Argentina, Bolivia, Mexico, Panama and the United States to form the Committee: the Representative of Panama acted as Chairman of the Committee. The Committee proceeded to the area and succeeded in bringing about a cease-fire in the fighting which had broken out. Both parties agreed to abstain from taking further steps which might aggravate the situation and to allow plans to be drawn up for the withdrawal of troops. The Committee established a military advisory committee and, at its request, the Council requested member States to place officers of Colonel's rank and below at the Committee's disposal. In its report of 16 May the Committee stated, however, that, owing to the uncertain state of the boundary lines and the reservations made by Honduras and Nicaragua when adhering to the Inter-American Treaty, it was unable to determine where responsibility for the aggression lay.

342. The Council thereupon terminated the activities of the Committee and, by a resolution adopted on 17 May 1957, set up an ad hoc committee, consisting of the same members, which was charged with the task of finding a peaceful and final solution. After visiting Honduras and Nicaragua, the ad hoc Committee succeeded in persuading Honduras and Nicaragua to agree to place the question before the International Court of Justice, in accordance with the Pact of Bogota. On 27 June 1957 the Council therefore ended its provisional status as Organ of Consultation. The International Court of Justice gave judgement in 1960 in favour of Honduras, holding that Nicaragua was obliged to accept the terms of the 1906 award.^{193/}

Situation in Panama, 1959^{194/}

343. On 27 April 1959, the Government of Panama submitted a complaint that its territory had been invaded by foreign elements seeking to overthrow the Government.

^{193/} Case concerning the Arbitral Award made by the King of Spain on 23 December 1906, Judgement 18 November 1960, I.C.J. Reports 1960, p. 192.

^{194/} See Unión Panamericana, Aplicaciones del Tratado Interamericano de Asistencia Recíproca 1948-1960, pp. 293-337.

On 28 April 1959, meeting in special session, the Council resolved to constitute itself a provisional Organ of Consultation under the Inter-American Treaty of Reciprocal Assistance and authorized the Chairman to appoint an investigating Committee. The representatives of Argentina, Brazil, Costa Rica, the United States and Paraguay were appointed members of the Committee. The two main tasks of the Committee were to verify the presence of foreign forces in Panamanian territory and to examine the possibility of others arriving by sea. The Committee visited Panama and interviewed the Panamanian authorities and also some representatives of the invading forces. In conjunction with the Council of the Organization of American States the Committee organized air and naval patrols to provide surveillance of the arrival of additional foreign troops. The Committee reported to the Council on 9 June that Panama had been the victim of an invasion by foreign elements, organized abroad and coming from Cuban ports. The Council adopted a series of resolutions on 18 June 1959, one of which called on the Governments of member States to observe the terms of the 1928 Havana Convention and the 1957 Protocol, on the rights and duties of States in the event of civil strife.

Situation in Nicaragua, 1959^{195/}

344. On 2 June 1959 the Government of Nicaragua submitted a complaint that it had been the victim of an armed attack by revolutionary forces of various nationalities, who had flown from Costa Rica. The Council constituted itself as Provisional Organ of Consultation and established an investigating Committee consisting of the Representatives of Brazil, Mexico, the United States and Uruguay. The Committee visited Honduras, Nicaragua and Costa Rica in turn and held talks with the Presidents and Foreign Ministers of the three Republics. In Nicaragua the Committee interviewed certain persons in prison; no local officials were present during the interviews. The three Governments provided the Committee with documentary material and with information regarding arms which had been seized. The Committee reported that the invading force had been organized by revolutionary elements in both

^{195/} Ibid., pp. 339-383.

neighbouring countries, acting without the participation of the Governments concerned. In a resolution adopted on 28 July 1959 the Council took note of the Committee's report and recommended that member States should strengthen their measures to maintain peace and should continue to observe the principles of non-intervention.

Request of the Government of the Dominican Republic^{196/}

345. On 2 July 1959, the Government of the Dominican Republic submitted a request that a meeting of the Council of the Organization of American States should be held in order to consider the international situation in the Caribbean area. The Council proved unable to take action under the Inter-American Treaty of Reciprocal Assistance. The Governments of Cuba and Venezuela declared that they would not permit any investigation under the auspices of the Organization to be carried out in their territories. Eventually, however, a Meeting of Foreign Ministers was called at Santiago, Chile, under articles 39 and 40 of the Charter of the Organization of American States, to consider the whole problem of tensions in the Caribbean area.

Request of the Government of Venezuela^{197/}

346. On 6 July 1960, the Government of Venezuela requested the Council to call a Meeting of Foreign Ministers to consider acts of intervention and aggression committed against Venezuela by the Dominican Republic and culminating in an attempt upon the life of the President of Venezuela. On 8 July the Council, constituting itself as the provisional Organ of Consultation, authorized the Chairman to appoint a Committee to investigate the charges. The Chairman appointed the representatives of Argentina, Mexico, Panama, United States and Uruguay. The representative of Panama acted as Chairman. The Committee visited Caracas and interviewed various members of the Venezuelan Government and also people in prison, without the supervision of Venezuelan authorities. The Committee also examined

^{196/} Ibid., pp. 385-390.

^{197/} See: Unión Panamericana, Aplicaciones del Tratado interamericano de Asistencia Reciproca, Suplemento 1960-1961.

the bomb mechanism and visited the scene of the attempted assassination. The Government of the Dominican Republic invited the Committee to visit that country and a Sub-Committee went to Ciudad Trujillo where it met the Minister of Foreign Affairs. The Committee submitted its report to the Meeting of Foreign Ministers held at San José, Costa Rica, between 16 and 21 August 1960. The Committee found that the Government of the Dominican Republic had been involved in the attempted assassination of President Betancourt. The Meeting of Foreign Ministers, acting under articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance, therefore called for an immediate break in diplomatic relations with the Dominican Republic and for a partial interruption of economic relations by all member States.

2. American Treaty on Pacific Settlement

"Pact of Bogotá", 30 April 1948^{198/}

347. The Treaty consists of eight chapters, the first five of which deal respectively with the "General obligation to settle disputes by pacific means", "Procedures of good offices and mediation", the "Procedure of investigation and conciliation", "Judicial procedure" and the "Procedure of arbitration".

348. Under chapter one, in the event that a controversy arises between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the Treaty (art. II). The order of the pacific procedures established in the Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided (art. III). Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfilment of the Treaty itself or a previous pact, no other procedure may be commenced until that procedure is concluded (art. IV).

^{198/} United Nations, Treaty Series, vol. 30, p. 84. Came into force on 6 May 1949. Ratified (by January 1964) by Costa Rica, Dominican Republic, El Salvador, Haiti, Honduras, Mexico, Nicaragua, Panama and Uruguay.

349. Chapter three, dealing with the procedure of investigation and conciliation, consists of sixteen articles, XV to XXX, the text of which follows:

350. Procedure of investigation and conciliation. Under article XV, this procedure "consists in the submission of the controversy to a Commission of Investigation and Conciliation", the establishment and functioning of which are governed by the articles that follow.

Convocation of the Commission. Duty of the parties when a request for convocation has been made

Article XVI. The party initiating the procedure of investigation and conciliation shall request the Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it. Once the request to convoke the Commission has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end, at the request of one of the parties, the Council of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

351. Composition of the Commission. Appointment and substitution of members of the Commission

Article XVII. Each of the High Contracting Parties may appoint, by means of a bilateral agreement consisting of a simple exchange of notes with each of the other signatories, two members of the Commission of Investigation and Conciliation, only one of whom may be of its own nationality. The fifth member, who shall perform the functions of chairman, shall be selected immediately by common agreement of the members thus appointed. Any one of the contracting parties may remove members whom it has appointed, whether nationals or aliens; at the same time it shall appoint the successor. If this is not done, the removal shall be considered as not having been made. The appointments and substitutions shall be registered with the Pan American Union, which shall endeavor to ensure that the commissions maintain their full complement of five members.

352. Establishment of a permanent panel of conciliators

Article XVIII. Without prejudice to the provisions of the foregoing article, the Pan American Union shall draw up a permanent panel of American conciliators, to be made up as follows:

/...

(a) Each of the High Contracting Parties shall appoint, for three-year periods, two of their nationals who enjoy the highest reputation for fairness, competence and integrity;

(b) The Pan American Union shall request of the candidates notice of their formal acceptance, and it shall place on the panel of conciliators the names of the persons who so notify it;

(c) The Governments may, at any time, fill vacancies occurring among their appointees; and they may reappoint their members.

353. Procedure to be observed in the event that a controversy should arise between two or more States that have not appointed the Commission referred to in article XVII

Article XIX. In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article XVII, the following procedure shall be observed: (a) Each party shall designate two members from the permanent panel of American conciliators, who are not of the same nationality as the appointing party; (b) These four members shall in turn choose a fifth member, from the permanent panel, not of the nationality of either party; (c) If, within a period of thirty days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected. The person so elected shall perform the duties of chairman of the Commission.

354. Place of meeting of the Commission

Article XX. In convening the Commission of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter the Commission may determine the place or places in which it is to function, taking into account the best facilities for the performance of its work.

355. Composition of the Commission in a controversy involving more than two States

Article XXI. When more than two States are involved in the same controversy, the States that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of

conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

356. Powers of the Commission

Article XXII. It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavour to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

Article XXVI. If, in the opinion of the parties, the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

357. Duty of the parties with regard to the Commission

Article XXIII. It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

358. Agents, advisers and experts

Article XXIV. During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

359. Period fixed for the conclusion of the Commission's work

Article XXV. The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

360. Contents, publication and adoption of the Commission's report

Article XXVII. If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary

of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

361. Character of the Commission's report and conclusions

Article XXVIII. The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

362. Certified copies of the minutes of the Commission's proceedings

Article XXIX. The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

363. Expenses of the Commission

Article XXX. Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon, the Council of the Organization shall determine the remuneration. Each Government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

B. Organization of African Unity

364. The Charter of the Organization of African Unity, signed at Addis Ababa on 25 May 1963, contains the following provision:

"Commission of Mediation, Conciliation and Arbitration

Article XIX

Member States pledge to settle all disputes among themselves by peaceful means and, to this end decide to establish a Commission of Mediation, Conciliation and Arbitration, the composition of which and conditions of service shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. Said Protocol shall be regarded as forming an integral part of the present Charter."

III. TREATIES CONCLUDED SINCE 1940

365. Parts I and II of this study deal with those collective and bilateral treaties concluded between 1899 and 1940 which provide for the procedure of investigation or conciliation for the pacific settlement of international disputes.^{199/} This part deals with the very limited number of such treaties concluded since 1940.

A. Collective treaties

366. In addition to the American Treaty on Pacific Settlement, signed at Bogotá on 30 April 1948, the relevant provisions of which are given above in the section dealing with the Organization of American States, mention should be made of the European Convention for the peaceful settlement of disputes, signed at Strasbourg on 29 April 1957.^{200/}

367. This Convention, which is based on the General Act of 26 September 1928, consists of four chapters: "Judicial settlement", "Conciliation", "Arbitration" and "General provisions". Under the terms of chapter II, conciliation is mandatory in all disputes other than those falling within the scope of the preceding chapter, unless the parties agree to submit the dispute in question directly to an arbitral tribunal. The Convention provides for a Conciliation Commission, which may be either permanent (previously set up by the parties concerned) or special (set up within a period of three months from the date on which a request to that effect is made by one of the parties to the other party). The provisions relating to the conciliation procedure deal only with the Special Commission; no mention is made of the Permanent Commission. The provisions relating to the composition, functions and procedure of the Special Commission, as well as the manner of bringing disputes before it, follow the broad lines of the corresponding provisions of the General Act of 1928.

^{199/} Those treaties which provide for such a procedure for the settlement of disputes resulting from their application are not considered.

^{200/} United Nations, Treaty Series, vol. 320, p. 244. Came into force on 30 April 1958; ratified (by January 1964) by the following States: Austria, Denmark, Federal Republic of Germany, Italy (which is not bound by chapter II, dealing with conciliation), Luxembourg, Netherlands, Norway, Sweden and the United Kingdom.

B. Bilateral treaties

368. The Treaty of Friendship of 27 September 1947 between the Philippines and Spain,^{201/} the Treaty of Friendship, Conciliation and Judicial Settlement of 24 March 1950 between Italy and Turkey,^{202/} and the Agreement concerning conciliation and judicial settlement of 2 November 1954 between Brazil and Italy^{203/} all provide for the establishment of a Permanent Conciliation Commission.

369. (a) The Treaty between the Philippines and Spain, after providing for the establishment of a Commission composed of five members appointed in the manner provided by the General Act of 1928, leaves it to the Parties to agree, by exchange of notes, upon the implementary details regarding the substitution of the members and the powers, operation and procedures of the Commission.

370. (b) The other two treaties, which are virtually identical, are based on the treaties concluded during the League of Nations period, especially the General Act of 1928. The Commissions set up under the treaties are empowered to deal with any dispute of whatsoever nature which arises between the Parties and which cannot be settled through the normal diplomatic channel. If the conciliation procedure is unsuccessful, a judicial settlement is to be sought in conformity with the provisions of the treaties. Disputes for the settlement of which a special procedure is laid down in other conventions in force between the Parties are to be settled in conformity with the provisions of those conventions.

371. The Commissions are composed of three members. The Parties each appoint one commissioner chosen from among their respective nationals; they designate by agreement the President, who is not to be a national of one of the Parties, to be habitually resident in their territories, or to be employed in their service. A special procedure is provided for in the event that the Parties fail to agree on the appointment of the President.

372. A matter may be brought before the Commissions by means of an application addressed to the President by the two Parties acting in agreement or, failing that, by either Party. It is the function of the Commissions to elucidate the questions in dispute, to collect all necessary information for that purpose and to endeavour to reconcile the Parties. The Commissions draw up a report making

^{201/} United Nations, Treaty Series, vol. 70, p. 134.

^{202/} Ibid., vol. 96, p. 209.

^{203/} Ibid., vol. 284, p. 338.

proposals for the settlement of the dispute. If either of the Parties fails to accept those proposals or to give its decision within the time-limit prescribed in the report, each Party may request that the dispute should be submitted to the International Court of Justice.

373. The Commissions lay down their own procedure and, unless otherwise agreed unanimously, are guided by the relevant provisions of the Hague Convention of 1907.

PART IV

OUTLINE OF THE EVOLUTION OF THE INSTITUTION OF INTERNATIONAL INQUIRY

374. In the preceding pages, an attempt has been made to describe the practice of States and some international organizations, principally the League of Nations and the United Nations, in the use of international inquiry as a peaceful method for settling disputes or adjusting situations. We have tried not so much to provide an exhaustive collection of material on the subject as to give enough information to bring out the general features and the trend of this considerable practice, which since 1899 has been constantly developing and taking on new forms. In the present part of this study a brief account will be given of the different stages in the evolution of the institution of international commissions of inquiry, reference first being made to the idea which inspired the creation of such commissions by the first Hague Conference.

375. The advantages of the institution of international commissions of inquiry which were argued at this Conference, in particular by Mr. Martens, the delegate from Russia, are set out in the report submitted to the Conference by its Third Commission.^{204/} International commissions of inquiry, the report stated, had already proved the value of their services when a conflict broke out between two States, each acting in good faith; for example, if a question concerning frontiers arose between them, opinion became inflamed in proportion as the incident was unexpected and public opinion lacked information with regard to it, because opinion was ignorant of the origin and real causes of the conflict. Opinion was at the mercy of momentary impressions and there were many opportunities under those circumstances to irritate the spirits and embitter the disagreement. For that reason, provision should be made for the possibility of a commission having for its purpose, first and above all, the search for, and the publishing of, the truth as to the causes of the incident and as to the materiality of the facts. While such a commission was working to make its report, time was gained, spirits grew calmer and the conflict was no longer acute.

^{204/} The Reports to the Hague Conferences of 1899 and 1907, Carnegie Endowment for International Peace, p. 50.

376. The functions of the international commissions of inquiry provided for in the first Hague Convention of 1899 was not to pronounce verdicts; their role was limited to fact-finding, and the parties were entirely at liberty to draw from the facts whatever conclusions they wished (supra, para. 11 et seq.). As soon as they began to be used, however, the role of international commissions of inquiry was extended beyond the limits indicated in the Convention. For example, the commission constituted in the Hull or Dogger Bank case between Great Britain and Russia (supra, para. 19 et seq.) was requested by the agreement for inquiry of 12 November 1904 not only to elucidate the facts but also to establish where responsibility lay and to fix the degree of blame attaching to those persons found responsible. The success of that commission was to give the second Hague Conference, and after that the promoters of the Bryan treaties, the idea of augmenting the importance of the international commissions of inquiry instituted by the 1899 Convention. At the second Hague Conference, it was felt that the Convention had conferred upon the commissions a character "the usefulness of which no one dreams of contesting". In the report on the revision of the Convention of 1899 submitted to the second Conference by its First Commission, the success of the institution of international commissions of inquiry was described in the following terms:^{205/} "Two of the most powerful nations of the world, in the course of a period of great disturbance, still within the memory of all of us, found these commissions a sure, honourable, and expeditious method of settling a dispute the consequences of which might have been disastrous, if direct and immediate resort to the exact provisions already ratified by public opinion had not been able to calm popular emotion, and thereby prevent situations which could not be relieved, and deeds beyond recall".

377. The second conference decided that the work of 1899 still demanded to be completed and bettered; it was necessary to endow the institution of international commissions of inquiry with a set of rules of procedure which would make their use surer and more expeditious. To quote the report referred to: "If States which intend to employ this pacific method of settling their differences do not find in the Convention which we are working out a clear and practicable guide to facilitate the preliminary steps, and to the immediate commencement of the investigation itself, it is to be feared that they will give up the use of this instrument of peace. The facts which are to be determined may have aroused national passions

difficult to allay, or critical situations which it would be dangerous to continue. An instrument sufficiently well fashioned and of sufficiently simple use to be employed without loss of time, must be placed in the hands of these Governments".^{206/}
378. The institution of international commissions of inquiry emerged from the second Hague Conference improved and perfected, particularly as regards procedure (supra, para. 30 et seq.). However, some States still regarded it as weak, in that it was optional and intended only for the settlement of difficulties relating to questions of fact in disputes which did not affect honour or vital interests. Those States wished to go still further. Between 1913 and 1915 they concluded the Bryan treaties or treaties along similar lines (supra, para. 62 et seq.). Under these treaties, commissions of inquiry were set up which were permanent and competent to consider the legal as well as the factual aspects of all disputes, with the exception, where the case arose, of those capable of arbitration. In addition, disputes could be referred to the commissions at the request of only one of the parties; and the commissions could even offer their services and act as soon as their offer had been accepted by one of the parties. In the context of the period in which these treaties were concluded, the most important element in the system they established was the Contracting States' undertaking not to resort to war or begin hostilities during the inquiry and the preparation of the commissions' report. This is what is generally called the "moratorium on war" subsequently envisaged in Article 12 of the Covenant of the League of Nations.

379. The enlargement of the powers of the commission of inquiry set up in the Hall or Dogger Bank case was the first milestone in the evolution of the international inquiry procedure. The Bryan treaties constituted the second. The Covenant of the League of Nations was to mark yet another stage (supra, para. 81 et seq.), for under the Covenant, Article 15 of which at least implicitly entrusted conciliatory functions to the Council and the Assembly, the inquiry procedure ceased to be an independent procedure and became a means of providing those organs with information, helping them to assemble the facts and data they needed to fulfil those functions. It became a "means of investigation", "a fact-finding procedure both familiar and necessary to any tribunal".

^{206/} Ibid., p. 318.

380. Immediately after the drafting of the Covenant, efforts were made to "decentralize" the functions entrusted to the Council and the Assembly as central organs of conciliation. Some States considered that the Council was a body of a too definitely political character and that the Assembly was too large to assume the duties of conciliation.^{207/} At its very first session, the Assembly of the League of Nations had before it draft amendments to Articles 12 and 15 of the Covenant, submitted by Norway and Sweden (supra, paras. 81 and 83), under which each pair of Members of the League would be required to set up an independent and permanent commission of conciliation which would intervene at the very outset of any dispute. Under this system, then, disputes could no longer be referred immediately and unilaterally to the Council or the Assembly, which would be entitled to exercise conciliatory functions only in the absence of an amicable settlement arrived at before the commissions constituted by the parties. The draft amendments were based on the following idea, which was explained by the Norwegian representative at the 31st plenary meeting of the Assembly, on 4 October 1921:^{208/} "The League of Nations is very centralised... it is even too much centralised. The natural remedy for this organic defect would be to introduce decentralisation when it is a question of settling international disputes ... The system suggested in the Norwegian proposal aims only at the formation of local organisations. These organisations would not be a new channel running parallel to the channels furnished by the Covenant. They would rather operate to some extent as filters for disputes, which would otherwise be submitted to the Council or to the Assembly, and they would take their place within the scheme of the present organisation".

381. In the report submitted by the First Committee on the draft amendments to the Covenant,^{209/} the Rapporteur drew attention to the following objection voiced by the Committee to the Norwegian and Swedish draft amendments: "Committee No. 1 considers that the main obstacle to the adoption of the proposed amendments lies in the complexity and rigidity of the procedure which they would tend to introduce in the international relations of States. Desirable, and, indeed, indispensable, as it might appear to be to adopt conciliation as the first step in the settlement

^{207/} League of Nations, Records of the second Assembly, plenary meetings, p. 696.

^{208/} Ibid., p. 284.

^{209/} Ibid., p. 696.

of international disputes, would this justify the imposition on all States of an obligation to establish some fifty permanent Conciliation Commissions with compulsory jurisdiction in case of dispute? There are undoubtedly cases in which Commissions of this kind would be the best qualified to contribute to a peaceful solution, acceptable to both parties in dispute. But, on the other hand, there will arise many cases in which a body like the Council of the League of Nations must be considered, owing to its high authority, the most competent to adjust or settle a dispute; and in such cases, compulsory previous recourse to a Conciliation Commission might entail unfortunate and even dangerous consequences".

382. On 4 October 1921, the second Assembly adopted a resolution deciding:

(1) not to adopt the amendments to Articles 12 and 15 proposed by the Norwegian and Swedish Governments; (2) to approve the procedure of conciliation in conformity with the spirit of the Covenant; and (3) to invite the Council to appoint a Committee for the purpose of investigating the procedure of conciliation as outlined in the amendments by the two Governments, with a view to the formulation of a body of rules on the subject.^{210/} On 22 September 1922, on the recommendation of the Committee appointed by the Council in accordance with that resolution, the third Assembly adopted the resolution which is reproduced above (para. 82). This resolution recommended that, subject to the rights and obligations mentioned in Article 15 of the Covenant, the Members of the League should freely conclude conventions with the object of laying their disputes before Conciliation Commissions. These were not intended to replace the Council as an organ of mediation. They were not incorporated in the Covenant by process of amendment. If they were unable to settle the dispute, the parties could still appeal to the Council, which retained jurisdiction under Article 15.

383. The resolution of the third Assembly expressed the hope that the competence of the Commissions would extend to the greatest possible number of disputes, and that the practical application of particular Conventions between States would, in the near future, make possible the establishment of a general convention open to the adhesion of all States. After the adoption of this resolution, the number of treaties of conciliation increased with every passing year (supra, para. 104, et seq.). In 1928, the Assembly of the League of Nations succeeded in drafting

^{210/} Ibid., p. 825.

the General Act for the pacific settlement of international disputes, and opened it to accession by States (supra, para. 109 et seq.). At the same time, it adopted three model bilateral conventions for conciliation, arbitration and judicial settlement which States could use as a basis, should they wish to conclude individual treaties with each other for the pacific settlement of their disputes. Most of the treaties concluded between 1923 and 1940 - and they are very numerous - are influenced by the work of the League of Nations. They gave the commissions they created wide substantive as well as formal powers. The commissions are in most cases competent to deal with disputes of any kind, whether centring on points of law or of fact. Generally speaking, they may or are required to propose terms of settlement (supra, para. 119 et seq.).

384. Although a very large number of treaties of inquiry or conciliation were concluded during the inter-war period, very few cases of inquiry or conciliation occurred (supra, para. 129 et seq.). On the other hand, although relatively few treaties of this kind were concluded after 1945 (supra, para. 365 et seq.), there were very many cases in which inquiry or conciliation took place through the agency of the United Nations and in application of the provisions of the United Nations Charter (supra, para. 149 et seq.). In undertaking the settlement of disputes or the adjustment of conflicts, the Security Council or the General Assembly use the inquiry procedure, as did the Council or the Assembly of the League of Nations, as a means of obtaining information and of helping them to find the suitable solution. The organs they establish for this purpose - generally ad hoc organs - are almost always sent to the spot to investigate and report. The Secretary-General too uses this procedure. In many cases, he has been invited to appoint bodies to carry out on-the-spot inquiries.

385. Far from halting or weakening the trend towards inquiry and conciliation resulting from the treaties and work of the League of Nations, the United Nations has tried to sustain it and foster it. Article 33 of the Charter calls for its revival, and General Assembly resolution 268 (III) endeavours to renew it and give it a fixed status. In part A of this resolution, the Assembly restored to the General Act for the pacific settlement of international disputes its original efficacy (supra, para. 109). In part D, after expressing the view that it was desirable to facilitate in every practicable way the compliance by Member States with the obligation in Article 33 of the Charter, it concluded that to make provision for a panel of persons with a view to the constitution of commissions of

inquiry or conciliation would promote the use and effectiveness of procedures of inquiry and conciliation. For that purpose, it invited each Member State to designate from one to five persons well fitted to serve as members of such commissions, and adopted a set of articles relating to the composition and use of the panel of persons thus designated (supra, para. 156 et seq.). The panel,^{211/} which so far consists of persons designated by only fifteen States,^{212/} has never been used either by States or United Nations organs for which it is intended. In addition, only six States have so far acceded to the General Act for the pacific settlement of international disputes, as revised by the General Assembly in 1949.^{213/}

386. This being so, and in view of the large number of States which have become Members of the United Nations since the adoption of the above-mentioned resolution by the General Assembly, it would perhaps be desirable for the Assembly to appeal to Member States which have not yet done so to accede to the Revised General Act and participate in the establishment of the panel, with a view to the constitution of commissions of inquiry or conciliation. At the same time, the appeal could urge them to make use of the panel in selecting members of commissions entrusted with inquiry or conciliation functions, constituted either by United Nations organs or by parties to a dispute. Obviously this suggestion is entirely without prejudice to the solution of the general question of the feasibility and desirability of establishing a special international body for fact-finding, or of entrusting fact-finding responsibilities to an existing organization - the subject of the last preambular paragraph in General Assembly resolution 1967 (XVIII).

^{211/} Revised list of persons designated by Member States, dated 20 January 1961 (A/4686, S/4632).

^{212/} Austria, Brazil, Ceylon, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Haiti, Israel, Netherlands, Pakistan, Sweden, United Arab Republic, United Kingdom of Great Britain and Northern Ireland.

^{213/} See supra, para. 109, foot-note 57.