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# ISSUES AT THE 27th GENERAL ASSEMBLY OF THE UNITED NATIONS

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## HEARING BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS AND MOVEMENTS OF THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES NINETY-SECOND CONGRESS SECOND SESSION

SEPTEMBER 27, 1972



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## ISSUES AT THE 27TH GENERAL ASSEMBLY OF THE UNITED NATIONS

WEDNESDAY, SEPTEMBER 27, 1972

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FOREIGN AFFAIRS,  
SUBCOMMITTEE ON INTERNATIONAL  
ORGANIZATIONS AND MOVEMENTS,  
*Washington, D.C.*

The subcommittee met at 2 p.m., in room 2200, Rayburn House Office Building, Hon. Donald M. Fraser (chairman of the subcommittee) presiding.

Mr. FRASER. The meeting of the subcommittee will come to order.

We have indications from several members that they plan to be here today, but I think, to save time, we will begin the testimony now.

Today, the Subcommittee on International Organizations and Movements begins hearings on issues at the 27th General Assembly of the United Nations.

The General Assembly which opened last week has before it an agenda of some 100 items. Discussion of some of the most important of these seems most appropriate for this subcommittee at this time, especially in the light of increasing congressional interest and activity concerning the role of the United States in the world organization. The past year has seen active congressional interest and participation—both on Capitol Hill and in United Nations forums—in such matters as the Stockholm Conference on Human Environment, the Seabeds Committee which is preparing for a Law of the Sea Conference, the change in Chinese representation at the United Nations, and U.S. contributions to the United Nations development program.

Last November, Congress acted to allow importation of chrome from Rhodesia in violation of the longstanding U.S. policy of adherence to U.N. economic sanctions against the regime in Salisbury. This past spring, the House voted to unilaterally cut this country's assessed contribution to the United Nations to 25 percent of the total U.N. budget, violating our treaty obligations as a member of the organization and countering the efforts of the administration to negotiate a reduction of the rate of assessment through the legally established procedures of the United Nations.

All of these issues are still very much alive and will figure prominently in the proceedings of the General Assembly during the coming weeks. It is important, therefore, for this subcommittee to avail itself of the opportunity to discuss General Assembly issues with knowledgeable persons at this time in the hope that we will be better informed when the issues are again raised in committee and on the floor of the House.

We are most fortunate in having with us, as our first witness, the Honorable Charles C. Diggs, Jr., of Michigan, a senior member of the Committee on Foreign Affairs, chairman of the Subcommittee on Africa, and a member of the U.S. delegation to the 26th General Assembly last year.

Appearing after Congressman Diggs will be one of the Nation's foremost scholars on international organizations, Prof. David A. Kay of the University of Wisconsin.

I welcome my colleague here, and I invite him to proceed in any manner he would like.

**STATEMENT OF HON. CHARLES C. DIGGS, JR., A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. Diggs. Thank you very much, Mr. Chairman.

I wish to compliment your leadership in providing a forum for this discussion of a subject which I consider to be a most vital aspect of our foreign relations, U.S. policy and practice at the United Nations.

As you indicated, I was a delegate to the 26th United Nations General Assembly last year as part of our delegation. So, I was able to see firsthand how this country has relegated to the back burner matters which many nations of the world consider much more crucial, issues such as colonialism and minority rule. It certainly reflects on our foreign policy in its many aspects.

I do not mean to detract one iota from the significant benefits accorded from foreign travel. But I wish to emphasize that the position of the United States in the regular conduct of foreign policy—on matters not relating to the more dramatic issues of Soviet-United States, Sino-United States détente—and in our routine attitude toward many items on the agenda should give cause for deep concern.

But before I take up the subject of our position on substantive issues, the matter of the functions of the delegation must be confronted, as the inadequacies in this respect compound other deficiencies with regard to the U.S. policy at the United Nations.

It is customary each year for two Members of Congress—alternately two from the Senate and two from the House—to serve as members of the U.S. delegation to the General Assembly.

I had the distinct pleasure of serving, as I pointed out last year, together with a distinguished member of this panel, Congressman Ed Derwinski of Illinois. As you know, such appointments are made by the President, pursuant to the United Nations Participation Act, which provides in section 2(c):

The President, by and with the advice and consent of the Senate, shall designate from time to time to attend a specified session or specified sessions of the General Assembly of the United Nations not to exceed five representatives of the United States. . . .

The obligations of such delegates with respect to the decisions of the Executive on voting are spelled out in section 3 of that act, as follows:

The representatives provided for in section 2 hereof, when representing the United States in the respective organs and agencies of the United Nations, shall, at all times, act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the

President, and such representatives shall, in accordance with such instructions, cast any and all votes under the Charter of the United Nations.

It is clear, therefore, that the U.S. delegation to the General Assembly serves as an instructed delegation. This does not mean, however, that the members thereon are mere automatons. Nor does it mean that the Executive's responsibility with respect to the active participation of the delegates in the work of the General Assembly and its committees can be satisfied by courtesy briefings or polite acceptance of a delegate's views.

I wish to address this particularly from the standpoint of the congressional members of the delegation.

The separation-of-powers doctrine of our political system causes a peculiar responsibility to be placed on such members. While such a delegate is in a position here where he, as part of an instructed delegation, must carry out the decisions of the Executive on voting, as a Member of the legislative branch himself he bears a further responsibility:

(1) To become fully apprised on issues within his special sphere of assignment as a delegate;

(2) To seek full, adequate, and substantive consultation on U.S. positions on issues of concern arising in this area; and

(3) Where he sincerely believes that the administration position is disastrous to the U.S. interest, to convey this evaluation and the reasons therefor to the administration, and thus to seek a review of this decision.

The congressional delegates, above all, should be afforded the opportunity for constructive input and consultation, although in the final analysis the decisions on the U.S. position are to be made by the President through the Secretary of State.

In addition to the obligation of the administration to avoid arbitrary action with respect to any of the members of the delegation, the ramifications of the separation-of-powers doctrine must mean that Members of the Congress are not serving on the delegation as rubber stamps or messenger boys, but as publicly elected officials seeking to be meaningful and contributory members of the foreign policy team on the U.S. delegation to the General Assembly.

Let me underscore: The administration is not "doing us a favor," as some would phrase it, by appointing Members of the Congress on the U.S. delegation to the United Nations.

Rather, the administration should be seeking not only the educational and informational benefits, and benefits in understanding of U.S. foreign policy which accrue to all of those serving on the delegation to the United Nations, but also it should be seeking the input of elected representatives of the people—an input perhaps especially useful because of its freedom from any wearied or bureaucratic view of a seasoned foreign policy official, and certainly potentially valuable because of its fresh outlook.

Members of Congress serving at the United Nations and dedicated to the task of working on the U.S. team at the United Nations on the formulation of U.N. policy should be accorded consultation, not dictation; flexibility to the extent possible, not rigidity; and serious rather than polite attention.

Cables from congressional members of the delegation certainly should be handled promptly and given meaningful responses.

Serious reservation also arises about the practice of classifying of cables which respond to messages of the Congressmen where this is not absolutely necessary. Of course, classification is understandable where required for national security interests.

But, surely the legerdemain which constituted the answer to my protest on the U.S. position that apartheid is not a crime against humanity could not have been required by the security interests of the United States to be classified.

I commend to you the report of Congressman Derwinski, who was my colleague serving on the delegation to the 26th General Assembly. In his excellent report, he refers to many problems, including:

(1) His inability in the "intolerable situation" of overcontrol, notwithstanding two cables to the Secretary of State, to be granted flexibility in carrying out his assignment on the Fifth Committee which handles U.N. budget assessments; and

(2) The situation of overcentralization in which the mission did not even have the State Department position on many agenda items, and where in others the mission did not receive voting instructions "until just before the vote was to be recorded."

Further, Congressman Derwinski stated that in-depth, rather than perfunctory, briefings should be given members of the delegation.

As is well known, my experience at the United Nations and the inability to get any kind of consultative process underway, on certain key questions on which I was the delegate to cast the U.S. votes—namely, African issues, as a result of my assignment on the Fourth Committee—constrained me to submit my resignation to the President last December, before the Assembly adjourned sine die.

Perhaps the administration has never really come to grips with the fallacies of treating congressional delegates as robots. Members of the delegation, and particularly congressional members, are entitled to, and should, in the interests of U.S. foreign policy, be given a real opportunity for meaningful input.

Before passing on to the issues before this General Assembly, I wish to note that certainly on African issues the U.S. mission, itself, is extremely handicapped by its inability to weigh in on decisions on U.S. voting on the U.N. questions. But this may merely reflect a certain powerlessness of the policy people in the State Department, itself, before the vast economic, military, and status quo interests evidently in the saddle on these issues, certainly in the African Bureau, certainly in any context where they are in competition for judgments with the European Bureau or the Economic Bureau.

Much is at stake at the United Nations this session; for the U.S. position both as a respected leader of the international community and as a law-abiding Nation is in great peril.

The first is a general consequence of the setback to U.S. prestige in the United Nations by the issue of the representation of Taiwan.

The second results from indications we might possibly renege on our binding financial obligations to the United Nations and, third, from our record of being the only member state by law violating the charter obligations, under article 25, to enforce the Security Council

chapter VII injunction against the importation of materials from southern Rhodesia.

It is unfortunately true that Congress initiated and passed section 503 of the Military Procurement Act which was intended by its sponsors to be the death knell of the sanctions.

But realism compels us to acknowledge the pivotal position of the White House both last fall at the time of the passage of that amendment and recently on section 503 of the foreign aid bill; it was perfectly obvious that the administration utterly failed to give the signals which sophisticated people look for to determine its interest in defeating or passing a measure.

And, as Senator McGee, the chairman of the Senate Foreign Relations Subcommittee on Africa, stated before this subcommittee, and the Senator, you know, is one of the two congressional members at the United Nations this fall, the White House did not make the telephone calls which he believed would have enabled them to nullify the Byrd amendment's damage to our international relations.

Further, as the lawsuit, *Diggs v. Connally* indicates, I believe that this administration rushed into the implementation of the Byrd amendment without meticulously examining whether it had recourse other than the breach of our solemn charter obligations.

Accordingly, the United States must take affirmative and constructive positions during this General Assembly as well as manifest flexibility and a will to consider new policies.

Our willingness to change policy, where we clearly perceive it to be in our interest to do so, is demonstrated by a statement attributed to Ambassador Bush, after the U.S. veto on the recent Security Council resolution on Arab-Israeli issues, to the effect that this represents a new policy on the part of the United States.

It is clear that a new policy is urgently needed, not only with respect to terrorism but with respect to longstanding African issues where the erosion of the U.S. position which started in 1969—especially in consideration of the fact that Africans represent about one-third of the entire membership of the United Nations—has resulted in our casting negative votes on many meaningful resolutions on human rights, colonialism, and self-determination, as well as uncompromisingly refusing to negotiate for resolutions which we would find acceptable.

The New York Times has very aptly summarized the situation:

“The United States is on a collision course with the rest of the world at the newly convened session of the United Nations General Assembly.”

The U.S. Government is seen as feeling very disappointed with the United Nations, for its own reasons, but is trying to push through one or two items in which it has a sectional interest.

On the other hand, the vast majority of the membership see the United Nations as completely indispensable for a vast range of undramatic but essential transactions. They are interested in certain issues, particularly that of decolonization and human rights where the U.S. position is seen as almost totally unhelpful, and, in many cases, obstructive.

The most immediate issue for the United States appears to be that of terrorism, where the United States has submitted a very hastily

drafted convention, without much foresight as to the natural reactions of the majority of United Nations member states.

As one African delegate remarked in the African group meeting the other day, "Only a few years ago, I was being called a terrorist."

The whole issue raises innumerable basic questions about the integrity of the U.S. position, particularly since we insist that apartheid is not a "crime against humanity."

If the delegation is lobbying hard for a convention on individual acts of terrorism, involving very few people, how does it explain its position on acts of genocide by powerful interests and governments? Why has the United States not ratified the Genocide Convention and why do we oppose an international tribunal to operate the Convention?

The United States has belatedly conceded that liberation movements are a separate issue. Why do we not support the application of the Geneva Convention to the combatants, the freedom fighters, as well as to civilians, in conflicts arising from the struggle for the liberation and self-determination of the colonial and minority-ruled areas of Africa. Frankly, some believe the reason is that the United States is tacitly supporting the minority and colonial governments which apply terror against the population of southern Africa.

If the United States succeeds in getting through its convention on terrorism, it may create a positive precedent on all these issues. The link between "terrorism" and decolonization is obvious. In particular, we need to know what position the U.S. delegation will take on item 52 of the General Assembly agenda, "Measures to be taken against ideologies and practices based on terror or in incitement to racial discrimination or any other form of group hatred."

Consideration of these human rights issues shows that the United States is exposing itself to ridicule by advocating a convention to only cover one small aspect of violence, while vigorously opposing action on all the others. We can hardly achieve our priority objectives without a flexible approach on other issues.

In the U.N. context, where the confrontation with the minority southern Africa regimes raises such burning issues, it is on these questions that concessions will have to be made.

The United States was given an easy victory on the question of withdrawal of troops from Korea; it is now our turn to be considerate of other people's human rights. If we continue with the automatic bureaucratic predominance of the European over the African issues, whatever their relative merits, the United States is likely to find itself on the losing side yet again.

The other general issue is that of the U.S. financial contribution to the United Nations and its specialized agencies. Here, official policy has put this country into a very difficult position.

By constant threats to act unilaterally and illegally, as we did with the International Labor Organization, our approaches on a negotiated reduction have met with an understandable cynicism. There is no way that observers of U.N. affairs can be persuaded that this move is not a question of the United States, having lost its power to manipulate, taking its marbles and getting out, partly in a fit of pique at losing the game on China last year.

One of the immediate issues is the status of liberation movements. The Fourth Committee, at the recommendation of the Committee of 24, seems very likely to seat "certain" liberation movements as "observers." The United States would appear very isolated, in the company of South Africa and Portugal, if it opposes this.

Informal contacts with the United Nations suggests that observers there see the United States as having abandoned its hands-off policy toward southern Africa and now are more aggressively pushing "dialog"—a code word which other states see as meaning coexistence with racism.

The only question remaining, according to this view, is whether the United States will come out more openly against liberation movements and as opposing the aspirations of the majority for freedom and self-determination.

What is the U.S. position on the "Portuguese Territories"?

There is a question coming up as to the recognition of the PAIGC, the effective liberation movement in Guinea-Bissau. The Special Committee on Decolonization adopted a resolution on April 13, 1972, affirming that the PAIGC "is the only and authentic representative of the People of the Territory."

The question of Uganda is likely to be brought up by Britain, probably in the Third Committee. Here, the United States should be in a good position if it admits refugees from Uganda for the same humanitarian reasons that the Czechs and Soviet Jews were welcomed to this country.

The Namibian issue is, of course, a major topic. There are five items on the agenda on this question. The illegal occupation of Namibia is certainly one African issue where the United States has, from the beginning, supported the rights of the people to self-determination and freedom from repression. It is now incumbent upon the United States to support constructive moves to implement the decision of the General Assembly Security Council and the advisory opinion of the International Court of Justice in accordance with our acceptance of this position.

At issue will be the appointment of a Commissioner for Namibia, and what he is going to do; for changes in the Council for Namibia to make it a group of experts, as in the case of Somalia a few years ago; and for pressure against South Africa's claims to represent Namibia, in treaties which involve the territory, and investments there.

In view of the frankly high-handed attitude of the U.S. mission when previously approached by the Council, we might even be in danger of appearing on the wrong side on this issue, which would be very sad since it is the one case where our past southern African record can be convincingly defended.

Finally, there is the question of Rhodesia. I can hardly express the damage done by the U.S. Government's decision to openly break sanctions.

The United Kingdom, which used to be public enemy No. 1 on southern African issues at the United Nations, received an immense amount of credit for the result of the Pearce Commission; and the United States, with its open violation of the most important decision ever taken by the Security Council, became the obvious target for criticism. This situation is likely to get worse instead of better.

We now have a situation where the United States is constantly threatening to veto Security Council resolutions in case they single out our action for attention. There are allegations that we are refusing to supply information on sanctions-breakers to the Sanctions Committee, even though Britain has done this for years, and is continuing to do so. Our sources of information are obviously the same kind as the British sources.

By making unsubstantiated allegations about other countries' violations, the United States is arousing much resentment. The United States must make every effort to promote reasonable proposals for strengthening sanctions.

In conclusion, Mr. Chairman, I wish to underscore the importance of the United Nations to world peace. The realities of our international order are based, to a great extent, on the interrelationships of the big powers with the concomitant neglect of the small nations.

But in our present world situation where a flame ignited in a smaller state can ignite a larger confrontation, it becomes critically important that there be some place where the big powers and the smaller nations can meet; and it is in the United Nations alone where the smaller nations have the opportunity at least to make the dinosaur open one eye.

We would tend otherwise not to hear the cries of the millions in the "Third World," their cries of hunger, their cries for economic cooperation, their cries for freedom and, even more, their cries of restlessness and dissatisfaction; we might not heed their suggestions of the ways in which we can work together toward an international community of peace and freedom for all.

As the United Nations affords an arena where these voices are heard, it assumes incalculable importance. It is imperative that the United States revamp its present policy of indifference to these voices and that it begin to listen and to negotiate from a position of flexibility toward a resolution of the many pressing issues with which the United Nations is seized.

Therefore, Mr. Chairman, it is vital that, at the beginning of each session of the General Assembly, the Congress inquire into both the substantive and procedural points here raised as to the U.S. position at the General Assembly on crucial issues and the operation of the U.S. delegation to the General Assembly, including the role of the congressional members of that delegation.

I hope that you will address these concerns to the State Department representatives when they appear before the subcommittee.

Thank you.

Mr. FRASER. Thank you very much, Congressman Diggs, for a very provocative and well-considered statement.

It appears that we will have to go to the House Chamber for a vote. Without objection, we will recess the meeting of the subcommittee for about 10 or 15 minutes. Then we will return.

(A brief recess was taken.)

Mr. FRASER. The subcommittee will come to order again.

Mr. Diggs, I want to say that I appreciate the comments that you made, particularly with respect to the U.S. policy on southern Africa.

I would be curious to know the extent to which, within the U.S. delegation to the General Assembly, issues like that were seriously and extensively discussed.

Was there an opportunity to really raise these questions in a meaningful way or were all the directions coming out of Washington?

Mr. Diggs. Directions were coming out of Washington principally.

We were advised in a briefing before the General Assembly opened last year that we would have an opportunity to express our views, that our views would be welcomed, and given the impression that no decisions would be made without some kind of inputs from us, particularly the congressional delegates, and, whereas our views may not have been embraced, at least we would have had an opportunity, and so on.

This, in a practical way, was never really implemented. The decisions were being made in Washington. I am not even sure about inputs from our mission, itself, in New York. I did not get the impression that they were in a position to turn around any kind of instructions that came down. Some of these instructions obviously came down from the White House level because it is quite apparent that southern African issues, particularly the more sensitive issues, are really handled at the White House level through the National Security Council, so that instructions go from there to the State Department, so that in spite of a more enlightened policy or more enlightened view that might prevail, for example, in the African Bureau, the influence that they have is relatively limited, particularly when they are in competition with the White House and the European Bureau and the Economic Bureau.

By the time it filters through, it does not even really represent what I know to be the personal views of some people on the African level.

Mr. FRASER. In your mind, is there a question of the constitutionality of having Members of Congress serve on U.N. delegations?

It is my recollection that the Constitution bars Members of Congress from holding other offices under the authority of the United States. I know this issue has risen with respect to holding reserve commissions in the military forces.

It seems to me fairly clear as you described it, and you cited that statutory language, that Members of Congress, when they go there, are performing a different role than that for which they were elected to Congress. Apparently they are members of a delegation representing, both in practice and under the statute, some form of executive authority.

Mr. Diggs. I think this is an issue that ought to be examined because there are, I believe, some very serious constitutional questions that are involved.

I see no reason why service on the United Nations delegation could not provide the same kind of opportunities, for example, we have here in the Congress, where we are able to dissent from the majority view; we are able to offer supplemental views.

I do not see how one can take away from the legislative branch their prerogatives simply by transferring them from Washington to New York, even in that role.

Now, I am accompanied this afternoon by the Staff Consultant for the Subcommittee on Africa, who has spent a considerable amount of time with the delegation up there. She may have some additional views on this matter as a result of her own research.

STATEMENT OF MRS. GOLER BUTCHER, STAFF CONSULTANT, SUB-COMMITTEE ON AFRICA, COMMITTEE ON FOREIGN AFFAIRS

Mrs. BUTCHER. I do agree it is a subject which requires much research.

What does seem clear to us is, as the Congressman stated, that at a minimum there is an extra duty on the representative, himself, and therefore some corresponding extra obligation and correlative duty on the administration with respect to these congressional members in regard to consultation and to trying to work with them in the expression of the views which they feel should go into the decisionmaking process.

I think it is something which has to be researched further.

Mr. FRASER. We will be asking the executive branch for answers to a number of the questions you raised.

I might add, since I was deeply involved in the problem of the Rhodesia chrome amendment, that it was perfectly clear to me that the top levels of the executive branch were not trying to uphold the U.N. Charter. It seemed almost as if word had gone out that it was all right to leave this law on the books that put us in violation of the U.N. Charter. This I find to be one of the most disappointing examples in looking at the administration's attitude toward the United Nations and our obligations under international law.

Mr. DIGGS. I think if we are unable to get some clarification of the role of a Member of Congress in connection with the delegation, something much more definitive, something that will protect his prerogatives, then perhaps we should amend the act to make it strictly an Executive kind of responsibility.

To fold in Members of Congress who, for example, may have dissenting views and are unable to express them except on the outside, to me is unfair. Of course, I recognize that it is important to have Members of Congress have this U.N. experience. We need to broaden the base of the United Nations' constituency within the Congress.

There are many Members who have taken this assignment, who have been tremendously educated by the experience and have had their views broadened.

In spite of the fact that I dissented from various views on African questions in particular, I found the experience to be most valuable in putting into context just where this country of ours stands in the family of nations.

But the kind of frustrations that beset a Member who is conscientious about his assignment and who may have some dissenting views may in some sense offset that. For us to have the responsibility to be part of a sort of unit rule without being able to express ourselves, in my view, needs some kind of different approach.

Mr. FRASER. I notice that one of the issues that you expect to come up at the General Assembly is the certification of black liberation movements as observers.

Has there been a recommendation to that effect which has already been formulated by the Committee of 24?

Mr. DIGGS. This has been a relatively standard item.

As the liberation movements grow in their strength, the priority of such an item gets a great deal more attention than perhaps it has in the past.

The Special Committee on Decolonization did adopt a resolution as I note on page 8 here, a resolution on April 13, 1972, affirming that PAIGC is the only and authentic representative of the people of the territory—that is, of Guinea-Bissau.

This would be the general form in which it would come up.

There is no question that there is at the organization of African-unity level and at other levels a broadening and growing support for the liberation movements in the still remaining unliberated areas and it is going to be raised on a list of priorities at the U.N. agenda and in other international forums.

Mr. FRASER. Would you expect on the basis of your experience at the United Nations that the African countries will be making a serious effort to raise the issue of our violating the sanctions against Rhodesia?

Mr. DIGGS. It certainly is one of the most talked about subjects at the United Nations and at the appropriate committee. I have no special intelligence that it is going to be a pressure. But it is an issue that affects the credibility of the United States. It certainly is one of the most troublesome matters which affects our posture, no question about it.

Mr. FRASER. Mr. Bingham.

Mr. BINGHAM. Mr. Chairman, I would just like to compliment our colleague, Mr. Diggs, on a most interesting statement.

I have no questions.

Mr. FRASER. I want to thank you very much. I think you have helped set the stage for a meaningful inquiry into this General Assembly session.

I hope you can join us in our other sessions to the extent that time permits you to do so.

Mr. DIGGS. Thank you very much, Mr. Chairman.

Mr. FRASER. Our next witness is Prof. David A. Kay of the University of Wisconsin-Madison.

#### STATEMENT OF DAVID A. KAY, ASSOCIATE PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF WISCONSIN-MADISON

Mr. KAY. Thank you, Mr. Chairman.

I have been asked to preview the major issues that will, or should, come before the current session of the General Assembly.

Before doing this, however, I would like to set before the committee the perspective from which I view current developments in the United Nations.

I believe that we must all recognize that in recent years it has become progressively more difficult for even longtime supporters of the United Nations to make a strong case for support of the organization.

Many of the assumptions on which U.S. support for the United Nations were based and many of the hopes that we entertained for a sharing through the United Nations of the burdens of maintaining an orderly and secure world have not been borne out.

The hopeful signs of international peacekeeping in the 1950's and early 1960's have failed to mature into a dependable mechanism of U.N. action.

The Security Council has in the Middle East and Bangladesh—to mention only two recent cases—seemed more a mirror or even intensifier of international conflicts than a useful device for moderating and controlling international violence.

Parallel with the growing uncertainty that many of us have experienced as to the utility of the U.N. role in the political area, we have had an upsurge in the bilateral readjustments of relations among cold war antagonists—Moscow and Washington; Peking and Washington; Peking and Tokyo; East and West Germany; North and South Korea.

Many of the things that seemed to be unthinkable in terms of bilateral relations only 4 years ago are now celebrated fact: The President's visit to China; Premier Tanaka's visit to China; the Korean agreements out of the President's Moscow trip, announced this week.

Inevitably this readjustment of international relations away from the abnormal levels of hostility and isolation of the cold war has tended to diminish—in the short run—our interest in the United Nations.

This is not the time nor the place for a full examination of this responsibility and causes for the declining interest and usefulness of the United Nations in the political sphere.

Part—but only part—is the responsibility of the United States, both failures of omission and commission, the obvious and most recent case being our policy with regard to sanctions.

Other States—both large and small—as well as major organs of the United Nations have played a role in this changed assessment.

Probably of even greater importance is that two of the major security questions of the last decade—Vietnam and the Middle East—have simply not been amenable to the tools available to the international community or, for that matter, to those available to even the most powerful States.

The question more important than assigning responsibility for the seeming decline in the usefulness of the United Nations relates to what its role in the future should be and how events of the current session of the General Assembly will affect that evolving role.

I believe that the tide has turned and that the role of the United Nations as a channel for institutionalized, multilateral political action in the interest of the norms of a more stable and peaceful world will, in fact, rapidly grow. This belief is based on more than a recognition that the United Nations is the best, and maybe the only, available basis that the international community has for coping with global problems of survival.

That is a general hope and one which we could have expressed over the last 15 years.

My assessment of the turning tide is really based on what I believe to be a general recognition—now starting to be followed by action—that has developed out of the turmoil and shock of the last decade of the necessity for immediately developing multilateral ground rules for dealing with:

1. Spreading terrorism which threatens to overwhelm the very fabric of international relations.
2. A drug problem of international dimensions—both as to sources of supply and impact.

3. Population crisis that threatens to make meaningless all economic development programs.

4. Global environmental problems.

5. The oceans and seabed resources.

6. Dangers of nuclear proliferation.

All these—and more—are global dangers that will require international action if they are to be dealt with satisfactorily. In all of these areas, bilateral diplomacy can assist and often must precede U.N. action, but none of these areas can be handled adequately without action at the international level.

It is in this context that I think that the current General Assembly can be an extremely important beginning point.

Of the main issues which are coming before it and which I think signal this, one can identify three or four. One is terrorism. I think it is extremely interesting that it was the Secretary General that introduced this item before the United Nations, not the United States.

This is both important in terms, I think, of a general recognition of the importance of the problem, but more important than that, in terms of the institutional growth and capability of the organization.

The Secretary of State's treaty proposal of Monday, followed by what I think is one of the most interesting speeches before the United Nations by the Foreign Minister of the Soviet Union, Mr. Gromyko yesterday, in which he not only condemned terrorism in general but specifically the Palestinian act in Munich.

This is a general problem and I think there is general recognition of the need to develop institutional norms for dealing with these acts of violence, quite apart from the root causes.

#### SCIENCE AND TECHNOLOGY

When we look back on the agenda for the 27th General Assembly, we will assess it as really being a change in the orientation of the organization because that agenda, I think, for the first time reflects the global nature of the problems of science and technology.

In the environment area, the United Nations is coming out of what I believe to be probably the most successful U.N. Conference ever held in Stockholm. It has before it 106 recommendations in terms of an action program, ranging from human settlements to identification and control of specific pollutants, to setting up an institutional framework for future U.N. action in the environmental area as well as a declaration.

All of these items will be before the Assembly this year and require U.N. action to be implemented.

I think this is probably the major item in terms of hopeful signs on the U.N. docket.

The ocean area represents a real beehive of problems in this area. The United Nations is facing a decision as to whether to go ahead in the summer of 1973 with a Conference on the Law of the Sea.

I think a realistic assessment is that the conference may open in 1973 but probably will take 2 or 3 years to finish. The question of what type of international regime one should have for the sea, the role of fisheries, the role of exploitation of resources; all of these items are before the U.N. Assembly.

These are major items setting the tone for the way the International Committee orients itself toward issues that are likely to dominate the next decade of international relations.

While these are hopeful areas, I think one has to note, as Congressman Diggs already has, one exceedingly disturbing area and that is in the role of sanctions and colonialism.

I think it is quite likely that the United States will find itself condemned in a resolution passed by the General Assembly for policy on Rhodesia sanctions. This is not only regretful because of the issue, itself, but because of the change in tone and tenor of the U.S. orientation toward the United Nations.

Over the last decade, the sanction policy is one of the few hopeful signs that the international committee tried to evolve norms for dealing with peaceful change. I think it is a black mark in terms of U.S. foreign policy that it was the State that publicly went on record destroying the U.N.'s nascent attempt at a peaceful change.

It makes it difficult for the United States to deal with a policy like terrorism, why it is essential that new norms be evolved; at the same time our policy in regard to sanctions is anything but helpful.

On the other hand, the Secretary General's appointment this week of his own representative for Namibia is an encouraging sign. It is a sign of institutional growth in the Secretary's office, a sign of developing a norm for peaceful change in the African Continent.

It is the slenderest of hope but the best that community has had for over 25 years.

Another issue on which the United States finds itself on the wrong side is the financial question. The U.N. budget in absolute terms is not large, in terms of what the United States is used to dealing with on items of this size.

Yet, the U.S. mission finds itself in the United Nations this year not knowing whether in fact the U.S. Congress may undermine our position with regard to the charter obligations by requiring the United States to reduce its contribution to the United Nations, to the 25-percent level before that can be negotiated.

Here again, it is a case of the United States tearing down what small nascent norms we have for international law assessments.

I think this is exceedingly disturbing in an otherwise hopeful period of time. It is particularly disturbing when you consider it is coming at a period when there is a new Secretary General in office; he has tried to come to grips with this problem more than any past Secretary General has come to grips with it.

When you had a cut in assessment of from 31.5 to 25 percent after devaluation of the U.S. dollar, it is an impossible administrative problem to cope with. It does not allow one to deal with the serious question of the efficiency of the U.N. bureaucracy which is a serious issue that the United States pointed to in the past and needs examination.

There was every sign that the Secretary General was proceeding with that problem. The United States could not have hoped for anyone to have done better. We immediately changed the issue to a ground that is most unfavorable for the United States.

I think a final and overall point of this Assembly, and one I hope the subcommittee turns to, is the nature of the U.S. interest and participation in the United Nations. We have, for reasons that I think are

partly understandable, proceeded on the basis of the last 5 years in the United Nations as if our major foreign policy objective was to limit the nature of the damage of what the United Nations could do to us.

I think this is deplorable in some respects, it is understandable in others. Yet it is necessary, if I am right that the tide is turning, to set a new tone for the U.S. participation in the United Nations. That is, one of constructive participation. It involves areas of size, of technology, of other issues such as sanctions, of building up the capability of the Secretary General to deal with these problems.

Yet I do not see today at this Assembly session that the United States has begun to do that. I think if one looks at the level of the public members of this delegation, one can say that this is probably the worst public delegation that the President of the United States has ever named to the United Nations in terms of quality of officials. They are not the outstanding citizens we have had participating before. This is deplorable. It is deplorable because of what it indicates to us of the nature of the U.S. commitment to the United Nations.

We have not yet seen the constructive signs of the very nature of the orientation of our foreign policy in terms of constructive participation in the areas in which there is hope for United Nations involvement.

That is essentially all I have to say, Mr. Chairman.

Mr. FRASER. Thank you very much. That is a very helpful statement.

Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I agree that this is a very thoughtful and very helpful statement, Professor Kay. I wonder if you have any thoughts at all on what can be done in the way of procedural changes or changes in voting arrangements or any other way to restore to the United Nations the kind of capability in the peacekeeping field that we hope to achieve.

I would certainly agree with you and with other commentators that there are many areas where the United Nations can be useful and we should develop those capabilities. That is all to the good.

Are we just going to give up on the peacekeeping aspect or are we going to look to see whether we can begin to think in terms of some other ways of proceeding that might be more effective than we have had up to now?

Mr. KAY. I do not mean to give up on the peacekeeping area. I agree with you, it decayed in the late sixties for reasons that I think are largely understandable. I think some of those conditions have started to change.

I think the readjustment of cold war hostility—United States-Soviets, United States-China, North and South Korea, East and West Germany—is, in fact, liable to open up opportunities for action in this area.

I believe a United Nations in which you have larger participation of states—European security problems, for example, to believe you can deal with them without East and West Germany participating is idiotic.

The United Nations in the next few years is likely to have both Germanys as members, perhaps North and South Korea, in the same

period of time. I think in that period of time with that membership one can hope once again, as well as with the Secretariat if it is allowed to build itself back up again. The Secretariat has deteriorated in the last 5 years in terms of competence. It is not coming up with any successes.

There are signs that the present Secretary General was trying to renew the capability to do that.

Peacekeeping operations in the past have never been a matter of voting. They have been a matter of leadership at the top supported by governments such as our own. For the past 5 years both of those elements have tended to decay. We have not supported the organization in ways that would be helpful in this area, nor has the organization itself and major elements acted in ways that would encourage governments such as our own to support it.

I think those are starting to change. Those are the basic conditions that would lead to new peacekeeping operations rather than new formal bureaucratic arrangements.

Mr. BINGHAM. I would agree that certainly the Office of the Secretary General ought to be strengthened and that there is great potential here that earlier Secretary Generals did understand and try to use, and hopefully Mr. Waldheim will.

But to your knowledge has anybody been thinking about some way of using third party techniques that might not involve the Secretariat but would involve member states that were not directly involved in a dispute?

What I am thinking of is akin to the type of thing we have had in the past, that in the United Nations in early days at least was very successful—a committee of experts. Perhaps in the security field also, if we can develop committees of genuine experts who were really not involved in a particular dispute, this might be a contribution that has not really been explored.

The absurdity of the Security Council trying to cope with the problem of the Middle East, where you have half the members that don't recognize the State of Israel, is patent, it is harmful to the United Nations. It is not going to be accepted by Israel or Israel's friends. We should not attempt it.

That is the kind of situation where possibly, if we could get together three or four or five states or individuals from parts of the world that are completely uninvolved, and use them as mediators, arbitrators, what have you, the whole range of third party techniques in the settlement of disputes, this might be a direction in which we might move.

Mr. KAY. I quite agree it is an important area. I think there has started to be some general recognition of this. Security Councils very often in handling international disputes at best just mirror international conflicts, very often intensify international conflicts, although they are the two most difficult cases I can probably imagine, the Middle East and Namibia cases, starting with the Waldheim mission, I think that is a small step toward that way.

You are right, it is necessary to explore means of conflict settlement that do not exacerbate the dispute. Very often the U.N. procedure has done that. That accounts to a large extent for the loss of prestige in this area.

There are some interesting lessons from the domestic dispute settlements where one attempts to avoid exactly what the Security Council institutionalizes, bringing the parties together and fighting it in public. A labor arbitrator would never do that unless he wanted to prolong the dispute and perhaps his fee.

I think there are some hopeful signs in this area.

Mr. BINGHAM. Thank you.

Mr. FRASER. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

I was sorry I was not able to be here when the gentleman began his presentation. I do have only one question of you, however.

There will probably be efforts in the near future by African countries at the General Assembly to have black liberation movements accredited to the United Nations as observers. I would like to know from you: What position do you think the United States should take in this matter?

Mr. KAY. I think you are quite right, this is likely to happen at this session. It is amazing in some ways that it has not happened earlier. The practice on how one accredits observer nations to the United Nations is one of the United Nation's least codified portions of law. It is a haphazard method which we very often interpret to our limited advantage. That is why you had a West German observer at the United Nations and not an East German observer, at least in part.

I would hope that the United States would take a position which I think is the only one that is morally as well as intellectually defensible, that we are interested in people expressing their views in political forums; that if anything, is the American way.

Excluding people from political participation is not likely to lead to any settlement of a dispute. There are obvious problems involved in selection of observers, favoring one group over another, but I think the way is to open it to allow anyone, and let the U.N. worry, itself, about the problem of how observers are allowed to participate in U.N. proceedings.

I think the United States itself should encourage the United Nations to open the forum of political participation in this area.

Mr. DELLUMS. I thank the gentleman.

I yield back the balance of my time, Mr. Chairman.

Mr. FRASER. I was struck by your general historical overview of the United Nations and the changes that are taking place in the world. In some ways, the growth of détente and the lessening of cold war tensions restores the international environment to something closer to that which prevailed when the United Nations was born, just before the cold war began in the late forties.

One would think, at least perhaps uncritically, that perhaps the United Nations will be able to function more effectively if we do get back to a situation similar to the one at that time; that is, the absence of major world power blocs, the deep ideological cleavages—although even détente does not eliminate those differences, it simply lessens tensions. I suppose those differences would still be reflected in many of the U.N. decisions.

Mr. KAY. The point I was attempting to make is that we have been going for the last 5 years or longer through a period of transition that is different. The United Nations was highest in terms of public prestige

and political precedence in the United States when it was a useful instrument in cold war days.

We went through a period of time, because of the changing composition of the United Nations, changing in interest of its members and more adequate representation of the other side on the United Nations, it was no longer useful, it was adrift.

I do not think détente by itself—in fact, I would argue that the initial first blush of détente is the view that you have drawn of new bilateral relationships—the United States and China, the United States and the Soviet Union. That has detracted in the last 5 years, a lot of U.S. interest and U.S. foreign policy has been in détente. Now we are emerging in a more mature period when we have discovered that the problems of détente, many of the problems we face with the Soviets or Chinese cannot be adequately dealt with bilaterally. Improved bilateral relations are necessary.

Often they must precede multilateral contact. If they are to flower into full meaning, most of these require international action of other states participating. This is closer to the United Nations of at least the charter, if not of the initial years of the forties.

I think this means there is a new opportunity here if we seize it. I think one is likely to see, as we move further and further ahead, the implications of détente in some areas of the environment, science, and technology, and peacekeeping.

It really means that we do not want to poison bilateral relations, or to come full circle, for fulfillment they require multilateral action.

Mr. FRASER. To what extent have you followed the development of the "terrorism" issue as it has unfolded in recent days?

Mr. KAY. I guess I have spent 5 of the last 7 or 8 days in New York, and inevitably I have watched that. I think terrorism as an issue is genuine. I think the fact it was raised by the Secretary General, that you had yesterday a Soviet Foreign Minister speaking to the issue, indicates that it is larger than the Soviets.

In all cases, including the Secretary of State's speech there, one has to disassociate how he might feel about legitimate problem areas, political causes behind these issues, from the criminality of the acts themselves.

One can feel various ways on the Middle East dispute, on southern African issues, or any other issue, East Germans fleeing to the West, but the criminal acts themselves are acts that have to be regulated if the basic norms of international society are to be maintained.

This is a genuine feeling. I think it is an example of where the United Nations is useful. I think unfortunately the United States has lost much of the impact we might have had in that area because of our policy with regard to sanctions. People are making the connection that, "Look, we feel very strongly about terrorism but we don't seem to feel very strongly about solving the basic causes underlying this." I think it is regrettable that the United States is in this position.

Mr. FRASER. I suppose when we propose an international convention in which nations will be bound to do certain things, when we have just demonstrated that for our own convenience we don't care about international obligations, it does weaken our standing in the effort to develop a new system.

Mr. KAY. I think that is right. I think that is one very useful function that this committee has in holding the administration's feet to the fire, of drawing logical connections that everyone else will.

I applaud very much Congressman Diggs' suggestion that these become annual. I suggest in terms of my experience at the mission in 1967 and 1968 these would be more meaningful if they were held earlier in the year.

Hearings like this during the late summer in which these ideas are being formulated in the administration, are probably more meaningful than at this late date when you get sucked up into the international diplomacy, and in New York it is difficult to pull apart and look at the issues.

That is exactly the type of issues on which the Congress should hold the administration's feet to the fire. These have real importance in terms of growth of the institution itself, just like the connections with our position on finances and our position of wanting the Secretary General to evolve as a stronger institution are being drawn, yet we are doing nothing to help.

Mr. FRASER. You suggested in effect that the action taken on our dues in the United Nations is undercutting the Secretary General. I am not sure I understand the relation, other than that he will get less money.

Mr. KAY. As bureaucracy has developed in the last 15 years, it has grown in a haphazard manner. The Secretary General, if he is going to develop a strong capability, could get hold of it. Mr. Waldheim dealt exactly with this issue. At the same time, to come in and to tell an individual that you are going to throw him into a cash crisis of cutting his budget 15 percent regardless of whether he is trying to take hold, is not exceedingly helpful, particularly if you are doing it in the manner in which you have.

In looking at the financial item, the principle itself of a smaller U.S. assessment is one that I could take either side on and, I think, argue effectively. But to say, as we may be in the position of saying after we know what the conference committee does, that we are going to cut it to 25 percent regardless of the U.N. treaty procedure we have signed, that we have agreed to, that we have held others responsible for agreeing to in the past, to do this without regard to the norms of international law, just as we have on sanctions in the past, I think is defeating the very growth of the institutional capability of the Office of the Secretary General or the United Nations.

I think you can separate this quite distinctly from how you may feel about the idea of a smaller U.S. contribution. The timing and method by which we have done it is open to condemnation, quite apart from how you feel on the 25 percent.

Mr. FRASER. You made some rather strong statements about the public members on our General Assembly delegation. I gather that this is in part a difficult thing to quantify. You have to look at people and their background and see if on the face of it they appear to be qualified. Do you find a marked difference this year?

Mr. KAY. I think there is a clear, marked difference. You find on this delegation, for example, the only member I know of in the history of the U.S. delegation which the Senate previously refused to confirm because of senatorial prerogative.

Before, you have had leading public opinion makers, people whose names would be generally recognized by those people concerned with either foreign policy or other significant areas. This time, you have people—and this is really separate from their worth as individuals, which I can neither quantify nor judge—who in terms of signifying the U.S. interest in the U.N. simply are not broadly recognized, needless to say, not internationally, but not domestically.

I have had a number of people comment to me that they had not seen the story in the Times. The Times traditionally runs the names in September. They had not seen them because they had been so unremarkable. The story was there but the names did not catch anyone's attention.

This is a serious problem. I think it is one to which the committee could usefully turn its purpose. For example, as brought up by Congressman Diggs' testimony in terms of consultation, I think it is a near scandal, the fact that public members are appointed the second and sometimes the third week in September, once the fourth week in September, and are expected to step in the very difficult shoes of negotiating in New York.

These are individuals who should be called in in the early summer, just as I would suggest the committee should perform its work in the summer if they are going to meaningfully participate. That is separate from the quality of the individuals. I do think this is a marked deterioration in the delegation.

Mr. FRASER. Mr. Dellums, do you have any further questions?

Mr. DELLUMS. No, Mr. Chairman.

Mr. FRASER. I want to thank you very much. This has been very helpful. We are going to be talking to the administration tomorrow and we will pursue these same questions.

The subcommittee will stand adjourned.

(Whereupon, at 3:45 p.m., the subcommittee adjourned.)

# APPENDIXES

## APPENDIX A

### APPOINTMENT OF MEMBERS OF CONGRESS TO SERVE AS U.S. DELEGATES TO INTERNATIONAL MEETINGS

The following is an excerpt from "The Senate Role in Foreign Affairs Appointments" prepared for the use of the Senate Committee on Foreign Relations by the Foreign Affairs Division of the Congressional Research Service, Library of Congress, 1971. The publication is subtitled "A study of the provisions of the Constitution and law requiring confirmation of nominations in the foreign relations field."

Some of the debate over the constitutionality of the appointment of Members of Congress as delegates in international negotiations has centered on whether such appointments were precluded by article I, section 6, of the Constitution. It provides: "No Senator or Representative shall, during the time for which he is elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time. \* \* \*"

The appointment of a Member of Congress to a negotiating commission has been justified on the ground that such a commission was not such an office. This justification, however, has also contributed to allowing the President to appoint other negotiators without referring their nominations to the Senate on the ground that they too were not officers.

The wording of the United Nations Participation Act of 1945 was devised to meet this problem. Then Under Secretary of State Dean Acheson pointed out in testimony on the act that if the requirement of Senate confirmation for representatives at the United Nations General Assembly, which had been added by the Senate to the original bill, constituted the creation of a civil office or if the addition of a salary constituted an increase in the emolument of the civil office so created, then the Constitution would prohibit any then current Member of Congress from being appointed as a delegate during his current term.<sup>1</sup> In the final legislation as enacted (Public Law 79-264), the addition of a salary was worded "not to exceed" so that the executive could determine the salary at zero, and a specific exemption from compensation for any Member of Congress serving was added. Subsequent amendments to the act have retained both the provision on compensation and the exemption from salary for Members of Congress serving as delegates to the General Assembly.

A more basic question presented by the appointment of Members of Congress as delegates in international negotiations, a situation which puts them in the position of receiving instructions from the President, is occasioned by the doctrine of separation of powers. Concern over this possibility has existed regardless of whether such appointments have been confirmed by the Senate.

The congressional members of the delegation to the United Nations General Assembly are subject to confirmation, but several such members have pointed out the existence of a constitutional problem.

Senator Vandenberg described the problem as follows:

"\* \* \* I am increasingly impressed with the difficulties confronted by 'congressional' representatives because of their dual capacity. Of course it will always be true that a man cannot serve two masters. Yet that is precisely what I undertake to do—for example—when I, as a Senator, sit in the General Assembly as a delegate. I am helping to make decisions for the United Nations which must pass in review before the American Congress. Having participated in the United Nations in helping to make the decisions, I am not a 'free agent' when I return to the Senate to function in my 'congressional' capacity. Indeed, it could be a most embarrassing and difficult situation in the event that I did not approve of

<sup>1</sup> U.S. Congress, House, Committee on Foreign Affairs, "Hearings on Participation by the United States in the United Nations Organization," Dec. 7, 1945, p. 9.

some decision made by the United Nations. I should dislike to oppose in Congress anything to which I had given my consent (if only by reluctant acquiescence) in the United Nations."

[Vandenberg pointed out to Mrs. Roosevelt that U.N. delegates were not "free agents," that by the very commissions which they held they rightfully voted as instructed by the President, and with possibly a subsequent moral obligation to defend this position in Congress. The question, Vandenberg surmised, went to the heart of the traditional "checks and balances" American governmental system. At the same time he urged continuity in American representation at the General Assembly \* \* \* ]<sup>2</sup>

Subsequent member-delegates have pointed out in their reports that the situation could be a source of embarrassment to a Member of Congress serving as a U.N. delegate if the Member were asked to take a position as a U.N. delegate in direct opposition to his personal convictions or that of the majority of his constituents, or that it could be a source of embarrassment to the executive branch if the Member of Congress were to voice his opposition upon resuming his legislative responsibilities or refuse a particular assignment while serving.

One instance in which a congressional delegate disagreed with the instructions he received from Washington occurred in 1960 when Senator Wayne Morse was assigned to represent the United States on the Fourth, or Trusteeship, Committee which had jurisdiction over colonial questions. In his subsequent report on that session, Senator Morse cited several instances in which the United States vote was cast contrary to the way he believed the United States should vote and the views he expressed in debate in the United Nations. He reported, for example:

"Another sorry example of United States alignment on the wrong side of a colonial issue was the final United States vote of abstention on the South West Africa resolution. The United States delegation had no choice in the matter, because the vote was dictated by instructions from the State Department. Here again, if the United States delegation to the United Nations had been allowed to follow its own best judgment based upon the best interests of the United States, as they developed in the course of the debate at the United Nations, the delegation would have voted in favor of the resolution."

Again, too, the opening speech I made on behalf of the United States was full of sympathy for the general welfare of the inhabitants of South West Africa. But as we got down to specifics, the State Department edged away.<sup>3</sup>

A defense of the congressional delegate's right to assume a position of opposition on the resumption of his legislative duties was expressed in one report: "Members of Congress who serve on delegations, of course, do not cease to be independent legislators except in the discharge of the specific assignment entrusted to them by the President and only for the duration of that assignment. It is not impossible, therefore, that congressional members of a delegation may assume a different position on any given issue when they cease to act as agents of the President and resume their legislative functions. It is essential that the executive branch understand fully this possibility, particularly in requesting congressional members of delegations to represent the United States and to maintain official positions at the United Nations on questions which may subsequently involve appropriations or other acts of the Congress.

"Members of Congress have independent responsibilities to their constituents, which cannot in any way be compromised by service at the United Nations. We stress this point because we believe the practice of including Members of Congress on U.S. delegations is a desirable one. It is one which we should like to see continued, provided, of course, that it remains consonant with the concept of separation of powers within our Government."<sup>4</sup>

Various alternative approaches to this problem exist. A Member of Congress who feels he would be unable to reconcile the role of agent of the Executive within the United Nations with his legislative responsibilities is free to decline appointments as a United Nations delegate. Members who accept appointment

<sup>2</sup> Vandenberg, Arthur H., Jr., "The Private Papers of Senator Vandenberg," Boston, Houghton Mifflin Co., 1952, p. 330.

<sup>3</sup> The United States in the United Nations: 1960—A turning Point. Supplementary Report to the Committee on Foreign Relations, United States Senate, by Senator Wayne Morse. Committee Print, 87th Congress, 1st sess., February 1961, p. 12.

<sup>4</sup> U.S. Congress, Senate, Committee on Foreign Relations, "Observations on the United Nations." Report of Senator Bourke B. Hickenlooper and Senator Mike Mansfield, S. Doc. 26, 86th Cong., 1st sess., Washington, U.S. Government Printing Office, 1959, pp. 5-6.

as delegates to international meetings might insist that they have complete freedom of action rather than acting under instructions from the President. Senator Vandenberg made his service on the San Francisco Conference delegation conditional upon retaining his freedom of action<sup>5</sup> and according to Senator Connally, President Roosevelt met with the delegation on March 23, 1945, and asked that they work within the framework of the Dumbarton Oaks proposals but otherwise, "I want you to have complete freedom of action to make your own decisions."<sup>6</sup> As another alternative Members of Congress could attend international meetings as observers or advisers rather than as members of the delegation.

In conclusion, it might be pointed out that inviting congressional participation in international negotiating bodies appears to have developed as one method of promoting congressional support of international organizations and conferences and any agreements which might result from them. Whether it should be continued depends on an assessment of whether it is the best method for achieving this purpose at the present time or whether it should be supplanted by other forms of consultation between the executive and legislative branches.

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<sup>5</sup> Vandenberg, Arthur H., Jr., "The Private Papers of Senator Vandenberg," *op. cit.*, p. 154.

<sup>6</sup> Connally, Thomas Terry, "My Name is Tom Connally," New York, Thomas Y. Crowell Co., 1954, p. 266.

## APPENDIX B

### MEMORANDUM FROM CONGRESSMAN DIGGS TO SECRETARY GENERAL WALDHEIM CONCERNING THE QUESTION OF NAMIBIA

JULY 28, 1972.

To: United Nations Secretary-General Dr. Kurt Waldheim.

From: Congressman Charles C. Diggs, Jr., Chairman, Foreign Affairs Subcommittee on Africa, United States House of Representatives.

Subject: An assessment of your report on the Implementation of Security Council Resolution 309 (1972) concerning the question of Namibia.

I have decided to make a particular effort to convey to you my concern over the possible consequences of continuing the dialogue with South Africa, as you have suggested to the Security Council, since it seems to me one of the crucial decisions on African affairs to be taken by the international community. As Chairman of the Subcommittee on Africa of the House of Representatives, I am voicing my concern as someone deeply involved in the promotion of African rights and fundamental freedoms.

My concern over this issue arises from the following factors:

#### 1. *What the dialogue was designed to achieve*

I see no reason for continuing consultations which have been offered to South Africa as a "last chance," during which they conceded literally nothing. There has been no evidence in the report that South Africa is acting in good faith. On the contrary, it has refused to accept any United Nations resolutions, which it is bound to observe under the Charter of the United Nations. South Africa has refused to recognize the right of self-determination in accordance with the United Nations definition of that concept. It has even refused to accept resolution 309. The Group of Three nominated by the Security Council to consult with you on these contacts stated in their *aide-memoire*:

"As an initial step the Government of South Africa should inform the Secretary-General of its acceptance of resolution 309 (1972) so as to enable further efforts on its basis."

This primary condition has not been met, and further efforts should therefore be discontinued.

Resolution 309 specified consultations "with all parties concerned." South Africa is not legally a party concerned, except in negotiating a time-table for withdrawal, although it has an obvious political interest. The Group of Three, in paragraph 7 of the Aide Memoire, specified in particular that it considers South Africa, the Council for Namibia, the Ad Hoc Subcommittee of the Security Council and representatives of political organizations of the people of Namibia as "parties concerned." Yet, the report concentrates on the talks with South Africa, to the virtual exclusion of the other parties concerned, especially the U.N. Council for Namibia, which was set up by the General Assembly to administer the affairs of the territory. This concentration on South Africa sets an unfortunate precedent, and the suggested appointment of a special representative, who will deal mainly with South Africa, would appear to suggest that the imbalance would not be corrected.

#### 2. *What the dialogue tends to do in practice*

By dealing with South Africa, the United Nations would be tending to accept its presence in Namibia, which the International Court of Justice, in its Advisory Opinion of 31 June, 1971, declared an illegal occupation.

The United Nations Council for Namibia would, in effect, be put into a kind of limbo for the duration of the dialogue.

With regard to the terms of reference, appointment and activities of the proposed special representative, South Africa would be given the authority to dictate terms, and at any point to veto the appointment or refuse access to Namibia. This threat could be used to deter any effort to put pressure on South Africa to withdraw.

This deference to South Africa and seeming recognition of its authority with continued dialogue along the lines of South Africa's policy—which is in practice

to annex Namibia by a gradual process and subject it to policy decided in Pretoria—would tend to erode the international community's efforts, consistent with the legal position, as set forth in the relevant United Nations resolutions and the Advisory Opinion, to bring self-determination and independence to the people of Namibia.

### 3. *What the dialogue does not achieve*

During the six months of negotiations, South Africa has given no evidence of good faith. It continues to maintain its own concept of the framework of dialogue, which is the same as that which applied to the visit of Mr. Dag Hammarskjöld in 1961. The Advisory Opinion has since shown that approach to be inconsistent with the present international legal position.

If the extension of the dialogue is conducted in a way similar to that of the last six months, it is in effect giving South Africa *carte blanche* to continue its policy of moving towards final annexation of Namibia. The situation is very similar to the operation of the appeasement policy in Europe, which allowed Nazi Germany to move towards the *anschluss* with Austria without any effective protest being made.

Quite apart from the obligation on South Africa to withdraw its administration, it has a further obligation, while it maintains its occupation administration, to do nothing that would deny basic human rights and fundamental freedoms to the people of Namibia. In the last six months, we have seen: emergency legislation, giving South Africa total control outside the rule of law over Ovamboland, the emergency proclamation having been issued on 4 February, the final day of the Security Council meeting in Addis Ababa which passed resolutions 309 and 310; there have been over two hundred people detained without trial; freedom of worship has been violated, particularly by the expulsion of Bishop Winter and his staff; freedom of movement and access for foreign observers sharply curtailed; the "Bantustan" policy pushed through on an urgent basis; and the Acting President of SWAPO banned.

The system of *apartheid* is being enforced, with restrictions, limitations, and even territorial segregation on the basis of race; the International Court of Justice declared that detailed fact-finding was unnecessary, since the very principle of *apartheid* is in "flagrant violation of the purposes and principles of the Charter." The Namibians continue to be denied freedom of movement, residence, employment and the whole panoply of rights recognized as fundamental by the Universal Declaration of Human Rights.

Thus the dialogue has not achieved any amelioration in the conditions in Namibia. Rather, since its inception, their situation has worsened. Thus any assessment that the dialogue represents an advance fails to take cognizance of the human elements involving the people of Namibia.

### 4. *The significance of this for the United Nations itself*

If there is any suggestion of compromising the decisions of the United Nations in order to reach agreement with South Africa, this would put into question the whole principle of United Nations decisions, and the Charter obligation on States to observe collective decisions.

Namibia has been an issue for the international community for over fifty years, and the present position has been arrived at over decades of struggle and sacrifice, especially by the Namibians themselves, in order to achieve their independence and enjoyment of human rights. To compromise the position now, following the important General Assembly and Security Council resolutions and the Advisory Opinion of the International Court of Justice, would be to surrender to South African intransigence at a point where there is a sound basis for concerted international pressure on South Africa to withdraw its occupation from Namibia.

While negotiations under resolution 309 have been carried out intensively, implementation of the other resolution, No. 310, has been extremely disappointing. It would have been more reassuring to see equal effort being devoted to pressuring member-States to implement this resolution, which calls for all States to ensure that companies of their nationality operating in Namibia apply the principles of the Universal Declaration of Human Rights in their employment practices.

A further crucial point is timing. Following the International Court's Opinion, the general strike in Namibia, and the widespread international interest aroused by the strike, as expressed in the Namibia International Conference in Brussels

in May 1972, there is the danger that momentum and interest will be dissipated by further dialogue, and purposeful discussion of pressure confused and deflected. Proper General Assembly consideration could be deferred until the very end of the XXVIIth Session, too late for a full debate and proper consultations; that will in effect mean a further year's delay.

For all these reasons, I am extremely concerned at the suggestion of further dialogue. I am fully aware that I have no official standing with respect to this matter; but, because of my longstanding interest in African affairs I feel compelled to state my concern.

As an alternative, I would urge both the expeditious appointment of a United Nations Commissioner for Namibia and the implementation of Security Council Resolution 310, a companion resolution to Security Council Resolution 309. In particular, I would call your attention to paragraph 5 of this resolution 310:

*"Calls upon all States whose nationals and corporations are operating in Namibia notwithstanding the relevant provisions of Security Council Resolution 283 (1970) to use all available means to ensure that such nations and corporations conform in their policies of hiring Namibian workers to the basic provisions of the Universal Declaration of Human Rights."*

However, if the Security Council decides that the dialogue must proceed there should at least be certain preconditions for any further contact with South Africa. First, there must be a clearer, more emphatic recognition that the purpose is to negotiate the transfer of governmental power to the people of Namibia or to the United Nations as Trustee. Second, South Africa must restore the basic human rights of the people of Namibia.

Through this memorandum, I wish to make the record clear that, based on the experiences of the past six months, since the passage of SC Res. 309, I do not expect any meaningful change from the dialogue as proposed. Perhaps, this is a tactic that must be exercised to broaden the base of support in the international community to assist in the liberation of Namibia. But, in my view, those member-States who require this kind of tactic and those who have contended that the initiatives by African states have been strident, uncompromising, and unproductive, namely the United States, the United Kingdom and France, ought to hang their heads in shame. Can it really be assumed that these States will, if this initiative does not result in actual arrangements during this period for South Africa's withdrawal and Namibian independence, support a Chapter VII finding and appropriate action under Article 41?

I think it is quite obvious that those States who need to be satisfied with this type of ploy are those who are more interested in political advancement with South Africa than concerned with the human rights that are involved.





