

DOCUMENTARY STUDY
of the
POLITICIZATION OF UNESCO

Fundação Cuidar o Futuro

by

DANIEL G. PARTAN

Professor of Law
Boston University School of Law

AMERICAN ACADEMY OF ARTS AND SCIENCES

November 1975



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December 30, 1975

Mr. John Upston
Executive Secretary
Commission for UNESCO
Department of State
Washington, D.C. 20520

Dear Mr. Upston:

This will authorize you to distribute copies of the Partan report to members of the U.S. National Commission on UNESCO. As we agreed we would like the statement of Saville Davis' summary from the Bulletin included with the report.

Fundação Cuidar o Futuro

Sincerely,

John Voss
Executive Officer

JV/j1
Enclosure

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AUTHOR'S PREFACE

This Documentary Study of the Politicization of UNESCO has been prepared at the request of the Special Committee on UNESCO appointed by the American Academy of Arts and Sciences.

The Special Committee was appointed by Academy President Harvey Brooks in the spring of 1975 to consider "what action, if any, the Academy should take with regard to the political misuse of UNESCO that culminated in the recent actions by the UNESCO General Conference concerning Israel." The General Conference actions referred to were the November 1974 decisions that, *inter alia*, condemned Israel for undertaking archaeological excavations in Jerusalem and for its "persistence in altering the historical features of the City of Jerusalem," called for the withholding of UNESCO assistance from Israel until it ended these practices, and rejected Israel's request to participate in UNESCO regional activities as a member of the European Region.

At its first meeting in May 1975, the Academy Special Committee referred to a growing need for "cooperation among nations to foster education, promote scientific development and enhance mutual understanding among peoples of different cultures." It observed that UNESCO can help in these areas, but that:

UNESCO is neither designed nor able to solve all kinds of problems and by attempting to solve all problems it could fail to solve any. It cannot fulfill its objectives unless it can be protected from interference arising from the grave political differences among nations. It cannot effectively deal with problems that are shared by all the peoples of the world if it is used by its member states to gain political advantage. This has been done in the past. It is being done now.

Accordingly, the Special Committee decided that part of its work would be to "assemble a documentary record relating to the past politicization of UNESCO," which the Committee considered as potentially useful "to individual scholars, scientists and cultural leaders in determining their own attitudes towards cooperation in UNESCO activities." The documentary record could also "serve as a basis for consideration of ways in which political actions could be avoided in the future, and UNESCO's effectiveness in accomplishing its true functions could be strengthened."

The present work is in three parts. First, a general introduction describes the Constitution and structure of UNESCO, and discusses the framework within which the "politicization" of the organization might



be considered. Second, the central part of the work sets out the actions taken by UNESCO with regard to Israel, attempting in each case to identify the issues that were raised in the course of their consideration by the organization, and to describe the development of those issues in reasonably complete detail. Third, the work offers a similar presentation and analysis of selected UNESCO actions that do not directly involve Israel, but show some parallels to the actions affecting Israel or otherwise illuminate the "politicization" of the organization.

The Documentary Study is accompanied by a lengthy Documentary Record that includes much of the UNESCO documentation relating to each UNESCO action considered in the Documentary Study. The Documentary Record includes the texts of relevant treaties and resolutions, the texts of reports submitted to the UNESCO Executive Board and General Conference, and excerpts from the summary records or verbatim records of discussions in UNESCO organs leading to the adoption of the UNESCO decisions under consideration. The Documentary Record has been reproduced separately from the present report, and is available from the American Academy of Arts and Sciences, 165 Allandale Street, Jamaica Plain Station, Boston, Massachusetts 02130.

The Documentary Study is limited in three respects.

First, the Documentary Study focuses on actions taken by the two UNESCO organs responsible for setting UNESCO policy and for adopting and overseeing the implementation of the UNESCO program. It deals chiefly with the debates, decisions and resolutions of the UNESCO Executive Board and General Conference, and only indirectly with the implementation of the UNESCO program by the Secretariat. The study thus does not deal directly with the performance of the UNESCO Secretariat, as to which it should be observed that no issue has been raised in any of the matters dealt with in the study.

Second, the Documentary Study is highly selective. The study attempts to clarify the record as to UNESCO actions relating to Israel, and as to some other actions that have been taken by UNESCO, including actions relating to South Africa, Southern Rhodesia, Portugal and Taiwan. The study does not attempt either a complete historical survey of trends towards politicization in UNESCO or an assessment of the degree of politicization in UNESCO as compared with other Specialized Agencies of the United Nations. Most importantly, the study does not attempt to present the very considerable body of solid evidence that most work of the UNESCO General Conference and Executive Board continues to be carried out in a fully responsible fashion squarely within UNESCO competence in the fields of education, science and culture.

Third, the Documentary Study presents the facts and the issues as they arose in UNESCO actions affecting Israel, and in other UNESCO



actions that either show parallels to the actions affecting Israel or establish by comparison the context in which such actions were taken. The study identifies the issues relevant to "politicization" charges and presents information needed for consideration of such charges, giving citations to the relevant UNESCO documentation including the material reproduced in the companion Documentary Record. The Documentary Study thus does not evaluate UNESCO actions or draw conclusions as to the "politicization" of UNESCO. The intent throughout has been to leave both questions of evaluation and the drawing of conclusions to the judgment of the reader.

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October 1975

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PART I: INTRODUCTION

A. UNESCO Constitution and Structure

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A. UNESCO CONSTITUTION AND STRUCTURE

UNESCO, the United Nations Educational, Scientific and Cultural Organization, is an intergovernmental organization established by a treaty, called the UNESCO Constitution,¹ signed at London in 1945. The UNESCO Constitution defines the purposes and functions of the organization, provides for its membership and sets out the structure and functions of the organization's two main organs, its Executive Board and its General Conference.

The UNESCO Constitution states that the purpose of UNESCO is to:

contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.²

The basic purpose thus stated is given particular content through provisions stating that the organization will take various actions, including, for example, the following: (a) by collaborating through mass communications to advance "the mutual knowledge and understanding of peoples"; (b) by giving "fresh impulse to popular education and to the spread of culture" through collaboration in the development of educational activities; and (c) by helping to "maintain, increase and diffuse knowledge", including action to assure "the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and recommending to the nations concerning the necessary international conventions". The same article of the Constitution also provides as follows:

With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States members of this Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction.³

UNESCO membership is nearly identical to the membership of the United Nations. The UNESCO Constitution provides that membership of the United Nations "shall carry with it the right to membership" of UNESCO; nearly all

1. Constitution of the United Nations Educational, Scientific and Cultural Organization, London, Nov. 16, 1945; 4 UNTS 275; hereinafter cited: UNESCO Constitution. The full text of the UNESCO Constitution as amended through 1974 is reproduced in the companion Documentary Record as Doc. I.A.1. The citation form just given is used in this study to refer to documents reproduced in the Documentary Record.

2. UNESCO Constitution, Art. I, para. 1.

3. UNESCO Constitution, Art. I, paras. 2 and 3.



United Nations members are members of UNESCO.⁴ In addition, states that are not members of the United Nations may be admitted to membership of UNESCO by two-thirds majority vote of the UNESCO General Conference upon the recommendation of the Executive Board.⁵ One hundred thirty-six states were members of UNESCO in 1975.

The UNESCO General Conference, which consists of all UNESCO members, determines "the policies and the main lines of work of the Organization," taking its decisions "on programs submitted to it by the Executive Board."⁶ The UNESCO program adopted by the General Conference is executed by the UNESCO Secretariat headed by the Director-General. In the period principally dealt with in this study, two persons served as Director-General: first, Mr. Rene Maheu of France, who served until November 1974; and, second, Mr. Amadou-Mahtar M'Bow of Senegal, who took office on Mr. Maheu's retirement towards the end of the 18th Session of the General Conference in November 1974.

The following particular functions of the General Conference are of special importance in the UNESCO actions considered in this study:

- a. The General Conference shall, when it deems desirable and in accordance with the regulations to be made by it, summon international conferences of States on education, the sciences and humanities or the dissemination of knowledge;
- b. The General Conference shall, in adopting proposals for submission to the Member States, distinguish between recommendations and international conventions submitted for their approval. In the former case a majority vote shall suffice; in the latter case a two-thirds majority shall be required. Each of the Member States shall submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted.
- c. The General Conference shall receive and consider the reports submitted periodically by Member States as provided by Article VIII [which provides for reports "in a manner to be determined by the General Conference," by each Member State "on its laws, regulations and statistics relating to educational, scientific and cultural life and institutions, and on the action taken upon the recommendations and conventions" adopted by the General Conference.]

4. UNESCO Constitution, Art. II, para. 1. South Africa, a member of the United Nations, was a member of UNESCO, but withdrew from UNESCO in 1955, and has not resumed UNESCO membership. See Part III.A below.

5. UNESCO Constitution, Art. II, para. 2. Switzerland is an example of such a state, having been admitted to membership of UNESCO without being a member of the United Nations.

6. UNESCO Constitution, Art. IV, paras. 1 and 2.

7. UNESCO Constitution, Art. IV, paras. 3, 4, and 6, and Art. VIII.



The General Conference consists of delegates appointed by each of UNESCO's 136 Member States after consultation by each with its UNESCO National Commission, if one has been established, or, otherwise, after consultation with national educational, scientific and cultural bodies.⁸ The General Conference meets in ordinary session every two years, normally at UNESCO Headquarters in Paris.

The UNESCO Executive Board presently consists of forty members elected by the General Conference from among the delegates appointed by the Member States, with the President of the General Conference serving ex officio in an advisory capacity.⁹ Executive Board members are to include "persons competent in the arts, the humanities, the sciences, education and the diffusion of ideas," selected by the General Conference with regard to "the diversity of cultures and a balanced geographical distribution."¹⁰ Executive Board membership has been increased by amendment of the UNESCO Constitution from the original eighteen members to the present forty members in several stages: from eighteen to twenty-two in 1954; from twenty-two to twenty-four in 1956; from twenty-four to thirty in 1962; from thirty to thirty-four in 1968; and from thirty-four to forty in 1972.¹¹

The UNESCO Constitution originally envisaged that Executive Board members would be elected and serve in their individual capacities and not as representatives of their governments. The Constitution, as quoted above, provided that Board members should include persons competent in UNESCO's fields of education, science and culture, and that:

The members of the Executive Board shall exercise the powers delegated to them by the General Conference on behalf of the Conference as a whole and not as representatives of their respective Governments.¹²

In 1954, the UNESCO Constitution was amended to provide for the election of Executive Board members "from among the delegates appointed by the Member States," and that each Board member "shall represent the government of the State of which he is a national." The amended Constitution also provides as follows:

Although the members of the Executive Board are representative of their respective governments they shall exercise the powers delegated to them by the General Conference on behalf of the Conference as

8. UNESCO Constitution, Art. IV, para. 1. Up to five delegates may be appointed by each Member State.
9. UNESCO Constitution, Art. V, para. 1, as amended.
10. UNESCO Constitution, Art. V, para. 2.
11. See UNESCO Constitution, Art. V, para. 1, 4 UNTS 275, 284 (original text); 575 UNTS 270 (1954 amendment); 575 UNTS 276 (1956 amendment); 575 UNTS 280 (1962 amendment); 22 UST 1699 (1968 amendment); and 17 C/Res. 13.1 (1972 amendment).
12. UNESCO Constitution, Art. V, para. 11 (original text), 4 UNTS 286.



a whole.¹³

Thus, under the amended UNESCO Constitution, Executive Board members both represent their governments and take action on behalf of the General Conference "as a whole." The practice of the Executive Board under these provisions shows that positions taken by Executive Board members frequently reflect the views of their governments whether or not the Board is carrying out a function explicitly delegated to it by the General Conference.¹⁴

There are no "permanent members" of the Executive Board; Board members are elected for six year terms and are not immediately eligible for election to a second term.¹⁵ On the expiration of the term of office of a delegate of a Member State, however, another delegate of the same Member State may be elected to membership of the Board, with the result that the major powers, that is, France, the Soviet Union, the United Kingdom and the United States, have always been represented on the Executive Board.¹⁶

In 1968 it was decided that Executive Board members would be drawn in a fixed proportion from five groups of Member States, assigning each UNESCO Member State to one of the five groups for purposes of elections to the Executive Board.¹⁷ The system of electoral groupings contributes to fulfilling the constitutional requirement that "the diversity of cultures and a balanced geographical distribution" be reflected in Executive Board membership; it makes no change in the requirement that Executive Board members include "persons competent in the arts, the humanities, the sciences, education and the diffusion of ideas."¹⁸

The five electoral groupings as amended through 1974 are as follows:

13. UNESCO General Conference Resolution 8 C/Res. II.1.2 (1954). The amendment substituted the quoted language for the provision quoted in the text at note 12 supra, which became para. 12 of Art. V of the UNESCO Constitution.
14. See the Executive Board debates discussed in Part II.A below.
15. UNESCO Constitution, Art. V, para. 3, as amended.
16. When the People's Republic of China replaced the Republic of China in UNESCO, a delegate of the People's Republic was elected to membership of the Executive Board.
17. Amendment to Art. V of the UNESCO Constitution, adopted by the 15th Session of the General Conference, 1968, 22 UST 1699, 1700-01; TIAS 7197. New members are assigned by the General Conference to one of the five groups for purposes of election to the Executive Board.
18. UNESCO Constitution, Art. V, para. 2.



Groupings of Member States for the Purpose of Elections
to the Executive Board

Group I(27): Ten Seats

Australia	Greece	Norway
Austria	Iceland	Portugal
Belgium	Ireland	Spain
Canada	Israel	Sweden
Cyprus	Italy	Switzerland
Denmark	Luxembourg	Turkey
Finland	Malta	United Kingdom of
France	Monaco	Great Britain and
Federal Republic of	Netherlands	Northern Ireland
Germany	New Zealand	United States
		of America

Group II(11): Four Seats

Albania	German Democratic	Ukrainian Soviet
Bulgaria	Republic	Socialist Republic
Byelorussian Soviet	Hungary	Union of Soviet
Socialist Republic	Poland	Socialist Republics
Czechoslovakia	Romania	Yugoslavia

Group III(24): Seven Seats

Argentina	Dominican Republic	Mexico
Barbados	Ecuador	Nicaragua
Bolivia	El Salvador	Panama
Brazil	Guatemala	Paraguay
Chile	Guyana	Peru
Colombia	Haiti	Trinidad and Tobago
Costa Rica	Honduras	Uruguay
Cuba	Jamaica	Venezuela

Group IV(21): Six Seats

Afghanistan	Indonesia	Mongolia
Bangladesh	Iran	Nepal
Burma	Khmer Republic	Pakistan
China	Japan	Philippines
Dem. People's Republic	Republic of Korea	Singapore
of Korea	Laos	Sri Lanka
India	Malaysia	Thailand
		Rep. of Viet-Nam

Group V(50): Thirteen Seats

Algeria	Egypt	Jordan
Bahrain	Ethiopia	Kenya
Burundi	Gabon	Kuwait
Cameroon	Gambia	Lebanon
Central African Rep.	Ghana	Lesotho
Chad	Guinea	Liberia
Congo	Iraq	Libya
Dahomey	Ivory Coast	Madagascar



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including UNESCO.²⁴

United Nations policy recommendations thus are not directly binding on UNESCO either under its Constitution, or under the United Nations Charter, or under the United Nations -- UNESCO relationship agreement. Such recommendations are nonetheless normally accepted and followed by both the UNESCO Executive Board and the General Conference, a practice that appears to have met with general acceptance by UNESCO Member States.²⁵ This has especially been true where, as in several of the cases considered in this study, the policy issue resolved by the United Nations appears to be a political issue lying outside the UNESCO sphere of competence, that is, outside the fields of science, education and culture. In such cases the political judgment of the competent United Nations organ has been accepted as determinative of the issue as it relates to the activities of UNESCO.²⁶

For the purposes of this study, two other aspects of UNESCO's basic constitutional framework and mode of operation should be stressed.

First, UNESCO's sphere of competence as defined by its Constitution relates to "education, science and culture." This does not mean that UNESCO has no role in matters bearing on peace and security, or as to international conflict and political controversy generally. To the contrary, a widely quoted clause of the preamble to the UNESCO Constitution states the basic premise of UNESCO that: "since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed." The Constitution defines UNESCO's purpose as contributing to peace and security "by promoting collaboration among the nations through education, science and culture" to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms.²⁷

Thus, notwithstanding the breadth and generality of the terms used in the UNESCO Constitution, its statement of purpose links UNESCO to international co-operation in "education, science and culture," and it is against this statement of the UNESCO sphere of action that specific UNESCO decisions should be tested to determine whether they properly fall within UNESCO competence.

UNESCO Constitution provides in Art. II, paras. 4 and 5, for the suspension and expulsion of UNESCO Members suspended or expelled by the United Nations. See Parts II.A and II.B below.

24. See, e.g., Part III.A below.

25. As noted in the text at notes 4-5 above, UNESCO membership is nearly identical to the membership of the United Nations.

26. See Parts II.A and III.A below.

27. UNESCO Constitution, Art. II, para. 1.



Second, UNESCO acts to achieve its purpose within its sphere of competence through study and recommendation designed to further international co-operation in education, science and culture. The UNESCO Constitution gives UNESCO no explicit authority to go beyond study and recommendation to achieve its ends. Thus, UNESCO may initiate studies of particular educational, scientific or cultural questions, and UNESCO may gather information²⁸ and hold meetings and conferences leading to recommendations and international conventions on such questions, but UNESCO has no explicit constitutional authority to take binding decisions on educational, scientific or cultural questions, or to take coercive action to enforce its decisions on such questions.²⁹

In this connection it should be noted that regardless of the exact terminology used, UNESCO resolutions addressed to Member States on educational, scientific and cultural questions have the status of recommendations. This means that Executive Board decisions and General Conference resolutions,³⁰ which frequently express or imply a view as to the legal obligations of Member States, do not in themselves create legal obligations for Member States. In each case the view expressed or implied by the Executive Board or the General Conference rests on actions or obligations existing apart from the determination made by the UNESCO Executive Board or General Conference. Reiteration of such an obligation by UNESCO organs may add strength or clarity to international standards or obligations; such reiteration will not by itself impose legal obligations on UNESCO Member States in matters relating to education, science or culture.³¹ UNESCO resolutions also initiate and govern UNESCO programs through instructions to the Director-General that may have direct impact on Member States without creating formal legal obligations.³²

28. The UNESCO General Conference is explicitly authorized to call upon Member States to submit reports on their "laws, regulations and statistics relating to educational, scientific and cultural life and institutions," and on the action taken upon recommendations and conventions adopted by the General Conference. UNESCO Constitution, Art. VIII, text at n.7 supra.

29. See n. 23 supra concerning suspension and expulsion of Member States that have been suspended or expelled by the United Nations, discussed in Parts II.A and II.B below.

30. Executive Board actions are customarily termed "Decisions of the Executive Board," while General Conference actions are termed "Resolutions of the General Conference."

31. Other types of UNESCO resolutions may create legal obligations for Member States, however. See, e.g., UNESCO Constitution, Art. VIII, relating to reports by Member States, n. 28 supra; and Art. IX, relating to the budget of the organization.

32. See, e.g., the instructions to the Director-General contained in the 18th General Conference resolutions discussed in Parts II.A and II.C. below.



PART I: INTRODUCTION

B. The "Politicization" of UNESCO

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B. THE "POLITICIZATION" OF UNESCO



The term "politicization" may have different meanings in different contexts. It has been used with respect to UNESCO chiefly in three senses: first, to refer to UNESCO decisions on matters that are considered by some to lie essentially outside the domain of "education, science and culture." Second, the term "politicization" has been used to refer to decisions reached through a process that some see as not reflecting the high standards of scholarship that should be expected of the agency bearing principal responsibility for education, science and culture in the United Nations system. Finally, the term "political" or "politicization" has also been used to reflect a view that specific actions taken by the UNESCO Executive Board or General Conference were taken to express a partisan political position rather than as an objective, non-partisan determination on a matter falling within UNESCO's competence.

The focus in Part II of this study is on four UNESCO actions affecting Israel that are considered by some to have been "political," or to reflect the "politicization" of UNESCO in one or more of the three senses indicated above. Three of these actions were taken by decision of the General Conference at its 18th Session in November 1974: first, to withhold UNESCO assistance from Israel until Israel complies with earlier General Conference and Executive Board decisions relating to the protection of cultural property and to archaeological excavations in Jerusalem; second, to reject Israel's request for admission to the UNESCO European Regional Group; and, third, to authorize the Director-General to "exercise full supervision of educational institutions" in territories occupied by Israel. The fourth action was the failure of the Executive Board to include Israel in the list of states to be invited to projected inter-governmental meetings concerning a proposed regional convention on the recognition of higher education studies and degrees in the European and Arab countries bordering on the Mediterranean.

With respect to each of the four UNESCO General Conference and Executive Board actions it has been charged that the decision was taken to express political opposition to Israel, rather than as an objective determination on a question within UNESCO competence. Second, in some respects certain of the decisions are charged to have been taken in disregard of the facts, or without adequate development in the General Conference or the Executive Board of the relevant facts. Third, apart from or in addition to alleged political motivation, it has been charged that in some respects certain of the decisions in question lie outside of the competence of UNESCO as defined in the UNESCO Constitution.

Each of the four UNESCO actions affecting Israel is described in detail in Part II of this study, with comprehensive citation to the relevant Executive Board and General Conference documentation. In each case the effort has been to draw attention to the issues relevant to "politicization" charges, and to present information needed for a consideration of such charges, without evaluation of the arguments and without drawing conclusions. Questions as to the validity of the UNESCO actions, and questions as to the justifications for charges that the actions in question were "political" or show the "politicization" of UNESCO, are left to the judgment of the reader. A similar summary and analysis is offered in Part III

other UNESCO Actions that may either show parallels to the actions affecting Israel, or establish by comparison the context or background against which the actions affecting Israel should be considered.

A separate Documentary Record collects and reproduces UNESCO documentation bearing on the matters considered in Parts II and III. The Documentary Record is abbreviated in the case of the UNESCO actions included in Part III, but is extensive and set out in relatively complete detail with respect to the UNESCO actions relating to Israel considered in Part II, which form the principal focus of this study.

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PART II: UNESCO ACTIONS RELATING TO ISRAEL

A. The Protection of Cultural Property in Jerusalem

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A. THE PROTECTION OF CULTURAL PROPERTY IN JERUSALEM

The question of protecting cultural property in Jerusalem has been at the center of UNESCO's relations with Israel in the period following the June 1967 war. In 1974, after reaffirming previous UNESCO resolutions on Israeli activities in Jerusalem, which are discussed later in this section, the 18th Session of the UNESCO General Conference adopted a resolution whereby the General Conference takes the following action:

Condemns Israel for its attitude which is contradictory to the aims of the Organization as stated in its Constitution by its persistence in altering the historical features of the City of Jerusalem and by undertaking excavations which constitute a danger to its monuments, subsequent to its illegal occupation of this city; [and]

Invites the Director-General to withhold assistance from Israel in the fields of education, science and culture until such time as it scrupulously respects the aforementioned resolutions and decisions.¹

The two chief operative paragraphs of the General Conference resolution, expressing condemnation of Israeli actions in Jerusalem and calling for a cut-off of UNESCO assistance to Israel, raise complex issues of law and policy that are discussed in the sections that follow. The issues are presented in the order in which they were raised in UNESCO as reflected in the public record of discussions in UNESCO organs. Where possible when required for a full presentation of the issues, reference is also made to official documentation lying outside the UNESCO public record, such as reports and resolutions of United Nations organs.

A brief summary of the issues presented by the November 1974 General Conference resolution may provide a useful introduction to the events and to the UNESCO actions leading up to the 1974 resolution. The issues may be grouped under the following five headings:

First, UNESCO's basis for involvement in the protection of cultural property in Jerusalem. In addition to the threshold question of the scope of the UNESCO Constitution in matters relating to the protection of cultural property generally, UNESCO has a special role under the 1954 Hague Conven-

1: UNESCO General Conference Resolution 18 C/Res. 3.427, operative paras. 2 and 3 (1974); Doc. II.A.53. General Conference resolutions are hereinafter cited C/Res. preceded by the number of the session; Executive Board decisions are cited EX/Dec. preceded by the number of the session. A "Doc." number following any citation refers to the reproduction of the cited document in the Documentary Record issued as a companion volume to this Documentary Study of the Politicization of UNESCO.



tion for the Protection of Cultural Property in the Event of Armed Conflict² that may be relevant to the protection of cultural property in Jerusalem. These issues are discussed in the sections immediately following.

Second, the basis and scope of Israel's obligations with regard to the protection of cultural property in Jerusalem. Two documents are relevant here. The first, the 1954 Hague Convention mentioned above, is an international treaty to which Israel is a party and under which Israel has formal legal obligations to protect and preserve cultural property in occupied territories. The scope of Israel's Hague Convention treaty obligations is in dispute, the principal issue being whether the 1954 Hague Convention prohibits archaeological excavations in occupied territories. The second document is a UNESCO General Conference resolution adopted in 1956, termed a "Recommendation on International Principles Applicable to Archaeological Excavations."³ The 1956 Recommendation states that occupying powers "should refrain from carrying out archaeological excavations in occupied territory." As a resolution rather than a treaty, the Recommendation does not create formal legal obligations for UNESCO Member States, but its interpretation and application in the Jerusalem context raise issues considered below.

Third, the disputed legal status of Jerusalem affects both the scope of Israel's obligations under the 1954 Hague Convention and the application of the 1956 General Conference recommendation. It is therefore relevant to ask whether UNESCO should regard the part of Jerusalem taken over by Israel after the June 1967 war as "occupied territory," or as territory that has been integrated into Israel, and by what means this issue should be resolved. In this connection it should be noted that the 1974 General Conference resolution quoted above both assumes that Jerusalem is occupied territory and characterizes the occupation as "illegal," raising the question of UNESCO's competence to evaluate the lawfulness of Israel's control of Jerusalem.

Fourth, with regard to a factual evaluation of Israel's actions in Jerusalem, conclusions stated in the 1974 General Conference resolution and in earlier UNESCO resolutions raise issues as to the adequacy of the facts upon which the conclusions have been based. For example, the 1974 General Conference resolution refers to Israel's "altering the historical features of the City of Jerusalem" and "undertaking excavations which constitute a danger to [Jerusalem's] monuments." The basic issue is: are these and similar conclusions stated in UNESCO resolutions adequately established by the evidence presented to and evaluated by UNESCO organs?

Fifth, assuming UNESCO's competence with regard to the protection of cultural property in Jerusalem, and the adequacy of the factual basis for UNESCO's decisions, what sanctions are available to UNESCO to enforce its decisions? The 1974 resolution, quoted above, contains the two measures taken by UNESCO: the condemnation of Israel "for its attitude" with respect to cultural property in Jerusalem, and the withholding of assistance from Israel until it complies with UNESCO resolutions.

2. 249 UNTS 215, 240; Doc. II.A.1; hereinafter cited as 1954 Hague Convention.

3. 9 C/Res. 4.32(c) and Appendix (1956); Doc. II.A.2, hereinafter cited as 1956 Recommendation.



Transcending the five groups of issues identified above, there remains the basic question of the "politicization" of UNESCO in the sense in which that term is used in this study. It is hoped that the discussion of the specific issues concerning the protection of cultural property in Jerusalem will provide sufficient information to enable the reader to formulate a conclusion on the central politicization issue in this phase of the study.

Application of the 1954 Hague Convention for the
Protection of Cultural Property in the Event of
Armed Conflict.



UNESCO involvement with the protection of cultural property in Jerusalem stems in part from the fact that five states engaged in the 1967 Middle East war, that is, Israel, Jordan, Lebanon, Syria and the United Arab Republic, were parties to the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict concluded at the Hague on May 14, 1954.⁴ The war thus provided the first opportunity for invoking the procedures established by the Convention.

On June 5, 1967, at the start of the fighting, UNESCO Director-General Rene Maheu telegraphed each of the five states drawing their attention to their obligations under the 1954 Hague Convention and to the procedure established in the annexed Regulations for the Execution of the Convention. The Director-General's telegrams stressed that the parties had undertaken in Article 4 of the Convention "to respect cultural property situated...within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings...for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property."⁵ A subsequent note addressed to each of the five states set out the provisions of the 1954 Hague Convention and of its Regulations designed to bring about the appointment of Commissioners General for Cultural Property accredited to each of the parties to the armed conflict through the procedure described in the following paragraphs.

Article 2 of the Regulations for the Execution of the 1954 Hague Convention provides that as soon as any party is engaged in an armed conflict covered by the Convention, that party shall appoint, first, "a representative for cultural property situated in its territory," and, second, "if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory." In addition, Article 2 provides that: "A Commissioner-General for Cultural Property shall be appointed to such High Contracting Party in accordance with Article 4."⁶

4. 1954 Hague Convention, note 2, supra.

5. 1954 Hague Convention, Art. 4, para. 1. The Director-General's telegrams and subsequent communications are reproduced in UNESCO document 77 EX/32 (1967); Doc. II.A.3. UNESCO General Conference and Executive Board documents are hereinafter cited C/_ and EX/_, respectively, preceded in both cases by the number of the session.

6. 1954 Hague Convention, Regulations, Art. 2, paras. (a) and (c). The Regulations are annexed to the Convention and constitute an integral part of the Convention.

Under the terms of Article 4 of the Regulations, each Commissioner-General is to be chosen "by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing Parties" from an international list of persons compiled by the Director-General of UNESCO.⁷ Where there are no Protecting Powers, as was the case in the 1967 Middle East war, Article 9 of the Regulations provides that "a neutral State may be asked to undertake those functions of a Protecting Power which concern the appointment of a Commissioner-General for Cultural Property."⁸

Director-General Maheu suggested that inasmuch as none of the parties to the Middle East conflict had "the benefit of the activities of a Protecting Power in the territory of the opposing Party or Parties," resort should be had to Article 9 of the Regulations, to secure the services of a neutral state in the appointment of the Commissioners-General. The Director-General's initiative led to the designation by all parties of Switzerland as the neutral state which would act as the "Protecting Power" under the Convention for the purpose of securing the appointment both of a Commissioner-General accredited to the Arab states and of a Commissioner-General accredited to Israel.⁹ Subsequently, on October 24, 1967, the Director-General announced the appointment of Dr. Karl Brunner of Switzerland as Commissioner-General to Jordan, Lebanon, Syria and the United Arab Republic, and Mr. H. J. Reinink of the Netherlands as Commissioner-General to Israel.¹⁰ Israel had earlier announced that as required by the Regulations to the Convention it had appointed Mr. Avraham Biran, Director of the Department of Antiquities and Museums at the Israeli Ministry of Education and Culture, as the representative of the government of Israel for cultural property.¹¹

The Work of the Commissioners-General

The chief functions of the Commissioner-General for Cultural Property as defined in the Regulations for the Execution of the 1954 Hague Convention are to "deal with all matters referred to him in connection with the application of the Convention." This is to be done "in conjunction with the representative of the Party to which [the Commissioner-General] is accredited," and may involve investigations conducted by the Commissioner-General in areas controlled by the Party to which he is accredited, with the agree-

7. *Id.*, at Art. 4, para. 1. The term "Protecting Power" is not defined in the 1954 Hague Convention or in the Regulations for the Execution of the Convention.

8. The Regulations for the Execution of the 1954 Hague Convention do not establish a procedure for inviting a neutral state to assume the role of a Protecting Power for the purpose of appointing Commissioners-General for the Protection of Cultural Property.

9. See the Director-General's report of communications with the five states involved in the 1967 war, 77 EX/32, paras. 16-20, pp. 7-9 (1967); Doc. II. A.3.

10. See *id.*, at paras. 21-29, pp. 9-10. Consultations were held at UNESCO headquarters by Switzerland with representatives of the parties to the conflict during September 1967. See *id.*, at para. 28, p. 10. The appointments were announced on Oct. 24, 1967. See 78 EX/5, para. 2 (1968); Doc. II.A.6.

11. See 77 EX/32, para. 30, pp. 10-11 (1967); Doc. II.A.3. The appointment was announced on Aug. 25, 1967, and apparently extended both to cultural property situated in Israeli territory and to cultural property situated in

ment of that Party.¹² The Commissioner-General has authority to "make any representations to the Parties to the conflict ... which he deems useful for the application of the Convention." He also draws up reports on the application of the Convention for submission to the Parties, with copies to the Director-General of UNESCO.¹³

Commissioners-General Reinink and Brunner, accredited to Israel and to the Arab states, respectively, took up their duties during December 1967 and submitted their first reports to the Director-General the following spring.¹⁴ These reports, transmitted by the Director-General to the Executive Board, show clearly that both sides had co-operated fully with the investigative functions of the Commissioner-General. Mr. Reinink stated that Israel had given him "complete freedom of movement," with a car and driver, and an experienced guide when he expressed the wish to have one.¹⁵ Mr. Brunner reported that he enjoyed the full support of the Arab countries to which he was accredited.¹⁶ Both received support and assistance from United Nations and UNESCO offices in the area.¹⁷

As to the protection of cultural property in areas occupied by Israel, Mr. Reinink stated that he had been able to visit "almost all" monuments about which inquiries had been made, "with the exception of some excavations in Syria ... [as to which] atmospheric conditions made the Golan Heights inaccessible and the exact location of the sites was not well enough known."¹⁸

territories occupied by Israel. See 1954 Hague Convention, Regulations, Art. 2 quoted in the text at n. 6 above, and the comments by Mr. Reinink, 78 EX/5, pp. 3-4 (1968); Doc. II.A.6.

12. 1954 Hague Convention, Regulations, Art. 6, paras. 1 and 3. Para. 3 gives the Commissioner-General "the right to order an investigation or to conduct it himself" in agreement with the Party to which he is accredited.
13. Id., at paras. 4 and 5. Para. 5 provides that the Director-General "may make use only of [the] technical contents" of the reports submitted to the Parties by the Commissioners-General.
14. UNESCO Doc. 78 EX/5 (1968); Doc. II.A.6. Mr. Reinink's report appears at pp. 3-6; Mr. Brunner's report at pp. 7-16. Mr. Reinink notes that he had previously sent reports to the parties with copies to the Director-General. Id., at p.5. These early reports do not appear in Doc. 78 EX/5.
15. Id., at p.3. Mr. Reinink also stated that: "when I wanted to be alone for an investigation or a conversation, my wishes were respected." Ibid.
16. Id., at p.8. Mr. Brunner reported that his independence had never been challenged, and transport problems had always been "settled satisfactorily and in good time." Ibid.
17. The Executive Board asked the Director-General to arrange to make the services and aid of United Nations and UNESCO offices in the countries parties to the conflict available to the Commissioners-General. 77 EX/Dec. 4.4.4, para. 5(b) (1967). See also the report of the Director-General, 78 EX/5, paras. 3 and 6, p.5 (1968).
18. 78 EX/5, p.5 (1968). Mr. Reinink was reported to have visited the Golan Heights during May 1968; his comments were made in April concerning an attempt to visit the sites in February. See statement by the Israeli representative in the Executive Board, UNESCO Doc. 78 EX/SR.



Mr. Reinink's general conclusion was "that the monuments suffered very little damage as a result of the armed conflict and that they have not suffered at all since the cease-fire."¹⁹ The principal criticism made by Mr. Reinink was that the monuments visited in areas controlled by Israel had not been marked with the distinctive emblem required by the Hague Convention.²⁰ In concluding his report, Mr. Reinink commented that the "world should be thankful that the hostilities did not result in irreparable damage to the old city of Jerusalem," which was "due to the fact that the attention of the Israeli troops was expressly drawn to the importance of conserving this unique site."²¹

Mr. Reinink noted, however, that several questions as to the interpretation and application of the 1954 Hague Convention and its Regulations had arisen in the initial phases of his work.

The first such question was whether Article I of the Convention, which defined "cultural property" as, inter alia, "monuments of architecture, art or history, whether religious or secular," included all religious monuments or only those which were at the same time monuments of architecture, art or history. After an exchange of views with the Israeli government, Mr. Reinink accepted the view that only religious monuments that were "monuments of architecture, art or history" were protected by the Convention.²²

The second question, apparently raised in Mr. Reinink's earlier reports transmitted to the Parties with copies to the Director-General, but which were not submitted to the Executive Board,²³ was the basic question whether archaeological excavations were permitted in occupied territories. Mr. Reinink did not comment on this issue in his initial report submitted to the Executive Board. The issue is dealt with at length in a subsequent section below.²⁴

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The third question related to the appointment by Israel of a single individual to serve as its representative for cultural property in respect

1-31, at SR.25, para. 28.6, p.282 (1968).

19. 78 EX/5, p.5, para. (a) (1968). Mr. Reinink noted that: "the arrangements to be applied in the center of Jerusalem have a particular bearing on the conservation of monuments. For this reason, the excavations that Hebrew University is carrying out in this area must be followed very closely." Id., at p.5, para. (d).

20. Id., at p.5, para. (e). Mr. Reinink noted that Israeli authorities had not refused his request to have the emblems installed, but "gave [him] to understand that priority had to be given to more urgent tasks." Ibid.

21. Id., at p.6. Mr. Reinink called for the drafting of an international convention to ensure the safety of Jerusalem, which he said was the heritage of all mankind. Ibid.

22. Id., at p.4.

23. See id., at p.5.

24. See text at n. 36 below. See also the statement on the archaeological excavation issue by Mr. Hammad of Egypt in the Executive Board, UNESCO Doc. 78 EX/SR.1-31, at SR.25, para. 24.3, p.279 (1968).



both of cultural property situated in Israel and of cultural property situated in occupied territories.²⁵ Mr. Reinink found no difficulty in practice with this arrangement, but cautioned that such an arrangement might be unacceptable in other cases of armed conflict "where the interests to be defended by the representative for cultural property situated in his own country might be at variance with those which the special representatives for cultural property situated in the occupied territories has to defend."²⁶

The reports by the two Commissioners-General were discussed by Executive Board on June 19, 1968.²⁷ The major criticism raised by several Board members was that Mr. Reinink had appeared "in many cases to have replied to questions with information dictated by the occupying authorities,"²⁸ a criticism apparently based upon the earlier detailed reports submitted by Mr. Reinink to the parties which were not transmitted to the Executive Board.²⁹

With regard to the questions of interpretation raised in Mr. Reinink's report, some members of the Executive Board criticized Mr. Reinink for having, in their view, acceded to Israeli wishes. The Soviet member, referring to the question of the meaning of the Article 1 reference to religious monuments, asked "why the Convention had to be interpreted on the basis of an exchange of views with the representative of one government only [Israel], and why the Commissioner-General had taken those views as a directive with which he was bound to comply."³⁰ Substantially similar comments were made concerning the appointment by Israel of a single representative for cultural property, whose responsibilities extended both to cultural property located in Israel and cultural property located in occupied territories.³¹

The Executive Board resolution taking note of the reports by the Commissioners-General made no comment as to their content, however. It merely asked that the summary record of the Board's discussion be trans-

25. See note 11, *supra*, and text at note 6, *supra*.

26. 78 EX/5, p.4 (1968); Doc. II.A.6.

27. UNESCO Doc. 78 EX/SR.1-31, at SR. 25-26, pp.278-86 and 302 (1968). The passages quoted in the text are taken from the summary record of the debate in the Executive Board, cited EX/SR.

28. *Id.* at SR.25, para. 24.4, p.279. Mr. Hammad of the United Arab Republic is quoted. See also the comments by Mr. Sobakin (USSR). *Id.*, at para. 26.4, p.281.

29. See Mr. Reinink's report, 78 EX/5, p.5 (1968).

30. UNESCO Doc. 78 EX/SR.1-31, at SR.25, para. 26.1, pp.280-81 (1968). In response to an Israeli statement that some religious structures were very humble, the Soviet member said that "religious monuments which appeared to the occupying force to be worthless and which the outsider deemed unworthy of attention might be regarded as sacred or of great value by the inhabitants of the occupied country themselves." *Id.*, at para. 30.2, p.283.

31. See *id.*, at para. 26.2, p.281. The Israeli member pointed out that Art. 2, para. (a), of the Regulations "in no way stipulated that the



It should be noted that at this point no question was raised as to the appropriateness of UNESCO involvement in the execution of the 1954 Hague Convention. In addition to providing for the receipt by the UNESCO Director-General of copies of the Commissioner-General's reports,³³ the Convention gives certain specific tasks to the Director-General,³⁴ and envisages UNESCO involvement in a continuing review of problems raised by the application of the Convention.³⁵ Thus it may be said that UNESCO has two distinct bases for action relating to the protection of cultural property in Jerusalem: UNESCO's special role under the 1954 Hague Convention and UNESCO's general concern with the protection and preservation of cultural property.

Archaeological Excavations in Jerusalem

Events in Jerusalem during the spring of 1968 precipitated sharply divided views over an issue that had barely surfaced in the initial work of the Commissioners-General: the propriety of Israeli actions in carrying out archaeological excavations in portions of the city of Jerusalem occupied by Israel as a result of the 1967 war.

The issue came to the UNESCO General Conference in October 1968 in the form of a draft resolution designed to put UNESCO on record as opposed to the Israeli archaeological excavations in Jerusalem.³⁶ Two routes were utilized in the draft resolution.

First, noting the steps that had been taken under the 1954 Hague Convention, the draft resolution recommended that states take all necessary measures to conform both to the 1954 Hague Convention and to the 1956 UNESCO

two responsibilities should not be vested in the same person." See id., at para. 28.7, p.282.

32. UNESCO Doc. 78 EX/Dec. 4.4.1 (1968).

33. See 1954 Hague Convention, Regulations, Art. 6, para. 5; Doc. II.A.1; and note 13 supra. The paragraph provides that the UNESCO Director-General "may make use only of [the] technical contents" of the reports.

34. See 1954 Hague Convention, Arts. 22, para. 2, and 23. Art. 23 provides for UNESCO technical assistance in connection with problems arising out of the application of the Convention.

35. Art. 27 of the 1954 Hague Convention provides for the convening by the Director-General of UNESCO, with the approval of the Executive Board, of meetings to study problems concerning the application of the Convention, which, when a majority of the Parties are represented, may undertake a revision of the Convention or of its Regulations.

36. 15 C/DR.201 (1968); Doc. II.A.9. The draft resolution was submitted by Jordan, the Soviet Union, Afghanistan, Yugoslavia, India, Malaysia, Egypt, Syria, Algeria, Tunisia, Kuwait, Saudi Arabia, Sudan, Lebanon and Pakistan.



Recommendation concerning international principles relating to archaeological excavations. The 1956 Recommendation is significant in this context because, unlike the 1954 Convention, the 1956 Recommendation deals explicitly with archaeological excavations in occupied territories. The 1956 Recommendation provides that states "should refrain from carrying out archaeological excavations" in occupied territories.³⁷

Second, noting the exceptional importance of cultural property in Jerusalem and a United Nations General Assembly resolution relating to the city, the draft resolution called upon Israel to take the following action:

To preserve scrupulously all the sites, buildings, and other cultural properties, especially in the old city of Jerusalem, and

To desist from any archaeological excavations, transfer of properties and change of their markings and their cultural and historical character.

The draft resolution also invited the Director-General "to use all the influence and means at his disposal ... to ensure the best possible implementation of this resolution."³⁸

Although the draft resolution thus called for a major step in the relationship of UNESCO to Israel and to Jerusalem, it was approved in the Programme Commission of the General Conference without substantial change after what appears to have been very limited debate. Fourteen states took part in the debate, most expressing "concern for possible damage to cultural property" in Jerusalem, and expressing the view that archaeological excavations were "undesirable" in that area. Some delegates considered that it was UNESCO's function "to protect all cultural property without distinction" and that "the issue was neither political nor juridical since the cultural property of Jerusalem belonged to the world as a whole."³⁹

A roll-call vote in the Programme Commission endorsed the draft resolution without a negative vote, but with 23 abstentions. Israel declined to participate in the vote on the ground that it was "not of the

37. The Recommendation on International Principles Applicable to Archaeological Excavations, adopted at the 9th Session of the UNESCO General Conference, New Delhi, Nov. 30, 1956, is reproduced in Doc. II.A.2. Para. 32 deals with archaeological excavations in occupied territories.

38. 15 C/DR.201 (1968); Doc. II.A.9.

39. A summary of the debate in the Programme Commission appears in the Report of the Programme Commission, paras. 995-1001, 15 C/Res. pp.241-42 (1968); Doc. II.A.10. The quoted passages appear in paras. 996 and 1000, p.242.



The draft resolution as recommended by the Programme Commission was adopted in the Plenary Meeting of the General Conference without debate and without opposition.⁴¹

Two issues implicit in the 1968 General Conference resolution, although apparently not clearly articulated at the time, were to become important in later developments relating to Jerusalem. The issues are: first, whether the 1954 Hague Convention or the 1956 Recommendation impose a legal obligation on Israel to refrain from undertaking archaeological excavations in Jerusalem; and, second, what bearing should United Nations General Assembly and Security Council resolutions concerning the status of Jerusalem have on the question of archaeological excavations as presented in UNESCO. These issues are discussed in the three sections that follow.

Archaeological Excavations in Occupied Territory:
The 1954 Hague Convention.

Although archaeological sites are explicitly included in the 1954 Hague Convention's definition of cultural property,⁴² no explicit reference is made to archaeological excavations in occupied territories. Article 5 dealing with occupation, provides only that the occupying state "shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property," and that the necessary measures to preserve cultural property damaged by military operations shall be taken in close co-operation with the competent national

40. Id., at paras. 998 and 1001, p.242. No direct response appears to have been made to the Israeli statement. The Report does not reproduce the roll-call vote.

41. 15 C/Res. 3.342 and 3.343 (1968); Doc. II.A.11. As adopted the resolution calls upon Israel "to desist from any archaeological excavations, transfer of [cultural] properties and changing of their features [or] their cultural and historical character." Ibid. See also Records of the General Conference, 15th Session, Proceedings, 41st Plenary Meeting, pp.1103, 1133-34 (1968).

42. 1954 Hague Convention Art. 1, para. (a). The explicit reference to archaeological sites originated in an amendment proposed by the Israeli representative at the Intergovernmental Conference that drafted the Convention. See Hague Conference Doc. CBC/DR/1, which proposed adding the words "including excavated and unexcavated archaeological sites" to the definition of cultural property proposed in the draft of Art. 1, para. (a). The proposal was ultimately accepted in the final draft which contained a separate reference to "archaeological sites." Records of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, the Hague, 1954, pp.125, 130-31, 201-02 (Main Commission meetings), and 372-73 (draft resolutions).



The question of prohibiting archaeological excavations in occupied territories had been raised during the drafting of the 1954 Hague Convention by a proposed article that would have obligated occupying powers to "refrain from excavations or other action for the discovery of unknown cultural property, except with the approval and participation of the competent national authorities of the occupied country."⁴⁴ The proposed article, submitted by Greece late in the conference, was explained as necessary to strengthen the Convention's prohibitions on the export by occupying powers of cultural property, since the identification of "unknown cultural property ... might prove difficult in the event of its exportation by an occupying power."⁴⁵ Although supported in principle by several delegates,⁴⁶ the Greek proposal was considered by some to raise difficult problems of interpretation and drafting, and to have been submitted too late for effective inclusion in the draft convention.⁴⁷ After assurances that the principle of Greek proposal would be retained for later inclusion in a proposed Draft Recommendation on the International Control of Archaeological Excavations, the Greek proposal was withdrawn.⁴⁸

The Greek proposal thus never came to a vote at the Hague conference and its substance was not included in the 1954 Hague Convention. It is clear from the text and the legislative history that the 1954 Hague Convention does not expressly prohibit archaeological excavations in occupied territories. It has been argued, however, that such a prohibition should be implied from the inclusion of "archaeological sites" within the protection of the Convention.⁴⁹

Article 1 of the 1954 Hague Convention defines the term "cultural

43. 1954 Hague Convention, Art. 6, paras. 2 and 3. Art. 4, para. 3, obligates the Parties to prevent theft and misappropriation of cultural property and to "refrain from requisitioning movable cultural property situated in territory of another" Party.

44. Hague Conference Doc. CBC/DR/166, Records, n.42 supra, at p.408.

45. Statement by the Greek representative, 9th Plenary Meeting, 12 May 1954, id., at para. 1912, p.278. See also 11th Plenary Meeting, para. 2173, id., p.293. Both summaries are reproduced in Doc. II.A.16.

46. See id., at paras. 2174-2184, p.294. The Israeli delegate supported the Greek proposal. Id., at para. 2177, p.294.

47. An effort by Greece to include the proposed article in the Plenary Session discussion of Art. 5 was rejected by a vote of 8 in favor, to 9 opposed, with 22 abstentions. Id., at paras. 1911-15, p.278. Greece thereafter proposed adding the article to the Regulations, but it was pointed out by Mr. Saba, UNESCO Legal Adviser, that the "Regulations were only aimed at defining the methods of applying the Convention and therefore nothing giving rise to new obligations could be inserted therein." Id., at para. 2178, p.294. The United Kingdom delegate noted that the Greek proposal was aimed at preventing the export of objects excavated by occupying powers, a question dealt with in Art. 4, para. 3, of the Convention, not in Art. 5. Id., at para. 2183, p.294.

48. See id., at paras. 2186-2191, pp.294-95.

49. In a report to the Executive Board in September 1969, the Director-



property" as including "archaeological sites,"⁵⁰ which are therefore among the property to be protected under the Convention. Jordan and Syria have argued that "an archaeological site is destroyed by excavation, because the various historical strata are destroyed."⁵¹ If the site were thus to be considered as destroyed by excavation, it would follow from the obligation of Article 5 to safeguard and preserve cultural property in occupied areas that excavations by occupying powers would be prohibited.

The argument just summarized appears to have been made for the first time in the context of post-1967 archaeological excavations in Jerusalem. No indication has been found that the argument was raised in the preparation of the Convention either prior to or at the 1954 Hague Conference. The argument has been generally accepted by Arab states and by Colonel Brunner, the Commissioner-General for Cultural Property accredited to the Arab states.⁵² It has been rejected by Israel and by Mr. Reinink, the Commissioner-General accredited to Israel.⁵³ No steps have been taken to resolve the dispute relating to the application of the 1954 Hague Convention to archaeological excavations in occupied territories.⁵⁴

Archaeological Excavations in Occupied Territory:
The 1956 Recommendation

In contrast to the 1954 Hague Convention, the 1956 Recommendation on International Principles Applicable to Archaeological Excavations⁵⁵ deals explicitly with archaeological excavations in occupied territory. Paragraph 32 provides in part as follows:

In the event of armed conflict, any Member State

General stated that the 1954 Hague Convention "contains no express provision concerning archaeological excavations, although it can be argued ... that the prohibition of excavations by the occupying power is implicit in the protection accorded to 'archaeological sites' by Article 1 of the Convention." 83 EX/12, para. 5, p.2 (1969), Doc. II.A.15.

50. 1954 Hague Convention, Art. 1, para. (a). See n.42 *supra*.

51. See Commissioner-General Brunner's report, 83 EX/12, Annex I, pp. 4-5 (1969); Doc. II.A.15. See also 82 EX/SR.1-18, at SR.17, paras. 5.1-5.8, pp.167-69 (1969); Doc. II.A.13.

52. *Ibid*.

53. See 83 EX/12, Annex II, p.1 (1969), Doc. II.A.15. Mr. Reinink reports that he had drawn the attention of Israel to the terms of the 1956 Recommendation. *Ibid*.

54. The Commissioners-General would have authority under Art. 22, para. 2, of the Convention, and Art. 6, para. 6, of the Regulations, to propose convening a meeting of representatives of the Parties to discuss the dispute.

55. Records of the General Conference, 9th Session, Resolutions, pp.40-44 (1956); Doc. II.A.2.



Although the Governmental Experts Committee thus recommended a prohibition of archaeological excavations in occupied territory, the Committee report noted that the question "raised complex problems which should be given the most careful study and which could be finally settled only by the adoption of provisions having the force of a convention."⁶¹

The Committee report does not identify the "complex problems" found by the Committee, and the record of the legislative history of the 1956 Recommendation is too sparse to indicate what those questions might have been. The record also does not show how the 1956 Recommendation is to be applied to issues that might be raised in the context of archaeological excavations in occupied territories. Some such issues follow: In areas such as Jerusalem, for example, in which on-going archaeological excavations have been interrupted by armed conflict, may they be resumed by the occupying power? May the occupying power permit others to resume such excavations, or to begin new excavations? Where the occupation extends over a considerable period of time, or appears to have become indefinite in duration, may the occupying power continue existing excavations or begin new excavations? These questions are not answered either by the text of the 1956 UNESCO Recommendation or, so far as can be determined from the published record, by the discussions that led to the adoption of the 1956 Recommendation.

The Committee's draft Recommendation was nonetheless adopted by the UNESCO General Conference in November 1956 without substantial discussion and without material change.⁶²

Archaeological Excavations in Jerusalem:
Changes in the "Status" of Jerusalem

Fundação Cuidar o Futuro

In the months following the conclusion of the June 1967 War, Israel took steps to unify the entire city of Jerusalem under Israel administration, thus placing under its sovereignty those parts of the city which had not been controlled by Israel prior to June 1967.⁶³ These actions were challenged in the United Nations General Assembly and the Security Council which, in 1967 and in 1968, adopted resolutions declaring that the measures taken by Israel to change the status of Jerusalem were invalid.⁶⁴

61. Id., at para. 63, p.16.

62. See Records of the General Conference, 9th Session, New Delhi, 1956, Resolutions, pp.37, 40-44 and 106.

63. The measures taken by Israel to integrate the entire city of Jerusalem under Israeli administration are described in a report by the U.N. Secretary-General dated Sept. 12, 1967, which recounts information gathered by the Secretary-General's personal representative during August 1967. UN Doc. S/8146, paras. 33-105, 22 SCOR Supp. for July, Aug. and Sept. 1967, pp.232, 238-48 (1967).

64. General Assembly Resolutions 2253 (ES-V) and 2254 (ES-V) (1967), and Security Council Resolutions 252 (1968), 267 (1969), and 298 (1971), are reproduced in Doc. II.A.18.



The General Assembly and Security Council resolutions called upon Israel to rescind the measures already taken, and to desist from further action that would alter the status of Jerusalem.

The General Assembly and Security Council actions were taken on the theory that the acquisition of territory by military conquest is inadmissible under the United Nations Charter and international law, and that the measures taken by Israel to alter the status of Jerusalem were invalid and stood in the way of achieving peace in the Middle East. These resolutions raise complex questions of law, history and politics that cannot be explored here. This study will be limited to raising the question of the effect of the United Nations Security Council and General Assembly resolutions on the functions of UNESCO in the context of Israeli archaeological excavations in Jerusalem.

As noted above, the 1968 UNESCO General Conference resolution calling upon Israel to desist from any archaeological excavations in Jerusalem⁶⁵ relies in part on General Assembly Resolution 2253 (ES-V) (1967), which calls upon Israel to desist from "taking any action which would alter the status of Jerusalem." Later UNESCO resolutions more directly imply that United Nations General Assembly and Security Council resolutions concerning the "status" of Jerusalem support a ban on archaeological excavations. The question is thus presented: Are archaeological excavations part of what is meant by the "status" of Jerusalem as that term is used in United Nations General Assembly and Security Council resolutions?

The question has no clear answer. Reports submitted to the General Assembly and Security Council in connection with the "status" issue concentrate on legislative and administrative measures taken by Israel to integrate Jerusalem as a single unit under Israeli control. Such reports also touch on a wide range of more-or-less related matters, however, including the destruction of Arab houses adjoining the Wailing Wall and the resumption of archaeological work in East Jerusalem.⁶⁶ The General Assembly resolutions refer merely to the "status" of Jerusalem, or to "actions which would alter the status of Jerusalem."⁶⁷ The Security Council resolutions use similar language, but refer also to "legislative and administrative measures ... including expropriation of land and properties," and to "legislation aimed at the incorporation of the occupied section into the state of Israel."⁶⁸ Therefore, unless the authorization or the undertaking of archaeological excavations can be seen as related to a "status" change

65. 15 C/Res. 3.343 (1968); Doc. II.A.11.

66. See UN Doc. S/8146 (1967), 22 SCOR Supp. for July, Aug. & Sept. 1967, pp.232, 238-48, 250, 258-60, 261, 263, and 277. A report on actions taken by Israeli ministries to implement the reunification of Jerusalem, *id.*, at p.275, notes under the Department of Antiquities and Museums that "archaeological work in East Jerusalem has been renewed" and that the British archaeologist Kathleen Kenyon "has resumed her work on her four excavations in East Jerusalem." *Id.*, at p.277.

67. General Assembly Resolutions 2253 (ES-V) and 2254 (ES-V) (1967); Doc. II.A.18.

68. Security Council Resolutions 267 (1969) and 298 (1971); Doc. II.A.18.



in the administrative or the legal sense, it becomes questionable to rely in this context on the cited General Assembly and Security Council resolutions whether or not Jerusalem continues to be regarded as occupied territory.

In another sense, however, the General Assembly and Security Council resolutions may be relevant to the consideration by UNESCO of the archaeological excavations problem. As has been noted, UNESCO's concern had been with archaeological excavations in occupied territories in the context of UNESCO's role under the 1954 Hague Convention and the 1956 Recommendation. Thus, the question is presented: Is Jerusalem an "occupied territory" as that term is used in the 1954 Hague Convention and the 1956 Recommendation?

As Israel extends its law and administration to the entire city of Jerusalem, and should that extension become generally accepted, the point may be reached at which Jerusalem will have become in fact and law part of Israel, and thus no longer "occupied territory." The quoted United Nations General Assembly and Security Council resolutions stand in the way of such a development, however, in the sense that they express the opposition of the competent organs of the United Nations system to a change in the status of Jerusalem. Furthermore, since UNESCO is part of the United Nations system, and is not itself competent to decide disputed issues as to the status of Jerusalem, it might be said that UNESCO should accept the General Assembly and Security Council view and continue to treat portions of Jerusalem as "occupied territory." In this sense, UNESCO would not itself make a political judgment as to the status of Jerusalem. Instead UNESCO would follow the leadership of the General Assembly and the Security Council as the competent organs of the United Nations system.

Archaeological Excavations in Jerusalem: The 1969 Executive Board Decision

The 1968 General Conference resolution that called upon Israel to desist from archaeological excavations in Jerusalem also invited the Director-General "to use all the influence and means at his disposal ... to ensure the best possible implementation of this resolution."⁶⁹ To carry out this task, Director-General Maheu took three steps: he held consultations with the Israelis early in 1969, sent a special consultant to Jerusalem to make inquiries on the spot in June 1969, and visited Jerusalem himself in August 1969. The results of these activities were reported by the Director-General to the Executive Board at its October 1969 meeting.⁷⁰

In his report to the Executive Board, to which he attached reports

69. 15 C/Res. 3.343, para. 2, Doc. II.A.11. See text at notes 37-41 above.

70. The Director-General's report, 83 EX/12 (1969), is reproduced as Doc. II.A.15.



by the Commissioners-General for Cultural Property,⁷¹ the Director-General set out what he saw as the most important points relating to the application of the 1954 Hague Convention, together with a number of questions that might call for action otherwise than under the Convention. Archaeological excavations were among the latter questions; the former included measures to broaden the scope and increase the effectiveness of the 1954 Hague Convention, making reference to suggestions by Mr. Reinink including his suggestion that the excavation question "be treated specifically in the Convention and not in a separate recommendation."⁷² In other words, Mr. Reinink sought a revision of the Hague Convention to resolve among other questions the issue of the validity of archaeological excavations in occupied territories.

With regard to the excavations which were then in progress in Jerusalem, in August 1969 the director of the excavations, Israeli archaeologist Professor Mazar, showed the Director-General excavations "on either side of the Western and Southern Wall of the Temple (Haram-esh-Shariff)."⁷³ The Director-General reported that the excavations "cover a large area ... [and] have already gone below the Omayyad and Byzantine levels and are being actively continued down to the most ancient sub-structures." The Director-General commented, however, that:

Whatever their scale, [the excavations] cannot, in their present state, endanger the stability of the immense platform of the Haram at this spot. They are nonetheless an infringement of the provisions of paragraph 32 of the international recommendation adopted by the General Conference in 1956. Furthermore, it may well be wondered how this site will look when the excavations which have ripped it open are completed.⁷⁴

The site of Professor Mazar's excavations was undoubtedly also viewed by the Director-General's special consultant, Mr. G. DeAngelis d'Ossat, Director of the School of Advanced Studies in the Restoration of Monuments in the Faculty of Architecture of the University of Rome, and formerly Director-General of Antiquities and Fine Arts in the Italian Ministry of Education. Mr. d'Ossat spent two weeks in Jerusalem during June 1969, and submitted a detailed report to the Director-General,⁷⁵ but that report was not transmitted to the Executive Board and has not been made public.

71. 83 EX/12, Annexes I and II, id., at pp.9-17 and 18-22. The reports submitted by the Commissioners-General are "communications" to the Director-General, and not "reports" to the Parties, as that term is used in Art. 6, para. 5, of the 1954 Hague Convention Regulations. See 82 EX/29, para. 6, p.2 (1969); Doc. II.A.12.

72. 83 EX/12, paras. 12 and 15, pp.4-6, and Annex III, p.23 (1969). See also para. 5, id., at p.2, in which the Director-General notes the dispute as to the application of the 1954 Hague Convention to archaeological excavations in occupied territory.

73. Id., at para. 10, p.3.

74. Id., at para. 16, p.6.

75. See id., at para. 9, p.3.



Mr. Reinink, the Commissioner-General for Cultural Property accredited to Israel under the 1954 Hague Convention, had also viewed the excavations earlier, and reported in May 1969 that he was "satisfied" that the excavations "do not threaten the Mosque quarter of Jerusalem."⁷⁶ Noting the 1956 Recommendation, Mr. Reinink requested the Israeli Government not to carry out excavations in occupied territory, and commented that although the excavations were of great importance for the history of Jerusalem, "they bring an element of unrest in the middle of one of the most important monuments for all mankind."⁷⁷

During the discussion in the Executive Board, several members expressed the view that archaeological excavations in occupied territories were in fact prohibited under the 1954 Hague Convention.⁷⁸ Israel, quoting excerpts from the legislative history of the Convention, expressed the view that the Convention did not prohibit such excavations, which Israel considered were subject only to the non-binding 1956 Recommendation.⁷⁹ There was no discussion of procedures that might be used to resolve the dispute as to the application of the Convention to archaeological excavations in occupied territories.

As to excavations in progress in 1969, the Israeli member stated that they were of two kinds: "salvation in the course of public works, or completion of archaeological excavations commenced before 1967."⁸⁰ He stated that the excavations in the Temple area, near the Wailing Wall, had been "extended" for the purpose of enriching "the world's knowledge of periods that were all too little known, those of the two Jewish Temples and of the early Christian era."⁸¹

Following the extended discussion of other issues, the Executive Board adopted a resolution that expressed "deep concern at the violations by Israel of the Hague Convention," and at Israel's "disregard of the Recommendation on Archaeological Excavations which emerge from the reports of the Commissioners-General."⁸² The resolution cited no specific violations of the Hague Convention. As originally proposed, the quoted para-

⁷⁶. 82 EX/29, Annex I, para. 6, p.7 (1969); Doc. II.A.12.

⁷⁷. 83 EX/12, Annex II, p.5 (1969); Doc. II.A.15.

⁷⁸. See, e.g., statements by the members from Ceylon, Pakistan, Syria, and the Soviet Union, 83 EX/SR.1-29, at SR.23, para. 6.5, pp.256-57; SR.24, para. 11.1, p.267; SR.24, paras. 17.2-17.3, p.269; and SR.28, para. 37.6, p.319 (1969); Doc. II.A.19.

⁷⁹. See *id.*, at SR.23, paras. 4.9-4.10, p.254. The United States, which made only one brief statement in the course of a lengthy debate, made no comment on the excavations issue. See *id.*, at SR.24, paras. 12.1-12.2, p.267.

⁸⁰. *Ibid.* The Israeli member also stated that "the political and municipal status of Jerusalem was not a subject for discussion in UNESCO but rather in the United Nations." *Id.*, at para. 4.14, p.255.

⁸¹. *Id.*, at para. 4.11, pp.254-55.

⁸². 83 EX/Dec. 4.3.1, para. 5 (1969); Doc. II.A.20.



graph would have stated specifically that the demolition of structures of a cultural character and the excavation of archaeological sites were contrary to, or incompatible with, the provisions of the documents cited in the paragraph.⁸³ The specific references were deleted in the Executive Board in order to avoid pre-judging an issue that might be submitted to a meeting of the Parties to the Hague Convention. This solution was termed an evasion of the issue by the member from Ceylon who believed that archaeological excavations in occupied territory clearly constituted a violation of the 1954 Hague Convention.⁸⁴

The Executive Board resolution also reiterates the language of the 1968 General Conference resolution calling upon Israel to desist from any archaeological excavations, and requests the Director-General to consult with the Parties to the 1954 Hague Convention concerning the advisability of calling a meeting to study "means whereby the scope of the said Convention can be made clear and its efficacy enhanced." The text originally proposed for the latter paragraph spoke of studying means whereby the scope of the Convention might be "enlarged." This was changed to "made clear" so as to avoid conflict with the view that the Convention already prohibited archaeological excavations in occupied territories.⁸⁵

It thus appears that the 1969 Executive Board resolution does not express an Executive Board determination on the question of whether archaeological excavations do, or do not, violate the Hague Convention.⁸⁶ It seems plain, however, that the resolution does express the view that such excavations conflict with the 1956 Recommendation, which would in itself account for the reiteration of the call upon Israel to desist from archaeological excavations in Jerusalem.⁸⁷

83. See 81 EX/SR.1-29, at SR.29, paras. 1.3, 2-5 and 9-10, pp.321-22 (1969); Doc. 11.A.19.

84. See the statement by the delegate from Ceylon, *id.*, at paras. 2-5, p.34. The paragraph as amended was adopted without a negative vote. See *id.*, at paras. 21 and 31, p.35. There were four abstentions, one by the member from Ceylon who desired a stronger resolution. *Ibid.* The resolution as a whole was adopted by 26 votes to none, with 4 abstentions. *Id.*, at para. 29. Israel voiced strong opposition to portions of the resolution and did not take part in the vote. *Id.*, at paras. 16 and 30. The record does not show how the United States voted.

85. See, *id.*, at SR.28, para. 37.6, and SR.29, paras. 1.5 and 11-15, pp.322-23.

86. The violations of the Hague Convention cited in 83 EX/Dec. 4.3.1, para. 5, would therefore refer to other events described in the next section.

87. The reiteration, otherwise drawn directly from the 1968 General Conference resolution, uses the term "invites," rather than the term "calls upon" used by the General Conference in 1968. Compare 15 C/Res. 3.343, para. 1(a) and (b) (1968), with 83 EX/Dec. 4.3.1, para. 6(a) and (b). While the term "calls upon" is ambiguous, the term "invites" appears to imply something less than a legal obligation.



In addition to the allegation that Israeli archaeological excavations in Jerusalem violated the 1954 Hague Convention, which has been discussed at length in the preceeding sections, the reports submitted to the Executive Board during 1969 raise several other issues as to Israeli compliance with the Convention. Six such issues are discussed here: the treatment by Israel of Dead Sea Scrolls; the failure of Israel to mark cultural property protected under the 1954 Hague Convention with the distinctive emblem provided for in the Convention; the removal of a staircase of the Mosque of Ibrahim; the demolition of the Abu Saud houses; the demolition of certain buildings in the Old Jewish Quarter; and the redevelopment of Jerusalem.

Many other issues and complaints brought to the Commissioners-General during 1968 and 1969 were resolved on investigation and report by Commissioner-General Reinink and were not brought to the attention of the Executive Board.⁸⁸ The issues discussed here are the most significant of those brought to the Executive Board through the Director-General's reports and through his transmittal of reports by the Commissioners-General.⁸⁹

(1) The Dead Sea Scrolls. When Israel occupied eastern Jerusalem in 1967, there were proposals that the collection of Dead Sea Scrolls held in the Rockefeller Museum in East Jerusalem be removed to the Shrine of the Book at the Israel Museum in the Israeli sector and exhibited together with the Dead Sea Scrolls held by that museum. The proposed transfer was not carried out, but some of the Rockefeller Museum scrolls were removed to the Israel Museum for repair, and "were, after reparation, exhibited in the Shrine of the Book for a short time, but will soon go back where they

88. See, e.g., 78 EX/5, p.5 (1968), Doc. II.A.6, where Mr. Reinink notes that detailed reports of his visits to monuments in the occupied territories had been submitted to the parties with copies to the Director-General. See also note 71 above. These reports have not been submitted to the Executive Board.

89. Other issues reported to the Executive Board include the following: (1) The removal by Israeli authorities of the alter of Banias to a safe place a short distance beyond the Israeli frontier; Mr. Reinink reported that "the necessary measures have been taken to guarantee the safety of the alter [and] it has been returned to its site at Banias." 83 EX/12, Annex II, p.4; Doc. II.A.15. (2) Changes in the Palestine Archaeological Museum; the Director-General's special consultant, Mr. d'Ossat, reported that "only minor measures have been taken and changes carried out ... may be described as active conservation." *Id.*, at para. 14 (iv) p.5. (3) Alleged use of Jordanian antiquities at the Paris exhibition "Israel through the Ages"; Mr. Reinink reported that the French Government had given him formal assurance that none of the objects exhibited was the property of the Jordanian Government. *Id.*, at Annex II, p.21. (4) Illegal traffic in antiquities; Mr. Reinink reported that the Israeli authorities had shown "a stricter attitude" which he hoped would end the traffic or "have some restricting influence on the quantities sold and bought." *Id.*, at p.20.



(2) The Convention Emblem. Article 6 of the 1954 Hague Convention provides that "cultural property may bear a distinctive emblem so as to facilitate its recognition." Article 16 describes the distinctive emblem to be used, and Article 17 prescribes certain restrictions on its use. From the beginning of his service in Israel, Commissioner-General Reinink requested that Israel mark monuments both in Israel and in the occupied territories with the Convention emblem.⁹¹ The Israeli authorities in Jerusalem expressed willingness to do so, but no action was taken,⁹² and the Israeli member of the Executive Board pointed out that while Article 16 described the emblem, Article 6 of the Convention made its use permissive.⁹³ While Mr. Reinink deplored the failure to use the emblem, stating that its use might have had some influence in the removal of the Abu Saud buildings, discussed below, he did not characterize the use of the emblem as required by the Convention, or the failure to use the emblem as a violation of the Convention.

(3) The Mosque of Ibrahim Staircase. The removal by Israeli authorities of the access stairway on one of the sides of the Mosque of Hebron was protested by Commissioner-General Reinink as an infringement of Article 5 of the 1954 Hague Convention. Mr. Reinink observed that the removal of the staircase "cannot be regarded as a measure either for safeguarding or for preserving the Mosque."⁹⁴ In response to Mr. Reinink's protest, the military governor of Hebron declared that he would have a new staircase built, which would, however, not be a replica of the one removed.⁹⁵ The Israeli member of the Executive Board pointed out that "the stairway was not ancient [and] its removal had revealed part of one of the finest Herodian buildings."⁹⁶ The Director-General's special consultant, Mr. d'Ossat, observed that in the context of the planned external landscaping, "the question of the demolition of the access stairway running up the short side of the great enclosure dating from the time of Herod, which has hitherto been considered in isolation, loses much of its specific interest." He agreed that the stairway did not appear to have been very ancient, but stated that it would be "possible and desirable to restore it to its place."⁹⁷

90. Commissioner-General Reinink's report, 83 EX/12, Annex II, p.3 (1969); Doc. II.A.15. One scroll, held in private hands contrary to Jordanian law, was acquired by Israeli authorities with "a reportedly substantial financial compensation from Israel paid with the help of an important contribution by a private American source." Ibid. The transaction had created "ramified legal implications" which would have to be "regulated at the time of a general settlement after the war is over." Ibid.

91. See 78 EX/5, p.5 (1968); Doc. II.A.6.

92. 83 EX/12, Annex II, p.4 (1969); Doc. II.A.15.

93. 83 EX/SR.1-29, at SR.23, para. 4.7, p.254 (1969); Doc. II.A.19.

94. 82 EX/29, Annex II, pp.2-3 (1969); Doc. II.A.12.

95. 83 EX/12, Annex II, pp.1-2 (1969); Doc. II.A.15.

96. 83 EX/SR.1-29, at SR.23, para. 4.2, p.253 (1969); Doc. II.A.19.

97. 83 EX/12, para. 14(i), pp.4-5 (1969); Doc. II.A.15.



(4) Demolition of the Abu Saud Houses. The demolition by Israel of the Abu Saud houses abutting on the Western Wall of the Temple (Haram-al-Sharif), near the part of the Wall known as the Wailing Wall, was protested by Commissioner-General Reinink as an infringement of Article 5 of the Convention. Mr. Reinink commented that the removal of the Abu Saud houses "has changed the aspect of the whole site forever." Although the "houses were not very valuable as monuments themselves, ... they were of cultural interest as a group of period architecture and as part of one of the most important monuments of the world."⁹⁸ The Israeli member of the Executive Board stated that no cultural property had been involved:

The Abu Saud houses had never been regarded as possessing any cultural value or historic interest. The two buildings had been in a neglected, dilapidated state and could not have been repaired. Moreover, they had been condemned by the municipal engineers.⁹⁹

(5) Demolition of Buildings in the Old Jewish Quarter. The demolition by Israel of aged and deteriorated buildings in the Old Jewish Quarter and elsewhere in the Old City for the purpose of redeveloping the area was questioned by the Director-General, who reported the view of his special consultant, Mr. d'Ossat, that:

[The] ... pulling down of a whole district, even if not among the most famous or the most striking, seriously damages the compact appearance of the Old City, which was huddled within its walls, forming a close fabric of small buildings in vivid and delightful contrast with the nearby open spaces and the monumental but untrammelled lines of the Haram. Now, with this dreary and formless artificial space before our eyes, and in the absence of any definite plans for its future lay-out, we can only echo the protests made.¹⁰⁰

(6) The Redevelopment of Jerusalem. The undertakings by Israel to rebuild and redevelop areas of Jerusalem were seen by the Director-General as "bound to result in an alteration of the historical aspect of the urban scene presented by the Old City."¹⁰¹ The existing work in the Old Jewish Quarter and the more extensive town-planning schemes being studied by Israeli authorities raised "the whole broad, complex question of the preservation of the historical heritage and appearance of Jerusalem, not only in the Old City but throughout the area."¹⁰² The Director-General proposed enlisting "the conscience and the knowledge of mankind on the broadest scale" to seek solutions to the problem of preserving and developing Jerusalem. This would be "in keeping with the mission of the Organization,

98. Id., at Annex II, pp.4-5.

99. 83 EX/SR.1-29, at SR.23, para. 4.3, p.253 (1969); Doc. II.A.19. Mr. Reinink stated that he did not agree that no cultural property had been involved. 83 EX/12, Annex II, p.2 (1969); Doc. II.A.15.

100. 83 EX/12, para. 14 (iii), p.5 (1969); Doc. II.A.15.

101. Id., at para. 18, p.7.

102. Id., at para. 21, pp.7-8.



which includes among its major constitutional obligations that of preserving the cultural heritage of mankind."¹⁰³

The Israeli member of the Executive Board stated that the demolition of old buildings in the Old Jewish Quarter had nothing to do with cultural property or with the Hague Convention.¹⁰⁴ He stated, however, that Israel "wished to restore the Jewish Quarter and where possible to repair the still existing buildings," and that Israel was "determined to preserve the historical and cultural character of [Jerusalem], every stone of which it considered sacred."¹⁰⁵

As to the broader issue of reconstruction and redevelopment, the Israeli member charged that the "wanton destruction carried out by the Jordanian authorities during nineteen years of their rule" had left many buildings damaged beyond repair.¹⁰⁶ In this situation, the Mayor of Jerusalem, Teddy Kollek, had appealed to "outstanding personalities of all parts of the world, of all religious sects," to advise on planning through a 62-member Jerusalem Committee. The committee, meeting in Jerusalem in July 1969, had concluded that "to delay any longer the rehabilitation of the walls, the clearance of slums and the protection of sites would do irreparable harm." Immediate study and prompt action were required, which "must be carried out with full consideration for archaeological excavations; for each new discovery helps relate the future form of the city to the past."¹⁰⁷

The Director-General observed in his report that the convening of the Jerusalem Committee had shown that Israel was aware "not only of the difficulty of the undertaking, but also of the heavy responsibilities it entails towards the international community." He questioned, however, whether the use of the Jerusalem Committee would be "sufficient to ensure both a real sharing of responsibilities and effective recourse to the various competent parties and interested bodies which should be called into action in planning for the future of Jerusalem."¹⁰⁸

Some members of the Executive Board considered that Israel, as the occupying power in Jerusalem, had no authority to carry out town planning or urban renewal schemes, a right that resided in the proper sovereign power which they considered to be Jordan.¹⁰⁹ The resolution adopted by the Executive Board in 1969 did not resolve the issue; it requested the Director-General to undertake certain action "in agreement with the legally sovereign State concerned" and in conformity with United Nations resolutions. The action requested was: (a) to provide "the parties concerned, both public and private," with technical advice and

103. Id., at paras. 22-23, p.8.

104. 83 EX/SR.1-29, at SR.23, para. 4.4., p.254 (1969); Doc. II.A.19.

105. Id., at paras. 4.13-4.14, p.255.

106. Id., at SR.23, para. 4.13, p.255. The Israeli member charged that under Jordanian rule, 34 of the 35 synagogues in the Jordanian sector "were in ruins or had been desecrated," and that: "Hundreds of Scrolls of the Law had been destroyed and thousands of tombstones broken or used as building materials." Ibid.

107. Ibid. The Jerusalem Committee consisted of 62 persons from 23 countries. Ibid.

108. 83 EX/12, para. 21, pp.7-8 (1969); Doc. II.A.15.



assistance; (b) to seek means of ensuring the application of the 1954 Hague Convention, the 1956 Recommendation and UNESCO resolutions; and (c) to "provide world public opinion with objective information" promoting, as to the preservation of Jerusalem, "a vast movement of understanding and mutual respect between the cultures whose historical roots are there."110

The 1970 Jordanian Complaint

In January 1970, the Jordanian Government protested Israel's "continuous violations against [Jordanian] cultural properties and antiquities" in a letter addressed to Dr. Brunner, which asked that the Executive Board study the case and "take more effective measures against Israel occupation authorities."111 Four particulars were cited:

1. The Israeli occupation authorities are still permitting excavation directed by its men or by foreign expedition... [in the Hebron district.]
2. In Jerusalem, excavations are carried out in the vicinity of Haram-es-Sharef area (one of the most sacred Moslem shrines).
3. The Israeli occupation authorities consider the Palestine Archaeological Museum as one of the Israeli museums....
4. The Dead Sea Scrolls are still in the Israeli Museum...112

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The complaint was transmitted to Mr. Reinink, who reported, in May 1970, that "no excavations are being carried out" in the Hebron district, and that, "with the exception of a few fragments that are being repaired and will follow as soon as repairs are completed," "the Dead Sea Scrolls that were in the Rockefeller Museum on 5 June 1967, have been returned to

109. 83 EX/SR.1-29, at SR.28, paras. 37.3-37.4, p.318 (Soviet Union); and SR.29, para. 8.1, p.322 (Jordan) (1969); Doc. II.A.19.

110. 83 EX/Dec. 4.3.1, para. 7 (1969); Doc. II.A.20. Paras. (a) and (c) were proposed by the Director-General in his report, 83 EX/12, para. 24, p.8 (1969); Doc. II.A.15. The Executive Board also asked the Director General to consult with the Parties to the 1954 Hague Convention as to the advisability of calling a meeting to study "means whereby the scope of the said Convention can be made clear and its efficacy enhanced." 83 EX/Dec. 4.3.1, para. 8 (1969).

111. See 84 EX/8, Annex V, letter to Dr. Brunner dated Jan. 22, 1970; Doc. II.A.21. The complaint was transmitted by Dr. Brunner to Mr. Reinink, and, through the Director-General, to the Executive Board. See 84 EX/8, Add., Annex, p.4, (1970); Doc. II.A.21.

112. Ibid. Para. 4 also charged, without specifics, that "many objects have been robbed." Ibid.



that museum."¹¹³ Mr. Reinink noted, however, that excavations were being carried out in the vicinity of the Haram-al-Sharif area in Jerusalem, "but they do not threaten the safety of the sacred Moslem monument and do not, therefore, fall under the terms of the [1954 Hague] Convention."¹¹⁴ No mention was made of the status of the Palestine Archaeological Museum, which appears no longer to have been in dispute.¹¹⁵

The exchanges between Jordan, Brunner and Reinink were transmitted by the Director-General to the Executive Board together with the Director-General's report on his activities under the 1969 Board resolution quoted above.¹¹⁶ Although it thus had the Jordanian complaint before it, the Board made no mention of the Jordanian complaint in adopting a resolution that took note of the Director-General's report and invited him to continue his efforts under the 1969 Executive Board resolution.¹¹⁷

The 1971 Jordanian Complaint

In May 1971, Jordan renewed its complaint with a detailed statement charging Israel with violations of the 1954 Hague Convention under three headings:

- (1) Illegal activities of archaeological excavations;
- (2) Continuation of demolition and expropriation of cultural buildings; [and]
- (3) Plans for drastic changes of the uniqueness of the City of Jerusalem and its surroundings, including the Holy Mount of Olives.¹¹⁸

The most significant charges made by Jordan are summarized below, together with both the response made by Israel and the observations submitted by Commissioner-General Reinink.¹¹⁹

As to archaeological excavations, Jordan charged that excavations in the Haram-al-Sharif, or Temple Mount, area were designed to extend 485

¹¹³. 84 EX/8 (1970); Doc. II.A.21. Mr. Reinink asked Dr. Brunner to "inquire from the Jordanian Government which objects have been robbed." Ibid. See n. 112 above.

¹¹⁴. Ibid.

¹¹⁵. A report by Dr. Brunner dated June 6, 1970, makes no mention of the Palestine Archaeological Museum while reiterating Jordan's other complaints. See 84 EX/8, Add. 7, Annex, p.2 (1970); Doc. II.A.21.

¹¹⁶. See 84 EX/8 (1970), and text at note 110 above.

¹¹⁷. 84 EX/Dec. 4.3.1 (1970); Doc. II.A.23. Jordan did not address the Executive Board during its brief debate. See 84 EX/SR.1-33, at SR.30, pp.343, 352-54 (1970); Doc. II.A.22.

¹¹⁸. 87 EX/31, p.2 (1971); Doc. II.A.24. The Jordanian statement was sent to the Director-General for presentation to the Executive Board.

¹¹⁹. 87 EX/34 and 87 EX/35; Docs. II.A.25 and II.A.26, respectively.



metres along both the southern and western portions of the Wall in order to expose the Wailing Wall and to "pave the way for the seizure of the Haram-esh-Sharif and its replacement by the dream Temple of 2,000 years."¹²⁰ Jordan charged that the excavations had already reached a length of 230 metres and had resulted in the destruction of buildings adjacent to the Wailing Wall. Their continuation along the western Wall "is being carried out under more Arab cultural and Moslem religious properties adjoining the walls, endangering no less than 300 buildings inhabited by around 3,000 Arabs."¹²¹

Israel responded that the excavations were designed to "make a stratigraphic study of the site in order to reveal the history of ancient Jerusalem," and that they were being conducted "in an area on which there are no cultural or historical monuments."¹²² The excavations were said by Israel to have done no damage to Moslem cultural property and to "present no danger whatsoever to Moslem religious buildings." The buildings demolished near the excavation site were said to have been dilapidated and pulled down for safety reasons; "they included not one historical or cultural building." Israel stated that the excavations were being conducted in "a most scientific and careful manner," and "[n]o demolition of any Moslem cultural building or monument has been, or is being, contemplated."¹²³ Israel said that much of the work complained of by Jordan was not excavation; it was "the clearing of refuse and debris which [had] accumulated through the centuries under the arches built by King Herod to support the bridge connecting the Temple Mount to the Western Hill," which according to Israel created no danger to buildings or to monuments.¹²⁴

Mr. Reinink stated that in the past year, "no destruction or removal of immovable property [had] taken place either to make room for an extended exposure of the Wailing Wall or for an extension of Professor Mazar's excavations," and that he did not believe that any such action was planned.¹²⁵ Mr. Reinink said that the clearing of the subterranean tunnels was not excavation in the ordinary sense of the word: "No new tunnels are being made that could threaten the safety of the buildings above, but constructions that were built hundreds and thousands of years ago are being cleared of ancient debris and cleaned." In his view, this work did not risk damage to the streets and buildings above.¹²⁶

It should be noted that the Jordanian statement, dated May 6, 1971, was circulated to the Executive Board under the date of May 7 for discussion at a Board meeting on May 11. Both the Israeli response and Mr. Reinink's report were dated May 10, the latter being circulated on the day of the Board meeting.

120. 87 EX/31, supra, paras. 3-4, pp.2-3.

121. Id., at paras. 6-7, p.3.

122. 87 EX/34, supra, at para. 4, p.1.

123. Id., at para. 6, p.2.

124. Id., at para. 7, p.2.

125. 87 EX/35, supra, at p.1.

126. Id., at p.2.



As to the demolition and expropriation of cultural buildings, and the Israeli plans for changing Jerusalem, the Jordanian complaint charged that "over 200 Arab mediaeval cultural and religious buildings" had been destroyed, and that large areas around Haram-al-Sharif and elsewhere had been appropriated and seized by Israeli military authorities. These seizures were seen by Jordan as a prelude to redevelopment under the Israeli master plan which would change "not only the demographic situation and the unique character of Jerusalem, but also the villages and hills around the city."¹²⁷

Israel responded that the redevelopment of Jerusalem was "the best refutation of the Jordanian allegations that Israel is bent on demolition and destruction." In contrast to Jordan's treatment of Jerusalem, "Israel's activity is governed by the strongest desire to preserve the beauty and character of the city," with the utmost care to avoid errors and with the use of expert advice whenever necessary.¹²⁸

Mr. Reinink noted that in general Israeli plans for new housing would be within his terms of reference under the 1954 Hague Convention only when it appeared that monuments would be threatened through such action. Mr. Reinink considered that plans for reconstruction of the Old City of Jerusalem, including the Jewish Quarter, clearly fit within his terms of reference, however. The Old City was a great monument as to which the Commissioner-General felt he had a great interest.¹²⁹ Without commenting on the specifics of the Israeli master plan, Mr. Reinink observed that "the ideas that lead the reconstruction are sound" and "the old town will not have suffered when the reconstruction will be completed."¹³⁰

The Jordanian complaint, termed a "Report from the Government of Jordan on the Violation of the Hague Convention," came before the Executive Board in May 1971 together with responses made by Israel and by the Commissioner-General. Both the Jordanian and the Israeli positions were amplified in statements made in the Executive Board,¹³¹ but the debate was adjourned and the matter deferred to the Board's fall 1971 session without decision. This action was taken on motion by the United Kingdom Executive Board member, who observed that a vote "would imply passing judgment on the validity or otherwise of the contentions advanced," and that time was therefore necessary "both for reflection and for consultation with governments, whose responsibility would be involved in any findings on what was manifestly a political issue."¹³²

127. 87 EX/31, supra, at paras. 11-18, pp.4-5.

128. 87 EX/34, supra, at paras. 9-10, p.2. The rebuilding of Jerusalem and the erection of new buildings to house a growing population were termed "normal civic developments." Ibid.

129. 87 EX/35, supra, pp.2-3.

130. Ibid. Mr. Reinink noted that the Israel master plan had been heavily criticized in other respects and it was not certain what would be done. He also "would have preferred," rather than Mayor Kollek's Jerusalem Committee, "a committee of advisers, eventually the same persons, not nominated by an Israeli authority, but by an international body, for example by UNESCO." Ibid. See text at note 107 above.

131. See 87 EX/SR.1-15, at SR.9, paras. 34.1-34.10 (Jordan), 35.1-35.4 (Egypt), and 36.1-36.4 (Israel), pp.97-99 (1971); Doc. II.A.27.



In the interim between the May and October Executive Board meetings, Director-General Maheu, with the agreement of Israel, sent Professor Raymond Lemaire to Jerusalem as special consultant to the Director-General. Mr. Lemaire's task was "to prepare a report for the Director-General dealing ... with the factual situation in the City of Jerusalem, and with the plans and intentions of the Israeli authorities insofar as they had already been made public by these authorities or might be made public during his visit."¹³³

Professor Lemaire visited Jerusalem in September 1971 and submitted his report to the Director-General on October 7, 1971. On October 18, the Director-General submitted to the Executive Board for its information "extracts broadly representative of the report rendered to him" by Professor Lemaire.¹³⁴ The full text of Professor Lemaire's report has not been made public.

The Director-General's extracts from Professor Lemaire's report are arranged in five sections: damage to cultural property; excavations; clearance work; conservation of Jerusalem's monumental heritage; and the town planning of Jerusalem. Each section is confined to factual observations and conclusions; no views are expressed on the disputed legal issues.

At the outset, Professor Lemaire praised the effective assistance given him by the Israeli authorities and their constant efforts to facilitate his inquiries. The authorities had given Professor Lemaire "free access to all the sources of information needed alike on excavations, on restoration operations and on town planning schemes for Jerusalem."¹³⁵

(1) Damage to Cultural Property. In the Haram-al-Sharif area, Professor Lemaire found that "considerable demolition work [had] been carried out to open up the enormous esplanade which now runs in front of the Wailing Wall," but that Israeli authorities had "confirmed that no further demolitions had been carried out since June 1969 and that no further destruction was contemplated in this zone."¹³⁶

^{132.} Id., at SR.9, para. 43.1, p.100. The vote was 13 to 11, with 3 abstentions. Id., at para. 46, p.101. See note 119 above.

^{133.} See 88 EX/47, para. 1, p.1 (1971); Doc. II.A.29. Mr. Lemaire was professor at the University of Louvain and Secretary-General of the International Council of Monuments and Sites.

^{134.} Id., at para. 4, p.2. The "extracts" consist of quotations taken by the Director-General from Professor Lemaire's report.

^{135.} Id., at para. 3, p.2. All direct quotations given below reproduce Professor Lemaire's language as quoted by the Director-General.

^{136.} Id., at para. 5, p.2. Lemaire noted that the area "undoubtedly contained some buildings of undeniable architectural value." Ibid.



As to the Jewish Quarter, Israeli authorities had completely evacuated it "in order to clear it up and to restore it," in the course of which Lemaire noted that "praiseworthy efforts are being made to preserve all the old buildings that have survived."¹³⁷

(2) Excavations. Concerning Professor Mazar's excavations around the Haram-al-Sharif, Professor Lemaire reported that:

the site covers a zone extending along the Herodian walls of the Temple from the south-west corner, stretching 200 metres south and 150 metres west and varying in width from 50 to 75 metres.

Although the excavations had uncovered remains of very great importance "dating from the epoch of Herod the Great and of the Ommiads," Professor Lemaire found that there was "no urgency of a technical nature...to justify the necessity of carrying out these excavations for reasons of conservation."¹³⁸

In Lemaire's view, the excavations just described had not "occasioned the demolition of any notable buildings," and "the work at present being carried out in no way threatens the stability of the Herodian Temple enclosure, nor, accordingly, the preservation of the very important monuments constructed on the terrace."¹³⁹ Lemaire commented that the extension of the excavations to the north, however, had "caused the very regrettable demolition of the Madrassa Zawuyah al Kakhriya group," probably "as a result of instability of the buildings due to soil subsidence caused by enormous earth works carried out in the vicinity in connexion with the very radical even ruthless clearance of the Wailing Wall zone and in connexion with the excavations."¹⁴⁰

As to excavations in the Jewish Quarter, Professor Lemaire stated that the excavations were being "conducted with exemplary method and attention to detail," and "are uncovering remains in successive horizons of all the great periods of the city." He stated that the excavations "have not directly caused the destruction of buildings of cultural value," and were "perfectly justifiable" at this time since the planned reconstruction of the Jewish Quarter "meant the partial destruction of remains preserved in the sub-soil or that it would be impossible to carry out excavations for a very long time if not for ever."¹⁴¹

137. Id., at para. 6, p.3. Lemaire further stated that: "Indisputably the will of the team of architects responsible for rehabilitating the quarter is to preserve everything which can be preserved...." Ibid.

138. Id., at para. 8, p.3.

139. Ibid. Lemaire noted that the excavations "have no where reached the footings of the walls, which are on average more than 20 metres below the surface where they appear to stand directly on the bed rock." Ibid.

140. Ibid. Lemaire observed that probably the demolitions had originally neither been desired nor intended. Ibid.

141. Id., at para. 9, pp.3-4.



(3) Clearance Work. The underground chambers being emptied of accumulated earth and rubbish lie beneath some of the most important Muslim monuments in Jerusalem. Professor Lemaire considered that these chambers "are very strongly constructed," however, and that "apart from a few cracks due to earth tremors [they] are in an excellent state of preservation." Lemaire said that the clearance work is not affecting the safety of the buildings above "as the vaults have always genuinely borne the weight of the buildings on top" and care is being taken to do the "necessary reinforcement work [where] damage due to earth tremors might have given cause for concern."¹⁴²

In Professor Lemaire's view, the clearance operation is not "excavation of the conventional type." It is "a freeing of a subterranean monument which is justifiable on the score both of the undoubted cultural interest of the structure and of the improvement which it will effect when the work is finished and the polluted waters are evacuated by new conduits."¹⁴³ In two places, however, "where the chambers against the wall of the Temple enclosure are not contiguous," Lemaire found that "narrow tunnels have been dug in the earth banking, to free the Wall." The new tunnels "are solidly braced by means of metal tubes," but he considered this a "temporary solution" and said that "the greatest attention will have to be given to the definitive consolidation, if the stability of the buildings erected above them is not to be imperilled."¹⁴⁴

(4) Conservation of Jerusalem's Monumental Heritage. The restoration and rebuilding of the Jewish Quarter was said by Lemaire to be preserving those buildings which the architects consider can be saved, but "both in conception and as regards certain restoration techniques," Lemaire found that "the work is often below what one might have hoped." Restoration operations on certain Arab buildings and monuments were also criticized by Lemaire as "misconceived," with the suggestion that "technical assistance is vital, and urgently needed."¹⁴⁵

(5) The Town Planning of Jerusalem. Professor Lemaire stated that the Israeli 1968 Master Plan for Jerusalem "in no way alters the structure [or] the appearance of the Old Town bounded by the Ottoman Ramparts."¹⁴⁶ The plan was still in the process of being worked out, however, and Lemaire considered that care must be taken to avoid errors of judgment, which would be costly in the landscape as difficult as Jerusalem's. One "exceptionally serious error" seen by Lemaire in the draft plan was the provision for

^{142.} Id., at para. 10, p.4. Lemaire "personally inspected certain buildings erected above the area that has been cleared, and did not observe the slightest sign of subsidence or recent cracking." Ibid.

^{143.} Ibid.

^{144.} Id., at p.5. Lemaire noted that: "Uneasiness about this on the part of the owners of these properties is perfectly understandable and justified." Ibid.

^{145.} Id., at paras. 11-12, p.5.

^{146.} Id., at para. 13, p.5.



a special commercial zone in the middle of the town on a site linking the Jewish Quarter to the south complex in the heart of the city. He said that this error should be brought to the attention of the Israeli authorities.¹⁴⁷

The preservation of the countryside surrounding the Old Town was seen by Lemaire as a major element of the Master Plan. A zone in this area had been expropriated for conservation as a national park, which Lemaire said would constitute "a safety zone of great importance for Jerusalem's historical landscape."¹⁴⁸

Executive Board Review, October 1971

The October 1971 Executive Board meeting received both the Director-General's excerpts from Professor Lemaire's report and a new statement by Jordan supplementing the statements that had been before the previous session of the Board. Jordan's statement, termed a "Memorandum to be attached to the Jordanian Report concerning the violations of the Hague Convention," specified that it was a supplement to the earlier report so that both constituted one complaint submitted for consideration by the Executive Board.¹⁴⁹

In its supplementary report, Jordan charged that Israeli military authorities had been:

...continuing excavations in the form of underground tunnels... all along the Western Wall. Reports about these excavations show that these tunnels took different directions and have been approaching the surface of the ground in many areas. The sacred Islamic sites are exposed to danger as a result of these excavations....¹⁵⁰

The excavations were alleged to be a preliminary stage to excavations within Haram-al-Sharif; Jordan stated that in the end the Israeli military authorities "would claim that they have found some archaeological relic of the Temple, thus to justify their getting possession of Haram-Al-Sharif."¹⁵¹

147. Id., at p. 6. A competition for the reconstruction of the zone had been organized without having been preceded by an "acceptable archaeological, urbanistic or architectural study." Ibid.

148. Ibid.

149. 88 EX/46, para. 3, p. 3 (1971); Doc. II.A.28. The document was dated Oct. 8 and circulated Oct. 13 for consideration at a meeting to be held on Oct. 20, 1971.

150. Id., at para. 5, p. 3. Specific instances of cracking were cited in a two-story building on the road that leads to the Wailing Wall in the Jewish Quarter and in the Ottoman School situated in middle of the Israeli excavations. Id. at paras. 8-9, p. 4.

151. Id., at para. 6, pp. 3-4.



The new Jordanian report also charged that as part of their plan to change the character of the occupied city of Jerusalem, the Israeli military authorities "began changing the names of some historical places and quarters, giving them Jewish names instead." The changes were seen by Jordan as "a revenge from the history related to these names," and a deed that showed the Israeli intention to alter the unique historical and cultural character of Jerusalem.¹⁵²

During the debate in the Executive Board in October 1971, the Jordanian representative reiterated the charges made in the Jordanian complaints and commented that the extracts that had been quoted by the Director-General from Lemaire's report had been "based on [Lemaire's] observations of plans shown to him by the Occupying Authorities and on his discussions with them." The Jordanian representative said the Lemaire report confirmed Jordan's charges, however. He said the report confirmed that "illegal excavations were still being carried out, that valuable monuments had been demolished and others likely to be demolished, that religious sites and monuments were in danger of collapse, that the Master Plan was being implemented and that property had been illegally expropriated."¹⁵³

The Israeli representative reiterated his government's view that the 1954 Hague Convention did not prohibit archaeological excavations, and that indeed in some instances archaeological excavations had to be undertaken to protect cultural property.¹⁵⁴ Examples of important discoveries were cited by Israel and it was observed that in contrast to the neglect and vandalism of the period of Jordanian rule, the "Government of Israel remained fully committed to consider the preservation of cultural property, whatever its origin, as a sacred trust."¹⁵⁵

A draft resolution submitted by representatives of six states, Afghanistan, Algeria, Czechoslovakia, Egypt, Lebanon and Pakistan, took note of the Jordanian complaints and accused Israel of violating the 1954 Hague Convention and of disregarding UNESCO resolutions.¹⁵⁶ An amendment

152. Id., at paras. 12-13, p. 5. Two specific instances were cited: "Solomon Road" changed to the "Parachutists Road," and "Bab Al Magharebeh Gate" changed to "Rehov Beit Mahsi." Id., at para. 14, p. 5.

153. 88 EX/SR.1-20, at SR.7, paras. 2.1, 2.10 and 2.13, pp. 63-65(1971); Doc. II.A.29.

154. Id. at SR.7, paras. 5.1 and 5.7, pp 66-67. An example cited by Israel was the insistence by Israel that archaeological excavations be carried out before a seminary was built in the Armenian Gardens, as had been authorized by the Jordanian authorities. Ibid.

155. See id., at SR.7, paras. 5.3-5.9, pp. 66-68.

156. 88 EX/DR.1 (1971). Israel commented that the draft resolution had been submitted by six states that had no diplomatic relations with Israel, and that it completely ignored both the Director-General's report and the Commissioner-General's report. 88 EX/SR.1-20, at SR.7, para. 5.16, p. 68 (1971); Doc. II.A.29.

submitted by Brazil sought to delete the specific conclusions as to Israel's actions from the draft resolution, and to reiterate the previous UNESCO calls upon Israel to desist from archaeological excavations in Jerusalem.¹⁵⁷

The representative of the Federal Republic of Germany found the information submitted to the Board insufficient "to form a proper basis for a sound and definitive judgement." In his view, Mr. Reinink's report showed that:

- (i) excavations near the walls of the Harem esh-Sharef had been continued, but they were not excavations in the ordinary sense of the word and did not endanger the streets and buildings above;
- (ii) since [June 1970] no destruction or removal of buildings had taken place in the Old City of Jerusalem in order to make room for extended excavations; and
- (iii) while a Master Plan for reconstruction of the city of Jerusalem existed, no monuments in the sense of the Convention were threatened as far as the city outside the walls was concerned.¹⁵⁸

The West German representative said that Professor Lemaire's report showed that the excavations around Haram-al-Sharif "had in fact led to the demolition of notable buildings", but he observed that "Professor Lemaire did not indicate that any damage had been caused or risk involved to cultural monuments by excavation works continued after the time of the relevant UNESCO resolutions."¹⁵⁹

Another speaker, the representative of the United Kingdom, noted a tendency in the Executive Board to bring into the discussion "political issues affecting the general status of Jerusalem, which in his view were not appropriate to UNESCO." He considered that the Board's competence "centered on UNESCO's role as custodian of the Hague Convention," which had not been ratified by the United Kingdom. He had doubts as to the Convention's "effectiveness in many places and in many circumstances", but since he was not in a position "to participate in positive judgements relating to the application of that imperfect instrument", he would "abstain on the draft resolution and on any amendment to it purporting to exercise judgement in the matter."¹⁶⁰

157. 88 EX/DR.2 (1971). The Brazilian and the Peruvian representatives commented that the Board was "getting lost in the maze of Jerusalem and that it was difficult to form a completely clear and positive opinion." 88 EX/SR.1-20, at SR.7, paras. 7.1-7.4 and 10.3, pp. 69-71 (1971); Doc. II.A.29.

158. Id. at SR.7, paras. 13.2-13.4, pp. 72-73.

159. Id. at SR.7, para. 13.3, pp. 72-73.

160. Id., at SR.7, paras. 6.1-6.2, p. 79. The United States did not participate in the debate.

The resolution finally adopted by the Board made no finding concerning Israel's compliance with the Hague Convention. It repeated previous UNESCO calls upon Israel to desist from archaeological excavations in Jerusalem, and to adhere scrupulously to the Hague Convention and to previous UNESCO resolutions.¹⁶¹ The resolution also invited the Director-General "to ensure the presence of UNESCO in the City of Jerusalem with a view to securing an efficient implementation of" the previous UNESCO resolutions.¹⁶²

Israel Rejects the 1971 Executive Board Decision

In November 1971, Director-General Maheu drew the attention of Israel to the Board's request that he "ensure the presence of UNESCO" in Jerusalem. Mr. Maheu suggested to Israel that a formula could be devised, "based on UNESCO's past experience in the preservation of the cultural heritage of mankind,"¹⁶³ that would fulfill the mandate of the Executive Board.

Israel's answer came in January 1972 from Abba Eban, the Israeli Minister of Foreign Affairs. Mr. Eban stated that the Executive Board decision had been "influenced by political considerations rather than [by] those cultural objectives which we in UNESCO share." He noted that Israel had willingly received the Director-General's personal representatives, Professor d'Ossat in 1969 and Professor Lemaire in 1971, who had reported to the Director-General personally on the protection of cultural property in Jerusalem. Israel had also co-operated closely with Mr. Reinink, the Commissioner-General for Cultural Property under the Hague Convention. Notwithstanding Israel's cooperation, however, Mr. Eban observed that the factual reports submitted by these officials and made available to the Board "do not appear to have been given their due weight and consideration in the deliberations and conclusions of the Executive Board." Israel therefore found itself "unable to co-operate with measures designed to implement" the Executive Board decision.¹⁶⁴

161. 88 EX/Dec. 4.3.1 (1971); Doc. II.A.30. The vote on the paragraph relating to archaeological excavations was 28 to 1, with 3 abstentions 88 EX/SR.1-20, at SR.8, para. 17, p. 82 (1971); Doc. II.A.29. The resolution as a whole was adopted by 29 votes in favor to none opposed, with 3 abstentions. Id., at para. 22, p. 82. The United States abstained on two preambular paragraphs, but voted in favor of the resolution as a whole. Id., at para. 25, p. 83.

162. 88 EX/Dec. 4.3.1, para. 7 (1971); Doc II.A.30.

163. 89 EX/19 Rev., para. 2, pp. 2-3 (1972); Doc. II.A.31. The Director-General stated that he had at the same time "suggested several ways which might be contemplated of ensuring the presence of Unesco in the City of Jerusalem." Ibid.

164. Id. at para. 4, pp. 3-4.



A draft resolution submitted at the ensuing session of the Executive Board in July 1972¹⁶⁵ sought to condemn the continuous violation by Israel of the Hague Convention and of UNESCO resolutions. The draft was submitted by Afghanistan, Algeria, Czechoslovakia, Egypt, Lebanon and Pakistan, the same six states that had sought to condemn Israel's action at the October 1971 session of the Executive Board.¹⁶⁶

Jordan began the debate in the Executive Board with a renewal of the charges that continued Israeli excavations in the Haram-l-Sharif area were threatening damage to historically and culturally important Islamic buildings.¹⁶⁷ Jordan noted the Israeli refusal to co-operate with the Director-General, and called upon UNESCO to decide "whether it should leave Israel to choose between full compliance with the Board's decision... or immediate expulsion from Unesco."¹⁶⁸

The Israeli spokesman stated that although the Executive Board's deliberations usually showed a "practical approach and disinterestedness," he could find "no correlation whatsoever between the resolutions [relating to Israel] and the periodic reports of the Commissioner-General or the published report presented by the personal representative of the Director-General." He said that therefore one had to conclude that the Board's resolutions "were influenced by considerations other than the safeguard of cultural property and unconnected with the facts of the situation." Israel considered that the draft resolution before the Board made no pretence of objectivity; it was "blatantly biased and politically motivated, marked by distortion and suppression of the truth and total disregard for the reports of experts . . . or for evidence produced by Israel."

The Israeli representative noted that "the Hague Convention was the creation of UNESCO", and that "the Commissioner-General appointed under the terms of the Convention provided the facts of the situation in periodic reports." The Commissioner-General could count on Israel's co-operation:

165. 89 EX/DR.20 (1972)

166. See note 156 above.

167. The Board, meeting on July 6, 1972, also had before it three other documents: a note submitted by Jordan on July 3 that cited six specific instances of damage alleged to have resulted from the continuation of excavations along the western and southern walls of Haram-al-Sharif; a report by Mr. Reinink on other matters; and a note by Israel dated July 4 submitted in response to Jordan's note of July 3. The Israeli response denied or otherwise avoided each of the six Jordanian allegations. See 89 EX/19, Adds. 1, 2 and 3 (1972); Doc. II.A.31.

168. 89 EX/SR.1-27, at SR.25, para. 6.1-6.11, pp. 291-93 (1972); Doc. II.A.32.



If [the Commissioner-General] ever felt that he required expert assistance, he could have recourse to Article 7 of the Regulations of the Convention. Any request made by him for Israel's approval in conformity with that Article would be examined favourably.¹⁶⁹

Israel's reference to UNESCO's role under the 1954 Hague Convention, and to the Commissioner-General's authority to appoint experts, may have been designed to offer a means through which a UNESCO "presence" might be established in Jerusalem without compromising Israel's position concerning the continuation of archaeological excavations. So far as is shown by the public record, however, no such request was made by Commissioner-General Reinink.

The Director-General drew attention during the Board discussion to Article 23 of the Hague Convention, which provides that UNESCO may provide technical assistance to the Contracting Parties "in organizing the protection of their cultural property, or in connection with any other problem arising out of the application of the present Convention." Acting under this article, the Director-General expressed his willingness to provide such technical assistance in the form of an expert mission to Israel; the expert would thus establish a UNESCO presence in Jerusalem.¹⁷⁰ Israel made no public response to this suggestion at the meeting of the Executive Board.

During the discussion of the Israeli response, quoted above, several members of the Executive Board criticized Israel's characterization of the Board's previous decision as having been politically motivated. The Lebanese member saw "an affront to the Board which represented the international community in matters falling into its field of competence."¹⁷¹ The Spanish member recalled that the Board decision had been an "almost unanimous decision of the Board in which Israel had no lack of good friends."¹⁷² Mr. Wynter of Jamaica thought it strange "to find himself, as a Jamaican, accused of voting for [the Board's 1971 decision] for political reasons." His government had voted for the decision "for the sole purpose of achieving Unesco's objectives," and he considered

169. Id. at SR. 25, paras. 7.2-7.6, pp. 293-94. Art. 7 of the Regulations to the 1954 Hague Convention empowers the Commissioner-General to obtain the services of experts with the approval of the party to which the Commissioner-General is accredited.

170. Id., at SR.25, para. 16.3, p. 299; and SR.26, paras. 2.1-2.3, p. 301.

171. Id., at SR.25, para. 9.3-9.6, p. 295-96.

172. Id., at SR.26, para. 5.3, pp. 302-03.



that "although political considerations inevitably influenced the decisions of an intergovernmental body, most of the members of the Board had voted for the resolution on cultural grounds."¹⁷³

Mr. Wynter also stated that the Board now faced a situation in which a UNESCO Member had "refused to accept a decision taken without any negative vote," a case for which the UNESCO Constitution had made "no provision for applying sanctions." In his view the Board should offer its good offices to Israel, while deploring Israel's attitude and renewing its call for co-operation. Mr. Wynter considered that Israel should review its decision: "If indeed it was doing all in its power to protect cultural property, then it had nothing to fear from a UNESCO presence."¹⁷⁴

In the place of the provision in the six-member draft resolution that would condemn Israel's violations of the Hague Convention, the Board adopted a paragraph stating that the Board:

Reproves Israel's negative attitude with regard to [the 1971 Executive Board decision.]¹⁷⁵

The word "reproves" had been stated as "réprouve" in the original French text, and initially translated as "reprobates" in the English text. The Lebanese member suggested that "censures" might be a more suitable English equivalent.¹⁷⁶ The Canadian member, supported by the United States member, proposed the substitution of "regrette" ("regrets" in English) for "réprouve."¹⁷⁷ The Canadian proposal was rejected by 13 votes in favor, to 14 against, with 3 abstentions.¹⁷⁸ "Réprouve" was then accepted by 21 votes to none, with 9 abstentions,¹⁷⁹ but after consultation with the UNESCO Secretariat translation services it was agreed that the English text should read: "Reproves Israel's negative attitude...."¹⁸⁰

173. Id., at SR.26, paras. 8.1-8.2, p. 303. Mr. Wynter said that "he would have hoped that Israel could agree that a proposal might be good in itself, regardless of the motives which inspired it." Ibid.

174. Id., at SR.26, paras. 8.3-8.5, pp. 303-04.

175. See 89 EX/Dec. 4.4.1, para. 5 (1972); Doc. II A.33. The amendment was submitted by Mr. Carneiro of Brazil, who considered that the Board lacked information as to the violations by Israel of the Hague Convention. See 89 EX/SR.1-27, at SR.25, paras. 10.1-10-3, pp. 296-97; and SR.26, paras. 10.1-10.3, pp. 304-05 (1972); Doc. II.A.32.

176. See id., at SR.26, para. 18.4, p. 306; and 89 EX/DR.21 (1972).

177. See id., at SR.26, para. 13.1, p. 305 (Canada); and para. 19.1, p. 306 (United States).

178. Id., at SR.26, paras. 29-30, p. 308.

179. Id., at SR.26, para. 31, p. 308.

180. Id. at SR.27, paras. 3-4, p. 311.



The resolution also "[deplored] the continuation under present conditions of archaeological excavations in Jerusalem by Israel,"¹⁸¹ and once again called upon Israel to scrupulously preserve "all sites, buildings, monuments and other cultural properties," to "desist from any archaeological excavations," and to adhere scrupulously to the provisions of the Hague Convention and UNESCO resolutions.¹⁸² The resolution thus contained no explicit finding that Israel had violated the Hague Convention.¹⁸³

A UNESCO "presence" in Jerusalem, 1972

The Executive Board's decision was transmitted to Israel by Director-General Maheu in July 1972 together with the suggestion that a formula be devised to implement the Board's decision calling for the establishment of a UNESCO presence in Jerusalem. The Director-General also renewed the offer, made orally at the Executive Board Meeting, to provide, "at the expense of UNESCO, under Article 23 of the Hague Convention, technical assistance, in the form of an expert mission," if that were acceptable to Israel.¹⁸⁴

The Director-General's technical assistance offer was accepted by Israel on October 6, 1972, just prior to the Executive Board's consideration of the question at its fall 1972 meeting.¹⁸⁵

In an oral statement made at the Executive Board meeting, Director-General Maheu stated that he intended "to appoint an expert of recognized standing, in order to furnish technical assistance to Israel for the preservation of the cultural heritage of Jerusalem, under the terms of Article 23, paragraph 2 of The Hague Convention." The Director-General went on to say that:

181. 89 Ex/Dec. 4.4.1, para. 6 (1972); Doc. II.A.33. The paragraph was proposed by the representative of France and was adopted by a vote of 14 to 2, with 2 abstentions. See id., at SR.27, para. 33, p. 309.

182. 89 EX/Dec. 4.4.1, para. 7 (1972). Each separate sub-paragraph was adopted without dissent. at SR.27, paras. 35-40, p. 309. The resolution as a whole was adopted by 22 to none, with 8 abstentions. Id., at para. 46, p. 309.

183. Just prior to the voting, the United States representative stated that: "The Hague Convention...was silent on the issue of archaeological excavations. That did not mean that the Convention could not or should not be amended, but such excavations were not in themselves sufficient grounds for accusations that Israel was violating it." Id., at SR.27, para. 19.5, p. 307.

184. 90 EX/9, paras. 2-3, pp. 2-3 (1972); Doc. II.A.34. See text at note 170 above.

185. Id., at para. 4, p.3. Israel's letter of acceptance was received on Oct. 6, 1972, and distributed the same day for consideration at an Oct. 11 meeting of the Executive Board.



In my opinion, the appointment by the Director-General of an expert under Article 23, paragraph 2 of The Hague Convention, corresponds to an extent which I consider as almost satisfactory at this stage, to the purposes of the decisions taken by the Executive Board when they require the presence of Unesco in the city of Jerusalem.¹⁸⁶

Responding to the Director-General's statement, the representatives of Jordan and Lebanon termed the proposed technical assistance mission "irrelevant" to the issue of Israel's noncompliance with the Board's decision calling for UNESCO's presence in Jerusalem. In their view, Israel had responded only to the Director-General's technical assistance proposal made under the Hague Convention; nothing had been said in response to the Board's decision to establish a presence in Jerusalem. Jordan and Lebanon thus considered that for a second time Israel had completely ignored the Board's decision.¹⁸⁷

Furthermore, the expert to be sent by the Director-General would not be "a representative responsible for ensuring the implementation of UNESCO decisions, but a technical assistance expert." In the view of the Lebanese representative:

[T]he Government of Israel had created a diversion by accepting a technical assistance expert without mentioning the terms of his mission. ...Would [the expert] be responsible for securing the implementation of [the Board's decision to establish UNESCO's presence in Jerusalem,] or would he simply furnish technical assistance. In the latter case, his task would consist solely of giving advice, not formulating policy or seeing to its implementation.¹⁸⁸

Jordan and Lebanon also protested the application of Article 23 of the 1954 Hague Convention to the particular case of Jerusalem. That article stipulated that the Contracting Parties might "call upon UNESCO for technical assistance in organizing the protection of their cultural property" and authorized UNESCO "to make on its own initiative, proposals on that matter." Thus, said the Lebanese representative:

[Article 23] referred to States Parties and their cultural property: Arab Jerusalem was not the property of Israel but the property of all mankind, under Jordanian legitimate sovereignty.¹⁸⁹

186. 90 EX/SR.1-19, at SR.14, para. 40.4, pp. 136-37 (1972); Doc. II.A.35. The English translation is quoted from Doc. 17C/INF.12, p. 4 (1972). The Director-General reminded the Board that the two Commissioners-General appointed under the terms of the Hague Convention were also "operating in the States concerned." *Ibid.* The Commissioner-General for Cultural Property accredited to Egypt, Jordan, Lebanon, and Syria, Dr. Brunner, died early in 1972 and was replaced by Mr. deAngelis d'Ossat, who had served as special consultant to the Director-General in 1969. See text at note 75 above.

187. See 90 EX/SR.1-19, at SR.14, paras. 41.2-41.4, p. 137 (Jordan); SR.15, paras. 1.1-1.4, p. 139 (Lebanon); SR.15, paras. 3.1-3.4, p. 140 (Egypt); and SR.15, paras. 16.1-16.2, pp. 144-45 (Lebanon); Doc. II.A.35.

188. *Id.*, at SR.15, paras. 16.1-16.2, pp. 144-45.

189. *Id.*, at SR.15, para. 1.3, p. 139 (Lebanon) (emphasis in the original).



Jordan warned that the Director-General's proposal to provide technical assistance under Article 23 would result in the "legalization of the authority of a foreign occupying power in the occupied city" of Jerusalem.¹⁹⁰

In response to the issue just raised, the Director-General expressed the view that recourse to Hague Convention Article 23 would not affect the legal status of Jerusalem. That article authorized the provision of technical assistance both for organizing the protection of cultural property and "in connection with any other problem arising out of the application of the present Convention or the Regulations for its execution." In the Director-General's view, the problems that had been examined by the Executive Board would justify the presence of UNESCO in Jerusalem under the quoted provisions of Article 23.¹⁹¹

A draft resolution submitted by the representatives of Afghanistan, Algeria, Czechoslovakia, Egypt and Lebanon, deplored the persistently negative attitude of Israel and its failure to comply with the decisions of the Executive Board, and called for the reference of the issue to the General Conference in order to secure the effective implementation of General Conference and Executive Board decisions.¹⁹²

Several speakers in the Executive Board debate considered that Israel's willingness to accept a technical assistance mission was a step forward and showed that progress was being made. One delegate called it a "ray of hope."¹⁹³ Another said that a UNESCO representative in Jerusalem "would be a representative of the entire world community" and that there "were good grounds for hoping that his mission would bear fruit."¹⁹⁴

Brazil proposed the deletion of the paragraph deploring Israel's persistently negative attitude so as to maintain the neutrality of the Executive Board and to avoid expressing condemnation of a Member State.¹⁹⁵

The United States representative said that the progress that had been made should be referred to in the Board's resolution. The United States therefore proposed amending the draft resolution to add language expressing satisfaction with the Director-General's efforts and with Israel's decision

190. Id., at SR.14, para. 41.4, p. 137 (Jordan).

191. Id., at SR.15, paras. 2.1-2.3, pp. 139-40. The Jordanian representative observed that "the Director-General's understanding might not be the understanding of all men of law, nor of the authors of Article 23." Id., at SR.15, para. 7.1, p. 141.

192. 90 EX/DR.18 (1972).

193. 90 EX/SR.1-19, supra, at SR.15, para. 8.2, p. 141 (Ceylon).

194. Id., at SR.15, paras. 19.1-19.3, pp. 145-46 (United Kingdom).

195. Id., at SR.15, paras. 6.1-6.3, p. 141 (Brazil). See also id., at SR.15, paras. 15.1-15.3, p. 144 (Spain).



to accept an expert from UNESCO under Article 23 of the 1954 Hague Convention. The United States also wished to delete the proposed reference of the issue to the General Conference.¹⁹⁶

The United States proposal to express satisfaction with the Director-General's efforts and with Israel's decision was rejected by a vote of 13 opposed, to 9 in favor, with 7 abstentions.¹⁹⁷ The United States proposal to delete the paragraph observing that "Israel's attitude does not constitute a satisfactory response" to Board decisions was rejected by 22 votes opposed, to 5 in favor, with 4 abstentions. The paragraph was then adopted by a vote of 25 in favor, to 3 opposed, with 3 abstentions.¹⁹⁸ The remaining United States proposal, to delete the reference to submission of the matter to the General Conference, was also rejected, this time by a vote of 20 opposed, to 7 in favor, with 4 abstentions.¹⁹⁹ The paragraph with the submission was then adopted by 24 votes in favor, to 5 opposed, with 2 abstentions, and the resolution as a whole, as amended, was adopted by 25 votes in favor, to 2 opposed, with 4 abstentions.²⁰⁰

As adopted by the Executive Board, the resolution observes that "Israel's attitude does not constitute a satisfactory response to the Executive Board decisions" adopted at the two previous sessions of the Executive Board, and decides "in view of the attitude of Israel, to

196. Id., at SR.15, paras. 13.1-13.2, p. 143. Mr Wynter of Jamaica supported the view that a "cautious, optimistic first step had been taken" and stated that "he was in favour of deleting the reference to Israel's negative attitude and supported the proposal to express appreciation to the Director-General, although he would not go as far in that direction" as the United States representative. Id., at paras. 24.3-24.4, pp. 147-148.

197. Id., at SR.17, para. 13, p. 164 (vote of 90 EX/DR.19 submitted by the United States).

198. Id., at SR.17, paras. 15-16, p. 164. The paragraph as voted contained less severe language than that originally proposed, which may account for the very large majority voting to reject the United States proposal to delete the paragraph entirely. See 90 EX/DR.19 (United States); and compare 90 EX/DR.21 (Spain) with 90 EX/DR.18 Rev. (5-power draft).

199. Id., at SR.17, para. 17, p. 165 (vote on 90 EX/DR.19, submitted by the United States).

200. Id., at SR.17, paras. 18-19, p. 165. The summary records show only the vote totals; they do not indicate how individual Board members voted.



submit the matter to the General Conference . . . with a view to securing an efficient implementation of the resolutions of the General Conference and of the Executive Board."²⁰¹

The 1972 Session of the General Conference

In November 1972, at the 17th Session of the General Conference, twenty-nine Member States joined in a draft resolution based on the Executive Board decision to establish a UNESCO presence in Jerusalem and its determination that "Israel's attitude does not constitute a satisfactory response" to the Executive Board decision. The draft resolution referred to the "persistent violation by Israel" of UNESCO resolutions relating to the preservation of cultural property in Jerusalem, deplored "the continuation by Israel of archaeological excavations in Jerusalem," condemned "the attitude of Israel" in this regard, and invited the Director-General "to ensure the effective presence of UNESCO in the City of Jerusalem."²⁰²

Draft amendments submitted by seven states, including the United States, sought to replace the quoted paragraphs in the 29-power draft concerning Israel's "attitude" and "persistent violation" of UNESCO resolutions, with paragraphs welcoming the Director-General's technical assistance proposal and Israel's acceptance of that proposal. The amendments would also delete the condemnation of Israel and the references to archaeological excavations in the 29-power draft, replacing them with a simple invitation to the Director-General to continue to pursue his initiatives towards establishing a UNESCO presence in Jerusalem.²⁰³

France submitted amendments to the 29-power draft that, in the main, would soften the condemnations of Israel in the 29-power draft, and add an explicit finding that the Director-General's technical assistance proposal "does not, as at present defined, seem [to the General Conference] to be able to make a sufficient contribution to solving the problem in question."²⁰⁴

201. 90 EX/Dec. 4.3.1 (1972); Doc. II.A.36.

202. 17 C/DR.243 (1972); Doc. II.A.37. The draft resolution also urgently called upon Israel to preserve all sites, buildings and other cultural properties in Jerusalem, "to desist from any alteration of the features of the City of Jerusalem," and "to desist from any archaeological excavations." *Id.*, at paras. 9(a), (b) and (c), p. 2. The 29 sponsors consisted mainly of Arab, African and Asian states.

203. 17 C/DR.284 (1972); Doc. II.A.37. The seven sponsors were: Brazil, Ecuador, Italy, the Netherlands, Nicaragua, the United States and Uruguay.

204. 17 C/DR.286 (1972); Doc. II.A.37. The French amendments would replace "persistent violation" by "persistently fails to observe" and "deplores" by "deprecates", and delete the condemnation of the attitude of Israel.



During the debate on the draft resolution and proposed amendments in the Programme Commission of the General Conference,²⁰⁵ there was general agreement that Jerusalem as one of the world's great spiritual centers was "part of the cultural heritage of the whole world," and that it was "UNESCO's responsibility, by virtue of its Constitution, to take action at the international level, for the preservation of the cultural heritage of Jerusalem."²⁰⁶ The Israeli delegate acknowledged the universal interest in Jerusalem and in the preservation of its cultural heritage. He also confirmed both Israel's continued compliance with the Hague Convention and Israel's willingness to accept the technical assistance mission proposed by the Director-General, but apparently made no new undertakings concerning Israel's attitude towards a UNESCO presence in Jerusalem.²⁰⁷

The Programme Commission debate apparently raised many of the points that had been discussed in the Executive Board, which, in the Programme Commission, would have been discussed without the benefit of the extensive documentation from the Commissioners-General and the Director-General's personal representatives that had been submitted to the Executive Board.²⁰⁸

The report of the Programme Commission noted that many speakers had questioned whether it was proper for the Commission to discuss "the political character of the problem of Jerusalem ... on the same basis as the technical aspects of the problem, with which alone [the Commission] should normally deal." As to this question:

Some delegates considered that the statements of a number of speakers proceeded from political considerations, on which level the problem of Jerusalem was outside Unesco's competence. Other delegates considered, however, that in Jerusalem political and cultural problems met and could not be separated.²⁰⁹

With regard to the concept of a UNESCO presence in Jerusalem, the Director-General commented that it was necessary for the Programme Commission "to define the precise nature and significance of that presence."

205. The debate is summarized in the Report of Programme Commission III (Social Sciences, Humanities and Culture), 17 C/97, paras. 197-221, pp. 32-35 (1972); Doc. II.A.38. There are no Summary Records of the debate in the Programme Commission.

206. Id., at para. 200, p. 33.

207. Id., at para. 201, p. 33.

208. See id., at paras. 202-04 and 206-09, pp. 33-34. The General Conference had before it only the texts of the Executive Board decisions, the exchange of letters between the Director-General and Israel, and the Director-General's statement concerning his technical assistance mission proposal. See Docs. 17 C/88, 17 C/INF.12, and 17 C/INF.13 (1972).

209. Id., at para. 205, p. 34.



In his opinion, the desired " 'effective presence' seemed to call for the physical 'presence' in Jerusalem of a representative of UNESCO." If that were so, the representative "would have to have relations with the de facto authorities in Jerusalem," whose consent would be needed for his presence there.²¹⁰ As to the role of the UNESCO representative, the Director-General offered no view as to "whether he was to be simply a witness taking notes and sending reports, or to exert as much influence as was possible on the authorities and on their decisions."²¹¹

With regard to the Director-General's technical assistance proposal, several delegates doubted whether the expert appointed by the Director-General "would be able to obtain tangible results, especially in view of the fact that his role would be merely to advise the Israeli Government."²¹² The Director-General observed that while his technical assistance proposal "might have ensured Unesco's presence in Jerusalem to a certain extent, ... events had now overtaken his initiative in so far as the Executive Board had not been satisfied with it, and in so far as the General Conference... had not appeared to accord him its full approval either."²¹³

Sixteen votes taken in the Programme Commission resulted in the rejection of all aspects of the 7-power draft amendments,²¹⁴ and the adoption of the 29-power draft resolution as modified in some respects by the French amendments.²¹⁵ The resulting draft resolution, adopted by

210. Id., at paras. 217-18, p. 35. The Director-General observed that sending a UNESCO representative to Jerusalem "would not imply any recognition whatsoever of the present situation in the occupied territories and... would not affect individual opinions concerning the present status of the city." Ibid.

211. Id., at para. 219, p. 35. It would appear that the latter should be the case for the "presence" of a UNESCO representative to be considered a step beyond the reporting function that had already been carried out by the Director-General's personal representatives.

212. Id., at para. 213, p. 34. Brazil withdrew its support for the 7-power draft amendments, n. 203 above, apparently as a result of doubts on this score. Ibid.

213. Id., at para. 215, p. 35.

214. None of the votes taken were recorded roll-call votes. The 7-power amendments, note 203 supra, were rejected in five separate votes. See id., at Annex-Recommendations, para. 39(b), (d), (g), (i) and (k), pp. 18-21 (1972); Doc. II.A.38. The vote on the central provision welcoming the Director-General's proposal and Israel's acceptance of it was 19 in favor to 49 opposed, with 14 abstentions. Id., at para. 39(d), p. 20.

215. The French proposal to add a paragraph noting that the Director-General's proposal "does not seem sufficient to establish Unesco's presence in Jerusalem" was adopted by a vote of 55 in favor, to 6 opposed, with 23 abstentions. Id., at para. 39(f), p. 20. The deletion of the condemnation of Israel was adopted by 50 votes to 10, with 17 abstentions. Id., at para. 39(l), p. 20.



53 votes to 8, with 21 abstentions,²¹⁶ contained three central elements:

- (a) The resolution noted "that Israel persists in not complying with the relevant resolutions and that its attitude prevents this Organization from undertaking the mission which is incumbent upon it under the terms of the Constitution" (adopted by 47 votes to 7, with 23 abstentions);²¹⁷
- (b) The resolution characterized the Director-General's "proposal to provide Israel with an expert [as] a measure which does not seem sufficient to establish Unesco's presence in Jerusalem" (adopted by 55 votes to 6, with 23 abstentions);²¹⁸ and
- (c) The resolution disapproved of "the continuation by Israel of archaeological excavations in Jerusalem" (adopted by 55 votes to 6, with 22 abstentions).²¹⁹

The draft resolution also repeated the appeal that had been made at the 1968 session of the General Conference to Israel to preserve scrupulously "all sites, buildings and other cultural properties" and to "desist from any archaeological excavations," adding an appeal to "desist from any alteration of the features of the City of Jerusalem," and to adhere scrupulously to the provisions of the Hague Convention and of UNESCO resolutions.²²⁰

The final paragraphs of the 1972 General Conference resolution invited the Director-General "to continue his efforts to establish the effective presence of Unesco in the City of Jerusalem and thus make possible the actual implementation of the resolutions adopted by the General Conference and the Executive Board," and to report to the Executive Board on the implementation of the resolution.

The draft resolution thus disapproved of the continuation of archaeological excavations in Jerusalem, but did not explicitly condemn "the attitude of Israel" as had been asked in the original 29-power draft.²²¹

216. Id., at para. 38, p. 18.

217. Para. 7 of the draft resolution; id., at paras. 38 and 39(e), pp. 18 and 20.

218. Para. 8 of the draft resolution; id., at paras. 38 and 39(f), pp. 18 and 20.

219. Para. 9 of the draft resolution; id., at paras. 38 and 39(h), pp. 18 and 20.

220. Para. 10(a)-(d) of the draft resolution; id., at para. 38, p. 19. The 1968 resolution, 15 C/Res. 3.343, appears in Doc. II.A.11.

221. See note 215 supra.



In the Plenary Meeting, the draft resolution reported by the Programme Commission was adopted without substantial discussion and without change. The vote, taken by a show of hands, was 54 in favor, to 3 opposed, with 20 abstentions.²²²

The Director-General's Representative for Jerusalem, 1973

Continuing his efforts to establish a UNESCO presence in Jerusalem, Director-General Maheu visited Jerusalem in April 1973 at the invitation of the Israeli Minister for Foreign Affairs. On his return, the Director-General reported to the Executive Board that he had:

...informed the Government of Israel of his intention to appoint a qualified person as his representative for Jerusalem. This person would be sent to Jerusalem at the Director-General's request, as necessary, and would report to him.

The Israel authorities have assured the Director-General that they would extend all facilities to his representative to enable him to carry out his functions.²²³

The Director-General concluded his brief report with the statement that he considered that "through this arrangement he has complied with the mandate given to him by the General Conference" in its 1972 resolution "to continue his efforts to establish the effective presence of Unesco in the City of Jerusalem."²²⁴

The general reaction in the Executive Board was that Israel's willingness to accept the presence of a UNESCO representative in Jerusalem had been a step forward. The Director-General was said to have fulfilled his mandate from the General Conference in this respect; the task remaining was to bring about the implementation by Israel of the whole resolution to assure the effective protection and preservation of cultural property in Jerusalem.²²⁵

222. See Verbatim Records of the Plenary Meetings 17 C/VR.36 (prov.), at paras. 141.8-145.4, pp. 37-38 (1972); and 17 C/Res. 3.422 (1972); Doc. II.A.39.

223. 92 EX/16, para. 5, p. 1 (1973): Doc. II.A.40. The Director-General visited both Jordan and Israel on 27-28 April, and 29-30 April, 1973, respectively. Id., at para. 4, p. 1.

224. Id., at para. 6, p. 2. See text at notes 220-21 supra.

225. 92 EX/SR.1-16, at SR.13, paras. 2.1-2.4, pp. 132-33 (Egypt); para. 3.1, p. 134 (Spain); paras. 5.2-5.3, p. 135 (Jordan); para. 6.3, p. 136 (Lebanon); and para. 12.1, p. 138 (Jamaica) (1973); Doc. II.A.41. No statement was made by Israel at the Executive Board meeting.



Mr. El Borolossy of Egypt said that the Director-General had indeed implemented the paragraph calling for the establishment of a UNESCO presence in Jerusalem, but this "should not be regarded as an end in itself. It was no more than a procedural step taken as a means of allowing for the implementation of the resolutions of the General Conference and the Executive Board."²²⁶

Mr. Wynter of Jamaica said that "the Director-General might not yet have completed his task for...he had been invited to establish the 'effective' presence of Unesco [and] the presence of his representative would only be effective if it led to the implementation of the whole of the resolution."²²⁷

The delegate of Egypt said that it was now up to the Director-General "to give clear instructions to his representative with a view to ensuring that the representative's presence in Jerusalem would enable Unesco's resolutions to be effectively implemented."²²⁸ He criticized one draft resolution submitted to the Board as inadequate since it "watered down the importance of the aims of the mission to be undertaken by the Director-General's representative in Jerusalem, and implied that the whole problem had been solved by the future presence of such a representative in that city."²²⁹ Another draft resolution sought to request the Director-General to instruct his representative in Jerusalem "to study and report on the changes brought about in the features of the Holy City" since 1968.²³⁰ It was also suggested that the Director-General should encourage his representative "to supervise activities and to try to persuade the Government of Israel to implement" the General Conference resolution.²³¹

Some members doubted whether Israel's acceptance of a UNESCO representative would lead to Israel's acceptance of the General Conference resolution as a whole. The representative of Jordan said that he did not oppose the presence of a UNESCO representative in Jerusalem, but he believed that an affirmative answer could not be given to the following questions:

226. Id., at SR.13, para. 2.4, p. 133.

227. Id., at SR.13, para. 12.1, p. 138.

228. Id., at SR.13, para. 2.4, p. 133.

229. Id., at SR.13, para. 2.6, p. 133; the Egyptian member was speaking of 92 EX/DR.15, introduced by the member from Argentina.

230. 92 EX/DR.18, sponsored by six states: Afghanistan, Algeria, Czechoslovakia, Egypt, Lebanon and Saudi Arabia.

231. 92 EX/SR.1-16, supra, at SR. 13, para. 12.2, pp. 138-39 (Mr. Wynter of Jamaica).



Had Unesco achieved more than Israel's acceptance of the presence of a Unesco representative in Jerusalem? Could Unesco persuade Israel to accept the General Conference resolution as a whole?²³²

The Soviet representative criticized the "timid appeals" that had been made to Israel, and questioned how "one or even ten representatives" could "determine where and when the ill-intentioned would take into their heads to carry out excavations or violate international conventions."²³³ He considered that in view of Israel's actions in Jerusalem, "the presence of the Director-General's representative in the Jordanian part of Jerusalem would scarcely have any effect." The Soviet representative said that UNESCO should therefore adopt different methods:

If methods of persuasion did not work, there were other methods open to Unesco, such as methods of condemnation and methods of arousing public opinion throughout the world...[and] for creating a climate of unwillingness to tolerate those who stubbornly refused to take account of the opinions of such an eminent Organization as Unesco.²³⁴

After some discussion of changes in wording of the two draft resolutions that had been submitted to the Board, one draft was withdrawn²³⁵ and the sponsors of the other agreed to accept amendments that had been suggested by Mr. Wynter and by the Director-General.²³⁶ There was thus in the end a single draft before the Board, which was put to a vote as a whole and adopted by 31 votes in favor, to 1 opposed, with 6 abstentions.²³⁷

232. Id., at SR.13, para. 5.3, p. 135. The Jordanian representative also called for unspecified additional measures: "If Unesco could not force Israel to comply with its decisions it must not make life easier for the disobedient Member State." Id., at para. 5.5, p. 135. Israel did not participate in the debate.

233. Id., at SR.15, paras. 55.1-55.3, pp. 170-71.

234. Id., at SR.15, paras. 55.4-55.5, p. 171. The Soviet delegate said that: "Such methods were available to the Director-General, the Executive Board and the General Conference of Unesco." Id., at para. 55.5, p. 171.

235. 92 EX/DR.15 Rev. was withdrawn by its sponsor, Mr. Dell'Oro Maini of Argentina. Id., at SR.15, para. 63, p. 173.

236. The vote was taken on 92 EX/DR.18 as amended by 92 EX/DR.23 (Mr. Wynter's amendments), and by the amendments orally suggested by the Director-General, 92 EX/SR.1-16, at SR.15, para. 62.10, p. 173.

237. Id., at SR.15, para. 66, p. 173. The record does not show which Executive Board member cast the negative vote.



The May 1973 Executive Board resolution first notes that Israel had not respected the appeal made by the 1968 session of the General Conference to desist from archaeological excavations, and that the 1972 General Conference had noted "that Israel persisted in not complying with the relevant resolutions and that its attitude prevented the Organization from undertaking the mission which is incumbent upon it under the terms of the Constitution." The 1973 resolution then took note of the Director-General's report on his efforts to establish a UNESCO presence in Jerusalem, and of his intention "to appoint a qualified person as his representative for Jerusalem." Finally, the 1973 resolution expresses the Board's "appreciation to the Director-General for this first achievement in the implementation" of the decision to establish a UNESCO presence in Jerusalem, and invites the Director-General:

to include among the terms of reference given to his representative an instruction to study and report to him on changes to the features of the Holy City since the adoption by the General Conference of its resolution in 1968 and, through the Unesco presence in Jerusalem, to make possible the effective implementation of the resolutions and decisions adopted by the General Conference and the Executive Board.²³⁸

The May 1973 Executive Board resolution thus does not condemn Israel, but fails to welcome, or otherwise to praise, or even explicitly acknowledge, Israel's willingness to accept a UNESCO representative in Jerusalem.

In October 1973, the Director-General reported that he had appointed Raymond Lemaire as his personal representative for Jerusalem.²³⁹ Mr. Lemaire, Professor of Architecture at the University of Louvain and Secretary General of the International Council of Monuments and Sites, had previously visited Jerusalem as special consultant to the Director-General in September 1971.²⁴⁰

238. 92 EX/Dec. 4.5.1, paras. 3-7 (1973); Doc. II.A.42. The resolution quotes in full the urgent call upon Israel made in the 1972 General Conference resolution relative to preservation of cultural property in Jerusalem. See text at note 220 supra.

239. 93 EX/17 Add.1 Rev. (1973); Doc II.A.43. The Director-General had previously announced that: "Two specialists with the requisite qualifications for this assignment [had] successively declined, for personal reasons, the offer made to them." 93 EX/17 (1973); Doc. II.A.43.

240. See text at note 133 supra. The Executive Board took note of the Lemaire appointment at its October 1973 session, and decided to defer the question of implementing UNESCO resolutions on Jerusalem for consideration at its spring 1974 session. 93 EX/Dec. 4.5.1 (1973); Doc. II.A.45. Consequently there was no extended discussion of the Jerusalem issue at the fall 1973 Executive Board session which would have nearly coincided with the 1973 Yom Kippur war.



The 1974 Lemaire Report

Professor Lemaire undertook two missions to Jerusalem as the Director-General's personal representative; the first from December 6-14, 1973, and the second from April 16-23, 1974. On both occasions Professor Lemaire reported to the Director-General, and, in May 1974, Director-General Maheu transmitted to the Executive Board his summary of Lemaire's reports, showing "the facts noted and the observations made by Mr. Lemaire concerning the questions which were the subject of the General Conference and Executive Board resolutions" leading to the appointment.²⁴¹ The text of Mr. Lemaire's reports has not been made public.

The Director-General's summary of Mr. Lemaire's reports had seven sections: (1) Excavations around Haram-al-Sharif; (2) Excavations in the Jewish Quarter; (3) Clearance of the Western Wall of the Temple and Conservation of the Monuments in the Zone above the Tunnels; (4) Restoration of the Al-Aksa Mosqua; (5) Restoration of Suq-al-Qattani and Various Buildings in Haram-al-Sharif; (6) Restoration of the Holy Sepulchre; and (7) Town-Planning and the Conservation of the City and the Historic Site. The following is a brief summary of "the facts noted and the observations made by Mr. Lemaire" as contained in the Director-General's report to the Executive Board. The quotations included in the present summary are taken from the Director-General's report; they thus reflect the view taken by the Director-General of Professor Lemaire's observations and are not necessarily direct quotations from Professor Lemaire's reports, which have not been published.

241. 94 EX/14, paras. 3-4, p. 2 (1974); Doc II.A.46. The Director-General stated that Mr. Lemaire undertook the missions to Jerusalem "on instructions from the Director-General," but did not report the text of those instructions to the Executive Board. Id., at para. 3, p. 2. See text at notes 228-31 and 238 above.



(1) Excavations around Haram-al-Sharif. Mr. Lemaire noted that the excavations had been continued since his last report in 1971, "in the same zone." "The area excavated has been somewhat extended to the south of the enclosure...on a vacant site where a few recent buildings were demolished with a view to making a National Park." The excavations were said by Lemaire to have uncovered "important and often well preserved remains of dwellings going back to Herodian and Byzantine times."²⁴²

Mr. Lemaire reported that three large concrete buttresses had been constructed to strengthen the base of the southern wall of the Temple enclosure since tests had shown that "under the least favourable circumstances it is possible that this part of the wall of the enclosure, uncovered to a height of almost 20 metres, might get out of plumb." The buttresses had been carefully constructed and could be removed and the original wall freed without damage if, as was suspected, the base of the wall proved to be over 40 metres thick.²⁴³

Mr. Lemaire observed that "some of the criticisms that have been levelled at the methods used in the excavations are groundless." His conclusions as summarized by the Director-General were that:

The excavations are being carried out by a perfectly well qualified team of experts of various kinds, who are extremely attentive to all aspects and to all the periods of which remains have been found on the site. The same care is expended on the preservation of remains of the Omriad palaces as on those of the Herodian period.²⁴⁴

(2) Excavations in the Jewish Quarter. The excavations were reported by Professor Lemaire as being continued systematically with the aim of studying "the substratum of this zone before the buildings demolished between 1947 and 1967 are reconstructed." In Lemaire's view the excavations were being carried out "with the utmost care and employing the most expert methods," and had already led to "discoveries of the greatest importance in relation to the history of Jerusalem."²⁴⁵

242. 94 EX/14, Annex, para. 1, p. 1 (1974); Doc. II.A.46. Mr. Lemaire also noted other important discoveries as a result of Israeli excavations, including the "monumental stairways which led up to the terrace of the temple built by Herod the Great." Id., at paras. 2(c) and (d), pp. 1-2.

243. Id., at para. 2(a), p. 1. Mr. Lemaire noted that the original parts of the wall "which have been preserved to a height of 15 m., show no sign of movement worth mentioning." Ibid.

244. Id., at para. 2(f), p. 2.

245. Id., at para. 3, p. 2. Mr. Lemaire mentioned discoveries of "a city wall from the time of the Kings, a house burnt down by the troops of Titus, with its furniture and the charred remains of a woman occupant, the famous 'Nea' basilica, and streets and dwellings, chiefly Herodian and Byzantine." Ibid.



(3) Clearance of the Western Wall of the Temple and Conservation of the Monuments in the Zone above the Tunnels. Mr. Lemaire noted that no major work had been carried out in the tunnels since 1971.²⁴⁶ He said that:

A part of the galleries dug in the earth banking beneath Arab buildings has been consolidated by steel bents. Another part is still propped up with wood, which has been freshly treated with carbonileum and is in a good state of preservation.²⁴⁷

Mr. Lemaire observed that in the damp galleries "the wood may be attacked by cryptogams or xylophagous insects," and if the wood gave way, "the situation would be disastrous for the buildings above." Moreover he is said to have observed that:

Whenever it rains, the water runs into the mass of earth banking through the numerous open courtyards . . . and the stability of some of the buildings erected above the excavated zone has been imperilled.²⁴⁸

Mr. Lemaire noted, however, that Israel had decided to replace the wooden props "throughout the tunnel by a definitive and durable system of consolidation." "The tunnels will be reinforced by steel bents, and the casing will also be of metal, with concrete filling on the outside." The proposed technique appeared to Mr. Lemaire to be satisfactory.²⁴⁹

Two cases of damage to buildings were discussed by Mr. Lemaire. In the case of Sharabeh House, cracks in the walls resulting from soil subsidence "have been stopped up, braces have been put under the ground floor vaults, and steel and concrete bonds have been installed in the upper part of the walls affected." This work was considered by Professor Lemaire to be "efficacious from the engineering standpoint, but the effect is inelegant, and would be unacceptable if it were not that the work is of a provisional nature, and restoration will later be carried out in accordance with the rules of art."²⁵⁰

246. Id., at para. 4, p. 2. Mr. Lemaire noted that "it is possible that the gallery running along the west wall of the temple may have been extended a few metres." It extended "to within a few metres of Bab-el-Nadhir, one of the large gates of Haram-esh-Sharif." Ibid.

247. Ibid.

248. Id., at para. 5, p. 2.

249. Id., at para. 15(a), p. 4.

250. Id., at para. 6, pp. 2-3. Another case of a crack in a building wall was dismissed by Mr. Lemaire as having manifestly been cracked for a long time and thus "unrelated to the digging of the tunnel." Id., at para. 7, p. 3.



In the Madrassa Jawahriya, recent cracks observed by Professor Lemaire in the walls and vault indicated that "the building is being pulled away from the wall of the enclosure of Haram-esh-Sharif, on to which it was built." Damage to one wing was found to be considerable, leading to "a serious stability problem" threatening total collapse of the building.²⁵¹ The cracks had resulted from recent slight subsidence of the soil in a zone about 40 metres long, parallel to the enclosing wall of Haram-al-Sharif, and about 4 to 6 metres from that wall. Mr. Lemaire noted that the "tunnel dug to free the base of the enclosing wall passes beneath" the zone of soil subsidence and parallel to it, leading to the conclusion that although the tunnel had been dug four years earlier, it was "not unconnected" with the soil subsidence.²⁵² Mr. Lemaire's conclusion was said to be that "the subsidence of earth due to the tunnel is not unconnected with the movement of the buildings situated above." Such subsidence had not caused much damage where the buildings were sound, but "it starts off a number of more extensive movements, which may be dangerous, where structures are weak or worn." He noted that the unstable buildings had already been evacuated.²⁵³

With regard to the digging of the gallery, Mr. Lemaire's observations summarized by the Director-General were that:

No other case of damage to buildings in the vicinity of the western wall of the temple in the zone affected by the digging of the gallery has been reported by the engineer responsible for maintenance and restoration of the monuments belonging to the Moslem community.²⁵⁴

(4)(5) and (6) Restoration of the Al-Aksa Mosque, the Suq-al-Qattani and the Holy Sepulchre. Restoration work on the Al-Aksa Mosque and on the Holy Sepulchre was reported by Professor Lemaire to be progressing slowly.²⁵⁵

251. Id., at para. 9, p. 3.

252. Id., at paras. 11-12, p. 3. Mr. Lemaire noted that the movement in the buildings had occurred after an exceptionally wet winter, and that: "Accumulated water percolating through the soil may be the cause of the subsidence of earth against the wood casing of the tunnel." Ibid.

253. Id., at para. 14, p. 4. Mr. Lemaire noted that the soil subsidence at this site "undoubtedly does not suffice to explain the extent of the movements of the walls observed." The soil movement "had the effect of starting up movements in the wall, which are caused basically by structural weakness." Id., at para. 13, p. 4

254. Id., at para. 8, p. 3.

255. Id., at paras. 16 and 19, pp. 4-5. Mr. Lemaire noted that the methods employed in restoration work on the Al-Aksa Mosque "could well be improved." Id., at para. 16, p. 4. As to the Holy Sepulchre: "Better co-ordination of the teams carrying out the work is to be desired." Id., at para. 19, p. 5. The restorations were being carried out by the Moslem and Christian authorities, respectively.



The Suq-al-Qattani, built in the 14th century, had been "until a year ago. . . in a lamentable state of neglect and disrepair." Its restoration was completed by April 1974.²⁵⁶

(7) Town-Planning and the Conservation of the City and the Historic Site. Mr. Lemaire was informed by Israel that "the preparation of a new master plan for the city was contemplated, since the existing plan gave rise to problems, in particular, in regard to traffic and zones for building." The Director-General's summary observes that "in the absence of legislation to protect the city's heritage of monuments and historic sites, . . . only adoption of the master plan procedure is likely to 'freeze' the situation for a time."²⁵⁷ Many thought that "the preservation of Jerusalem entails not only that of the city itself, but also that of its environs Jerusalem would suffer irreparable damage if the site and the landscape were spoilt as a result of bad administration of the territory, anarchic urban growth and uncontrolled speculation in property."²⁵⁸

Condemnation by the Executive Board, 1974

At the June 1974 Executive Board meeting, to which the Director-General submitted his summary of Professor Lemaire's reports, thirteen Member States submitted a draft resolution that referred to the Director-General's report and asked that the Executive Board take two actions: first, to condemn Israel for its violations of General Conference and Executive Board resolutions; and, second, to submit the matter to the 1974 session of the General Conference for decisions on further measures to implement those resolutions.²⁵⁹ The thirteen sponsors were: Afghanistan, Algeria, the Congo People's Republic, Czechoslovakia, Egypt, India, Lebanon, Saudi Arabia, Senegal, Togo, the U.S.S.R., Yugoslavia and Zaire.

The Jordanian delegate said that the Executive Board had to recognize from the Lemaire report that nothing, in fact, had changed. Although the Lemaire report was "unclear, ambiguous and imprecise," and came to "no conclusion as to whether Israel was respecting Unesco's decisions or not," the facts stated in the report "clearly showed that violations of Unesco decisions continued, excavations still went on, the character of the city was deliberately being changed, [and] a new master plan was under discussion."²⁶⁰ The Jordanian

256. Id., paras. 17-18, p. 4. Restoration methods used in the work on the Suq-al-Qattani had been improved. Id., at para. 18, p. 4.

257. Id., at para. 21, p. 5.

258. Id., at para. 20, p. 5.

259. 94 EX/DR.16 (1974).

260. 94 EX/SR.1-33, at SR.29, paras. 5.2-5.4, p. 350 (1974); Doc. II.A.47. The Jordanian representative commented that the report gave "the impression that Mr. Lemaire had been sent to Jerusalem as a technical adviser to the Israeli authorities." Id., at para. 5.2, p. 350.



delegate observed that the Director-General's representative "had taken no measures whatever to curb the actions of the Israeli authorities," and concluded that "Unesco's presence in Jerusalem could in no way be described as effective."²⁶¹ He said that the Board should "consider effective measures for preventing a country which flouted Unesco's decisions from remaining a Member."²⁶²

Several speakers agreed that the Director-General's summary of Professor Lemaire's report showed that Israel continued to ignore UNESCO resolutions. There was no doubt that excavations were still being carried out and that alterations were being made to the City of Jerusalem.²⁶³ The Soviet delegate said that the Lemaire report "gave evidence of patent violations of the Hague Convention and of resolutions of the General Conference." He said that the report showed that "Israel was continuing to undertake archaeological excavations on territory belonging to another country," and "bore witness to Israel's unprecedented cultural aggression, which could be compared with Nazi Germany's barbaric policy of destruction of historic monuments in occupied territories."²⁶⁴

The delegate of the People's Republic of China spoke of his country's "support for the Arab people in their struggle against Zionism," which "must go hand-in-hand with the struggle against racialism, colonialism and all other forms of oppression." He said that the question of Jerusalem could be solved "only when all the occupied territories had been recovered and the national rights of the Palestinian people restored."²⁶⁵

The Israeli representative questioned whether the draft resolution before the Board was related to the facts presented in the Director-General's report. He reiterated his government's view that archaeological excavations were not prohibited by the 1954 Hague Convention, and stated that the excavations were "notably increasing knowledge of the Holy City." The excavations were thus "of value to the cultural heritage, rather than a threat to it," and

261. Id., at SR.29, para. 5.2, p. 350. The Jordanian representative said that the report "did not begin to fulfill its essential purpose," criticizing it for dealing with technical matters and "making no mention of changes in the features" of Jerusalem. Id., at para. 5.3, p. 350. See also comments by the Lebanese delegate, id., at para. 7.5, p. 351.

262. Id., at SR.29, para. 5.4, p. 350.

263. See, e.g., id., at SR.29, para. 7.6, p. 351 (Lebanon); and para. 8.5, p. 352 (Egypt).

264. Id., at SR.29, paras. 12.3-12.4, p. 353.

265. Id., at SR.29, para. 13.2, p. 354.



Israel considered that the "Member States of Unesco would do well to join together in an international effort rather than to allow political factors to inhibit scholarly research."²⁶⁶

The 13-power draft resolution, with certain amendments offered by Mr. Wynter of Jamaica and accepted by the sponsors of the draft,²⁶⁷ was put to a vote as a whole. It was adopted by 24 votes in favor, to none opposed, with 11 abstentions.²⁶⁸

Following the vote, the United States delegate, who had not spoken previously, said that the United States "shared the interest and concern of all nations with regard to the need to protect the city of Jerusalem and all other historical sites and monuments," but that the "Board's discussions on such issues should be based on objective facts and should not become politicized." Although he had certain reservations, he had abstained on the resolution because of "the sensitivities involved and in the light of the efforts of the United States Government to reach a just and lasting peace in the Middle East."²⁶⁹

The resolution adopted by the Board in June 1974 states that the Board was "convinced from certain aspects" of the Director-General's report that "Israel persists in not complying with the relevant resolutions, and that its attitude prevents the Organization from undertaking the mission which is incumbent upon it under the terms of the Constitution." The resolution then "condemns the persistent violation by Israel" of the General Conference and Executive Board resolutions, and submits the matter to the 1974 session of the General Conference "for decisions to be taken on further appropriate measures within its competence."²⁷⁰

266. Id., at SR.29, paras. 16.3-16.6, p. 355.

267. Mr. Wynter's amendments are set out, id., at SR.29, paras. 20.1-20.6, pp. 356-57. One was to change the proposed condemnation of Israel to a condemnation of the "persistent violations by Israel" of UNESCO resolutions. Id., at para. 20.4, p. 357.

268. Id., at SR.29, para. 28, p. 357.

269. Id., at SR.29, para. 29, p. 357.

270. 94 EX/Dec.4.4.1 (1974); Doc. II.A.48.



The 1974 Session of the General Conference

Thirty-four Member States introduced a draft resolution at the 18th Session of the General Conference in October 1974 that went beyond previous General Conference resolutions in two respects. First, the draft resolution condemned Israel:

...for its attitude which is contradictory to the aims of the Organization as stated in its Constitution by its persistence in altering the historical features of the City of Jerusalem and by undertaking excavations which constitute a danger to its monuments, subsequent to its illegal occupation of this city.²⁷¹

Second, the draft resolution requested the Director-General "to withhold assistance from Israel in the fields of education, science and culture until such time as it scrupulously respects" UNESCO General Conference and Executive Board resolutions.²⁷²

The 34-power draft resolution was considered in General Conference Commission III, Social Sciences, Humanities and Culture, in a lengthy debate that is summarized in the Report of Commission III to the Conference.²⁷³ The Commission's report notes that the sponsors of the draft resolution had presented their arguments in four statements covering (a) the historical and social aspects including the changes by Israel of the features of Jerusalem; (b) the legal aspects; (c) the political aspects; and (d) the religious and spiritual aspects of the problem of cultural property in Jerusalem.²⁷⁴ The arguments are summarized below.

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271. 18 C/SHC/DR.2, operative para. 2, p. 2 (1974); Doc. II.A.50. The sponsors were mainly Arab, African and Asian states, together with eastern European states and the Soviet Union.
272. Id., at operative para. 3, p. 2. The 1972 General Conference resolution had noted Israel's non-compliance with UNESCO resolutions and disapproved of the continuation of archaeological excavations in Jerusalem, but did not condemn Israel and contained no sanctions. 17 C/Res. 3.422 (1972); Doc. II.A.39.
273. Report of Commission III, 18 C/122, paras. 330-31, pp. 49-57 (1974); Doc. II.A.51. There are no summary records of the debate in Commission III.
274. Id., at para. 333, p. 49.



(a) Historical and Social Aspects. Three main points were made: (1) archaeological excavations were being continued, including those in the Haram-al-Sharif area; (2) the tunnels dug underground constituted a danger to monuments and dwellings above ground; and (3) the features of Jerusalem "had been radically altered by new buildings and displacements of Moslem and Christian communities."²⁷⁵

(b) Legal Aspects. After exhausting all possible measures, the Executive Board had submitted the matter to the General Conference to take further measures "of a more strenuous nature, designed to secure compliance with the decisions of the Organization and the provisions of its Constitution." UNESCO was obliged to take such measures "to safeguard a cultural legacy which did not belong to Israel."²⁷⁶

(c) Political Aspects. In the question of Jerusalem, "political aspects were bound up with the cultural aspects," and the question was related to "Unesco's broader objectives with regard to the elimination of colonialism, the right of peoples to self-determination and human rights." Therefore, "measures similar to those taken against South Africa should be taken against Israel."²⁷⁷

(d) Religious and Spiritual Aspects. Israeli excavations and the construction of new buildings had disfigured the city and denied the cultural and spiritual heritage of Christianity and of Islam. "The safeguarding of Jerusalem should not be merely a matter of the conservation of hallowed stones, but also of preserving all the spiritual and moral values which had made Jerusalem an exceptional site."²⁷⁸

The delegate of Israel said that "while Jerusalem had been the focus of Jewish life and history, his Government was deeply conscious of the universal interests in Jerusalem and the Holy Places located in it." Israel was "committed to preserving the unity and peace of the city," and, in its development, was "careful to ensure the preservation of the city's cultural heritage." Israel had complied with the 1954 Hague Convention, which did not prohibit archaeological excavations, and had co-operated with UNESCO by accepting the missions of the Director-General's representatives. In Israel's opinion, the Director-General's reports showed that the archaeological excavations had observed scholarly standards and had "contributed much to the history of Jerusalem." They also showed that

275. Id., at para. 338, p. 50.

276. Id., at para. 339, p. 50.

277. Id., at para. 340, p. 50. One speaker referred to Zionism, whose objective was "the total annexation of Jerusalem and, consequently, the destruction of the true character of the Holy Places." Ibid. The speaker was not identified in the report.

278. Id., at para. 341, p. 50.



the tunnels "in no way endangered the stability of the monuments in the Haram-el-Sharif area." Israel concluded that "Unesco should encourage archaeological excavations, which led to major scientific discoveries, rather than hamper them."²⁷⁹

Mr. Fobes, the Deputy Director-General, reported that Professor Lemaire had visited Jerusalem for a third time in September 1974, in his capacity as personal representative of the Director-General.²⁸⁰ Mr. Lemaire's report on this latest mission showed that "some progress had been made in Jerusalem with regard to the preservation of the cultural heritage." Mr. Fobes stated that Professor Lemaire's report showed that:

- (a) So far as archaeological excavations were concerned, those carried out by Professor Mazar near El Haram-el-Sharif were open to certain criticisms in respect of the methods used. The excavations in the Jewish quarter continued to be carried out on sound scientific principles.
- (b) The dangers of collapse due to tunnelling still existed, and the Director-General's representative had drawn the attention of the Israeli authorities to them. The authorities had undertaken to remedy the situation, and had given the necessary instructions for reinforcing the tunnels....
- (f) Building operations in Jerusalem and the urban development of the city appeared to have slowed down somewhat.²⁸¹

Several delegates questioned the wisdom of the proposal in the draft resolution to withhold UNESCO assistance from Israel. It was feared that the progress made by the Director-General's personal representative might be jeopardized by the proposal, and a situation might arise "in which Unesco was no longer able to exercise a certain measure of control over the situation in Jerusalem."²⁸² A proposal was made that a working group be established to examine "ways and means of ensuring that UNESCO was actually represented in Jerusalem."²⁸³ This proposal was put to a vote and rejected by 39 votes in favor, to 48 opposed, with 17 abstentions.²⁸⁴

279. Id., at para. 343, p. 51.

280. Id., at para. 357, p. 53. Mr. Lemaire "had continued to receive all the help required from the Israeli authorities, and had been able to hold discussions, in Jerusalem, with all those mainly concerned." Ibid.

281. Id., at para. 359(a), (b) and (f), pp. 53-54. Subparas. (c), (d) and (e) related to restoration of certain souks, reconstruction of the Al-Aksa Mosque, and technical assistance for the Islamic Museum. Ibid.

282. Id., at paras. 344 and 347-48, pp. 51-52.

283. Id., at para. 344, p. 51. The proponent of the working group proposal suggested that a permanent commission or observer, or an international committee, might be appointed to establish an effective UNESCO presence in Jerusalem. Ibid.

284. Id., at para. 354, p. 53.



The following statement was made on behalf of the Director-General:

The presence, the action and the influence of Unesco in Jerusalem must be reinforced. A policy of absence would be a policy of renunciation. And how could Unesco continue to concern itself with education, science and culture in the occupied territories if it were no longer present in Jerusalem, the city cherished above all others by so large a part of mankind?²⁸⁵

Director-General Maheu's statement also said that it was essential for Israel to be aware "that international public opinion is concerned, on strictly cultural grounds, about the preservation of Jerusalem," and that Israel "should abstain, until a peaceful settlement is reached, from any unilateral decisions on this subject."

The first proposal to be put to a vote in the General Conference Commission was an amendment that sought to replace the sanctions paragraph of the 34-power draft with a paragraph requesting the Director-General to "take all measures, in particular by intensifying Unesco's presence and action in Jerusalem" to achieve the goals of UNESCO's previous resolutions.²⁸⁶ The proposed amendment was rejected by a vote of 30 in favor, to 49 opposed, with 25 abstentions.²⁸⁷

In the Commission voting on the 34-power draft itself, the paragraph condemning Israel was adopted by a vote of 60 in favor, to 15 against, with 28 abstentions. The paragraph calling for withholding UNESCO assistance from Israel was adopted by a vote of 52 in favor, to 30 opposed, with 21 abstentions.²⁸⁸ The draft resolution as a whole was adopted by 54 votes to 21, with 25 abstentions.²⁸⁹

Following the vote in the General Conference Commission, the United States explained that it had voted against the draft resolution because it considered the resolution "a politically motivated and unjustified sanction against a Member State which might turn Unesco into a purely political forum and a place of bitter confrontation."²⁹⁰ Sweden and Switzerland criticized the draft resolution as coming close to depriving

285. Id., at para. 360, p. 54.

286. 18 C/SHC/DR.6 (1974); Doc. II.A.50. The amendment was submitted by five states: Costa Rica, Haiti, Honduras, Guatemala and Nicaragua.

287. 18 C/122, supra, at para. 363, p. 54. The vote was taken by roll-call, but the roll-call results are not included in the Commission's Report.

288. Id., at para. 368, p. 55. Both were roll-call votes.

289. Id., at para. 369, p. 55.

290. Id., at para. 370, p. 55.



a Member State of its right to participate in the Organization's work.²⁹¹

The Director-General's representative announced that inasmuch as the resolution had reaffirmed all previous resolutions, the Director-General considered that it had reaffirmed the request made at the 1972 General Conference to continue his efforts to establish an effective presence of Unesco in Jerusalem. The Director-General considered that "even in new circumstances he should continue his efforts to act upon that resolution."²⁹²

The draft resolution adopted by Commission III came before the Plenary Meeting of the General Conference on November 20, 1974.

As the first speaker, the Israeli representative denounced the resolution as "ultra vires of the Constitution." Except for two cases that did not apply here, he noted that there was no provision in the UNESCO Constitution "for the suspension of the exercise of Members' rights and privileges."²⁹³ He said that the resolution was "a mass of contentious misrepresentations seeking to masquerade as facts." It talked of "Israel altering historical features of the City of Jerusalem, when not one whit of evidence can substantiate that charge, [and it talked of] excavations which constitute a danger to monuments, when the objective outside observers deny completely that any such danger exists." The Israeli representative warned that the resolution "would be seen as a purely political move motivated by hate and enmity," and would tarnish the image of UNESCO in the eyes of its constituents, the world's writers, artists, musicians and scientists.²⁹⁴

The draft resolution rested in part on a repetition of earlier findings by the Executive Board that Israel had persisted in not complying with UNESCO resolutions, and that "in persistently violating the resolutions," Israel had defied "willfully the world conscience and the international community." The resolution then stated that the General Conference could not "remain passive before Israel's continuous persistence in violating its resolutions," and that in adopting sanctions, the General Conference was guided by "precedents

291. Id., at paras. 373 and 375, p. 55.

292. Id., at para. 379, p. 56.

293. Verbatim Records of the Plenary Meetings, 18th General Conference, 18 C/VR.39 (prov.), para. 49.2, p. 16 (1974); Doc. II.A.52. The UNESCO Constitution provides, in Art. II, para. 3, that Members "which are suspended from the exercise of the rights and privileges of membership in the United Nations Organization shall, upon the request of the latter, be suspended from the rights and privileges of this Organization." 4 UNTS 275, 280. Art. IV, para. 8(b), provides that: "A Member State shall have no vote in the General Conference if the amount of its unpaid contributions to the Organization exceeds the amount of contributions due from it for the current year and the immediately preceding financial year."

294. Id., at VR.39, paras. 49.6-49.7, pp. 16-17. See also the statements by Venezuela, Malawi and the United States, id., at paras. 53.1-53.8, 55.1-55.3 and 99.1-99.2, pp. 18-20 and 34.



adopted by the General Conference since its fourteenth session upon the persistent violation of its resolutions and the violation of the aims stipulated in the Constitution."²⁹⁵ The precedent referred to was a decision by the General Conference to withhold UNESCO assistance from Portugal, taken pursuant to a request from the United Nations General Assembly that the Specialized Agencies withdraw their programs from Portugal.²⁹⁶

With regard to the 14th General Conference precedent, Israel pointed out that the argument had been that UNESCO was obliged to act pursuant to a mandate from the General Assembly even though there was no specific authority for the action in the UNESCO Constitution. In the present case, however, there was "neither a mandate from our Constitution nor a request in the form of a General Assembly resolution."²⁹⁷

In the voting on the draft resolution in the Plenary Meeting, a separate vote was requested on the paragraph citing as a precedent for the proposed sanctions the earlier withholding of UNESCO assistance from Portugal. The paragraph was adopted by 79 votes to 12, with 26 abstentions.²⁹⁸

The operative paragraph condemning Israel was then adopted by 78 votes to 18, with 24 abstentions, and the paragraph instituting sanctions against Israel was adopted by 59 votes to 34, with 24 abstentions.²⁹⁹ The resolution as a whole was adopted by 64 votes to 27, with 26 abstentions.³⁰⁰

In a statement explaining his vote, the United States representative said that he had voted against the resolution because its objective was not the preservation or protection of historical sites and monuments. The United States considered that the resolution "imposes a completely unjustified sanction upon a Member State" and had been "largely motivated by political considerations." It marked "a tragic departure in the direction of turning Unesco into a purely political arena and away from its intended function as a forum for the exchange of ideas and knowledge."³⁰¹

295. See 18 C/SHC/DR.2, p. 2; Doc. II.A.50. The word "barefacedly" in the original draft resolution had been deleted at the suggestion of the Spanish delegate in Commission III.

296. See General Conference resolutions 14 C/Res. 11 (1966), 15 C/Res. 9.12 and 9.14 (1968), 16 C/Res. 8 (1970), and 17 C/Res. 10.1 (1972). See Part III.A below.

297. 18 C/VR.39 (prov.), paras. 49.4-49.5, p. 16 (1974).

298. Id., at para. 115 and 124.1-124.2, pp. 37-38. The separate vote was requested by Chile.

299. Id., at paras. 124.5-124.8, p. 38. The vote on the sanctions paragraph was a roll-call vote.

300. Id., at paras. 124.9-124.10, p. 38. The vote was taken by roll-call. The resolution as adopted is 18 C/Res. 3.427 (1974); Doc. II.A.53.

301. 18 C/VR.40 (prov.), para. 8.2, p. 5 (1974).



The 1974 General Conference Resolution

The resolution adopted by the General Conference is entitled:

"Implementation of the resolutions of the General Conference and decisions of the Executive Board concerning the protection of cultural property in Jerusalem."³⁰² The resolution has nine paragraphs in the preamble and three operative paragraphs.

The preamble begins with paragraphs that refer to "the importance attached by Unesco, in accordance with its Constitution, to the protection and preservation of the world heritage of monuments of historic or scientific value," and to:

...the exceptional importance of the cultural property in the Old City of Jerusalem, not only to the countries directly concerned but to all humanity, on account of their unique cultural, historical and religious value.

The preamble cites two sets of resolutions. First, it cites United Nations General Assembly and Security Council resolutions "calling on Israel to nullify the measures it has taken to change the status of the City of Jerusalem"³⁰³ and "expressing regret at Israel's disregard of the United Nations resolutions on the preservation of Jerusalem."³⁰⁴ Second, the preamble cites UNESCO General Conference and Executive Board resolutions calling upon Israel "to desist from any archaeological excavations in the City of Jerusalem and from any alteration of its features or its cultural and historical character."³⁰⁵

The preamble then quotes the central portions of the 1972 General Conference resolution³⁰⁶ and of the 1974 Executive Board resolution,³⁰⁷ and expresses the judgment that:

302. 18 C/Res. 3.427 (1974); Doc. II.A.53.

303. The General Conference resolution cited United Nations General Assembly Resolutions 2253 (ES-V) and 2254 (ES-V) (1967); see text at notes 63-68, supra, and Doc. II.A.18.

304. The resolution cited Security Council Resolutions 267 (1969) and 298 (1971); see text at notes 63-68, supra, and Doc. II.A.18.

305. The resolution cited 15 C/Res. 3.342 and 3.343 (1968); 82 EX/Dec. 4.4.2 (1969); 83 EX/Dec. 4.3.1 (1969); 88 EX/Dec. 4.3.1 (1971); 89 EX/Dec. 4.4.1 (1972); 90 EX/Dec. 4.3.1 (1972); and 17 C/Res. 3.422 (1972). The cited resolutions are reproduced in the Documentary Record in Docs. II.A.11, 14, 20, 30, 33, 36 and 39, respectively.

306. 17 C/Res. 3.422 (1972); Doc. II.A.39. The 1974 resolution quoted passages noting that "Israel persists in not complying with the relevant resolutions and that its attitude prevents this Organization from undertaking the mission which is incumbent upon it under the terms of the Constitution," and inviting the Director-General to continue his efforts "to establish the effective presence of Unesco in the City of Jerusalem."

307. 94 EX/Dec. 4.4.1 (1974); Doc. II.A.48. The 1974 resolution quoted the Executive Board's condemnation of "Israel's persistent violations of the resolutions adopted by the General Conference and the Executive Board."



Israel, in persistently violating the resolutions adopted by the General Conference and the Executive Board with a view to preserving the cultural heritage of the City of Jerusalem, defies wilfully the world conscience and the international community.

Stating that "the General Conference cannot remain passive before Israel's persistence in violating its resolutions," and that it was "[guided] by precedents adopted by the General Conference since its fourteenth session upon the persistent violation of its resolutions and the violation of the aims stipulated in the Constitution,"³⁰⁸ the General Conference resolution took the following action:

1. Reaffirms all the resolutions mentioned above and insists on their implementation;
2. Condemns Israel for its attitude which is contradictory to the aims of the Organization as stated in its Constitution by its persistence in altering the historical features of the City of Jerusalem and by undertaking excavations which constitute a danger to its monuments, subsequent to its illegal occupation of this city;
3. Invites the Director-General to withhold assistance from Israel in the fields of education, science and culture until such time as it scrupulously respects the aforementioned resolutions and decisions.

The General Conference thus took the view in adopting the 1974 resolution that Israel has an obligation both to halt its archaeological excavations in Jerusalem and to desist from altering the historical and cultural features of the city. The 1974 resolution refers to the UNESCO Constitution and cites both United Nations and UNESCO resolutions, but does not mention the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.³⁰⁹ The resolution thus appears to emphasize the view that the Israeli obligations in Jerusalem stated in the resolution flow from the UNESCO Constitution, from the United Nations Charter, and from general international law, rather than, for example, the view that Israel has an obligation under the 1954 Hague Convention to desist from archaeological excavations in Jerusalem.³¹⁰ In reaffirming all

308. The precedents cited were 14 C/Res. 11 (1966); 15 C/Res. 9.12 and 9.14 (1968); 16 C/Res. 8 (1970); and 17 C/Res. 10.1 (1972). See Part III.A below.

309. See text at notes 42-54, supra, and Doc. II.A.1.

310. See, e.g., text at notes 78-79 and 85-86 supra.



previous UNESCO resolutions, however, the 1974 General Conference resolution reaffirms the 1972 General Conference resolution calling upon Israel "to adhere scrupulously" to the provisions of the 1954 Hague Convention.³¹¹

The 1974 General Conference resolution evaluated Israeli actions in Jerusalem, expressing the conclusion that Israeli actions were altering the historical features of Jerusalem, and that Israel's continued excavations constitute a danger to the city's monuments. In this regard there appears to have been no doubt that Israel was continuing its archaeological excavations in Jerusalem,³¹² but the two other conclusions reached in the resolution were controversial. Speakers at the General Conference supported both sides on the latter two issues, that is, the issues as to whether the Israeli excavations endangered monuments in Jerusalem, and as to whether Israeli urban renewal actions had altered the historical features of Jerusalem.³¹³

The 1974 General Conference resolution also characterized Israel's occupation of Jerusalem as "illegal," a characterization that was not discussed in the General Conference and does not appear to have been required to accomplish the purposes of the General Conference resolution.

The 1974 General Conference resolution's sanction of withholding UNESCO assistance from Israel appears to have been based upon the resolution's statement that "the General Conference cannot remain passive before Israel's continuous persistence in violating" General Conference resolutions, and upon the resolution's reference to prior General Conference actions. The latter reference related chiefly to the 1966 General Conference action concerning Portugal, which is discussed in Part III.A of this study.³¹⁴

On the sanctions question, the Israeli delegate pointed out that there was no provision in the UNESCO Constitution for the suspension by the General Conference of the rights and privileges of a Member State for failure to comply with UNESCO General Conference and Executive Board resolutions. The Israeli delegate therefore denounced the 1974 General Conference resolution as "ultra vires the Constitution."³¹⁵

311. 17 C/Res. 3.422 (1972); Doc. II.A.39. See text at notes 202-22 supra.

312. See text at notes 280-81 supra.

313. See text at notes 273-79 and 293-94 supra.

314. See text at notes 295-97, supra, and Part III.A below. The Israeli delegate pointed out that in the Portuguese case UNESCO had acted in response to a request made by the United Nations General Assembly, and that no such request had been made here. See text at note 297, supra.

315. See text at note 293, supra.



The issue in this regard goes beyond the question of whether or not the Israeli obligations stated in the 1974 General Conference resolution are binding legal obligations, and the question of the basis for such obligations. The issue also concerns the authority, or the lack of authority, of the General Conference to take action to enforce the obligations stated in the resolution through the condemnation of Israel and through the withholding of UNESCO benefits from Israel.³¹⁶ As to this latter issue, the resolution stated that "the General Conference cannot remain passive before Israel's persistence in violating its resolutions," which may imply either a claim to authority to take action to enforce resolutions that express binding legal obligations for Member States, or a claim to a more generalized authority to take action to enforce UNESCO resolutions that have been "persistently violated" by Member States. The precise basis for the sanctions authority exercised in the 1974 resolution was not made clear during the discussion of that resolution at the 1974 session of the General Conference.

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316. The specific sanction of withholding UNESCO assistance from Israel is currently estimated as affecting some \$24,000 in UNESCO assistance to Israel, as contrasted with Israel's 1975 assessment of approximately \$197,000 for contributions to UNESCO programs.



PART II: UNESCO ACTIONS RELATING TO ISRAEL

B. The Definition of Regions in UNESCO

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B. THE DEFINITION OF REGIONS IN UNESCO

The UNESCO General Conference has established five regions to which UNESCO Member States have been assigned for the purpose of aiding in the determination of which Member States shall participate in regional activities undertaken by UNESCO. As explained in detail below,¹ UNESCO regional activities have consisted of the convening of regional intergovernmental meetings in which some UNESCO Member States are invited to participate with full voting rights, while others may participate only as observers. The practice has been to accord full voting rights to two categories of UNESCO Member States for each such regional meeting: first, the Member States classified as part of the particular region concerned; and, second, such other Member States as the General Conference, or in some cases the Executive Board, considers should be invited as full voting participants in the particular meeting in question.² Thus, the assignment of a UNESCO Member State to UNESCO region establishes the right of that state to participate as a full voting member in UNESCO meetings convened for that region, but the exclusion of a Member State from a particular UNESCO region does not mean that the state cannot subsequently be invited to participate with full voting rights in UNESCO meetings convened for that region.

The General Conference Definition of Regions

The five UNESCO regions were established by a 1964 General Conference resolution entitled: "Definition of regions with a view to the execution of regional activities."³

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1. See text at notes 14-17 below.
2. One example is the Conference on the Application of Science and Technology to the Development of Asia held at New Delhi in 1968, in which seven UNESCO Member States that were not part of the UNESCO Asian Region were invited to participate with full voting rights: Australia, France, Netherlands, New Zealand, the Soviet Union, the United Kingdom and the United States. See 76 EX/Dec. 4.3.1 (1967), and 77 EX/Dec. 4.3.2. (1968). Another is the UNESCO Intergovernmental Conference on Cultural Policies in Europe, held at Helsinki in 1972, in which Canada was invited to participate with full voting rights. See 87 EX/Dec. 4.4.2. (1971).
3. 13 C/Res. 5.91 (1964); Doc. II.B.1.



The resolution, adopted at the 13th Session of the General Conference in 1964, stated that the countries named as members of each region "will participate in regional activities in which the representative character of States is an important factor." The five regions were: Africa; Latin America and the Caribbean; Arab States; Asia; and Europe. Their composition was as follows:

Africa. Algeria, Basutoland, Bechuanaland, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Democratic Republic of Congo, Dahomey; Ethiopia, Gabon, Gambia, Ghana, Guinea, Ivory Coast, Kenya, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Zambia.

Latin America and the Caribbean. Argentina, Bolivia, Brazil, British Eastern Caribbean Group, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Venezuela.

Arab States. Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Qatar, Saudi Arabia, South Arabian Federation, Sudan, Syrian Arab Republic, Tunisia, United Arab Republic, Yemen.

Asia. Afghanistan, Burma, Ceylon, China, India, Indonesia, Iran, Japan, Khmer Republic, Korea, Laos, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Thailand, Viet-Nam.

Europe. Albania, Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Cyprus, Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Monaco, Netherlands, Norway, Poland, Romania, Spain, Sweden, Switzerland, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom, Yugoslavia.

In determining the composition of the five UNESCO regions, the General Conference did not include all UNESCO Member States. The following five states were not assigned to any region: Australia, Canada, Israel, New Zealand and the United States.

The definition of regions adopted by the General Conference in 1964 was questioned in 1966,⁴ leading to the presentation at the 14th Session of the General Conference of specific proposals for the modification of the list adopted in 1964, and of a general proposal that the entire question of regions in UNESCO "and their adequate geographical representation on the

4. See 72 EX/Dec. 4.1 (1966), and 14 C/63 (1966).



Executive Board" be studied in depth for consideration at the 1968 session of the General Conference.⁵

Two proposals advanced at the 14th Session of the General Conference in 1966 called for the addition of states to the Asian Region as defined by the General Conference in 1964. First, it was proposed that the Soviet Union, which had been placed in the European Region in 1964, be added to the Asian Region as well. Second, it was proposed that the following four states that had not been assigned to a region in 1964, be added to the Asian Region: Australia, New Zealand, Israel and the United States.

The addition of the Soviet Union to the Asian Region was proposed by the delegate of India, who noted that the greater part of Soviet territory belonged to the land mass of Asia, and that the Soviet Union had close cultural and economic ties to Asian countries.⁶

Australia and New Zealand noted that while they had maintained close cultural ties with Europe, geographically their closest neighbors were Asian countries, and that they were keenly interested in Asian affairs. In addition, the two countries stated that they had strong links with South East Asian countries through bilateral treaties and through the Colombo Plan, and that they had also frequently participated in various regional meetings in Asia.⁷

Israel considered that geography sustained the case for Israel's incorporation into the Asian Region, but considered that the question of defining regions was complex and required detailed study leading to comprehensive recommendations that should be considered by the General Conference in 1968.⁸

The United States supported the Israeli proposal for a careful study with recommendations to be submitted at the next session of the General Conference, but stated that, should the proposal for such a study be rejected, the United States would be happy to be considered for membership of the Asian region.⁹ With regard to the definition of UNESCO regions that

5. The study proposal was advanced by Israel. See 14 C/PRG/DR.7 (1966); and Records of the General Conference, 14th Session, Resolutions, Annex, Appendix VIII, extracts from the Summary Records of the Programme Commission, at 14 C/PRG/SR.16, para. 17, p. 353 (1966).
6. Id., at 14 C/PRG/SR.15, paras. 26.1-26.2, p. 343. The same arguments were made by the Soviet Union. See id., at paras. 41.1-41.2, pp. 347-48.
7. Id., at paras. 29.1-30.2, p. 344. The Australian delegate suggested that the region might be called "Asia and Oceania." Id., at para. 29.4, p. 344.
8. Id., at paras. 25.1-25.5, pp. 342-43. See text at note 5 supra.
9. Id., at paras. 36.1-36.4, p. 346. Thailand submitted the proposal to add Australia, New Zealand and the United States to the Asian Region. See id., at para. 35.2, p. 345.



might be adopted by the General Conference, the United States delegate observed that:

Criteria for definition [of UNESCO regions] were varied: they could be geographical, linguistic, cultural or economic. They could also concern mutual acceptability or co-operative activity.

The United States delegate considered it essential that UNESCO either adopt "a principle of maximum flexibility in which account would be taken of as many criteria as possible," or adopt "limited criteria" and use them "mechanically in order to avoid argument and disagreement." He felt that the choice between these two alternatives was difficult and could not be made without time for study and reflection.¹⁰

The delegate of the United Kingdom supported the Israeli study proposal, noting that the issue of UNESCO regions related to intergovernmental meetings which took a long time to prepare and to which the countries not at present on the list of a given region could still be invited by decision of the General Conference or the Executive Board. There was time, therefore, to examine the matter and reach a well-founded decision.¹¹

After further discussion of the difficulties of reaching a decision as to the definition of regions, the question was adjourned sine die,¹² leaving the 1964 General Conference resolution in force without change. This decision was taken on the understanding that the Executive Board would continue to determine the list of states to be invited to regional intergovernmental meetings, taking into account both the 1964 General Conference list of members of the region and any other factor relevant to the composition of a particular regional meeting.¹³

Invitations to Regional Meetings convened by UNESCO

The 14th Session of the General Conference also adopted a set of "Regulations for the general classification of the various categories of meetings convened by UNESCO" which empower the Executive Board to determine the composition of intergovernmental meetings convened by UNESCO.¹⁴

10. Id., at para. 36.2, p.346.

11. Id., at 14 C/PRG/SR.16, paras. 20.1-20.2, p. 353.

12. Id., at 14 C/PRG/SR.17, paras. 1.1-1.3 and 7, p. 355.

13. Id., at paras. 8.1-8.3, p. 356 (statement by the Director-General).

14. 14 C/Res. 23 (1966), reproduced in part in 18 C/43, para. 9, pp. 2-3 (1974); Doc. II.B.3.



The Regulations divide intergovernmental meetings convened by UNESCO into two categories: "International Conferences of States," called Category I meetings; and "Intergovernmental Meetings other than International Conferences of States," called Category II meetings.

International Conferences of States are defined as "conferences bringing together representatives of States, and reporting the results of their work to these same States," whether or not such conferences lead to the conclusion of international agreements. The General Conference, or the Executive Board when authorized by the General Conference, "shall decide which States shall be invited" to participate as full voting members in such conferences. UNESCO Member States not so invited may send observers to the conference.¹⁵

Category II, "Intergovernmental Meetings other than International Conferences of States," embraces all other UNESCO meetings "at which the chief participants represent their governments." With regard to such meetings the Regulations provide that the Executive Board, acting on the Director-General's proposal and subject to "existing regulations applicable," "shall decide on the Member States ... whose governments are to be invited to the meeting" as full voting participants. UNESCO Member States not so invited may send observers to the meeting.¹⁶

The Regulations for the general classification [of UNESCO meetings] do not specifically mention regional meetings. The Regulations have been construed as applying to regional meetings, however, subject to the 1964 General Conference definition of UNESCO regions.¹⁷ The result, therefore is that the General Conference, in the case of Category I meetings, and the Executive Board acting on the Director-General's proposal, in the case of Category II meetings, have the authority to invite as full voting participants in regional meetings both the members of the region and other UNESCO Member States to which it is considered that such invitations should be extended.

15. Id., at Regulations Arts. 8 and 11.

16. Id., at Regulations Arts. 18 and 21.

17. In 1973 it was reported by the Director-General that in the period 1967-1972 "invitations to regional intergovernmental conferences have been decided on a case-by-case basis by the Executive Board in accordance with" Art. 21 of the Regulations quoted in the text at note 16, supra. 92 EX/12, para. 10, p. 3 (1973); Doc. II.B.2. Eight such meetings were held in the six-year period. See id., at Annex I, and note 2, supra.



Executive Board Guidelines for Invitations to Regional Meetings

The adjournment sine die of General Conference consideration of the definition of UNESCO regions in 1964 thus left to the Executive Board two principal questions relating to invitations to regional meetings. First, what criteria should be used by the Board in deciding whether to invite to a particular regional meeting one of the five Member States that had been omitted from the 1964 General Conference regional membership list? Second, how should the Board deal with the cases of Member States admitted to UNESCO membership after 1964, which therefore also do not appear on the 1964 list?

Considering that the 1964 General Conference resolution stated no explicit basis for the division of Member States into the five regions established by the resolution, the Executive Board undertook on a case-by-case basis to "take whatever decisions it deemed appropriate regarding States which were to be invited" to regional meetings. This situation led in 1973 to a proposal that the Executive Board adopt guidelines for its use in determining the composition of regional meetings of an intergovernmental character.¹⁹

Three alternate sets of guidelines were proposed for use by the Executive Board "in determining the classification of Member States for invitations as full participants in regional meetings of an intergovernmental character."

One draft proposed the following two guidelines:

- (a) [the] geographical location [of Member States] as it emerges from the generally accepted ideas on this subject; [and]
- (b) the effective contribution [the Member States] have already made to the activities of the region to which they belong....²⁰

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18. Report of the Director-General, 18 C/43, para. 11, pp. 3-4 (1974); Doc. II.B.3. The Director-General referred to the absence of "an overall and complete definition of regions" and to the growing membership of UNESCO. Ibid.

19. The proposal was "mainly inspired by the wish of some Member States to have their participation in regional meetings settled in a more institutional way." Report of the Programme and External Relations Committee, 92 EX/47, para. 45 (1973).

20. Id., at para. 60. The draft was rejected by 5 votes in favor, to 18 opposed, with 7 abstentions. Ibid.



A second draft proposed the following guidelines:

- (a) cultural, historical, ethnic and social traditions;
- (b) shared desire for association;
- (c) membership in regional groups of other intergovernmental organizations;
- (d) geography; [and]
- (e) comparability of technological and scientific development.²¹

The third draft proposed three guidelines for invitations to Member States as full participants in UNESCO intergovernmental regional meetings:

- (a) their interest in and ability to contribute to the activities of the region and thereby to facilitate the tasks of the Organization;
- (b) their geographical location; [and]
- (c) their historical, or cultural, or social traditions.²²

During the discussion in the Execution Board, there was general agreement that the development of criteria for invitations to regional meetings should be governed by two principles: universality and the promotion of peace. The universality principle was stated to entail active participation in UNESCO affairs, emphasizing that "each Member State had the right and the duty to take part in regional conferences and that a situation in which certain Member States could not do so was likely to be prejudicial to the effectiveness of the Organization."²³ There was considerable controversy, however, over two

21. Id., at para. 61. The draft was rejected by 6 voted in favor, to 12 opposed, with 10 abstentions. Ibid.

22. Id., at para. 66. The draft was approved by 16 votes in favor, to 2 opposed, with 9 abstentions. Id., at para. 62. See 92 EX/Dec. 4.2, para. 8 (1973); Doc. III.B.5.

23. Mr. deHoog of the Netherlands, speaking as Chairman of the Programme and External Relations Commission at the 92d Session of the Executive Board, 92 EX/SR.1-16, at SR.14, para. 25.2, p. 153 (1973); Doc. II.B.4. See also Mr. Wynter's comments (Jamaica), id., at ¶39.2, p. 158.



basic issues: First, should the Executive Board formulate criteria for invitations to regional meetings, or should the issue be left to the General Conference in the context of its re-examination of the definition of region? Second, were the criteria proposed for invitations to regional meetings sufficiently clear, or, as stated by one member, were they so vague as to raise the "danger that every country would be fully entitled at any time to take part in discussions on the affairs of others"?²⁴

On the first issue, it was pointed out that while the General Conference was responsible for the definition of regions, the Executive Board had been directed to decide upon invitations to certain meetings, including regional intergovernmental meetings, and therefore was concerned with determining criteria for invitations to regional meetings.²⁵ The proposed Executive Board decision would not alter the 1964 General Conference definition of UNESCO regions; it would only determine the practice of the Executive Board in issuing invitations to regional meetings within the framework of General Conference decisions.²⁶

As to the clarity of the proposed criteria for invitations to regional meetings, several speakers characterized the criteria as vague,²⁷ while others considered that they reflected present practice. The main issue appeared to be whether going beyond geography to include historical, cultural and social traditions as a basis for invitation to regional meetings was unwarranted and destroyed the concept of a region. It was pointed out that although geography would suffice in the cases of eleven of the fourteen states that had not been classified by the General Conference,²⁸ "the problem of the three remaining countries---Canada, Israel and the United States---could not be settled by geographical considerations."²⁹

24. Mr. Maillard of France, id., at ¶28.4, p. 154.

25. Mr. Wynter of Jamaica, id., at ¶39.1, p. 158. See text at notes 14-17 above.

26. See the view expressed by the Director-General, id., at ¶¶53.1-53.3, pp. 160-61. Mr. Maillard of France took the contrary view that while the Executive Board could decide on invitations to a particular meeting, "it could not decide, on a systematic and permanent basis, that this or that Member State would, in future and in all cases, be attached to this or that geographical region." Id., at ¶28.8, p. 155.

27. See, e.g., Mr. Tikhvinsky of the USSR, id., at ¶33.2, p. 156.

28. Five of the fourteen states were the states that had not been classified by the General Conference in 1964: Australia, Canada, Israel, New Zealand and the United States. The other nine had become UNESCO members in the period following the 1964 General Conference decision: Bangladesh, Barbados, German Democratic Republic, Guyana, Democratic People's Republic of Korea, Malta, Oman, Singapore, and the United Arab Emirates.

29. Mr. Wynter of Jamaica, id., at ¶39.4, p. 158.



Speaking in opposition to proposals to include the United States and Canada in the European Region, the delegate of France acknowledged that "it was desirable for each country to form part of a regional group," but said that it did not follow that such countries should be assigned to Europe "regardless of the reservations on the subject held by a not inconsiderable number of the States chiefly concerned." He suggested that North America had "its own specific character," which "owing to its power, its influence and the size of its population" might well constitute a regional entity by itself. In his view, in certain clearly defined cases such as scientific conferences, "the United States could very well be attached to Europe as a full member." In general, however, France considered that:

Unesco's fields of activity should not all be considered as equivalent, and associations which might exist in certain cases were not desirable in others. In that connexion, the system in force - [in which] invitations were sent out by the Executive Board - made it possible to deal with the complexity of the situation and, where appropriate, to give substantial satisfaction to the United States.³⁰

With regard to a proposal to include the Soviet Union in the Asian Group, the delegate of the People's Republic of China stated that in his government's view, "although the Soviet Union was geographically part of both Asia and Europe, it was politically and culturally still a European country." Considering that the Soviet Union had already been assigned to the European Region, the delegate of China said "there was no reason to consider including it also in Asia."³¹

The delegate of Jamaica pointed out that the issue before the Board was the criteria to be used for invitations to regional meetings. He said that the "basic issue was the dignity of each and every Member State, regardless of its power or wealth;" therefore it was vital to affirm "the basic principle that every Member State had the right to participate fully in the Organization's regional activities."³²

30. Id., at para. 28.6, pp. 154-55. The United States representative said that he would not respond to the allegations that had been made about his country, but observed that it "seemed inconsistent for certain members to agree that one Member State [the Soviet Union] should belong to two regional groups, while proposing that a decision on four other Member States should be deferred." Id., at para. 40.3, p. 159.

31. Id., at para. 43, p. 159.

32. Id., at para. 39.3, p. 158.



The resolution as finally adopted by the Executive Board³³ noted a trend towards decentralization of UNESCO activities and states that "it is the right and duty of every Member State to participate fully and on a regular basis both in the international and regional activities of the Organization."³⁴ The resolution also stated, however, that the inclusion of a Member State in a region "cannot be obtained without the broad consent of the Member States in the region concerned."³⁵

The Executive Board decision adopted the third set of guidelines quoted above, referring to the ability of the Member State to contribute to the activities of the region, and to the state's historical, social and cultural traditions, as well as to the geographical location of the Member State concerned.³⁶

Applying the guidelines adopted in the Board decision, the Board also decided that "when the Board is called upon in the future to decide on invitations to regional meetings of an intergovernmental character" the following determinations would be utilized:

- (a) with respect to European regional meetings, Canada and the United States of America shall be considered as forming part of that region;
- (b) with respect to Asian regional meetings, Australia and New Zealand shall be considered as forming part of that region; [and]
- (c) with respect to European as well as Asian regional meetings, the Soviet Union shall be considered as forming part of both.³⁷

The Board decision also invites other Member States "to make their views known to the Board to enable it to take a decision on their classification," and recommended that the General Conference re-examine the definition of regions at its 18th Session in 1974.³⁸

33. 92 EX/Dec. 4.2 (1973); Doc. II.B.5.

34. 92 EX/Dec. 4.2, supra, at paras. 5 and 7. Paras. 1-7 were adopted by a vote of 27 to 0, with 7 abstentions. See 92 EX/SR.1-16, at SR.15, para. 9, p. 164 (1973).

35. 92 EX/Dec. 4.2, supra, at para. 8. The paragraph was added to the draft resolution by a vote of 25 to 6, with 5 abstentions. See 92 EX/SR.15, supra, at paras 24-30, pp. 165-66.

36. See text at note 22 above. The guidelines were adopted by a vote of 20 to 10, with 4 abstentions. See 92 EX/SR.15, supra, at para. 12, p. 165.

37. 92 EX/Dec. 4.2, supra, at para. 10. A roll-call vote was taken on ¶10(c) relating to the Soviet Union. The paragraph was adopted by 21 votes to 1 (China), with 17 abstentions. This was the only roll-call vote taken. See 92 EX/SR.15, supra, at paras. 16.2 and 17, p. 165.

38. 92 EX/Dec. 4.2, supra, at paras. 11 and 12.



Considering that no proposal had been made at the 1973 session of the Executive Board concerning the classification of Israel for the purpose of participating in the regional activities of UNESCO, the case of Israel was not directly considered by the Board, and there is no reference to Israel in the 1973 Board decision.

On August 14, 1973, Israel addressed a letter to the Director-General in response to the Board's invitation to states to make their views known so that the Board might take a decision as to their classification. The Israeli letter states that "Israel attaches great importance to full participation in regional activities of Unesco," but that:

Due to the absence of a specific Middle East geographic division and the virtual identification of the Asian Region with the area covered by ECAFE, Israel's participation in regional activities has unfortunately been sporadic and irregular.³⁹

The letter states that "the close ties and the similarity of conditions which exist between members of the European region and Israel in the areas of major concern to Unesco would enable Israel to make a worthwhile contribution to the activities" of the European Region. The letter concludes as follows:

In order to enable Israel to discharge its duty to Unesco and to make its rightful contribution to the formulation and execution of Unesco regional activities, [Israel] therefore requests that the Executive Board, when called upon to decide on invitations to regional meetings of an intergovernmental character, will consider Israel as forming part of the European region.⁴⁰

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Although the Executive Board had contemplated taking a decision on such requests for the classification of Member States, at its next session the Executive Board decided not to take up the statements submitted by Member States, leaving the issue for consideration by the General Conference at its 18th Session in 1974.⁴¹

39. 93 EX/8, p. 11, Annex VIII (1973). ECAFE is the United Nations Economic Commission for Asia and the Far East.

40. Ibid. The Israeli letter also notes that for the purposes of elections to the Executive Board, "Israel belongs to Electoral Group I which includes, inter alia, Western Europe." See Part I.A above.

41. See 93 EX/Dec. 1 (1973).



The Definition of Regions at the 18th Session of the General Conference

Proposals submitted at the 18th Session of the General Conference in 1974 sought to assign each unclassified UNESCO Member State to one of the five regions that had been defined by the General Conference in 1964. If adopted, the result would have been to assign Australia, Bangladesh, the Democratic People's Republic of Korea, New Zealand and Singapore to the Asian Region, renamed "Asia and Oceania"; Barbados and Guyana to the Latin America and Caribbean Region; Oman and the United Arab Emirates to the Arab States Region; and Canada, the German Democratic Republic, Israel, Malta, Portugal and the United States to the European Region.⁴² The proposals thus differed from the results reached at the 1973 session of the Executive Board in two respects: first, the regional assignments to be made by the General Conference would be amendments to the 1964 General Conference resolution, carrying the right for the Member States concerned to participate in UNESCO regional activities undertaken for the region to which the member was assigned;⁴³ and, second, taken as a group, the proposals would result in a regional assignment for all UNESCO Member States without exception.

In addition to the proposals relating to unclassified Member States, a proposal introduced at the 1974 session of the General Conference would assign the Soviet Union to the newly-designated "Asia and Oceania Region" in addition to the existing assignment of the Soviet Union to the European Region.⁴⁴

The question of the definition of regions was assigned to General Conference Commission V, on General Programme Matters, which had the task of considering proposals on the subject and adopting a draft resolution for consideration at a Plenary Meeting of the General Conference. Debate in Commission V appears to have centered on Chinese objections to Soviet participation in the Asia and Oceania Region, and on French objections to going beyond geography as the criterion for regional grouping.⁴⁵

42. See 18 C/PRG/DR.2, 3, 4 and 5, incorporated into 18 C/PRG/DR.15 Rev. (1974), Doc. II.B.6.

43. See text at notes 3-13 above.

44. See 18 C/PRG/DR.15 Rev. (1974); Doc. II.B.6.

45. The debate in Commission V is summarized in the Commission's Report, 18 C/124, part M, pp. 1-7 (1974); Doc. II.B.7. See paras. 30-32, p. 5, for a summary of the debate on the inclusion of the Soviet Union in the Asia and Oceania Region, and para. 11, p. 2, for the French statement.



With regard to the inclusion of Israel in the European Region, the Israeli representative formally presented the proposal, stressing the principle of "the right and duty of Member States to participate in regional activities." The Israeli representative noted Israeli participation in European regional activities in several other United Nations Specialized Agencies, and that there is no Middle East region in UNESCO. He said that: "Whereas the region of Arab States has been set up in the light of a common language, Israel has in the past been hampered by this situation." Israel's conclusion was that, "in order to enable Israel to discharge its duty to the Organization, it must be included in regional activities" as a member of the UNESCO European Region.⁴⁶

There were several statements of support for the Israeli position in Commission V, and the debate in Commission V does not appear to have directly challenged Israel's classification as part of the European Region.⁴⁷ Statements of support were couched in terms of the right and duty of every Member State to participate in regional activities, which was affirmed in the draft resolution under consideration. Statements in opposition appeared limited to criticism of utilizing criteria other than geography as the basis for regional classification.⁴⁸

Commission V held separate votes in the cases of the four countries whose proposed classification had been challenged directly or indirectly in the Commission. Canada and the United States were accepted for inclusion in the European Region by votes of 59 to 5, with 11 abstentions, and 57 to 10, with 12 abstentions, respectively.⁴⁹ An initial vote on Israel was equally divided, 30 to 30, with 8 abstentions; a second vote, this time by roll-call, rejected the Israeli proposal by 23 votes in favor to 35 against, with 26 abstentions.⁵⁰ The Soviet Union was accepted for inclusion in the Asia and Oceania Region, in addition to the European Region, by a vote of 44 to 4, with 27 abstentions.⁵¹ Thus the result was that Commission V reported a draft resolution to the Plenary Meeting that would classify every Member State except Israel as belonging to one of the five regions established by the General Conference for the purpose of participating in the regional activities.

46. Id., at paras. 6-7, p. 1.

47. See, e.g., the general statements by the representatives of the Federal Republic of Germany, Norway and Switzerland, id., at paras. 22 and 28-29, pp. 3-4.

48. See, e.g., the view stated by the representatives of France and the Sudan who appeared to consider geography as the only viable criterion for assignment to regions. Id., at paras. 11 and 13, p. 2. The Commission Report is not a summary record of the debate in the Commission; it contains only a brief indication of the points made in the Commission debate.

49. Id., at ¶42, p.6.

50. Ibid. The Commission V Report does not contain a record of the roll-call vote

51. Id., at para. 42, pp. 6-7.



During the consideration of the Commission V report and draft resolution in the Plenary Meeting, Israel moved to amend the draft resolution by adding Israel to the States listed in the draft resolution, classifying Israel in the European Region.⁵² The Israeli amendment was rejected on a roll-call vote of 33 in favor, to 48 opposed, with 31 abstentions.⁵³ The draft resolution as proposed by Commission V was then adopted by 85 votes to 2, with 9 abstentions.⁵⁴

In the course of the debate in the Plenary Meeting of the General Conference, the representative of the United States supported the Israeli motion to include Israel in the European Region. The United States representative said that in the spirit of equity and fairness, it was a "well-established principle [in UNESCO] that every Member State is entitled to be a member of a region," and urged the Conference to accept the Israeli amendment.⁵⁵ The delegate of Jamaica, Mr. Wynter, expressed the view that every Member State "has the right to participate in Unesco's activities whether they are international or regional." Mr. Wynter said that in the case of states located outside of the region in which they wished to participate, the principles that should be followed were whether the state has "cultural, social or historical ties with the region with which it wants to participate," and whether the members of the region were willing to accept the participation of "a Member State which is not geographically sited in that region."⁵⁶ On this basis the delegate of Jamaica voted in favor of the Israeli amendment.⁵⁷

The Lebanese delegate opposed the Israeli amendment, commenting that Israel was an historical and geographical paradox. He said that: "Israel is a state which belongs nowhere because it comes from nowhere."⁵⁸

Following the vote on the draft resolution as a whole, the Israeli delegate stated that he had voted against the resolution because of "the almost schizophrenic gap between the statement of high principle in the preamble and what actually happened in the voting." The Israeli delegate said that the preamble to the General Conference resolution "acclaims triumphantly that it is 'the right and duty' of all Member States to 'participate fully' in regional activities." That principle had been destroyed in the resolution itself by a group of Member States, "capable of mustering a majority on apparently any issue," who had decided: "down with principles, up with politics." If it wished, said the Israeli representative, "that same automatic majority could, in spite of Galileo and in spite of Copernicus, carry a motion that the earth is flat."⁵⁹

52. Provisional Verbatim Records, 18th General Conference, 18 C/VR.42 (prov.), ¶¶26-30, p.13 (1974), Doc. II.B.8.

53. *Id.*, at ¶51.1, pp.21-22. Of the 30 states then part of the European Region, 14 voted in favor of Israel: Austria, Belgium, Denmark, Finland, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Switzerland, and the United Kingdom; 10 voted against: Albania, Bulgaria, Byelorussia, Czechoslovakia, Hungary, Poland, Spain, the Ukraine, the USSR and Yugoslavia; and 3 abstained: France, Greece and Turkey. The remaining 3 did not vote: Cyprus, Monaco and Rumania.

54. *Id.*, at para. 66.4, p.24.

55. *Id.*, at para. 40, p. 17.

56. *Id.*, at paras. 50.2-50.6, pp. 20-21.

57. *Id.*, at para. 51.1, p. 21.

58. *Id.*, at para. 36, p. 16.

59. *Id.*, at para. 69.1, p. 24.



The 1974 General Conference Resolution

The resolution adopted by the 1974 session of the General Conference supplements the list of UNESCO Member States assigned to UNESCO regions under the 1964 General Conference resolution.⁶⁰ The 1974 resolution refers to the fact that the groups listed in the 1964 resolution do not include all UNESCO Member States. It states that the General Conference recognized "the fundamental principle whereby every Member State has the right and duty to participate fully and regularly in the Organization's regional and international activities," and that the General Conference desired to help "to ensure that every Member State may exercise this right and perform this duty."⁶¹ The 1974 resolution then adds to the list contained in the 1964 resolution every Member State that was not mentioned in the 1964 resolution, except Israel, with the result that every UNESCO Member State except Israel is, in the words of the 1974 resolution, "empowered to participate [as a full voting member] in regional activities in which the representative character of States is an important factor," as part of one of the five regions established under the 1964 General Conference resolution.⁶²

The 1974 General Conference resolution does not alter the established UNESCO practice under which any Member State may send observers to any intergovernmental meeting sponsored by UNESCO, including meetings held on a regional basis. There is thus nothing to prevent Israel, or any other UNESCO Member State, from sending observers to UNESCO meetings convened for the European Region.

The 1974 General Conference resolution also does not alter the 1966 "Regulations for the general classification of the various categories of meetings convened by UNESCO," under which the Executive Board has the function of deciding upon invitations to intergovernmental meetings, including regional meetings.⁶³ Thus, notwithstanding the refusal of the General Conference to classify Israel as part of the European Region for the purpose of participation in regional activities generally, it remains possible for the Executive Board to decide to invite Israel to participate as a full voting member in any particular regional intergovernmental meeting convened by UNESCO, including such meetings held for European Region.⁶⁴

60. The 1964 resolution is quoted in the text at note 3 above.

61. 18 C/Res. 46.1 (1974); Doc. II.B.9.

62. Ibid. The Soviet Union is "empowered" by the 1974 resolution to participate in two UNESCO regions: Asia and Oceania, and Europe.

63. See text at notes 14-17 above. Executive Board invitations to Category II intergovernmental meetings are made on the Director-General's proposal and subject to "existing regulations applicable."

64. See the statement by Mr. Wynter of Jamaica, Provisional Verbatim Records, note 52 supra, at paras. 50.1-50.7 and 75.3, pp. 20-21 and 26.



The 18th General Conference resolution thus does not entirely bar Israeli participation in the European Region. It also explicitly contemplates the examination at the 19th Session of the General Conference in 1976 of "any outstanding questions, together with the cases of States which may become Members of the Organization after the adoption of this resolution."⁶⁵

With regard to the "political" character of the vote rejecting Israeli classification with the European Region, it may be noted that the principles that would lead to Israeli exclusion from the European Region which were articulated in the course of the debate stemmed from the view that the regional structure should be defined by geography rather than history, culture, or social traditions. Such a view would lead to exclusion of Canada and the United States, as well as Israel, from the European Region, yet Canada and the United States were accepted into the European Region with but 5 and 10 negative votes in Commission V, respectively, and without opposition in the Plenary Meeting. Israeli participation in the European Region was rejected by 35 negative votes in Commission V, and 48 negative votes in the Plenary Meeting, which would appear to indicate that more than geographic principle was involved in the rejection of Israel.

1975 Executive Board Action

The question of further General Conference action on the participation by Member States in UNESCO regional activities was taken up by the Executive Board in October 1975 in the course of the Board's consideration of an agenda item entitled: "In-depth study of the working methods of the General Conference."⁶⁶

The Executive Board adopted a resolution recommending that the 1976 session of the General Conference:

take all appropriate measures to complete the list of Member States empowered to participate in the regional activities of the Organization as it emerges from 13 C/Resolution 5.91 and 18 C/Resolution 46.1, taking into account the principles set forth in those resolutions and on the basis of the wishes of the Member States already included in each of the various regions.⁶⁷

65. 18C/Res. 46.1, para. 2 (1974).

66. See 98 EX/16 (1975).

67. 98 EX/Dec. 6.1, para. 5 (1975); Doc. II.B.10.



In adopting the quoted recommendation, the Executive Board resolution noted that, at its 1974 session, the General Conference had expressed the following views in 18 C/Resolution 46.1 (1974):

[The General Conference had] affirmed "the fundamental principle whereby every Member State has the right and duty to participate fully and regularly in the Organization's regional and international activities" and [had] expressed its desire to help to "ensure that every Member State may exercise this right and perform this duty".⁶⁸

The Executive Board also noted that in the same resolution the General Conference had decided "to examine at its nineteenth session any outstanding questions, together with the cases of States which may become Members of the Organization after the adoption of this resolution." The Executive Board resolution accordingly invites "the Member States concerned" to inform the Director-General "of the region in the activities of which they wish to participate."⁶⁹

Thus, in effect, the Executive Board resolution contemplated the renewal at the 1976 General Conference session of the question of Israeli participation in the European Region, and recommended that the General Conference decide that question "on the basis of the wishes of the Member States already included" in the European Region. Should the General Conference adopt the procedure recommended by the Executive Board, it would be available to be used for the assignment of Israel to the European Region.⁷⁰

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68. Id., at para. 2. The Executive Board resolution also noted that in 1973 the Board had "affirmed its awareness that the inclusion of a Member State in a region for the purposes of participation in regional activities 'cannot be obtained without the broad consent of the Member States in the region concerned.'" See 92 EX/Dec. 4.2 (1973), quoted in the text at notes 33-35 above.
69. 98 EX/Dec. 6.1, para. 6 (1975). The resolution is reported to have been adopted by a vote of 23 to 3, with 3 abstentions. See New York Times, Oct. 8, 1975.
70. A majority of the States that were members of the European Region in 1974 voted in favor of Israel's motion to be included in that region at the 1974 session of the General Conference. See note 53 supra.



PART II: UNESCO ACTIONS RELATING TO ISRAEL

C. UNESCO Supervision of Education and Culture
in Occupied Territories

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The UNESCO General Conference has developed a practice of dealing with three sets of related issues through the adoption of lengthy "omnibus" resolutions at each session of the General Conference. The "omnibus" resolutions deal with UNESCO's role in contributing to peaceful relations among states, with the attainment of independence by colonial countries, and with the elimination of racism. The omnibus resolution adopted at the 1972 session of the General Conference, entitled "UNESCO's contribution to peace and its tasks with respect to the elimination of colonialism and racism,"¹ initiated a special role for UNESCO in relation to education and culture in occupied Arab territories.

Building upon previous expressions of concern with respect for human rights in occupied territories,² the 1972 omnibus resolution declared that the "violation of the human rights of the peoples in occupied territories should be brought to the attention of world public opinion in order to ensure the respect of human rights in those territories." It requested the Director-General to use "all available means at his disposal" to assemble information "on the national education and the cultural life of the populations in the occupied Arab territories" for submission to the General Conference at its 18th Session in 1974.³

The Director-General's Report

In response to the General Conference request, the Director-General sent an extensive questionnaire to the governments of Israel, Egypt, Jordan, Lebanon and Syria, to the League of Arab States and the Arab Educational, Cultural and Scientific Organization (ALESCO), and to 89 international non-governmental organizations.⁴ Substantial responses were received from the governments of Israel, Egypt, and Jordan, and from the two Arab intergovernmental organizations from which responses had been requested, that is, from the Arab League and from ALESCO. The governments of Lebanon and Syria and most of the non-governmental organizations replied that they had no information to offer.⁵

1. 17 C/Res. 10.1 (1972); Doc. II.C.1. The term "omnibus resolution" has been informally applied to resolutions on the elimination of colonialism and racism that have been adopted at every session of the General Conference since 1960. The resolutions are reproduced in Part III.A, below.
2. See 15 C/Res. 9.13 (1968), Doc. III.A.9, p.6; and 16 C/Res. 8, Part I (1970); Doc. III.A.10.
3. 17 C/Res. 10.1, Part III, paras. 17 and 19 (1972); Doc. II.C.1.
4. The Director-General's questionnaire is reproduced as an annex to the Director-General's Report, 18 C/16 (1974); Doc. II.C.2.
5. Director-General's Report, 18 C/16, paras. 1-4, p.3 (1974); Doc. II.C.2. The Director-General notes that his report does not follow the outline given in the questionnaire since neither the governments nor the Secretariat had found it possible to assemble the detailed information requested within the time limits given. The Director-General stated, however, that the main objectives of the information-gathering exercise had nonetheless



In addition to the documentary material thus received, the Director-General sought information through sending a special mission⁶ to observe the state of education and culture in the occupied Arab territories on the spot. The UNESCO mission visited Egypt, Jordan, Lebanon and Syria, and Israel, the Gaza Strip and the occupied Jordanian territories. According to the Director-General, the mission "was well received by the authorities at all levels everywhere and had invaluable assistance from them," and, in the occupied territories, the mission "was able to meet all the people it wished to see and had discussions with them, without witnesses, in an atmosphere of complete freedom."⁷

The resulting report by the Director-General presents information on education and culture in three occupied areas separately: the Gaza Strip and Northern Sinai; the West Bank, including East Jerusalem; and the Golan Heights. The report states that it "does not attempt to be anything more than a descriptive account, in the soberest possible terms, based on the information received or obtained from the different sources" consulted by the Director-General. Where conflicting views were received, such views are reported with citations to sources.⁸ The Director-General notes that "it has not always been possible ... to assess the accuracy of the observations or information" received.⁹ He also notes that although every effort was made to keep the report within the strict framework of education and culture, "these are, by their very nature, everywhere and at all times, too intimately bound up with the economic, social and political circumstances of the past and the present for any description of their actual situation to leave those circumstances entirely out of account."¹⁰

While much could be said about the information presented in the Director-General's report, all that can be done here is to draw attention to what appear to be the most significant observations made in the report for the purpose, later, of contrasting the Director-General's observations with the approach and conclusions reached in the debate on the report at the 18th Session of the General Conference.

With regard to education in the Gaza Strip and in Northern Sinai, the report noted that it is extremely difficult to evaluate the impact of Israeli policy "for the obvious reason that it is not possible to surmise how education would have developed if there had been no occupation."¹¹ The statis-

been met. Id., at para. 10, p.4.

6. Id., at para. 5, p.3. The mission, consisting of two UNESCO Secretariat officials, was led by Mrs. M-P. Herzog, Director of the UNESCO Human Rights Coordination Unit. Ibid.
7. Id., at para. 6, p.3.
8. Id., at paras. 8 and 12, p.4. See, e.g., n.1 to para. 13, p.4.
9. Id., at para. 12, p.4.
10. Id., at para. 8, p.4.
11. Id., at para. 17, p.5. The Israeli policy is characterized by the Israeli Ministry of Defence as a policy of "non-presence, non-interference and open bridges." Id. at para. 16, p.5. Under this policy, the "former educational system ... has been maintained in the Gaza Strip and ... is continuing, at least in theory, its own growth." Ibid.



PART II: UNESCO ACTIONS RELATING TO ISRAEL

- D. Proposed Regional Convention on the Recognition
of Higher Education Studies and Degrees

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tics showed growth, but "the occupation has created all kinds of new problems relating, for example to textbooks, vocational training and access to universities."¹² In both the Gaza Strip and the West Bank, a major problem appeared to be the reluctance of the population, especially of teachers, to accept the supervision of education by military as opposed to civilian authorities.¹³ The report also noted difficulties faced by West Bank students in going on to higher education, "which [difficulties] are due partly to the comparatively low standard of the secondary schools, partly to the tendency of certain Arab countries to restrict the number of West Bank students admitted to their universities, and, lastly, to the high standard required for admission to the Israeli universities, where the language of instruction is not Arabic."¹⁴

With regard to cultural life, it is reported that in the Gaza Strip the "Israeli authorities have not modified cultural life and have not taken part in it."¹⁵ There appears to be a "passive resistance to any attempt to reanimate cultural life," however. The population appears to feel that its cultural identity is threatened; the Director-General's report observes that: "faced both with the insidious weakening of its cultural heritage and with uncertainty about its future, [the population in the Gaza Strip] suffers from a bitter sense of abandonment."¹⁶ In the West Bank, although the report notes that life "in the bustling towns and in the peaceful-seeming countryside ... appears to be going on as usual,"¹⁷ it is observed that "there is a great ferment of ideas, at least among the more highly educated circles, concerning the nature of the cultural identity" of the occupied territories. A question asked by everyone in impassioned tones was: "Where do we belong?"¹⁸

12. There was no growth in higher education. Ibid.

13. Id., at para. 15, p.5, and para. 65, p.14.

14. Id., at para. 97, p.22. As to the Gaza Strip, it is reported that over 1,000 students from the Gaza Strip went to Egypt in 1973 for higher education, and that "Egyptian authorities intend to restrict the number of such students to 1,000, apparently owing to the massive rise in the number of students at the universities of Cairo." Id., at para. 37, pp.10-11.

15. Id., at para. 44, p.12.

16. Id., at paras. 45 and 55, pp.12-13.

17. Id., at para. 104, p.23. It is specifically noted that: "Freedom of speech, at least for the individual, seems to be little restricted." Ibid.

18. Id., at para. 126, p.26. The Israeli archaeological excavations and new building in East Jerusalem, discussed in Part A above, were a particular source of distress to the inhabitants. See id., at paras. 115 and 116, p.25.



The 1974 General Conference Resolution

Having received and considered the Director-General's report, the 1974 session of the General Conference adopted a resolution that contains highly controversial propositions.¹⁹

The General Conference resolution begins with the proposition that "access to national education and culture is one of the fundamental human rights affirmed by the Charter of the United Nations and the Unesco Constitution." It also states that "military occupation of territories by foreign forces constitutes a constant danger to peace and human rights, including the inalienable right to national education and cultural life."²⁰

The General Conference resolution then notes "with anxiety" that it is "apparent" from the Director-General's report that "the populations in the occupied Arab territories are not enjoying their inalienable and inviolable rights to national education and cultural life."²¹

The resolution has three operative paragraphs. It invites the Director-General to take the following measures:

To exercise full supervision of the operation of educational and cultural institutions in the occupied Arab territories, and to co-operate with the Arab States concerned and with the Palestine Liberation Organization with a view to providing the populations in the occupied Arab territories with every means of enjoying their rights to education and culture so as to preserve their national identity²²

It then appeals to Israel "to refrain from any act that has the effect of hindering the population of the occupied Arab territories in the exercise of their rights to national education and cultural life." The resolution also invites Israel to allow the Director-General to carry out the tasks assigned to him under the resolution, and asks the Director-General to report to the Executive Board on the implementation of the resolution.²³

Discussion at the 18th Session of the General Conference

With respect to the General Conference resolution's characterization

19. 18 C/Res. 13.1 (1974); Doc. III.C.5.
20. Id., at first and second preambular paragraphs.
21. Id., at third preambular paragraph.
22. Id., at para. 1.
23. Id., at paras. 2 and 3.



of the Director-General's report, the delegate of the United States said that a careful reading of the report shows that the peoples of the occupied territories do indeed enjoy their rights to national education and cultural life.²⁴ The delegate of Israel said that the resolution was "entirely inspired by political considerations and has no relationship to the situation described in the report of the Director-General."²⁵ He stated that there had been "no Israeli intervention in the content of education or in the religious and cultural life of the population," and that there was no basis for allegations that Israel intended to force an alien way of life upon the peoples of the occupied territories.²⁶

The resolution's assignment of "full supervision of the operation of educational and cultural institutions in the occupied Arab territories" was stated by the United States delegate to be beyond UNESCO's mandate and to raise questions outside UNESCO's competence.²⁷

The UNESCO Deputy Director-General, Mr. Fobes, stated that the Director-General saw three problems in the tasks assigned to UNESCO under the resolution.²⁸ First, to define the meaning of "full supervision" as applied to three subjects: administrative and financial questions; curricula in educational institutions; and professional standards. Second, to determine how the task was to be carried out in co-operation not only with Israel, but with the Arab States and with the Palestine Liberation Organization. And, third, to determine how the Director-General was to interpret the requirement that the populations be provided with "every means of enjoying their rights to education and culture."

Mr. Fobes said that the three problems would require the gathering of a considerable amount of information that was not now available to the Director-General. The necessary contacts and negotiations might proceed in four initial stages: First, "contacts with the Arab States concerned and ... with the Palestine Liberation Organization." Second, contacts with Israeli authorities "to advise them that the Director-General wishes to contact the local authorities concerned with education and cultural institutions." Third, contact with such local authorities. Fourth, "the Director-General would advise the Executive Board on the information he had gathered, the results of the initial contacts and negotiations, and

24. UNESCO General Conference, 18th Session, Plenary Meetings, 18 C/VR. 47 (prov.), para. 8, p.6, (1974); Doc. II.C.4.

25. Id., at para. 6, p.5. The United States delegate expressed the "conviction that the growing intrusion of politics into [UNESCO] deliberations can only hinder its achievements and contributions" in the fields of education, science, culture and communications. Id., at para. 8, p.6.

26. Id., at para. 6, pp.5-6. The Israeli delegate stated that: "The same laws covering education in Arab countries apply in the territories administered by Israel ... The same educational leadership that conducted the educational systems in the past under Arab administrations continues to do so now." Ibid.

27. Id., at para. 8, p.6.

28. Id., at para. 4.1, pp.3-4.



at least the beginning of preliminary definitions concerning the three major issues."

Mr. Fobes concluded by saying that "in a matter of such import and complexity, the Director-General would obviously wish to proceed with great care and caution because he would operate on the assumption that this mandate should be carried out in the interests of the Organization as well as to initiate constructive action in the direction asked for" in the General Conference resolution.²⁹

Two votes were taken in the Plenary Meeting of the General Conference, both by a show of hands. The first vote added to the initial draft resolution³⁰ the requirement that the Director-General consult with the Palestine Liberation Organization as well as with the Arab States concerned in the exercise by the Director-General of "full supervision of the operation of educational and cultural institutions in the occupied Arab territories."³¹ The amendment carried by a vote of 50 to 2, with 25 abstentions. As amended, the resolution was then adopted by the General Conference by a vote of 51 to 5, with 22 abstentions.³²

The delegate of the United States, who voted against the resolution, stated that the Director-General's report had been a "commendable effort" that helped to show the conditions of educational and cultural life in the occupied Arab territories. He said that the report had been "designed to give an objective assessment of the situation and not to provide condemnations." In his view, this contrasted sharply with the General Conference resolution, which he said made "sweeping allegations rather than constructive suggestions." The resolution was considered by the United States to be an example of the "growing intrusion of politics" into UNESCO deliberations, which could only hinder UNESCO's achievements and contributions in the fields of education, science and culture.³³

Implementation of the 1974 General Conference Resolution

As noted above,³⁴ the Deputy Director-General, Mr. Fobes, indicated at the General Conference session that the implementation of the resolution

29. Id., at paras. 4.2-4.3, pp.4-5.

30. The initial draft resolution, 18 C/PLEN/DR.5 (1974), was sponsored by sixteen Arab states.

31. See 18 C/PLEN/DR.27 (1974).

32. Provisional Verbatim Records of the General Conference, 18th Session, Plenary Meetings, 18 C/VR.47 (prov.), paras. 5.2-5.3, p.5 (1974); Doc. II.C.4. Israel and the United States voted against both actions. See id., at paras. 6 and 8, pp.5-6.

33. Id., at para. 8, p.6.

34. See text at notes 28-29 supra.



would require considerable study and interpretation, and contacts with the Arab States, with the Palestine Liberation Organization, with Israel and with the local authorities in the occupied territories. Mr. Fobes also indicated that the results of the Director-General's preliminary consultations with the parties and with the authorities concerned would be reported to the Executive Board, presumably before any definitive or final action was taken.³⁵ No such report was submitted by the Director-General at either the spring or the fall sessions of the Executive Board in 1975, and, consequently, there has been no further Executive Board discussion or action through October 1975.³⁶

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35. The General Conference Resolution invites the Director-General to report to the Executive Board on the implementation of the resolution. 18 C/Res. 13, para. 3 (1974).

36. The Provisional Agenda for the Executive Board's spring 1975 session, dated March 18, 1975, includes the item: "Report of the Director-General on the implementation of 18 C/Resolution 13 concerning educational and cultural institutions in the occupied Arab territories (97 EX/35)." 97 EX/1, item 9.5, p.8 (1975). The report was apparently not issued and the item does not appear on the final draft agenda for the session. See 97 EX/1 Rev., dated 2 May 1975.



D. PROPOSED REGIONAL CONVENTION ON THE RECOGNITION
OF HIGHER EDUCATION STUDIES AND DEGREES

In 1970, the UNESCO General Conference adopted a resolution on the UNESCO program in the development of higher education which, among other subjects, authorized the Director-General "to pursue and intensify activities designed to extend the comparability and equivalence of certificates, diplomas and degrees in higher education."¹ Part of the program thus authorized included efforts by the UNESCO Secretariat to promote the conclusion of regional agreements on the recognition of higher education studies and degrees.² In the case of the countries bordering the Mediterranean, the Secretariat efforts led ultimately to the convening of intergovernmental meetings scheduled for 1975 and 1976, to which Israel, alone among the UNESCO Member States bordering the Mediterranean, has not been invited. The events leading up to this action are summarized below.

The Convening of the Rabat Meeting of Experts, September 1972

The first formal step leading to an equivalency of degrees agreement for countries bordering the Mediterranean was the convening by UNESCO of a "Meeting of Experts on International Instruments concerning the Recognition of Studies, Degrees and Diplomas in Higher Education in the Countries of the Western Mediterranean," held at Rabat, Morocco, September 11-15, 1972.

The Rabat Meeting consisted of eight experts, "invited in a personal capacity," from the following eight UNESCO Member States: Algeria, Egypt, France, Italy, Morocco, Spain, Tunisia and Yugoslavia.³ In addition, to the eight experts, a total of twenty-five other persons attended the Rabat Meeting as follows: four representatives from the United Nations, FAO and WHO; eight observers sent by eight international non-governmental organizations; a total of eleven observers sent by the governments of six UNESCO Member States; and two UNESCO staff members.⁴ The six UNESCO Mem-

1. 16 C/Res. 1.241(b)(1970). The resolution continued a program of UNESCO action begun under the authority of 15 C/Res. 1.262 (1968).
2. The UNESCO Programme and Budget for 1971-1972, approved by the 16th Session of the General Conference in 1970, states that the "work plan" relating to the equivalence of higher education degrees will include further efforts "to facilitate the holding of meetings between universities and professional university bodies, governmental and non-governmental, in order to promote the conclusion of regional and multilateral agreements in this sphere." 16 C/5 Approved, ¶1369, p.91 (1970).
3. Final Report of the Rabat Meeting of Experts, UNESCO Doc. ED-72 CONF. 78/5, ¶15, p.1 (1972); Doc. II.D.2. A full list of participants appears in Annex I to the Final Report of the Rabat Meeting.
4. Id., at Annex I, pp.1-4. The Secretariat of the meeting consisted of the two UNESCO officials. Id., at p.4.



ber States sending observers were: France, Italy, Morocco, Spain, the United States and Yugoslavia.⁵

As a non-governmental meeting of experts convened within the UNESCO work program, invitations to the Rabat Meeting would have been issued by the Director-General as provided for in the UNESCO "Regulations for the general classification of the various categories of meetings convened by UNESCO."⁶ Article 59 of the Regulations provides that members of the expert committees "shall serve in a private capacity," and "shall be appointed individually, either by the Director-General or by governments at the Director-General's invitation."⁷ In the latter case, the Regulations provide that experts selected by governments at the Director-General's invitation "will sit in the same capacity as the experts chosen directly by the Director-General and will not be considered to be representatives of their respective governments."⁸ There is no indication in the report as to which, if any, of the experts at the Rabat meeting were selected by their governments, and which, if any, were chosen directly by the Director-General. There is also no indication as to which, if any, governments were consulted in convening the meeting, or in selecting either the experts invited by the Director-General, or the governments invited to send experts. In any event, however, it is clear under the Regulations that the eight experts at the Rabat Meeting were acting in their personal capacity and not as representatives of their governments.

As to the attendance of observers at expert meetings, the Regulations provide that: "As a general rule meetings of expert committees shall be private." The Director-General has the authority, however, to invite UNESCO Member States and international governmental and non-governmental organizations to send observers to such meetings, "if he considers it desirable from the programme point of view."⁹ Since government observers

5. Id., at Annex I, p.3. France and Morocco sent three observers each. Five of the six governments sending observers also sent experts: France, Italy, Morocco, Spain and Yugoslavia. The sixth, the United States, sent only one observer.

6. The Regulations were adopted by the General Conference at its 14th Session in 1966. See UNESCO, Collection of Basic Texts, pp.3-14; Doc. II.D.1.

7. Id., at Art. 59, ¶1 and 2, p.11.

8. Id., at Art. 59, ¶4, p.11.

9. Id., at Art. 59, ¶8, p.12. The Regulations also provide that United Nations agencies and "other intergovernmental organizations with which UNESCO has concluded mutual representation agreements may send representatives to the meetings of expert committees." Id., at Art. 59, ¶7, p.11.



were present at the Rabat meeting, it is apparent that the Director-General exercised his authority to invite governments to send observers, but there is no indication in the report as to which, if any, governments other than the six represented by observers at the meeting, had been consulted about the meeting or invited to send observers.¹⁰

The Report of the Rabat Meeting of Experts

The main purpose of the Rabat meeting was stated in the report to have been "to give its opinion as to whether the preparation of an agreement concerning the recognition of studies, degrees and diplomas in higher education could be envisaged within the framework of the western Mediterranean, and, if so, to outline the content of such an agreement."¹¹ The term "western Mediterranean" was not defined, other than as might be implied from the composition of the meeting, which included experts from Spain, France, Italy and Yugoslavia on the one side, and Morocco, Algeria, Tunisia and Egypt, on the other side of the Mediterranean Sea.

In its conclusions and recommendations, the report noted the "close and long-standing ties [existing] between the countries on both shores of the Mediterranean" and the unanimous agreement of the experts on the advisability of preparing a multilateral convention on the "recognition of studies, diplomas and degrees in higher education within the framework of the western Mediterranean." The Rabat Meeting report states that the experts had emphasized that "it was particularly desirable that there should be a new, multilateral instrument to supplement and extend the application of the provisions of the bilateral or regional agreements already linking" the countries on both shores of the Mediterranean.¹²

As to "which Mediterranean States [should] be invited to conclude the proposed Convention," the committee "felt that because of the considerable volume of exchanges of intellectuals in the Mediterranean basin," the agreement should be "one which would link together the European and Arab States bordering the Mediterranean."¹³ The committee further stated that the "criterion should be that the States concerned should be Mediterranean States which were Parties or which had been invited to become Parties either to [three Council of Europe conventions], or to the Arab Cultural Treaty of 27 November 1947, or to the Pact of Arab Cultural Unity

10. It is a reasonable assumption that at least ten governments were informed about the meeting: the five that sent both experts and observers (France, Italy, Morocco, Spain and Yugoslavia); the three that sent experts but no observers (Algeria, Egypt and Tunisia); and the one that sent only an observer (the United States).

11. Final Report of the Rabat Meeting of Experts, UNESCO Doc. ED-72/CONF. 78/5, para. 3 (1972). The agenda included the defining of "the broad outlines of a regional policy" concerning the recognition of degrees, etc. *Id.*, at ¶2(a).

12. *Id.*, at ¶10, p.2.

13. *Id.*, at ¶11, pp.2-3.



of 29 February 1964."14 This criterion was thought by the committee to confirm "the close and long-standing links between countries belonging to two particularly important regions, some of which, like the countries of the Maghreb, could be considered as constituting a sub-regional group."15

The committee report observes that: "The steps already taken by those States [to which reference had been made] and the cordial relationships existing between them made it foreseeable that close and effective co-operation in the field of recognition of studies, degrees and diplomas could be organized and swiftly developed."16

The balance of the committee report contained an outline of the proposed convention, including its principles, objectives and machinery for implementation, and recommended that the committee's report be sent "to the various Member States concerned, inviting them to send their comments and suggestions to the Director-General." Should the comments be favorable, the committee recommended that a preliminary draft convention be prepared by the UNESCO Secretariat and that provision be made in UNESCO's future work program for convening two additional meetings: a meeting of a committee of government experts to prepare the final draft of the proposed convention; and a diplomatic conference of states to adopt the final text of the proposed convention.17

Post-Rabat Actions

In 1973, following the completion of the report of the Rabat Meeting of Experts, two steps were taken by the UNESCO Secretariat. First, provision was made in the UNESCO Programme and Budget for 1973-74 for the preparation by the Secretariat of a preliminary draft agreement on the "recognition of studies and diplomas in higher education in the European and Arab countries of the Mediterranean."18 Second, copies of the Rabat Re-

14. Ibid. The European Conventions mentioned were three Council of Europe agreements: (1) The Convention on the Equivalence of Diplomas leading to Admission to Universities, Paris, Dec. 11, 1953, 218 UNTS 125; (2) The European Convention on the Equivalence of Periods of University Study, Paris, Dec. 15, 1956, 278 UNTS 73; and (3) The European Convention on the Academic Recognition of University Qualifications, Paris, Dec. 14, 1959, 444 UNTS 193. Israel became a party to the 1953 Convention on Oct. 7, 1971. See statement by the Israeli representative, 97 EX/SR.17 (prov.), para. 132, p.20 (1975); Doc. II.D.7.

15. Id., at para. 11, p.3.

16. Id., at para. 12, p.3. The committee stressed that the instrument "should be forceful and forward-looking and should be not so much the culmination of what had previously been accomplished as the starting point for further fruitful, concerted activity with a view to the attainment of common aims." Ibid.

17. Id., at para. 30, points 1-3, p.7.

18. UNESCO Programme and Budget for 1973-1974, 17 C/5 Approved, ¶398, p.126 (1972).



port were circulated by the Director-General to the following sixteen Member States: Albania, Algeria, Cyprus, Egypt, France, Greece, Italy, Lebanon, Libya, Malta, Morocco, Spain, Syria, Tunisia, Turkey and Yugoslavia. Each was asked to submit its "views on the report in order to enable the Secretariat to draw up a preliminary draft of the convention."¹⁹ Israel was not sent a copy of the Rabat report.

In 1974, the 18th Session of the General Conference was asked to approve the two meetings that had been recommended at Rabat: a meeting of an intergovernmental preparatory committee of experts to be held in 1975, and an International Conference of States to be held in 1976. The General Conference gave its approval, requesting the Executive Board and the Director-General to "take all necessary measures to this effect," terming the end-product a "convention on the recognition of studies and degrees in the European and Arab countries bordering on the Mediterranean."²⁰

Invitations Determined by the Executive Board, 1975

As a result of the 1974 General Conference decision, it became the task of the Executive Board to decide upon the composition of the two meetings recommended by the Rabat Meeting and approved by the General Conference.

The UNESCO "Regulations for the general classification of the various categories of meetings convened by Unesco" distinguish between International Conferences of States and Intergovernmental Meetings other than International Conferences of States.²¹ When authorized by the General Conference, as was the case here, the Executive Board decides which states shall be invited to participate with full voting rights in International Conferences of States.²² In the case of other intergovernmental meetings, the Executive Board, acting on the Director-General's proposal and subject to "existing regulations applicable," decides which Member States shall be invited to participate with full voting rights.²³ In both cases, UNESCO Member States that are not invited to participate as full voting members are entitled to send observers to the meeting.²⁴

The Executive Board was thus required to decide upon a list of states to be invited to the two intergovernmental meetings needed for the

19. See Report of the Executive Board Programme and External Relations Commission, 97 EX/22, ¶23; Doc. II.D.6.
20. 18 C/Res. 1.322 (1974); Doc. II.D.3. See also UNESCO Programme and Budget for 1975-1976, 18 C/5 Approved, ¶¶1505 and 1519, pp.79 and 81 (1974).
21. The Regulations are printed in the UNESCO Collection of Basic Texts, pp.3-14; Doc. II.D.1. See also Part II.B above.
22. Id., at Art. 11, para. 1(a), p.4.
23. Id., at Art. 21, para. 1(a), p.6. As indicated in Part II.B, the reference to "existing regulations applicable" has been construed to include the General Conference classification of Member States in the five UNESCO regions in the case of regional meetings.
24. Id., at Art. 11, ¶2, and Art. 21, para. 2, pp.4 and 6.



development of the proposed "convention on the recognition of studies and degrees in the European and Arab countries bordering on the Mediterranean," that is, the 1975 meeting of an intergovernmental committee of experts, and the 1976 International Conference of States.

The question of invitations to the two meetings came before the Executive Board in May 1975 with a proposal by the Director-General couched in the following terms:²⁵

The Director-General accordingly proposes that the Executive Board should invite to participate in the Special Committee with the right to vote the governments of the following Member States, which belong to two different regions under the terms of resolutions 13 C/Resolution 5.91 and 18 C/Resolution 46.1 but whose close historical and geographical bonds make it possible to envisage their acceding to one single convention:

(i) European States Bordering on the Mediterranean

Albania	Malta
Cyprus	Monaco
France	Spain
Greece	Turkey
Italy	Yugoslavia

(ii) Arab States Bordering on the Mediterranean

Algeria	Morocco
Egypt	Syria
Lebanon	Tunisia
Libya	

The General Conference resolutions mentioned in the Director-General's proposal, resolutions 13 C/Resolution 5.91 (1964) and 18 C/Resolution 46.1 (1974), are the resolutions that define UNESCO regions and classify Member States as part of the regions so defined. As set out in Part II.B., above, the European States listed by the Director-General are all part of the European Region, and the Arab States are part of the Arab Region.²⁶ Israel belongs to neither region.

Subsequent to the circulation of the Director-General's proposal as quoted above, and in the course of the Executive Board meeting, the Director-General issued an "addendum-Corrigendum" which replaced the quoted paragraph with a new proposal that invitations to participate with the right to vote be extended to the same seventeen Member States named in the original proposal, which were now listed in alphabetical order.²⁷ The effect of the change was to delete the references to the regional structure of UNESCO and to the categories of European and Arab states bordering on

25. "Invitations to Intergovernmental Conferences and Meetings," 97 EX/9, Annex III, ¶5 (1975); Doc. II.D.4. The Director-General's proposal extended both to the intergovernmental expert committee and to the subsequent International Conference of States. See *id.*, at Annex III, para. 15, p.5.

26. See Part II.B above, and Docs. II.B.1 and II.B.9.



the Mediterranean. Israel was not mentioned in either proposal. The change was explained by the Deputy Director-General in the Executive Board's Programme and External Relations Commission as conforming to the usual practice of presenting lists of states in alphabetical order. The Deputy Director-General also commented that the references to General Conference Resolutions 13 C/Resolution 5.91 and 18 C/Resolution 46.1 were unnecessary and were therefore deleted.²⁸

Two votes were taken on the question of invitations to the proposed meetings, the first in the Executive Board's Programme and External Relations Commission on May 9, 1975, and the second in the Executive Board on May 22, 1975. In the May 9 vote, the Director-General's proposal was adopted, as amended, by 25 votes to one, with one abstention.²⁹ The United States cast the negative vote on the ground that the failure to include Israel conflicted with the "fundamental principle whereby every Member State had the right and duty to participate fully and regularly in the Organization's regional and international activities."³⁰

In the Executive Board itself, the Director-General's proposal as adopted by the Programme and External Relations Commission, was approved by a vote of 28 to 1, with 3 abstentions.³¹ The United States again cast the sole negative vote, stating that the inclusion of the list of invitations of all UNESCO Member States bordering on the Mediterranean except Israel "created an anomalous situation which was liable to lead to political conflict rather than normal collaboration between States and was therefore contrary to UNESCO's basic purposes and principles."³²

During the discussion in the Executive Board, the representative of Israel observed that her country met all of the criteria suggested by the Rabat Meeting of Experts for participation in the forthcoming meetings concerning the proposed regional convention on the recognition of higher education studies and degrees in European and Arab states bordering the Mediterranean.³³ Israel was a Mediterranean state both by location and

27. 97 EX/9 Add. & Corr. 2, dated May 15, 1975; Doc. II.D.5.

28. Report of the Executive Board Programme and External Relations Commission, 97 EX/22, ¶22, p.7 (1975); Doc. II.D.6.

29. Id., at ¶28, p.9. An identical proposal for participation in the International Conference of States was adopted by 28 votes to 1, with one abstention. Id., at ¶29, pp.9-10.

30. Id., at ¶30, pp.10-11.

31. UNESCO Executive Board, Provisional Summary Records, 97 EX/SR.18 (prov.), para. 3, p.4 (1975); Doc. II.D.7. The vote on invitations to the International Conference of States was 29 to 1 with 3 abstentions. Id., at ¶6, p.4.

32. Id., at ¶7, p.4. See also ¶¶8-16, pp.5-6, for explanations of vote by several Executive Board members who voted in favor of the resolution. Israel was not a member of the Executive Board and therefore did not vote.

33. Id., at 97 EX/SR.17 (prov.), para. 132, pp.20-21 (1975); Doc. II.D.7. The Israeli representative pointed out that the Rabat Meeting had proposed the involvement of two groups of states: Mediterranean states that had adhered to the Council of Europe agreements, note 14 supra, and Arab states that had adhered to the Arab Cultural Agreements. Ibid.



by culture and background. Israel was also a party to the 1953 Council of Europe Convention on the Equivalence of Diplomas that had been referred to in the Rabat Meeting report as a criterion for participation in the regional convention.³⁴ Israel therefore had every reason to expect to be invited to the proposed regional meetings and protested its exclusion from the invitation list placed before the Executive Board by the UNESCO Secretariat. The Israeli representative also pointed out that the regions into which UNESCO Member States had been classified need not be taken into account for the purpose of invitations to the present meetings since the meetings had been designed for states bordering on the Mediterranean rather than for the states of any particular region.³⁵ Israel was the only state bordering on the Mediterranean that was not included in the list that had been placed before the Executive Board.

In conclusion, the Israeli representative observed that the approval by the Executive Board of a list that ignored the existence of Israel as a Member State bordering on the Mediterranean would be a "grave decision" that would come at a time when it was hoped that UNESCO "would avoid politicization" and the discriminatory practices that were contrary to the principles which must guide UNESCO action.³⁶

Replying to the Israeli representative, the Director-General, Mr. M'Bow, said that the invitation list had been prepared by the Secretariat on the basis of the General Conference resolution. Mr. M'Bow said that if Israel had shown a desire to take part in the meetings, that fact would have been communicated to the Executive Board: "But Israel had not expressed such a desire and no other Member State had taken any steps in that direction, so that it could not be said that Israel had been excluded."³⁷

Mr. M'Bow emphasized that should Israel desire in fact to be invited to the proposed meetings concerning the conclusion of a convention on the equivalence of higher education studies and degrees, Israel would still be free to express such a demand which would present a question on which the Executive Board would have to take a decision.³⁸

The Director-General thought it extraordinary for Israel to speak of the recent politicization of UNESCO when Israel had opposed the admission of the Federal Republic of Germany to UNESCO in 1951. He asked, was this not a political act on the part of Israel? He also asked, was not the opposition for over twenty years to the representation of the Peoples' Repub-

34. See note 14, *supra*.

35. *Ibid.* The Israeli representative pointed out that the Deputy Director-General had considered the original references in the Director-General's proposals to the regional structure of UNESCO "unnecessary."
Ibid. See text at note 28 *supra*.

36. 97 EX/SR.17 (prov.), para. 132, pp.20-21 (1975).

37. *Id.*, at paras. 133.1-133.3, p.21.

38. *Id.*, at para. 133.2, p.21. Mr. M'Bow stated that the task of the Executive Board was to verify whether the Director-General's proposal conformed to the decision of the General Conference, and to take all necessary measures accordingly. *Id.*, at para. 133.1, p.21.



Mr. M'Bow said that as Director-General he would deplore a situation in which "any Member State whatever should not be fully able to exercise its rights" within UNESCO, but he observed that: "Press campaigns will resolve no problem concerning UNESCO." In his view, "patient and clear discussion within UNESCO" was needed to overcome difficulties of the kind that had developed at the 1974 Session of the General Conference.⁴⁰

Speaking just prior to the voting in the Executive Board, the Israeli representative said that she wished to make clear that she had not said that Israel had been excluded from the proposed meetings, but only that Israel had not been included in the list of Member States to be invited to the meetings. She said that Israel remained in favor of patient and clear discussion if it could contribute to ending the injustice to which Israel had been subjected at the 18th Session of the General Conference.⁴¹

In the course of the voting in the Executive Board, the Director-General once again observed that Israel had not asked to participate in the meetings to which the resolution under consideration in the Board referred.⁴²

The result of the vote in the Executive Board was to approve the invitation list as submitted by the Director-General both as to the 1975 meeting of government experts and as to the 1976 International Conference of States. The Executive Board decision thus extends invitations to both meetings to every UNESCO Member State bordering on the Mediterranean, with the exception of Israel. As stated throughout, the meetings have the purpose of preparing and adopting a "convention on the recognition of studies and degrees in higher education in European and Arab countries bordering on the Mediterranean."⁴³

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39. Id., at para. 133.3, p.21.

40. Ibid. The Director-General again remarked in the course of the voting that Israel had not asked to participate in the meetings to which the Executive Board resolution referred. Ibid

41. 97 EX/SR.18 (prov.), para. 1, p.4 (1975); Doc. II.D.7. The Israeli representative did not directly ask the Board to amend the list proposed by the Director-General to include Israel.

42. Id., at para. 4, p.4. The Director-General's remark was made after the vote on invitations to the meeting of government experts and prior to the vote on invitations to the International Conference of States. Following the latter vote, Mr. M'Bow stated that he had intervened between the votes to make clear that the Executive Board could still have included Israel in the latter meeting, which was a matter wholly controlled by the Executive Board. Id., at para. 18, p.6. See text at notes 21-23 above.

43. See 97 EX/Decisions, pp.22-23 (1975).



PART III: OTHER UNESCO ACTIONS

A. Elimination of Colonialism and Racism

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A. ELIMINATION OF COLONIALISM AND RACISMThe Withdrawal of South Africa, 1955

On April 5, 1955, the Union of South Africa notified the Director-General that the South African Government had decided to withdraw from UNESCO, effective December 31, 1956. In response to the Director-General's request for an explanation of the reasons for the South African decision, the government transmitted the following statement that had been made by the South African Minister of External Affairs before the South African House of Assembly in April 1955:

Having regard to the general criticism of the activities [of the South African government] as revealed at [the 1954 session of the UNESCO General Conference,] and also the interference in South Africa's racial problems by means of Unesco publications which are being advertised and distributed in the Union by the South African Institute of Race Relations, it was recently decided that the Union Government would withdraw from Unesco.¹

The criticism mentioned by the South African Foreign Minister related to South African Government's apartheid policy which was considered by speakers at the 1954 Session of the General Conference to be contrary to the human rights and fundamental freedoms affirmed both in the United Nations Charter and in the Constitution of UNESCO. Article I of the UNESCO Constitution states that the Organization's purpose is to:

contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.²

The same article also provides that:

1. See Report of the Director-General of UNESCO [for the Year 1955] para. 3, p.19 (1956), Doc. III.A.2; and 42 EX/43 (1955).
2. UNESCO Constitution, Art. I, para. 1, 4 UNTS 275, 278.



With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States Members of this Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction.³

At the conclusion of the debate referred to, the General Conference adopted a resolution that declared its "faith in the possibility of resolving all tensions by peaceful means through the exercise of restraint, tolerance, understanding and goodwill," and recommended that all Member States "encourage respect for justice, for the rule of law and for the human rights and fundamental freedoms" affirmed by the United Nations Charter and the UNESCO Constitution.⁴ A related resolution invited Member States to use "the social sciences in solving problems of discrimination and in the integration of minorities into the full social and cultural life of the community." The Director-General was asked in the latter resolution to give special attention in carrying out UNESCO's program, to measures designed to eliminate racial discrimination and eradicate racial prejudice, and to advise Member States, at their request, on measures for the removal of discrimination on account of race, sex, religion and national origin.⁵

In June 1955, having received from the Director-General a report of South Africa's withdrawal and the statement by the South African Foreign Minister, the UNESCO Executive Board adopted a resolution in which it expressed its regret at South Africa's decision and urged the Government to reconsider that decision before it took effect on December 31 of the following year. The Executive Board also declared that:

...in the matter of race problems, as in all other spheres, the planning and conduct of UNESCO's activities..... have never violated Article I, paragraph 3, of the Constitution, which prohibits the Organization from intervening in matters which are essentially within the domestic jurisdiction of the Member States.⁶

The Executive Board resolution also authorized the Director-General to take appropriate steps "in order that the Union of South Africa may continue its participation in the work of the Organization." South Africa did not reconsider its decision to withdraw and has not resumed its membership of UNESCO.

3. Id., at Art. I, para. 3.

4. 8 C/Res. IV.1.3.41, Social Science and Problems of International Understanding and Tensions (1954); Doc. III.A.1.

5. 8 C/Res. IV.1.3.42, The Social Sciences and Problems of Human Rights and Minorities (1954); Doc. III.A.1.

6. 42 EX/Dec. 4, para. B (1955), quoted from the Report of the Director-General, note 1, supra, at para. 4, p.19.



In 1960, coincident with the attainment of independence and the admission to UNESCO membership of newly independent states in Africa and Asia, the UNESCO General Conference undertook a basic review of the "role of UNESCO in contributing to the attainment of independence by colonial countries and peoples."

Pointing to the "provisions of Unesco's Constitution"⁷ and to "the democratic principles of the equality of rights of nations and peoples and their right to self-determination," a General Conference resolution adopted in 1960 observed that "only in conditions of freedom can man benefit to the full from education, science and culture," and that the colonial system, which "prevents the free development of international co-operation," is incompatible with the ideals of peace and progress upheld by Unesco."⁸ Stating that "one of Unesco's principal aims is to help eliminate racial, social and international tensions," and that "the liberation of all nations is an irresistible and irreversible process," the 1960 General Conference resolution declared:

- (a) That colonialism in all its forms and all its manifestations must be speedily abolished, and that accession to freedom and independence must not be delayed on the false pretext that a particular territory has not reached a sufficiently high standard in economic, social, educational and cultural matters;
- (b) That Unesco has a vital part to play in promoting the freedom and independence of colonial countries and peoples through its programmes in the fields of education, science and culture;
- (c) That one of Unesco's most urgent tasks is to help the newly independent countries, and those which are preparing for independence, to overcome any harmful after-effects of colonialism, such as economic, social and cultural underdevelopment, illiteracy, and the serious shortage of trained personnel.⁹

7. See UNESCO Constitution, Art. I, para. 1, quoted in the text at note 2 above.

8. 11 C/Res. 8.2 (1960); Doc. III.A.3. The resolution also stated that colonialism "impedes the expansion of forms of culture attuned to the dignity and the peculiar genius of the individual countries." Ibid.

9. Id., at operative para. 1.



The Director-General was instructed by the resolution to give the promotion of the freedom and independence of colonial countries an "increasingly prominent place" in UNESCO's programs in the fields of education, science and culture.¹⁰

The initiative taken by the General Conference in 1960 was further developed at the 1962 and 1964 sessions of the General Conference in resolutions entitled: "The role of Unesco in contributing to the attainment of independence by colonial countries and peoples."¹¹

The 1962 resolution affirmed UNESCO's role as defined in 1960, and stated that UNESCO should "make its most direct contribution to peoples in the process of attaining nationhood, and to newly-independent nations, by assisting in their educational planning related to economic and social development and in the implementation of their programmes of education, science and culture." The resolution authorized the Director-General to "intensify his efforts in this direction," giving particular attention in executing the UNESCO program "to the problems of overcoming educational, scientific and cultural underdevelopment of countries which have recently won their national independence or are endeavouring to attain it."¹²

The 1964 resolution noted the "considerable practical work" that had been done by UNESCO in "assisting...colonial countries and peoples to accelerate their educational, scientific and cultural development, thus enabling them better to prepare for independence." The resolution asked the Director-General to continue to give special emphasis to "the Organization's activities on behalf of the countries and peoples which have not yet attained independence," stating that the most valuable fields for such action include:

educational planning, the reform of school organization and curricula, the elimination of illiteracy, the training of qualified national personnel, the organization and development of science and technology in and on behalf of the countries concerned, the study, preservation and presentation of national cultures, and the development of information media.¹³

10. Id., at operative para. 2. Member States were asked to provide assistance to newly independent countries in education, science and culture, both through UNESCO and through bilateral programs. Id., at operative para. 3.

11. 12 C/Res. 8.2 (1962); and 13 C/Res. 6.3 (1964); Docs. III.A.4, and III.A.6, respectively.

12. 12 C/Res. 8.2, supra. The Director-General was asked to carry forward "research on any harmful consequences of colonialism in the fields of education, science and culture, with a view to promoting the practical implementation of measures designed to eliminate such consequences." Ibid.

13. 14 C/Res. 6.3, supra.



Under Article II, paragraph 1, of the UNESCO Constitution, membership of the United Nations "shall carry with it the right to membership" of UNESCO.¹⁴ Portugal, admitted to the United Nations on December 14, 1955, thus had the right to assume membership of UNESCO as of that date. Portugal did not choose to do so, however, and thus was not a member of UNESCO during the development by the General Conference of the UNESCO role in the elimination of colonialism described above.

In this period, although not a member of UNESCO, Portugal participated in the annual International Conferences on Public Education convened by UNESCO jointly with the International Bureau of Education (IBE).¹⁵ In 1963, Portugal's presence at the Public Education Conference was protested by some African states who demanded the exclusion of the Portuguese delegates on the grounds that the Portuguese Government "keeps the Africans in bondage... and denies to them their legitimate rights to the pursuit of the development of their culture and to the enjoyment of human rights."¹⁶ The Conference voted after considerable debate to exclude the Portuguese delegation, who were accordingly informed that they could not be authorized to continue their participation in the Conference on Public Education.¹⁷

Considering that UNESCO bore joint responsibility with the International Bureau of Education for invitations to the Public Education Conferences, the question of Portuguese participation in the conferences was raised in the UNESCO Executive Board in 1963, and in the UNESCO General Conference in 1964. The General Conference decided in 1964 that, for UNESCO's part in the invitation process, UNESCO would agree to the invitation to future sessions of the International Conference on Public Education of only the following three groups of states:

- (a) all Member States and Associate Members of UNESCO;
- (b) the Member States of IBE which are also members of UNESCO; [and]
- (c) any other State which is not a member of either organization, provided:

14. UNESCO Constitution, Art. II, para. 1, 4 UNTS 275, 280.

15. The International Conference on Public Education is an annual inter-governmental meeting convened, organized and financed jointly since 1947 by UNESCO and the International Bureau of Education (IBE), an independent intergovernmental organization with headquarters in Paris.

16. Report by the UNESCO Director-General on the XXVth International Conference on Public Education, Geneva, 1963, 66 EX/3, para. 3, p.2 (1963).

17. Id., at paras. 9-10, p.6. The vote in the International Conference on Public Education was 40 in favor of excluding Portugal, to 23 against, with 17 abstentions. Ibid.



(i) that it act in accordance with the principles set forth in the Constitution,

(ii) that neither organization oppose the invitation by a vote, the decision to invite, in the case of Unesco, being taken by a two-thirds majority of the Executive Board.¹⁸

The UNESCO General Conference decision thus effectively established a veto power for the UNESCO Executive Board in the case of invitations to states that were not members of UNESCO, while assuring the invitation to the joint UNESCO-IBE Conferences on Public Education of all Member States and Associate Members of UNESCO.

The UNESCO General Conference decision was taken in November 1964, effective for the 1965 session of the International Conference on Public Education. Since at the time the decision was taken, Portugal, although a member of the United Nations, had not assumed UNESCO membership,¹⁹ the result was to give a two-thirds majority of the UNESCO Executive Board the power to exclude Portuguese participation in the Conference on Public Education.

Portugal thereupon assumed membership of UNESCO, thus qualifying as a UNESCO Member State for participation in the 1965 International Conference on Public Education under the terms of the 1964 General Conference resolution quoted above.²⁰

In 1965, however, the UNESCO Executive Board took up the question of the consequences of Portugal's becoming a member of UNESCO, and decided "not to give effect to any invitations to Portugal" pending completion of "a study in situ of the present state of education in African territories under Portuguese administration, from the point of view of the aims and general objectives of Unesco as defined in its Constitution and the relevant resolutions of the General Conference."²¹

The 1965 Executive Board resolution took note of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples,²² and "its implications with respect to the African territories under Portuguese administration." The resolution asked the Director-

18. 13 C/Res. 1.116 (1964). The General Conference resolution replaces an Executive Board decision that had contemplated approval of invitations to the Conferences on Public Education both to UNESCO Member States and to "Member States of the IBE which are members of the United Nations or of one or more agencies of the United Nations." 67 EX/Dec. 3.3.1 (1964).

19. See UNESCO Constitution, Art. II, para. 1, quoted in the text at note 14 *supra*.

20. See Report of the Director-General of UNESCO [for the Year 1964].

21. 70 EX/Dec. 14, paras. 4 and 5 (1965).

22. United Nations General Assembly Res. 1514 (XV), 15 GAOR Supp., pp.66-67 (1960).



General to carry out the study of the state of education in Portuguese African territories "with the authorization of Portuguese Government, and with the aid either of qualified officials of the [UNESCO] Secretariat or of appropriate eminent personalities."²³

Portugal protested that the Executive Board resolution was "manifestly illegal and discriminatory," under both the UNESCO Constitution and international law. Portugal stated that the resolution was a "flagrant violation" of the 1964 General Conference resolution relating to invitations to the International Conference on Public Education, and that the resolution was:

...contrary to the principles of equality and non-discrimination between Member States flowing from Article 1 of the United Nations Charter and Articles IV.8(a), VII.1, VIII and XIII.1 of Unesco's Constitution.²⁴

Portugal protested that the Executive Board resolution constituted "a sanction against a Member State and a deprivation of its rights for which no provision is made either in Article II.4 and 5 or in Article IV.8(b)" of the UNESCO Constitution.²⁵

Viewing the matter as "a problem of the utmost importance concerning the interpretation of Unesco's Constitution and of the rights and privileges of its members," Portugal requested that the issue be submitted to the International Court of Justice for an advisory opinion on the following question:

Is the resolution, whereby a member of Unesco is suspended from exercising the right to take part in conferences to which all Member States are invited without any other special qualifications being required of them, compatible with the Organization's Constitution, with other international agreements and with the general legal principles applying?²⁶

With regard to the proposed study of the state of education in Portugal's African territories, Portugal stated that it would be willing

23. 70 EX/Dec. 14, para. 4 (1965).

24. See letter from the Portuguese Ministry of Foreign Affairs to the Director-General of UNESCO, 30 June 1965, 14 C/34, Annex I (1966). Cf. Art. 2, para. 1, of the United Nations Charter, which refers to the "sovereign equality" of Member States. The cited provisions of the UNESCO Constitution refer to voting rights in the General Conference, the establishment of National Commissions, reports by Member States and the amendment of the Constitution, respectively. See Doc. I.A.1.

25. UNESCO Constitution Art. II, paras. 4 and 5, refer to the suspension and expulsion of UNESCO Member States that have been suspended or expelled by the United Nations. Art. IV.8(b) refers to the loss of vote in the General Conference of Member States in arrears in the payment of UNESCO contributions.



to consent to the carrying out of the study, but that Portugal could not give its consent unless there was a clear understanding on two points: First, that the study "is not intended to be a discriminatory measure against Portugal and that the countries which have suggested it are therefore prepared to agree to an identical study in their territories;" and, second, that "the carrying out of this study will not suspend the exercise of any of Portugal's rights as a Member State of Unesco."²⁷

The Portuguese request for an advisory opinion from the International Court of Justice was considered at length in the Legal Committee of the UNESCO General Conference in 1966. The Legal Committee recommended that the General Conference ask the International Court of Justice for an advisory opinion on the following question:

Does the Constitution of Unesco...give the power to withhold from a Member State, by virtue of decisions of the General Conference or Executive Board, any invitations to meetings convened by UNESCO....?²⁸

The General Conference decided, however, to confirm the decision of the Executive Board and to reject the request of the Portuguese Government for an advisory opinion.²⁹ The General Conference resolution stated that "Portugal continues to pursue in the African territories under its domination a policy of colonialism and racial discrimination which deprives the peoples of those territories of their most elementary rights to education and culture, thus violating the fundamental obligations of every member of Unesco." It also reaffirmed the right of the General Conference "as the sovereign organ of Unesco, to interpret the provisions of the Constitution," and particularly the provisions giving the Executive Board authority to take all necessary measures to execute UNESCO's program in accordance with General Conference decisions.³⁰

Portugal accordingly was denied the right to participate in the joint UNESCO-IBE International Conferences on Public Education, and was not invited by the Executive Board or the Director-General to participate in other UNESCO meetings.

26. 14 C/34, note 24 supra, at Annex I, p.2. Portugal also requested that the International Court be asked whether the UNESCO Executive Board is the body competent to take such a decision. Ibid.

27. Id., at Annex II.

28. 14 C/90, Annex, p.15 (1966).

29. 14 C/Res. 20 (1966). The draft resolution adopted by the General Conference was submitted by the following eight states: India, United Arab Republic, Senegal, Tanzania, Chad, Czechoslovakia, the USSR and Yugoslavia. 14 C/DR.207 (1966).

30. 14 C/Res. 20 (1966). Since the substitute draft resolution was adopted, note 29 supra, no vote was taken on the draft resolution submitted by the Legal Committee, note 28 supra. See Records of the General Conference, Fourteenth Session, Proceedings, 31st-35th Plenary Meetings, pp.864-1005 (1966).



In December 1965, after reviewing the lack of progress made in implementing its 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples,³¹ the United Nations General Assembly adopted a resolution deploring "the negative attitude of certain colonial Powers, and in particular the unacceptable attitude of the Governments of Portugal and South Africa, which refuse to recognize the right of colonial peoples to independence."³² The resolution recognized "the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence," and requested, among others, the Specialized Agencies of the United Nations "to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination."³³

In the 1966 session of the UNESCO General Conference it was proposed that UNESCO carry out the General Assembly's request by withholding assistance from Portugal and South Africa, and by excluding these countries from UNESCO meetings, until they had complied with the General Assembly resolution.³⁴

Considering that the UNESCO Constitution provided for the suspension of the rights and privileges of UNESCO membership only in the case of a state suspended by the United Nations from membership of the United Nations,³⁵ some UNESCO Member States questioned whether the UNESCO General Conference had the authority to exclude a UNESCO member from participating in UNESCO programs on any other grounds. The debate in the Plenary Meeting of the General Conference showed a consensus deploring the racial discrimination and apartheid practiced by the Governments of Portu-

31: Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV), 15 GAOR Supp., pp. 66-67 (1960). The resolution states that "all peoples have an inalienable right to complete freedom [and to] the exercise of their sovereignty," and "declares" that: "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation." *Id.*, at p.67.

32: General Assembly Resolution 2105 (XX), 20 GAOR Supp. 14, pp.3-4 (A/6014) (1965).

33: *Id.*, at operative paras. 10 and 11, p.4. The resolution also requested all states and international organizations to withhold such assistance from Portugal and South Africa. *Ibid.*

34: See 14 G/DR.143 (1966), submitted by the following twelve states: Algeria, Cameroon, Cuba, Czechoslovakia, India, Iran, Mongolia, Pakistan, Senegal, United Arab Republic, USSR and Zambia.

35: See UNESCO Constitution, Art. II, para. 4, which provides that, upon the request of the United Nations, UNESCO Member States "which are suspended from the exercise of the rights and privileges of membership of



gal, South Africa and Southern Rhodesia, but some members expressed opposition to the proposed exclusion of these three countries from UNESCO activities on two basic grounds. First, some countries opposed to such exclusion argued that UNESCO's effectiveness lay in the universality of its membership and of its programs, and that participation in UNESCO's work was more likely to bring about change in a government's policies than exclusion from UNESCO activities. Second, some of the countries opposed to the exclusionary action considered that such action could not be taken without the amendment of the UNESCO Constitution.³⁶ Despite such opposition, the exclusionary measures were adopted in the Plenary Meeting of the General Conference by a substantial majority.

The provisions withholding UNESCO assistance from Portugal, South Africa and Southern Rhodesia, and excluding the three countries from UNESCO meetings and activities, formed part of a General Conference resolution dealing with "Unesco's tasks in the light of the resolutions adopted by the General Assembly of the United Nations at its twentieth session on questions relating to the liquidation of colonialism and racialism."³⁷ The General Conference resolution states that "in accordance with the decisions of the United Nations General Assembly," the Director-General was authorized:

to withhold assistance from the Governments of Portugal, the Republic of South Africa and the illegal regime of Southern Rhodesia in matters relating to education, science and culture, and not to invite them to attend conferences or to take part in other UNESCO activities, participation in which might be considered as conferring technical assistance, until such time as the governments of those countries abandon their policy of colonial domination and racial discrimination.

The 1966 General Conference resolution also condemned "all forms and manifestations of colonialism and neo-colonialism," and stated that colonialism, apartheid and racial discrimination "constitute a threat to international peace and security and are a crime against humanity."³⁸

In the area of UNESCO's program, the 1966 General Conference resolution authorized the Director-General to emphasize assistance to "the newly independent countries and peoples and those that have not yet attained independence," and to emphasize research on "the harmful effects of colonialism, neo-colonialism and racialism on the social and economic life of

the United Nations" shall be suspended from UNESCO. 4 UNTS 275, 280.

36. See Records of the General Conference, Fourteenth Session, Proceedings, 31st-35th Plenary Meetings, pp.864-1005 (1966). A British proposal to delete the paragraph in question, 14 C/DR.160, para. 8 (1966), was defeated by 34 votes in favor, to 58 opposed, with 7 abstentions. Id., at 35th Plenary Meeting, paras. 3.8-3.10, pp.992-93. The sanctions paragraph proposed in 14 C/DR.143, note 34 supra, was adopted without change by a vote of 61 in favor, to 34 opposed, with 9 abstentions. Id., at para. 5.2.

37. 14 C/Res. 11 (1966); Doc. III.A.8. The resolution as a whole was adopted in the Plenary Meeting by a vote of 72 in favor, to 11 opposed, with 26 abstentions. Id., at 35th Plenary Meeting, para. 5.18, p.994.



countries and on the development of their education, science and culture, with a view to ... practical measures to eradicate such after-effects" of colonialism, neo-colonialism and racialism.³⁹

In 1967, referring to the role of the United Nations in making recommendations for the co-ordination of the policies and activities of the Specialized Agencies, the United Nations General Assembly resolved that the Specialized Agencies "should extend their full co-operation to the United Nations in achieving the objectives" of the Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples.⁴⁰ The General Assembly resolution recommended that the Specialized Agencies "assist the peoples struggling for their liberation from colonial rule," in particular the "oppressed peoples of Southern Rhodesia and the Territories under Portuguese domination." It also reiterated the earlier call upon the Specialized Agencies to withhold assistance to South Africa and Portugal "until they renounce their policy of racial discrimination and colonial domination."⁴¹

In view of the United Nations General Assembly's 1967 resolution, the 1968 UNESCO General Conference reaffirmed its condemnation of colonialism and racism, and called for a "further intensification of Unesco activities, within its own terms of reference" for "comprehensive assistance to peoples fighting for their liberation from colonial domination."⁴² Directing its attention to what it termed Portugal's "policy of genocide and racial extermination" followed in the territories under Portugal's domination, the General Conference condemned "Portugal's attitude, which is in contradiction with Unesco's ideals as they appear in the Organization's Constitution," and invited Member States "to suspend all co-operation with Portugal in the fields of education, science and culture."⁴³

General Conference "Omnibus" Resolutions

The 1968 General Conference resolution just discussed dealt with ★

38. Id., at paras. 1 and 2(d). There appears to have been no explicit consideration of the competence of the General Conference to express judgments on the legality of the regime in Southern Rhodesia, or to state that colonialism, apartheid and racial discrimination constitute threats to the peace and crimes against humanity.

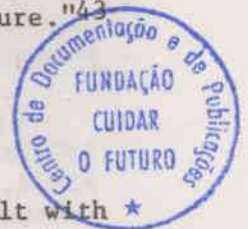
39. Id., at paras. 2(a) and (b). Para. 2(c) asked wider use of UNESCO information programs to help eradicate colonialism, neo-colonialism and racialism. Ibid.

40. General Assembly Resolution 2311 (XXII), 22 GAOR Supp. 16, p.50 (A/6716)(1967). See note 31 above.

41. Id., at paras. 3 and 4.

42. 15 C/Res. 9.12, para. 3 (1968); Doc. III.A.9. The resolution also reaffirmed the withholding of assistance from Portugal, South Africa and Southern Rhodesia. Id., at para. 5.

43. 15 C/Res. 9.14, paras. 1 and 2 (1968); Doc. III.A.9. The Director-General was asked to increase UNESCO aid to "the African refugees from countries and territories still under Portuguese domination." Id., at



"Unesco's contribution to peace and Unesco's task with respect to the elimination of colonialism and racialism."⁴⁴ Based on the constitutional duty of UNESCO to promote "international peace and security through the educational, scientific and cultural co-operation of all peoples," the 1968 resolution dealt in separate sections with what were seen as three related areas of UNESCO's program: principles of peaceful co-operation among Member States; the liquidation of colonialism and racialism; and the promotion of human rights and fundamental freedoms.⁴⁵ In 1970, and in later years, the three areas, and others,⁴⁶ have been integrated in a single resolution that has come to be called the "omnibus" resolution. Such resolutions usually consist of a lengthy preamble followed by as many as twenty-eight operative paragraphs. The omnibus resolutions are normally debated and drafted in a special working group, or in a drafting committee of limited membership, and are reported directly to the Plenary Meeting. They contain general policy guidance for the Executive Board and the Director-General, and exhortatory provisions addressed to Member States and others on the subjects covered by the resolution.

The 1970 omnibus resolution⁴⁷ stated in its preamble that "Unesco should take all appropriate initiatives, within its fields of responsibility, designed to create and consolidate the intellectual conditions ... for international understanding and peace." The preamble also referred to the need to promote human rights, and to the "pernicious influence of colonialism, neo-colonialism, racialism and fascism and other anti-humanistic concepts on the intellectual life of the peoples of a number of countries." The resolution's operative paragraphs called upon Member States "actively to oppose colonialism, neo-colonialism, racialism and fascism and all forms of repression and tyranny," and reaffirmed the decision to withhold assistance from Portugal, South Africa and Southern Rhodesia.⁴⁸

As to the 'Advancement of peace,' the 1970 General Conference resolution referred to the Director-General's report on UNESCO action in this field, and authorized the Director-General to implement the report with particular regard to certain aspects enumerated in the resolution.⁴⁹

para. 3.

44. 15 C/Res. 9 (1968); Doc. III.A.9.

45. 15 C/Res. 9.11, 9.12, and 9.13 (1968). See also text at note 43 above concerning 15 C/Res. 9.14.

46. 16 C/Res. 8, part III, para. 14 (1970), urges the convening of a European Security Conference; both 17 C/Res. 10, part VI, para. 27 (1972), and 18 C/Res. 11, part V, para. 21 (1974), deal with disarmament; and 18 C/Res. 11, part VI, paras. 22-23 (1974), refer to the new international economic order and the practices of transnational corporations.

47. 16 C/Res. 8 (1970); Doc. III.A.10.

48. *Id.*, at paras. 3 and 4. The resolution also initiated the investigation of non-governmental organizations having branches, etc., in South Africa, in Southern Rhodesia or in Portuguese-dominated African territories, discussed in Part III.B, below. See *id.*, at paras 9-10.

49. *Id.*, at paras. 12-13. See the Director-General's report on a plan of action for the advancement of peace, 16 C/12 (1970).



The 1972 omnibus resolution, which covered much the same ground as the 1970 resolution,⁵⁰ drew attention to resolutions of the General Assembly concerning the representation of Angola, Mozambique and Guinea-Bissau as Associate Members of the United Nations Economic Commission for Africa,⁵¹ and noted that "any decisions of the United Nations, particularly with regard to its structures and functioning, should be taken into consideration" by UNESCO.⁵² The 1972 General Conference omnibus resolution also drew attention to a 1972 United Nations General Assembly determination that "the national liberation movements of Angola, Guinea-Bissau and Cape Verde and Mozambique are the authentic representatives of the true aspirations of those territories,"⁵³ and decided "to associate with [UNESCO's] activities, including those of the General Conference, the representatives of the African liberation movements recognized by the Organization of African Unity."⁵⁴

Portugal, which had been denied UNESCO assistance and barred from participation in UNESCO meetings since 1966, and whose government's attitude and policies had been vigorously denounced in the UNESCO General Conference in the same period, withdrew from UNESCO in 1972, prior to the decision to grant observer status to the representatives of liberation movements in the Portuguese African territories. Portugal resumed its participation in UNESCO in 1974 following its change in government and that government's decisions to grant independence to the African territories.⁵⁵

The 1974 Omnibus Resolution

The omnibus resolution adopted at the 18th Session of the General Conference in 1974 contained 43 paragraphs in the preamble and 26 operative paragraphs.⁵⁶ It included all the elements of the previous omnibus

50. 17 C/Res. 10 (1972); Doc. III.A.11. The 1972 resolution also included a section on disarmament. *Id.*, at part VI, para. 27. See note 46 above.
51. General Assembly Resolutions 2795 (XXVI) and 2878 (XXVI), adopted in Dec. 1971, 26 GAOR Supp. 29, pp.98-100 and 16-17 (A/8429)(1971).
52. 17 C/Res. 10, *supra*.
53. *Id.*, referring to General Assembly Resolution 2918 (XXVII)(1972).
54. *Id.*, at operative para. 5. The resolution also reaffirmed the 1966 decision to withhold UNESCO assistance from Portugal, South Africa and Southern Rhodesia. *Id.*, at para. 7.
55. See Report of the Director-General [for the Year 1974].
56. 18 C/Res. 11 (1974); Doc. III.A.14; entitled "Unesco's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism."



resolutions while adding references to the "new international economic order" and to the Palestine Liberation Organization.⁵⁷

While welcoming "the change in world policy from the 'cold war' to international détente," the preamble to the 1974 resolution stated that "colonialism, neo-colonialism, imperialism, racialism, apartheid and foreign occupation constitute a permanent threat to peace and the security of the nations." The preamble made the same statement with regard to the "resurgence in some countries of fascist and neo-fascist forces and other forms of totalitarian oppression by the deliberate and aggressive action of imperialism."⁵⁸

Citing previous United Nations resolutions concerning the role of the Specialized Agencies, the preamble stated that "the peoples struggling for their liberation from colonialism, racialism and foreign occupation must be associated in Unesco's activities."⁵⁹ In this connection, the preamble also cited General Assembly resolutions recognizing that "the people of Palestine are entitled to equal rights and self-determination," and recognizing that the "Palestine Liberation Organization is the representative of the Palestinian people," pointing out that the General Conference had just adopted a resolution associating the Palestine Liberation Organization with UNESCO's activities.⁶⁰

The preamble then cited United Nations General Assembly resolutions relating to the Establishment of a New International Economic Order, to the Disarmament Decade and to the need for a reduction of the military budgets of the permanent members of the Security Council,⁶¹ and stated that, "within its fields of competence," it is "essential for Unesco to contribute to the implementation" of these resolutions.⁶² It also stated that "the time has come to make definite preparations for the holding of an International Conference on Disarmament," to which UNESCO must contri-

57. See text at note 46 above. Considering that Portugal had changed its attitude towards its overseas territories, the 1974 resolution does not mention Portugal in reiterating the withholding of UNESCO assistance from South Africa and Southern Rhodesia. With regard to the Palestine Liberation Organization, the resolution refers to the 18th Session resolutions concerning participation by that organization in the work of UNESCO. See Part III.D below.

58. 18 C/Res. 11, supra, at the 3rd, 10th and 12th paragraphs of the preamble. "Imperialism" and "foreign occupation" are new additions to the list.

59. Id., at the 19th and 25th paragraphs of the preamble. The resolutions cited were General Assembly Resolutions 2555 (XXIV)(1969) and 2621 (XXV)(1970).

60. Id., at the 22nd-24th paragraphs of the preamble. The resolutions cited were General Assembly Resolutions 2672 (XXV)(1970) and 3210 (XXIX)(1974). UNESCO's relations with the Palestine Liberation Organization are discussed in Part III.D below.

61. General Assembly Resolutions 3201 (S-VI)(1974), 2602E (XXIV)(1969) and 3093 (XXVIII)(1973), respectively. As to the New International Economic Order, see 18 C/Res. 12.1 (1974).

62. 18 C/Res. 11, supra, at the 26th-29th paragraphs of the preamble.



bute "within its fields of competence."⁶³

The 1974 resolution's operative paragraphs combine both broad policy decisions for UNESCO and specific instructions to the Director-General, and in addition make general recommendations to Member States on a number of subjects. Illustrative examples are quoted below.

The resolution declared that:

Unesco should take a more active part in the struggle against all forms and manifestations of fascism, neo-colonialism and all other forms of oppression and tyranny, racialism and apartheid caused by imperialism

The resolution further declared that "Unesco must intensify its action in this field," and invited all Member States to "lend Unesco effective support in its activities on behalf of world peace, international understanding and the promotion of human rights."⁶⁴

With regard to détente, the 1974 omnibus resolution called upon Member States to strive "to make the process irreversible," and asked the Director-General to prepare a long-term UNESCO program of measures to strengthen peace and to further international détente, including research, symposia and public information activities.⁶⁵

The 1974 resolution reaffirmed the earlier General Conference decisions to withhold UNESCO assistance from the "racialist Government of the Republic of South Africa" and from the "illegal and racist regime of Southern Rhodesia," and to refrain from inviting these countries to participate in UNESCO activities until they have "put an end to their policy of racial discrimination." The resolution also invited UNESCO Member States "that are also members of other organizations and agencies, ... to have the Republic of South Africa and Southern Rhodesia excluded from any meetings or activities [of such organizations and agencies] in which these two countries might presume to participate."⁶⁶

With regard to colonialism, the 1974 omnibus resolution declared that UNESCO must "intensify its action on behalf of the peoples struggling against colonialism, racialism and foreign domination and occupation," and

63. Id., at the 30th paragraph of the preamble.

64. Id., at operative paras. 2-4.

65. Id., at operative paras. 5-6. Para. 7 states a number of conditions required for "genuine international co-operation" including, for example, "a realization of the growing interdependence of countries and of the need for the establishment of a new international economic order."

66. Id., at operative paras. 8 and 9. Operative paras. 17 and 18 continue the investigation of non-governmental organizations with branches, etc., in South Africa and Southern Rhodesia discussed in Part III.B. below.



called upon the Director-General to increase "the resources made available to assist the Palestine liberation movement, the liberation movements recognized by the Organization of African Unity and the peoples of liberated areas."⁶⁷ The resolution also expressed "the firm hope that Palestine will join the community of nations within the international organizations, including Unesco."⁶⁸

The 1974 resolution strongly condemned "all forms and varieties of racialism, fascism and apartheid, and all other ideologies which inspire national or racial hatred and violations of human rights and fundamental freedoms."⁶⁹ The preamble to the resolution declared that "apartheid is a crime against humanity, a violation of international law and of [the United Nations Charter,] and a threat to world peace."⁷⁰ The resolution also continued UNESCO's policy of severing relations with non-governmental organizations found to be supporting racial discrimination through branches or activities in South Africa or Southern Rhodesia,⁷¹ and in addition requested the Director-General:

to ensure that Unesco's dealings with banks and businesses are subject to the same rules concerning economic sanctions against [South Africa and Southern Rhodesia] as are applied by the Secretary-General of the United Nations in pursuance of the relevant resolutions of the General Assembly.⁷²

General Conference Consideration of the 1974 Omnibus Resolution

The 1974 omnibus resolution was drafted in a "Working Group on Peace" established by the General Conference at its 1974 session. Taking into account six draft resolutions that had been introduced at the Plenary Meeting,⁷³ the Working Group produced a single draft resolution which

67. Id., at operative paras. 11-12.

68. Id., at operative para. 13.

69. Id., at operative para. 14.

70. Id., at para. 37 of the preamble. The United States sought to replace "crime against humanity" by "criminal policy," and "a threat to world peace" by "endangers world peace." 18 C/VR.45 (prov.), para. 16, p.5 (1974). The proposed amendment was rejected by 48 votes to 32, with 11 abstentions. Id., at paras. 33.1-33.2, p.7.

71. 18 C/Res. 11, supra, at paras. 17(b) and 18. See Part III.B below.

72. Id., at operative para. 17(d).

73. See 18 C/PLEN/DR.2 (USSR); DR.3 (USSR); DR.7 (USSR, Eastern European states and others); DR.11 (German Democratic Republic, Algeria, Cuba, India, Syria, Togo, Ethiopia and Hungary); DR.12 (chiefly African, Arab and Asian states); and DR.18 (the Netherlands, Dahomey, Jamaica, Philippines, Mexico, France, Italy, Togo and Indonesia) (1974); see Doc. III.A.12.



served as the basis for General Conference discussion⁷⁴ and, with relatively few changes, was adopted by the General Conference as the 1974 resolution on "Unesco's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism."⁷⁵

Several of the issues raised in the Plenary Meeting of the General Conference with respect to the draft resolution submitted by the Working Group on Peace are described below.

With regard to South Africa and Southern Rhodesia, the draft resolution submitted by the Working Group on Peace contained a paragraph that asked the Director-General "not to associate Unesco with any joint meeting to which the Republic of South Africa or Southern Rhodesia are invited by other agencies."⁷⁶ The Deputy Director-General, Mr. Fobes, commented that this paragraph appeared "to limit the capacity of the Director-General to co-operate in meetings, including technical meetings, which might be held by the United Nations Environmental Programme" concerning subjects within the fields of UNESCO competence.⁷⁷ Mr. Fobes suggested that the desired end might be achieved through action by UNESCO Member States within the other organizations of which they were members to exclude South Africa and Southern Rhodesia from the meetings of these organizations. In view of Mr. Fobes' comments, the Plenary Meeting deleted the proposed paragraph.⁷⁸

With regard to measures against apartheid and racial discrimination, the Working Group proposal would have asked the Director-General to ensure that UNESCO had "no transactions with any banking institutions or consortium which has transactions with [South Africa or Southern Rhodesia] or with any firm which secures any of its supplies from these countries."⁷⁹ Speaking for the Director-General, Mr. Fobes commented that the Working Group proposal would be costly and impossible to administer.⁸⁰ The proposal was accordingly replaced by the paragraph quoted above,⁸¹ calling

74. 18 C/PLEN/DR.28 (1974); Doc. III.A.13.

75. 18 C/Res. 11 (1974); Doc. III.A.14.

76. 18 C/PLEN/DR.28, operative para. 9, p.5 (1974).

77. 18 C/VR.44 (prov.), para. 2.10, p.5. (1974).

78. 18 C/VR.45 (prov.), paras. 203.3-221.2, pp.30-32 (1974). As indicated in the text at note 66 above, the resolution asked UNESCO Member States to bring about the exclusion by other organizations of South Africa and Southern Rhodesia from meetings, etc., sponsored by those organizations. A proposal by Canada to delete this paragraph was defeated in the Plenary Meeting by a vote of 67 to 26, with 5 abstentions. 18 C/VR.45 (prov.), paras. 221.3-221.4, p.32 (1974).

79. 18 C/PLEN/DR.28, para. 18(c), p.6 (1974).

80. 18 C/VR.46 (prov.), paras. 8.1-32, pp.4-7 (1974).

81. See text at note 72 above.



for ensuring that UNESCO's dealings with banks and businesses are subject to the same economic sanctions rules as are applied by the Secretary-General of the United Nations in respect of United Nations transactions. As to this new proposal, Mr. Fobes explained that the United Nations presently had no rule restricting the placing of accounts with banks that had transactions with South Africa and Southern Rhodesia. He said that in any event, UNESCO did not deal with suppliers in these two countries, so that the resolution would in effect simply confirm the policy followed by UNESCO. Mr. Fobes said it would not be unreasonable to ask UNESCO "to conform to the administrative and financial rules of the United Nations since we are part of a common system," and since many such matters were already settled by common agreement.⁸²

With regard to Palestine, the Working Group proposal included the paragraph to which attention has already been drawn,⁸³ that is, the paragraph expressing "the firm hope that Palestine will join the community of nations within the international organizations including Unesco." At the Plenary Meeting, Israel, supported by the United States, moved to delete the paragraph as "irrelevant." The Israeli proposal was defeated by 60 votes to 18, with 20 abstentions.⁸⁴ Several delegates who had voted for the Israeli proposal to delete the paragraph, or who had abstained, said that they considered that the status of Palestine was a major political issue that UNESCO was not competent to resolve. The delegate of Australia explained his abstention by stating that his government would accept the creation of a Palestinian state alongside Israel, but his government could not agree to the adoption of the proposed resolution by the UNESCO General Conference "against the background of the current debate at the United Nations General Assembly, where the advocates of the rights of the Palestine people have declined to admit any reference to the parallel rights of the State of Israel to exist."⁸⁵

With the changes indicated above, and others, the draft resolution proposed by the Working Group on Peace was adopted by the Plenary Meeting by 72 votes in favor, to 11 opposed, with 16 abstentions.⁸⁶

Many of the delegates who had voted against the 1974 resolution, or who had abstained, made statements explaining their votes. The delegate

82. 18 C/VR.46 (prov.), paras. 18, 22 and 28, pp.5-6 (1974).

83. See text at note 68 above.

84. 18 C/VR.45 (prov.), paras. 268-270 and 273.1-273.2, pp.37-38 (1974).

85. Id., at para. 290, p.39. See also statements by Canada, para. 274; New Zealand, para. 276; Switzerland, para. 278; the United States, para. 282; and France, para. 284; id., at pp.38-39.

86. 18 C/VR.46 (prov.), para. 139.3, p.23 (1974). The debate in the Plenary Meeting extended over four meetings on two days. See 18 C/VR. 43-46 (prov.)(1974).



of Norway, speaking for Denmark, Finland, Iceland, Norway and Sweden, said that the five countries had abstained "because, among other things, the question of sanctions against South Africa is a matter falling within the exclusive competence of the Security Council of the United Nations and should be solved within the framework of the United Nations." He also said that the question of the status of Palestine was a "complex and difficult matter [that] should be left to the competent political organ of the United Nations."⁸⁷

The delegate of the Federal Republic of Germany said that he had voted against the resolution because it was not objective and disregarded the principles of international law. He thought it "unworthy of Unesco as an organization where science and philosophy are held in high esteem, to be one-sided in its judgment and to oversimplify matters which are not at all simple." The West German delegate considered that there had not been enough time to "discuss, improve and vote on such an important text," which showed traces of hasty elaboration, which changed priorities that had already been approved, and which in many instances went beyond UNESCO's competence.⁸⁸

The delegate of Australia, who had abstained, considered that there had been "totally inadequate time for study, reflection and informed discussion," and that the resulting resolution was "so ill-conceived, hastily contrived, based on such insufficient evidence and ... so badly drafted" that Australia could not support it. He said that: "No scientist could defend its logic, no educator its presentation, no linguist its language."⁸⁹

The delegate of the United States, who had voted against the resolution, stated that his delegation had "various substantive legal and conceptual objections" to different parts of the resolution.⁹⁰ With regard to the references to Palestine in the 1974 omnibus resolution, the United States representative took particular exception to "language that

87. 18 C/VR.46 (prov.), para. 142, p.24 (1974). The delegate of the United Kingdom, who voted against the resolution, said that: "A number of the questions taken up in the resolution are more properly the concern of the General Assembly and the Security Council and to discuss and try to pronounce on them here does not really help." *Id.*, at para. 156, p.29.

88. *Id.*, at paras. 146.1-146.2, pp.25-26.

89. *Id.*, at para. 160, pp.30-31. Similar comments were made by the delegates of Canada, Austria, France and Mexico, *id.*, at paras. 144.1-144.4, 150.1-150.3, 154.1-154.3 and 158, pp.25-30.

90. *Id.*, at para. 162, p.31. The United States delegate referred to "particular reservations concerning preambular paragraphs 13, 25, 26 and 35," and operative paragraphs 10 and 14. *Ibid.* The cited preambular paragraphs correspond to paras. 15, 27, 28 and 37 of the preamble to 18 C/Res. 11; Doc. III.A.14. Para. 15 relates to the European Security Conference; paras. 27 and 28 relate to disarmament, see text at notes 61-62 above; and para. 37 relates to apartheid, see note 70 above. Operative paras. 10 and 14 of 18 C/PLEN/DR.28 correspond to operative paras. 9 and 13 of 18 C/Res. 11. Para. 9 relates to the exclusion of South Africa and Southern Rhodesia from meetings of organizations to

by implication bestows statehood on what is as yet only a concept and not a legal entity in terms of accepted international law."⁹¹ He said that the United States is "profoundly committed to the cause of peace," but could not support the resolution since it would not lead to the "road to peace which is uniquely Unesco's road." In his view, the road to peace to be followed in UNESCO "must lead to the intellectual and moral solidarity of all" UNESCO Member States, which would be reached by "practical observance by all peoples and governments," rather than by the disputed statements contained in the omnibus resolutions.⁹²

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which UNESCO Member States belong, see text at notes 76-78 above; and para. 13 relates to the statehood of Palestine, see text at notes 83-85 above.

91. See text at notes 83-85 above, and 18 C/Res. 11, para. 13 (1974).
92. 18 C/VR.46 (prov.), para. 162, pp.31-32 (1974).



PART III: OTHER UNESCO ACTIONS

- B. Non-Governmental Organizations Active
in South Africa, Southern Rhodesia or
Portuguese Territories

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B. NON-GOVERNMENTAL ORGANIZATIONS ACTIVE IN SOUTH AFRICA,
SOUTHERN RHODESIA OR PORTUGUESE TERRITORIES

In 1966 and 1968, the UNESCO General Conference adopted a policy of withholding assistance from Portugal, South Africa and Southern Rhodesia, and of excluding the three countries from UNESCO activities, until such time as their governments "abandon their policy of colonial domination and racial discrimination."¹ These developments are discussed in Part III.A above, dealing with UNESCO's actions relating to the Elimination of Colonialism and Racism.

The 1970 General Conference Resolution

In 1970, in addition to reaffirming its policy of withholding UNESCO assistance and of excluding the three countries from UNESCO meetings, the General Conference adopted a resolution drawing attention to the potential role of non-governmental organizations in combatting racism and colonialism. The 1970 General Conference resolution noted that some international non-governmental organizations "have branches or affiliates in countries in which colonialism and racialism are practiced," and that:

international non-governmental organizations which are associated with Unesco may play an important part in implementing the objectives of the Organization, including its policy of unremitting opposition to, and elimination of colonialism and racialism.²

The 1970 General Conference resolution accordingly asked the Director-General to take the following action:

to undertake investigations of all international non-governmental organizations enjoying relations with Unesco which have branches, sections, affiliates or constituent parts in the Republic of South Africa or Southern Rhodesia or Portuguese-dominated African territories, with respect to the practice of racial discrimination or racial segregation in their policies, activities, or membership or their co-operation in any way with the apartheid policy of the Government of The Republic of South Africa.

The resolution asked the Director-General to report to the Executive

1. 14 C/Res. 11, para. 2(d)(1966); and 15 C/Res. 9.12, para. 5 (1968); see Part III.A above.
2. 16 C/Res. 8, 15th preambular para. (1970); Doc. III.B.1.



Board on the results of his investigations, and called upon the Board to take the necessary measures to:

break off, as from 31 December 1971, all relations with those international non-governmental organizations in respect of which it has not been established, to the satisfaction of the Board, that their branches, sections, affiliates or constituent parts in the Republic of South Africa, Southern Rhodesia or Portuguese-dominated African territories neither practice racial discrimination or segregation in their policies, their activities or in their membership, nor co-operate in any way with the Government of the Republic of South Africa in the latter's apartheid policy.³

The 1970 decision to investigate the practices of non-governmental organizations active in South Africa, Southern Rhodesia or Portuguese territories formed part of the 1970 General Conference omnibus resolution entitled "Unesco's contribution to peace and its tasks with respect to the elimination of colonialism."⁴

The Director-General's Investigation

Pursuant to the 1970 General Conference resolution, the Director-General sent a circular letter in January 1971 to all international non-governmental organizations having relations with UNESCO asking for the "fullest possible information" on the points mentioned in the General Conference resolution. The Director-General repeated in the letter a statement that he had made at the General Conference that non-governmental organizations associated with UNESCO would be "as anxious to co-operate with Unesco on the ethical plane as on the intellectual and technical planes," and that the information supplied would show their "endeavors on behalf of human rights in their spheres of competence."⁵

The Director-General sent his letter to 287 organizations having consultative status with UNESCO, asking that they reply by April 15, 1971, so that the Director-General might submit a comprehensive report to the

3. Id., at operative paras. 9 and 10.
4. The provisions that became preambular para. 15 and operative paras. 9-10 of 16 C/Res. 8 (1970), were based on the draft resolution submitted by the Special Committee on UNESCO's contribution to peace established as a working group at the 16th Session of the General Conference. See 16 C/DR/PLEN.16, paras. 15 and 30(d), pp.3 and 5 (1970). An amendment submitted by Trinidad and Tobago substituted slightly more specific language that became paras. 9 and 10 of 16 C/Res. 8 (1970). See 16 C/DR/PLEN.19 (1970).
5. 87 EX/20, Annex I (1971); Doc. III.B.2.



Executive Board at its fall session that year.⁶ At the end of March, however, an examination by the Director-General of the 66 replies that had been received by that time showed "problems of substance and procedure which the Executive Board should be acquainted with without delay." Accordingly these replies were transmitted by the Director-General to the Executive Board in April 1971 for consideration at the Board's spring session.⁷

At the Executive Board meeting in May 1971, Director-General Maheu reported that the responses received from non-governmental organizations had generally been very positive and had demonstrated effective collaboration with UNESCO, but that reservations had been expressed by some organizations. Some organizations considered that the UNESCO inquiry would not serve the ends desired, and expressed the fear that in some cases the furnishing of the information requested would jeopardize the ability of the organization to assist in the struggle against racial discrimination and apartheid. Others considered the inquiry an unjustified interference by UNESCO in their activities and expressed disquiet at the intrusion of politics into their scientific and technical activities. Finally, some organizations stated that they had no authority to interfere in the independence of their branches, or to exclude a branch or affiliate at the request of UNESCO.⁸

The Union of International Associations, which serves as a center of non-governmental international organizations, reported that the General Conference resolution had produced a strong reaction among non-governmental organizations, which were, "for the most part, institutions independent of States and rightfully jealous of their freedom of action." Such institutions considered that consultative status with governmental organizations did not affect their independence, which "admits of no other limit or constraint than respect for the rules of the international community by which States themselves are bound."⁹

The Commission of Churches on International Affairs, which represents the World Council of Churches at UNESCO, stated that the opposition of its member churches to apartheid was well known, but that the Commission was not happy that non-governmental organizations "should be subjected to this kind of inquisition." In its view, the branches of some organizations in South Africa or Southern Rhodesia "are already terribly isolated and under pressures which it will be hard for them to survive if

6. The 287 organizations consisted of 31 in Category A, 150 in Category B, and 106 in Category C. 87 EX/20, para. 2 (1971).

7. Id., at para. 6, p.2, and Annex III. A total of 96 organizations had responded by the date of the Executive Board meeting, May 12, 1971. See statement by the Director-General, 87 EX/SR.1-15, at SR.10, para. 2.2, p.103 (1971).

8. Id., at SR.10, paras. 2.4-2.5, pp.103-04. The Director-General briefly summarized the reservations expressed in the reports that had been received by the date of the Executive Board meeting.

9. 87 EX/20, Annex III, pp.45-46 (1971). The Union considered that consultative status was not a privilege or favor conferred upon non-governmental organizations, but an essential contribution to the work of governmental organizations. Ibid.



they lose their affiliation with their own international body and consequently with an international agency with the moral force of Unesco."¹⁰

The International Social Science Council considered that the investigation had "no apparent necessity," for two reasons:

Firstly, the Council sees no justification for the systematic exclusion from its activities of scientists or scientific institutions which, though established in the aforementioned countries, in no way share their ideology, but on the contrary make praiseworthy efforts, under difficult circumstances, to further international co-operation without prejudice or dogmatism.

Secondly, the relationships between the most regrettable forms of discrimination and the socio-economic systems of individual countries are so close that the General Conference ought to have given priority to their investigation rather than to that of the structure of non-governmental organizations enjoying relations with Unesco, of which it may be said that they are, by definition, opposed to the prejudices at which [the General Conference resolution] is aimed.¹¹

The Director-General stated that his present report was provisional and partial, and that a full examination of the problems should be left to the next session of the Board, but that it would be useful at this stage to have the guidance of the Board on certain procedural questions.¹² First, some organizations were prepared to supply complete information on the condition that such information be considered confidential. Second, it had been suggested that non-governmental organizations against which action was to be taken should be allowed to be present at the meeting of the Executive Board at which their cases were to be considered.¹³ Third, it would be useful for the Executive Board to determine the points on which it wished to have information, and by what means the information should be obtained by the UNESCO Secretariat.¹⁴

With regard to confidential information, there appeared to be general agreement in the Executive Board that information submitted as confidential

10. Id., at Annex III, p.26. See also the statement by Caritas Internationalis, id., at pp.27-28.

11. Id., at Annex III, pp.12-13. See also the statement by the International Council for Philosophy and Humanistic Studies, id., at pp.9-10.

12. 87 EX/SR.1-15, at SR.10, paras. 2.3 and 2.6, pp.103-04 (1971).

13. 87 EX/20, Annex IV, p.2 (1971).

14. The Director-General asked whether the Board wished him to request supplementary information from organizations that had already responded, and whether the Board considered that the Secretariat should gather information by means other than requests addressed to the organizations by the Director-General. 87 EX/SR.1-15, at SR.10, para. 2.6, p.104 (1971).



must be treated as such. One member, representing the United Kingdom, appeared to give broad scope to the concept of confidentiality. He said that:

It was conceivable that an organization in South Africa could to some extent fail to comply with laws, regulations or customs derived from the monstrous policy of apartheid, but if such an organization were to provide tangible proof of anti-apartheid activities - as appeared to be required [by the General Conference resolution] - it would be signing its own death warrant and Unesco, in encouraging it to provide such evidence, would be an accomplice in exposing it to reprisals.¹⁵

The Executive Board reviewed the replies that had been received, and the Director-General's questions, and adopted a resolution¹⁶ that asked the Director-General to provide the Board with a "factual analysis" of the information submitted by the non-governmental organizations under the following three headings:

- (a) Do these organizations have branches, sections, affiliates or constituent parts in South Africa, Southern Rhodesia or Portuguese-dominated African territories?
- (b) Do the branches, sections, affiliates or constituent parts practise racial discrimination or racial segregation in their policies? or
- (c) Do they co-operate with the apartheid policy of the Government of the Republic of South Africa?¹⁷

The Executive Board resolution asked the Director-General to write again to the 196 organizations that had not replied to the Director-General's initial letter, and to "seek further information from those organizations which have submitted incomplete information."¹⁸ In preparing his final report containing the "factual analysis" requested by the Board, the Director-General was requested to take into account both the replies submitted by the non-governmental organizations, and "all relevant information available to the Secretariat."¹⁹

15. Id., at SR.11, para. 13.2, p.116. Confidential information was not mentioned in the Board's resolution, text at notes 16-20 below.

16. 87 EX/Dec. 5.4 (1971); Doc. III.B.3.

17. Id., at para. 9. The resolution expressed agreement with the "form and spirit" of the Director-General's earlier letter, and stated that the General Conference resolution was "not to be interpreted as an indictment," Id., at paras. 5 and 6.

18. Id., at paras. 8 and 10.

19. Id., at para. 11. See note 14 above.



The Board also decided that its Committee on Non-Governmental Organizations would have the "task of making a critical analysis of the information received by the Director-General and compiled in his final report" to the Executive Board. The Committee was directed to make recommendations for Board action as required by the General Conference resolution.²⁰

Executive Board Review, October 1971

Following the three-part outline requested by the Executive Board, the Director-General compiled comprehensive reports for the Executive Board²¹ on the relationships existing between South Africa, Southern Rhodesia and the Portuguese territories and over 290 international non-governmental organizations that enjoyed consultative status with UNESCO.²² The Director-General's reports, together with statements and documents submitted by approximately 270 of the 290 organizations,²³ were reviewed by the Executive Board's Committee on Non-Governmental Organizations, which made recommendations for Executive Board action at its October 1971 meeting.²⁴

Having had the great mass of information analyzed for it by the Committee on Non-Governmental Organizations, the Executive Board spent relatively little time in disposing of a large majority of the cases that came before it.²⁵ In the few cases that called for more than summary discussion in the Board, when the Board's decision was to suspend relations with the organization in question, the decision was taken on the understanding that the case could be re-opened should new evidence be submitted prior to the spring 1972 session of the Executive Board.²⁶

Based on this extensive documentation and review, the Board decided that 153 organizations that did not have branches, sections or affiliates in South Africa, Southern Rhodesia or the Portuguese territories, did not come under the General Conference resolution and could continue their relationship with UNESCO without further inquiry by the Director-General or

20. Id., at para. 3.

21. 88 EX/20 and 88 EX/20 Add. (1971). Excerpts from the Director-General's reports appear in Doc. III.B.4.

22. Due to a constant process of additions to, and deletions from, the list of organizations having consultative status with UNESCO, especially as to organizations in Category C, the number of organizations under investigation by the Director-General varies over time. See, e.g., 88 EX/20, supra, at para. 9, pp.7-8.

23. The documentation, excerpted in 88 EX/20 and Add., was made available at the Executive Board meeting in dossiers on each organization.

24. 88 EX/21 (1971).

25. Portions of three Executive Board meetings were spent in reviewing the reports of the Director-General and of the Committee on Non-Governmental Organizations. See 88 EX/SR.1-27, at SR.13, SR.14 and SR.17 (1971).

26. See 88 EX/Dec. 6.5, paras. 3 and 10 (1971); Doc. III.B.5.



With regard to thirty-one organizations that had only individual members in the territories concerned, the Executive Board decided that such organizations "should continue to enjoy mutually profitable relations with Unesco,"²⁸ without further inquiry as to the attitudes and practices of these individuals, or as to their co-operation with the South African policy of apartheid. In taking this decision, the Executive Board implicitly accepted the unanimous recommendation of its Committee on Non-Governmental Organizations that "individual members should not be regarded as constituent parts, branches, sections or affiliates" of a non-governmental organization. The Committee took the view that "whereas institutions had a corporate and thus stronger influence and impact on the society, individuals by themselves had less impact." Furthermore, the Committee observed that "it was easier to ascertain whether an institution practiced racial discrimination or was in favor of it."²⁹

Sixty-five organizations that had branches, sections or affiliates in one or more of the three countries were found by the Executive Board to qualify under the General Conference resolution in that "their respective branches in the territories concerned do not practice racial discrimination and, in the case of the Republic of South Africa, do not co-operate with the policy of apartheid."³⁰

In order to reach its decisions approving continued co-operation in the 65 cases just mentioned, and to suspend relations in the cases of 21 organizations noted below, the Executive Board found it necessary to establish guidelines for the application of the General Conference policy. The Board approved the following criteria for determining the "non-co-operation" of non-governmental organizations "in racial discrimination or segregation in the Republic of South Africa, Southern Rhodesia or Portuguese-dominated African territories:"

- (i) a clear statement by a non-governmental organization that its branch does not practice racial discrimination should be accepted;
- (ii) a clear statement by a non-governmental organization that its branch does not co-operate with the policy of apartheid should be accepted;
- (iii) where there is evidence that compliance with the law on racial discrimination and apartheid by a branch is only on the basis of "unwilling compromise" - for example if the branch is open to all races and has made a public declaration

27. Id., at para. 5, listing 16 organizations in Category A, 76 in Category B, and 61 in Category C.

28. Id., at para. 8, listing 17 organizations in Category B and 14 in Category C.

29. 88 EX/21, para. 14, p.9 (1971).

30. 88 EX/Dec. 6.5, para. 9 (1971); listing the 65 organizations, whose statements are summarized in 88 EX/20 and Add., supra.



against racial discrimination or has otherwise overtly demonstrated its hostility to apartheid-that branch should be regarded as not co-operating with apartheid;

- (iv) where there is evidence that the branch, in spite of complying with the law on apartheid, continues its previous work among all races without any significant and harmful change in that work, the branch should not be regarded as co-operating with apartheid, especially if the work and the principles of the branch and the parent international non-governmental organization are in accord with the United Nations Declaration of the Rights of the Child or other fundamental human rights;
- (v) where there is evidence that the branch, in spite of complying with the law on apartheid, makes every effort to mitigate the effects of apartheid, it should not be regarded as co-operating with apartheid;
- (vi) if an international non-governmental organization which has a clause in its Constitution forbidding racial discrimination states that its branch does not practice racial discrimination and that there is relevant information which cannot be disclosed because it is confidential or that it would not be discreet to give further information in view of the situation in the country, the international non-governmental organization's statement should be accepted as adequate evidence that the branch does not co-operate with apartheid;
- (vii) where the international non-governmental organization is unable to provide information as to whether its branch practices racial discrimination or co-operates with apartheid, the presence of a distinguished African of world renown on the Executive Body of the international non-governmental organization representing African interests should be an acceptable indication that the branch does not practice discrimination and does not co-operate with apartheid; [and]
- (viii) where information on the branch is inadequate, but there is in the Constitution of the international non-governmental organization a strong clause forbidding racial discrimination, the fact that national member bodies are required to subscribe to this clause should be acceptable evidence that racial discrimination is not practiced by the branch and that there is no co-operation with apartheid.³¹

31. Id., at para. 4.



Applying the criteria quoted above, the Board suspended relations 19 organizations, on the understanding as to each organization that the suspension would be rescinded at the spring 1972 session of the Board if the organization showed that it had taken the measures specified by the Board.³² One such measure was that the organization concerned:

[conduct] inquiries on the activities of its branch in South Africa and [take] appropriate action to break off relations with the branch if that branch is practicing racial discrimination or apartheid and is not prepared to change its policies....³³

Other conditions specified that the organizations concerned show that their branches do not practice racial discrimination, or that they will accept their human rights directives of the parent international non-governmental organizations.³⁴

In addition to the 19 organizations suspended for having failed to demonstrate their non-co-operation with racial discrimination or apartheid policies, the Executive Board suspended relations with two organizations as to which it considered that more detailed inquiries were necessary,³⁵ and with 21 organizations that had failed to respond to the Director-General's circular letters.³⁶

In sum, then, in October 1971, the Executive Board suspended relations with 42 organizations, and continued normal consultative status relations in the cases of a total of 252 non-governmental organizations.³⁷

Executive Board Review, June 1972

The 42 organizations suspended as a result of the Executive Board's fall 1971 review were invited to submit appropriate information for re-examination by the Board in June 1972. Three of the 42 organizations had ceased to exist by the spring of 1972; 31 of the remaining 39 sent replies that were considered by the Executive Board's Committee on Non-Governmental Organizations at six meetings held in conjunction with the June 1972 Executive Board meeting.³⁸ The remaining eight organizations did not

32. Id., at para. 10.

33. Ibid. The quoted condition was applied to 12 of the 19 suspended organizations. Examples are the International Union of Local Authorities, the International Federation of Library Associations, the World Federation of Engineering Organizations and the International Chamber of Commerce.

34. E.g., the World Federation of Catholic Youth, the International Council of Nurses, and the International Council on Archives. Ibid.

35. Id., at para. 11. The two were the European Broadcasting Union and the International Organization for Standardization.

36. Id., at para. 3(iii). The failure to reply was also considered "a non-fulfillment of the obligations undertaken" by the organizations in entering into consultative status with UNESCO. Id., at para. 3(i).



respond.

The Executive Board Committee recommended that the suspension be rescinded in 21 cases as to which the Committee had received satisfactory "additional written or oral information...or as a result of the breaking-off of relations between the parent non-governmental organization and its incriminated branch."³⁹

The remaining ten organizations from which responses had been received by June 1972 were denied a recommendation of reinstatement by the Committee for a number of reasons. In three cases the Committee apparently considered that it had not received sufficient information concerning the activities of branches or affiliates to warrant reinstatement.⁴⁰ One such case was Rotary International, having 137 clubs in South Africa. Although all Rotary Clubs operated under a "standard Rotary Club Constitution [which provides] for membership without limitation as to race,"⁴¹ the Committee members felt that "neither the Statute nor the reply of the organization gave clear indication of the action and role of the 137 clubs in South Africa," or as to their opposition to apartheid.⁴² In the case of the International Federation of Social Workers, the Committee decided to take no action pending confirmation by the organization's Permanent Council of the expulsion of the South African affiliate,⁴³ and in the case of the International Chamber of Commerce, the Committee rejected by a narrow margin a proposal to recommend that the suspension of the organization be rescinded, but the Committee's report states no reason for the decision.⁴⁴

37. In addition to the 153, 31 and 65 organizations mentioned in the text at notes 27-30 above, 3 organizations were found to no longer have affiliates in South Africa, thus evidently qualifying for continued consultative status. Id., at paras. 6-7.
38. The replies are reproduced in 89 EX/31, Annex and Adds. 1 and 2 (1972); the Report of the Committee on Non-Governmental Organizations is 89 EX/32 (1972); see Docs.III.B.6 and III.B.7, respectively.
39. 89 EX/32, para. 5, p.2; and 89 EX/32 Add., para. 3 (1972).
40. The three were the International Water Supply Association, which had not carried out the inquiries on the activities of its branch in South Africa as requested; the Association for the Promotion of the International Circulation of the Press, which had said nothing about the policies of its South African member; and Rotary International, discussed below. 89 EX/32, paras. 9, 11 and 12, p.3; and 89 EX/31, Annex, pp.3-4, 17-18 and 73-74.
41. 89 EX/31, Annex, pp.17-18 (statement by the Assistant General Secretary of Rotary International in a letter to Mr. Fobes, Deputy Director-General of UNESCO).
42. 89 EX/32, para. 9, p.3. The Committee decided by a vote of 6 to none, with 3 abstentions, that no recommendation should be made to lift the suspension of Rotary International. Ibid.
43. 89 EX/32, para. 7, p.3. See also 89 EX/31, Annex, pp.61-62.
44. 89 EX/32, para. 10, p.3. The vote was 4 in favor to 5 against, with no abstentions. Ibid. See 89 EX/31, Annex, pp.71-73, for communications from the International Chamber of Commerce. It is there stated that the



The remaining five organizations denied recommendations of reinstatement by the Committee were organizations whose branches in South Africa appeared to be "quasi-governmental or Statutory Bodies" in the sense that they had some form of official connection with the South African Government.⁴⁵ Some Committee members felt that the Board's criteria for "non-co-operation in racial discrimination" could not be applied when official connections existed between an organization's branch and the South African Government. In such cases, if the Committee adhered rigidly to the Board's criteria, it "could find itself deeming a Statutory Body in South Africa as not co-operating with that Government's policy of apartheid."⁴⁶

The Committee's recommendations were adopted by the Executive Board without change.⁴⁷ The Board's decision congratulates the organizations that had expelled their southern African affiliates, or had "taken energetic measures to remedy the situation which the Executive Board was seeking to correct."⁴⁸

Executive Board Review, October 1972

Seven of the ten organizations that had been denied reinstatement at the June 1972 Executive Board meeting transmitted additional communications for consideration by the Board at its October 1972 meeting.⁴⁹ Five of these seven organizations were recommended for reinstatement; two were not: the International Water Supply Association and Rotary International.⁵⁰

With regard to the International Water Supply Association, a letter from the Secretary-General of the Association that protested the lack of adequate notice for the Association to respond to UNESCO inquiries was considered by the Committee to present no new factors that warranted re-examination of the organization's status.⁵¹

Chamber's South African member, the South African Council, "does not practise racial discrimination and there is no reference to questions of race in its Statutes," and that: "Any person, whatever his ethnic group, may take part in the activities" of the South African Council. Id., at p.71.

45. The five organizations were the International Union of Local Authorities, the International Council of Industrial Design, the International Union of Official Travel Organizations, the European Broadcasting Union and the International Organization for Standardization. 89 EX/32, paras. 13-14, p.4. The International Union of Local Authorities also had pending a constitutional amendment that would make the Universal Declaration of Human Rights a policy guideline for the organization. Id., at para. 13, p.4.
46. Id., at para. 15, p.4. Proposals to lift the suspensions of the International Council of Industrial Design, and of the International Organization for Standardization, were rejected by votes of 4 in favor 5 against, with no abstentions. Ibid.
47. 89 EX/Dec. 7.3, paras. 5 and 6 (1972); Doc. III.B.8.
48. Id., at para. 3.
49. No additional material was reported from the Association for the Pro-



In the case of Rotary International, some Committee members thought that the organization's letter did not contain "any new factors" and did not give "a clear indication of the action and role of the 137 clubs in South Africa with regard to apartheid."⁵² The letter, sent by the General Secretary of Rotary International, stated that the "standard Rotary club constitution adopted by all Rotary clubs ... [has] absolutely no provision with regard to race, colour, religion or nationality," and that "membership is not denied to any race by Rotary statute." It also said that:

It is the responsibility of the local Rotary club to select its members in harmony with its constitution and necessarily, consistent with the laws of its country. There being no membership provisions related to race or colour, no records are maintained concerning these factors by the central administration of Rotary International and, therefore, it would be neither discreet nor appropriate to comment further.⁵³

One member of the Executive Board Committee felt that the Rotary International letter would permit the Committee to lift the suspension "in accordance with the Committee's guideline four, since its branch in South Africa performs work among all races."⁵⁴ The proposal to lift the suspension of Rotary International was rejected by the Committee by a vote of 2 in favor to 3 against, with 3 abstentions.⁵⁵

The five organizations approved for reinstatement by the Committee on non-Governmental Organizations consisted of four organizations whose South African branches were semi-governmental or "statutory bodies," and the International Federation of Social Workers. The Committee noted with regard to the latter organization that it had provisionally recognized a "new co-ordinating agency for all professional associations of social workers in South Africa in place of the all-white South African association which it had suspended" to make room for the new association. The Committee therefore recommended reinstatement of the International Federation of Social Workers subject to review when the federation takes final action on the membership of the new South African co-ordinating agency.⁵⁶

motion of the International Circulation of the Press, note 40 supra; the International Chamber of Commerce, note 44 supra; or the European Broadcasting Union, note 45 supra. See 90 EX/19 (1972).

50. 90 EX/20, para. 5, p.2 (1972).

51. Id., at para. 8, p.2. The letter said that the Association's Board was not certain of what inquiries it was required to make, and that the Association "has members in a large number of countries but no 'branches' in any country," but did not indicate whether its members were individuals or organizations, etc. 90 EX/19, Annex, pp.22-23.

52. 90 EX/20, para. 9, p.3.

53. 90 EX/19, Annex, pp.24-26. The letter states that the UNESCO action "amounts to a public censure" of Rotary International, which was "unfair and unwarranted." Id., at p.26.

54. 90 EX/20, para. 9, p.3. See text at note 31 above.

55. 90 EX/20, para. 9, p.3.

56. Id., at para. 7, p.2. See 90 EX/19, Annex, pp.19-21.



With regard to the four organizations having semi-governmental or statutory bodies as branches, two, the International Union of Local Authorities and the International Union of Official Travel Organizations, reported that they had suspended or would exclude their South African branches from membership.⁵⁷ The Committee recommended reinstatement of both organizations, conditioning the reinstatement in the case of the International Union of Official Travel Organizations on the ratification by its General Assembly of the decision to exclude the South African branch.⁵⁸

With regard to the remaining two organizations, the International Organization for Standardization and the International Council of Societies of Industrial Design, which each had a semi-governmental South African member, the Committee voted 4 to 1, with 2 abstentions, to recommend that the suspension be lifted.⁵⁹ One member wished to have the question of semi-governmental bodies put to the General Conference, but another felt that:

although some difficulty did exist, it was nevertheless possible in most cases to make a distinction between those bodies connected with the Government of South Africa which formed an integral part of that Government's machinery for implementing its policies of apartheid, and those others whose functions and activities were not related to the promotion and enforcement of those policies.⁶⁰

The Committee made no recommendation on the general status of organizations having semi-governmental members in South Africa.

The Committee's recommendations were adopted by the Executive Board without change.⁶¹ In addition, the Board recommended that the 1972 Session of the General Conference adopt a resolution specifically approving the measures taken by the Executive Board to implement the 1970 General Conference resolution, and empowering the Executive Board to "rescind the suspension imposed on non-governmental organizations when it is convinced that they have complied with the conditions necessary to the resumption of working relations with Unesco."⁶²

In addition to reaffirming the UNESCO policy of withholding assistance from Portugal, South Africa and Southern Rhodesia, and of excluding these countries from UNESCO activities,⁶³ the 1972 session of the General

57. See 90 EX/19, Annex, p.11 (exclusion of the South African Tourist Corporation from the International Union of Official Travel Organizations); and 90 EX/19 Add., Annex (suspension of the South African branch of the International Union of Local Authorities).

58. 90 EX/20, paras. 5-6, p.2.

59. Id., at para. 14, p.4. One member declined to participate in the vote. Ibid.

60. Id., at para. 13, p.4.

61. 90 EX/Dec. 7.2, Part I, paras. 4-5 (1972); Doc. III.B.11.

62. Id., at Part II, paras. 2 and 4.

63. See Part III.A above.



Conference adopted the draft resolution recommended by the Executive Board without substantial discussion and without change.⁶⁴ The 1972 General Conference resolution thus approved the measures taken by the Executive Board and invited it to continue its examination of the activities of non-governmental organizations using the criteria established by the Board in 1971.⁶⁵

The 1974 General Conference

The draft resolution submitted by the Working Group on Peace at the 1974 Session of the General Conference,⁶⁶ contained a paragraph requesting the Director-General:

to debar any non-governmental organization which has branches of activity or sections in South Africa or Southern Rhodesia from participation in Unesco activities and to give no subventions to any international non-governmental organization which has relations with these countries.⁶⁷

Speaking in the Plenary Meeting, the Deputy Director-General, Mr. Fobes drew attention to the paragraph quoted above, commenting that the provisions of the paragraph went considerably "beyond the present regime," whereby the Executive Board examined all the facts in cases in which non-governmental organizations had members in, or relations with, or appeared to give support to the racial policies of South Africa or Southern Rhodesia. Mr. Fobes considered that the proposed new provisions "would appear to debar a number of [such organizations] from any relationship with Unesco even though, after examination by the Executive Board, they have been continued in consultative status."⁶⁸

64. 17 C/Res. 10, paras. 7 and 21-26 (1972); Doc.III.B.13.

65. In February 1973, the European Broadcasting Union reported that its South African member, the South African Broadcasting Corporation, had "resigned with retroactive effect from 1 January 1973." 92 EX/42, Annex (1973). The Executive Board accordingly rescinded the suspension of the European Broadcasting Union. See 92 EX/43, paras. 4-5, p.2 (1973); and 92 EX/Dec. 5.8.3. (1973); Docs. II.B.14-16.

66. 18 C/PLEN/Dr.28 (1974); Doc. III.A.13. See Part II.A above.

67. Id., at para. 18 (b), p.6. The draft resolution does not mention Portugal in view of Portugal's change in policy relating to its overseas territories.

68. 18 C/VR.44 (prov.), para. 2.11, p.5 (1974). Mr. Fobes said that some cases of subventions that had already been planned "would appear to be denied" under the proposed paragraph. Ibid.



In view of the comments by the Deputy Director-General, an amendment was proposed under which the Director-General would be asked to continue to ensure that "no non-governmental organization having working relations with Unesco participates in any way in the policy of apartheid and racial discrimination practised in the Republic of South Africa and Southern Rhodesia." ⁶⁹ Under the revised draft, the Executive Board would be asked by the General Conference:

- (a) to continue to refuse to allow any non-governmental organization participating in any way at all in the policy of apartheid and racial discrimination practised in the Republic of South Africa and Southern Rhodesia to participate in Unesco's activities; [and]
- (b) to ensure that no subventions are granted to non-governmental organizations which support the policy of the Government of the Republic of South Africa or of the illegal Government of Southern Rhodesia.⁷⁰

Mr. Fobes stated that the new text appeared to be a "slight modification of the present [UNESCO] practice," but that the "effect would be the same as the present practice."⁷¹ With this explanation, general support was expressed for the new proposal.⁷² One representative commented that reference had to be made to the work that had already been done: "a new text and a new language ... might arouse new and unjustified fears" among non-governmental organizations, which would create further problems "in dealing with something which is a continuation of an earlier exercise."⁷³

69. 18 C/VR.45 (prov.), paras. 329.1-329.2 and 359-365, pp. 44-45 and 50-51 (1974) (proposal by the representative of Dahomey). The proposal became para. 17(b) of 18 C/Res. 11 (1974); Doc. III.A.15.

70. The quoted paragraph became paras. 13(a) and 1(b) of 18 C/Res. 11 (1974).

71. 18 C/VR.45 (prov.), para. 337, pp. 46-47 (1974). Mr. Fobes said that his interpretation was made hastily, but it appeared to him that the new text did not go beyond present arrangements carried out by the Executive Board. *Ibid.*

72. *Id.*, at paras. 339-353, pp. 47-49.

73. *Id.*, at para. 355.2, p. 49. The speaker was Mrs. Wynter of Jamaica, who pointed out that the new language derived from 18 C/PLEN/DR.12 of which her government had been a sponsor. *Ibid.*



The revised proposal quoted above was adopted by the General Conference in 1974 without change and without opposition.⁷⁴ The 1974 General Conference resolution thus authorized the continuation of the Executive Board practice that had been developed under the 1970 General Conference resolution in determining whether the "branches, sections, affiliates or constituent parts" of non-governmental organizations in South Africa or Southern Rhodesia "practise racial discrimination or segregation in their policies, their activities or in their membership," or "co-operate in any way" with the apartheid policy of the Government of South Africa.⁷⁵

Fundação Cuidar o Futuro

74. Id., at para. 366.1, p. 51.

75. 16 C/Res. 8 (1970); quoted in the text at note 3 above. See text at note 31 above for the Executive Board's guidelines in applying the 1970 General Conference resolution.



PART III: OTHER UNESCO ACTIONS

C. Non-Governmental Organizations
with Branches in Taiwan

Fundação Cuidar o Futuro



The question of the relations between UNESCO and non-governmental organizations "having branches, sections or members linked with the Chiang Kai-shek clique" was raised by the representative of the People's Republic of China in the Executive Board in 1973.¹ The Chinese representative noted that "bodies or elements linked with Chiang Kai-shek were usurping the name of China in certain non-governmental organizations,"² and stated that:

it was time for non-governmental organizations maintaining relations with Unesco which contained bodies or elements linked with Chiang Kai-shek to take measures to exclude them immediately and to break off all relations with them.³

He accordingly proposed that the Executive Board adopt a resolution urging such organizations to put an end to their ties with such "bodies or elements linked with Chiang Kai-shek."

The 1973 Executive Board Resolution

At the Executive Board session in October 1973, the representative of the People's Republic of China submitted a draft resolution entitled: "Question of the international non-governmental organizations maintaining relations with Unesco and having branches, sections or members linked with the Chiang Kai-shek clique."⁴ The proposed resolution would note that "bodies or elements linked with Chiang Kai-shek and usurping the name of China continue to conduct illegal activities within certain international non-governmental organizations maintaining relations with Unesco." The resolution would urge:

international non-governmental organizations which maintain relations with Unesco and in which bodies or elements linked with Chiang Kai-shek participate, having illegally usurped the name of China, to take measures to exclude them immediately and to break off all relations with them.⁵



1. See 93 EX/30, Part II, pp. 4-5 (1973); Doc. III.C.1.
2. Id., at Part II, para. 2, p. 4. The Chinese representative had earlier referred to the International Council of Scientific Unions (ICSU) as having a member, the International Union of Biochemistry, that included "representatives of the Chiang Kai-shek clique." Id., at Part I, para. 9, pp. 2-3.
3. Id., at Part II, para. 2, p. 4.
4. 93 EX/NGO/DR.1 (1973). The draft resolution originally referred to non-governmental organizations "having consultative status with Unesco." At the request of the Chinese representative, this was changed to organizations "maintaining relations with Unesco." 93 EX/30, Part II, para. 3 p. 4 (1973).

The Chinese draft resolution asked the Director-General to communicate the resolution to "all international non-governmental organizations maintaining relations with Unesco," and to request these organizations "to inform him of the action they have taken to comply with the resolution."⁶ The draft resolution also asked the Director-General "to submit a report on this subject to the Executive Board at its Spring session in 1974."⁷

Speaking in support of the draft resolution during a brief debate in the Executive Board, the Chinese representative quoted the United Nations General Assembly's 1971 resolution restoring the rights of the People's Republic of China in the United Nations, in which the Assembly decided "to expel forthwith the representatives of Chiang Kai-shek from the place they unlawfully occupy at the United Nations and in all the organizations related to it."⁸ The United Nations General Assembly resolution was implemented within UNESCO by a 1971 Executive Board decision stating that the People's Republic was the "only legitimate representative of China in Unesco" and would henceforth represent China in UNESCO organs.⁹ The Chinese representative considered that these resolutions had made it clear that "all bodies and individuals under the administration of the [Chiang Kai-shek] clique were unqualified to participate in the proceedings or activities of any international organization in China's name."¹⁰

5. Id., at Part II, para 6, draft resolution paras. 4 and 5, p. 5. The draft resolution was approved by the Executive Board's Committee on Non-Governmental Organizations by 4 votes to 1, with 3 abstentions. Ibid. Bulgaria, Egypt, France and the People's Republic voted in favor; the United States voted against; and Austria, Costa Rica and Italy abstained.
6. Id., at draft resolution paras. 6(1) and (2), p. 5.
7. Id., at draft resolution para. 6(3), p. 5. The Director-General's representative stated that "in her opinion, the report which the Director-General was to submit [under the resolution] would be statistical in character." Id., at para. 4, p. 5.
8. General Assembly Resolution 2758 (XXVI), 26 GAOR Supp. 29. p. 2 (A/8429) (1971).
9. 88 EX/Dec.9, para. 3 (1971). The decision recalled General Assembly Resolution 396 (V) (1950) recommending that "the attitude adopted by the General Assembly" on questions of representation "should be taken into account in other organs of the United Nations and in the Specialized Agencies." Id., at para. 2.
10. 93 EX/SR.1-27, at SR. 22, para. 68.1. p. 207 (1973); Doc. III.C.2.



The Chinese representative said that there was only one China, and that "Taiwan was a province and an inalienable part of China." He said, however, that some organizations "having relations with Unesco still allowed bodies and elements under the administration of the Chiang Kai-shek clique to conduct illegal activities usurping the name of China or in the name of 'Taiwan.'" ¹¹ He also observed that "individual 'scientists' or 'scholars' were unlawfully occupying the seat of China in certain international non-governmental organizations under the guise of 'science independent of politics' or 'academic freedom.'" ¹² In the light of these observations, the Chinese representative urged the Board "to do its utmost to persuade all international non-governmental organizations involved to sever all their connexions with the Chiang Kai-shek clique and so redress the utterly abnormal situation."¹³

The representative of Argentina, supported by the representative of Uruguay, referred to the "special relationship between Unesco and non-governmental organizations," and said that in his view:

Unesco, after ascertaining that the statutes and activities of a non-governmental organization were in keeping with its own aims, should maintain its relationship with that organization in a climate of respect for its autonomy.

He therefore considered that it would be better to submit the problem to the organizations so that they could "study what measures they considered appropriate under their statutes, instead of urging on them a line of policy which might raise difficulties for them."¹⁴

The representative of Argentina accordingly proposed an amendment to the Chinese draft resolution that would delete the provision urging non-governmental organizations to break off relations with "bodies or elements linked with Chiang Kai-shek," and substitute a provision urging such organizations "to take measures to study this problem of genuine representativeness." The Argentinian amendment was rejected in the Executive Board by 14 votes to 8, with 5 abstentions.¹⁵

11. Ibid. The Chinese representative mentioned ICSU, note 2 supra, which "allowed representatives of the clique to participate in the name of Taiwan," and the International Biochemical Association, which had "admitted the Chiang Kai-shek representative in 1964, thereby forcing China's Biochemical Institute to withdraw." Ibid.

12. Id., at SR.22, para. 68.2, p. 207.

13. Id., at SR 22, para 68.3, p. 207.

14. Id., at SR. 22, paras. 69.1-69.2 and 70, pp. 207-08.

15. Id., at SR.22, para 74, p. 208. The only other speaker was the representative of Algeria, who opposed the Argentinian proposal. Id., at para. 72, p. 208.



The Chinese draft resolution was then adopted by the Executive Board without change and without further debate. The vote was 16 in favor to 1 opposed, with 10 abstentions.¹⁶

The Director-General's Survey, 1973-1974

The Director-General brought the Board's resolution to the attention of the 319 organizations having consultative status with UNESCO by circular letter dated November 14, 1973. By the time of the Board's June 1974 meeting, 226 of the 319 organizations had responded;¹⁷ the substance of the 226 responses was reported to the Board by the Director-General.¹⁸

The Director-General submitted his report in three parts: (a) the number and names of organizations stating that they had no "branches, sections or individual members" in Taiwan; (b) the number and names of organizations stating that they did have branches, sections or individual members in Taiwan; and (c) statements submitted by organizations listed in part (b). Of the 226 organizations that responded, 188 said they had no branches, sections or individual members in Taiwan, and 38 said that they did have such branches, sections or individual members.¹⁹

The statements submitted by the 38 organizations that had branches, sections or individual members in Taiwan showed a wide range of facts and attitudes.

Some organizations indicated that they had individual members in Taiwan who acted in a personal capacity and did not purport to represent any government.²⁰ The International Society of Soil Science, for example, said

16. Id., at SR.22, paras. 75-76, p. 208. The United States cast the negative vote, and Argentina, Austria, Canada, Costa Rica, the Federal Republic of Germany, Italy, Japan, the United Kingdom and Uruguay abstained. The resolution appears as 93 EX/Dec 6.9 (1973); Doc. III.C.3.
17. 94 EX/31, para. 23, p. 6 (1974); Doc. III.C.5. Responses had been received from 33 out of 35 organizations in Category A; 117 out of 167 in Category B; and 76 out of 117 in Category C. Ibid.
18. 94 EX/33 and Add. (1974); Doc. III C.4.
19. See id., at para. 7(a) and (b), pp. 1-8; and Add., para. 2(a) and (b), pp. 1-3; and 94 EX/31, para. 22, p. 6.
20. See, e.g. the International Society of Soil Science, the World Council for the Welfare of the Blind, the International Association of Agricultural Economists and the World Peace-through-Law Center, 94 EX/33, pp. 8-9, and the International Law Association, 94 EX/33 Add., p.3.



that it "only has individual members who do not represent to any extent a special country." The Society acknowledged that it had one member resident in Taiwan, but stated that:

There has not been and will not be a member who might usurp the name of China or would continue to conduct illegal activities. This is a pure fiction.²¹

Other organizations having branches or sections in Taiwan maintained that their branches or sections represent only their own members and do not represent any government. The International Federation of Library Associations, for example, reported that the Taiwan Library Association "is a member association ... and represents only its members ..."²² The International Society for the Rehabilitation of the Disabled reported that "the Rehabilitation Medicine Association functioning in Taiwan" had been accepted as an Associate Member, but that it had been stipulated that the Rehabilitation Medicine Association "does not represent any country or government."²³

Several organizations indicated that they had taken a variety of forms of action to ensure that, despite the existence of a branch or section in Taiwan, the name "China" would not be improperly used.

The World Energy Conference stated that in 1967 it had admitted a "National Committee carrying the title 'The Territories of Taiwan, Kinmen, Matsu and Penghu of the Republic of China,' and ... that the National Committee represented energy power ... interests within the territorial area of these Islands." It was pointed out that the People's Republic of China had not applied for membership, and that there was thus no National Committee "using the name of 'China.'"²⁴

The World Confederation of Organizations of the Teaching Profession (WCOTP) reported that its constitution provides that membership is open to "national teachers' organizations." As used by WCOTP, the word "national":

has been accepted over the years to mean: in a territory having a separate educational system. For example, the Educational Institute of Scotland is a member under the heading of 'Scotland' and the Sarawak Teachers' Union under 'Sarawak'.

21. 94 EX/33, p. 8 (1974) (emphasis in original). The Society stated that it had 4,576 members in 102 countries. *Ibid.*

22. 94 EX/33, *supra*, at p. 8.

23. 94 EX/33 Add., *supra*, at p. 4.

24. 94 EX/33, *supra*, at p. 9.



WCOTP has no constitutional difficulty in having a national teachers' organization in membership whose 'national' character is distinct from that of a political unit with Member State status in the United Nations.²⁵

The organization had decided, in 1973, "that its member organizations in Taiwan should be listed under the title 'Republic of China (Taiwan)' in order to avoid any misunderstanding as to the territory concerned."²⁶

Some organizations declined to respond to the Director-General's inquiry. The World Psychiatric Association, for example, stated that it had considered the Executive Board resolution, and had "decided to take no action."²⁷

The World Alliance of Young Men's Christian Associations stated that its constitution "makes no reference to the political situation in which" its geographically defined entities work, and that the "YMCA works independently of governments except that it obviously observes the laws and regulations which are in existence." The member organizations "are concerned with the spiritual, social, educational and recreational needs of the people in the region or country in which they work," which applies "equally ... to the YMCA working in the island of Taiwan." The organization therefore "respectfully [declined] to accept the proposal conveyed" in the letter of the Director-General.²⁸

On the other hand, some organizations took action to sever relations with their branches or sections in Taiwan.

The World Federation of Engineering Organizations reported that on receipt of the Director-General's letter, a draft resolution had been circulated to the members of the organization's Executive Committee calling for "termination of membership of the National Member for the Republic of China (Taiwan)."²⁹

Two other organizations, the International Union for Conservation of Nature and Natural Resources and the International Federation of Photographic Art, reported that their assemblies had decided to suspend relations with their members in Taiwan.³⁰

25. Id., at p. 10.

26. Ibid.

27. Id., at p. 11.

28. 94 EX/33 Add., supra, pp. 4-5. The statements are quoted from a decision taken by the organization's Executive Committee. Ibid.

29. Id., at p. 3.

30. 94 EX/31, supra, at para. 22, p. 6.



Finally, a number of organizations that had branches or sections in Taiwan reported that they desired to submit the matter to their governing bodies at their next meetings, which were due to be held later than the June session of the UNESCO Executive Board.³¹

Executive Board Action, 1974

The data and statements reported by the Director-General were reviewed in the Executive Board's Committee on Non-Governmental Organizations. During the Committee's consideration of the reports, the Chinese representative stated that he "regretted that some non-governmental organizations had taken an erroneous position and had come forward with a non-constructive reaction" to the Executive Board decision. He said that the question "was not difficult to resolve" since "one has merely to recognize that there is only one People's Republic of China."³² The Chinese representative introduced a draft resolution asking that the question be added to the agenda of the 1974 session of the General Conference.³³

There was apparently only a brief debate in the Executive Board Committee on Non-Governmental Organizations, during which no opposition was expressed to the Chinese proposal. One delegate, however, "emphasized the importance of abiding by the principle of universality," which he considered "applicable not only to Member States, but also to international non-governmental organizations."³⁴

On the recommendation of the Committee on Non-Governmental Organizations,³⁵ the Executive Board adopted a resolution calling for a report by the Director-General on further responses received, and for the inscription of the following item on the agenda of the 1974 session of the General Conference:

Question of the international non-governmental organizations maintaining relations with Unesco and having branches, sections or members linked with Chiang Kaishek and illegally usurping the name of China.³⁶

31. Sixteen organizations reported that the question of branches in Taiwan would be submitted to their governing bodies. 94 EX/33, supra, at para. 7(d), pp. 9-10; and 94 EX/33 Add., supra, at para. 2(d), p. 4.
32. 94 EX/31, para. 24, p. 6 (1974).
33. 94 EX/NGO/DR.1 (1974).
34. 94 EX/31, para. 27, pp. 6-7 (1974). The delegate who made the quoted statement is not identified in the Committee report.
35. Id., at para. 28, p. 7. The vote in the Committee was 6 to zero, with 3 abstentions. Ibid.
36. 94 EX/Dec. 7.7 (1974); Doc. III.C.5. The vote was 23 to zero, with 4 abstentions. 94 EX/SR.1-33, at SR.30, paras. 114-116, p. 374 (1974). The proposed resolution was adopted without change and without debate. Ibid.



The Director-General's Survey Resumed

In August, 1974, the Director-General issued two circular letters in continuation of his survey of action taken by non-governmental organizations to comply with the Executive Board's 1973 resolution. One letter went to the 92 organizations that had failed to reply to the Director-General's earlier letters. The other went to the 37 organizations that had stated in response to the earlier letters that they had branches, sections or individual members in Taiwan.³⁷ The latter asked these 37 organizations to inform the Director-General, prior to the opening in October of the 18th Session of the General Conference, of the measures that each organization had taken with respect to its Taiwan members.³⁸

Based upon the replies received prior to the October 1974 Executive Board meeting, the Director-General reported that an additional 35 organizations had stated that they had no branches, sections or individual members in Taiwan.³⁹ Four organizations reported that they had decided to exclude, or to suspend relations with, their Taiwan members.⁴⁰ The sixteen other organizations with members in Taiwan that responded to the Director-General's circular letter basically reported either that they had not yet had an opportunity to complete their consideration of the matter and thus had yet to take action,⁴¹ that they had nothing to add to their previous response,⁴² or that for one reason or another it appeared that no action was required, and none would be taken.⁴³

37. 95 EX/18, paras. 3 and 6, pp. 1-2 (1974); Doc. III.C.7. One organization that had been listed as having members in Taiwan responded that it had no such members. 95 EX/18 Add.1, p. 11 (1974).

38. 95 EX/18, supra, at Annex II.

39. Id., at para. 4(a), p. 1; and 95 EX/18 Add.1, para. 2(a), p. 1 (1974).

40. The four were: the International Music Council, the International Federation of Library Associations, the International Union for Conservation of Nature and Natural Resources, and the International Federation of Photographic Art. See 95 EX/18, paras. 4(b) and 5, p. 1 (1974). See also text at note 30 above.

41. See the replies of the Boy Scouts World Bureau; the International Council on Social Welfare; and the International Society for Photogrammetry. 95 EX/18 Add.1, pp. 4-5 (1974).

42. See the replies of the International Confederation of Free Trade Unions; the World Alliance of Young Men's Christian Associations, see text at note 28 above; the International Confederation of Catholic Charities; the International Political Science Association; the World Psychiatric Association, see text at note 27 above; and the International Federation of Women Lawyers. Id., at pp. 2-6.

43. See the reply of the World Young Women's Christian Association, id., at p. 6; and the replies quoted below.



The International Society of Soil Science responded that it had "one member residing in Taiwan," who "is not illegally usurping the name of China."⁴⁴ The International Association of Agricultural Economists stated that its "memberships are on an individual basis and consequently the directive mentioned" in the Director-General's letter "would not apply."⁴⁵ The International Council of Nurses observed that since under its constitution "it does not discriminate on the basis of political affiliation, it would seem inappropriate to 'break off all relations' with Taiwan on the basis of politics, as Unesco is now requesting."⁴⁶

The World Federation of Engineering Organizations, which had earlier indicated that it was seeking to end its relations with Taiwan members, said that it had "heard indirectly that learned societies in Taiwan with international connections now claim only to represent their members in Taiwan, and no longer claim to be representative of China." In this changed situation, and without guidance as to UNESCO's attitude, the organization's Executive Committee now found it difficult "to reach a conclusion as to what action, if any, it should take."⁴⁷

The International Council of Scientific Unions (ICSU)⁴⁸ reported that its General Assembly had considered the question of "the representation of China in international, non-governmental scientific organizations." ICSU and its member unions sought to resolve the problem "without violating their constitutions, while preserving their scientific integrity and securing the fullest participation of the world community of scientists in the activities of the ICSU family."⁴⁹ In this light, the ICSU General Assembly recommended that:

- (i) An appropriate institution in the People's Republic of China be again invited to become a member of ICSU;
- (ii) Efforts to resolve the problem raised in the Unesco communication do continue within ICSU with all deliberate speed; and
- (iii) The suggestion be conveyed to the Director-General of Unesco that no precipitate action be taken by Unesco which would make the solution of the problem more difficult than necessary.⁵⁰

44. Id., at p. 4. See text at note 21 supra.

45. Id., at p. 6. See note 20 supra.

46. Ibid.

47. Id., at p. 5. See text at note 29 supra.

48. See notes 2 and 11 supra.

49. 95 EX/18 Add.2, p. 3 (1974). The quotations are from a 1974 ICSU General Assembly decision concerning the representation of China.

50. Ibid. The ICSU statement noted that at the ICSU General Assembly representatives both of International Scientific Unions and of national scientific organizations had stressed "the need to ensure the participation of scientists from the People's Republic of China." Ibid.



Discussion in the Executive Board

During the discussion of the Director-General's reports in the Executive Board's Committee on Non-Governmental Organizations in October, 1974, the delegate of China expressed satisfaction that positive measures had been taken to implement the Board's 1973 decision. He welcomed the decision of some organizations "to exclude the elements of Chiang Kai-shek" and hoped that "in the nearest future all those [organizations] which have not yet excluded the elements of Chiang Kai-shek will follow [the organizations that had done so] in taking a decisive step in response to the call issued" in the Board's 1973 decision. He requested the UNESCO Secretariat "to take further and more effective measures in urging all the [organizations] which have not severed their relation with Chiang Kai-shek to take positive actions as soon as possible in the direction of a full implementation of" the Board decision.⁵¹

Responding to the Chinese delegate, the United States representative stated that his government did not favor "the use of Unesco to achieve expulsions of individuals and private organizations from the non-governmental organizations that have relations with Unesco." The United States considered that non-governmental organizations "are precisely what that term states: they do not speak for governments or any political groups, nor do they take instructions from them." It was therefore improper for Unesco "to impose political conditions upon [non-governmental organizations] which maintain relations with Unesco."⁵²

No draft resolution having been submitted in the Executive Board's Committee on Non-Governmental Organizations, the Committee's report is essentially limited to a statement of the exchange of views between the Chinese and the United States representatives.⁵³ The exchange was repeated in the Executive Board, which also had no resolution before it, and merely took note of the report submitted by the Committee on Non-Governmental Organizations.⁵⁴

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51. 95 EX/19, para. 13, p. 3 (1974). The Chinese representative emphasized that he had said "all" organizations that had "not yet excluded the elements of Chiang Kai-shek." Id., at para. 16, p. 4.

52. Id., at para. 15, pp. 3-4 (emphasis in the original).

53. The Chinese-United States exchange appears verbatim in the Committee's report. Id., at paras. 13, 15 and 16 (1974).

54. 95 EX/SR.1-23, at SR.14, paras. 5.1-5.3 (China), 10.1-10.4 (United States), and 12 (noting the report), pp. 118-20 (1974); Doc. III.C.9. See 95 EX/Dec. 8.3 (1974).



In a major statement to the Executive Board, the Chinese representative noted that "over two-thirds of the non-governmental organizations having relations with Unesco had replied to the Director-General's communication," and that the majority of organizations that had "maintained contacts with the Chiang Kai-shek regime had cut off such relations." He hoped that the others "would keep pace with the tide of current history and sever relations with any contacts they might have in Taiwan." The Chinese representative regretted, however, that some organizations, "such as ICSU, still declined to expel such elements," using pretexts which he considered to be absolutely groundless. He considered that such an attitude was "contrary to the Board's decision and was most mistaken."⁵⁵

The United States representative reiterated his government's belief that "non-governmental organizations enjoying consultative relations with Unesco did not speak for any governments, groups, cliques or political parties." He said that such organizations "should be allowed to open their membership to groups or individuals regardless of where the latter were located," and should not be penalized for doing so. As to ICSU he considered that its expulsion from UNESCO "would be tantamount to removing science from Unesco's sphere of activity." In the United States view, the goal should be to resolve the complex Taiwan problem "without violating the rights of non-governmental organizations" and in the interests "of securing the fullest possible participation in Unesco's work of all scientists, scholars, and professional groups."⁵⁶

The Chinese delegate observed that the United States position "could be taken as meaning that ... organizations which had not expelled members in Taiwan [should] refrain from doing so, thus repudiating the will of the Chinese people," and challenging the decision that had been taken by the Executive Board.⁵⁷

The 1974 General Conference

In a brief report submitted to the 18th Session of the General Conference in November 1974, the Director-General stated that as of October 16, 1974, a total of 290 out of the 344 organizations contacted had replied to the circular letters sent by the Director-General. Of this number, 254 had stated that they had no branches, sections or individual members in Taiwan, and thirty-six organizations had reported that they did have such branches, sections or individual members.⁵⁸ No further data was given in the Director-General's report.

55. 95 EX/SR.1-23, at SR.14, para. 5.1, p. 118 (1974).
China was supported by the representatives of Pakistan, Chile and Sri Lanka. See *id.*, at paras. 7-9, pp. 118-119.
56. *Id.*, at SR.14, paras. 10.3-10.4, p. 119.
57. *Id.*, at SR.14, para. 11.1, p. 120.
58. 18 C/104, paras. 6-8, pp. 2-3 (1974); Doc. III.C.10.
The report contained no details as to the contents of the responses received by the Director-General.



The People's Republic of China submitted a draft resolution that recalled the 1973 Executive Board decision, and noted "with satisfaction" that some organizations had "already excluded bodies or elements linked with Chiang Kai-shek and severed connections with them."⁵⁹ Using language nearly identical to that used in the 1973 Executive Board decision, the draft resolution provided as follows:

The General Conference, ...

Noting with close attention that bodies or elements linked with Chiang Kai-shek and usurping the name of China continue to conduct illegal activities within certain international non-governmental organizations maintaining relations with Unesco,

Urges all international non-governmental organizations which maintain relations with Unesco and in which bodies or elements linked with Chiang Kai-shek still participate, having illegally usurped the name of China, to take measures to exclude them immediately and to break off all relations with them;

Invites the Director-General:

- (i) to communicate this resolution to all international non-governmental organizations maintaining relations with Unesco;
- (ii) to request the international non-governmental organizations concerned to inform him of the action they have taken to comply with the resolution;
- (iii) to submit a report on this subject to the Executive Board at its Autumn session in 1975.⁶⁰

The Chinese draft resolution was adopted in the Plenary Meeting of the General Conference without change and with no debate. The vote was 57 in favor, 2 opposed, with 22 abstentions.⁶¹

59. 18 C/PLEN/DR.6, para. 4 (1974). The draft resolution was introduced in the Plenary Meeting and evidently was not referred to one of the Conference Commissions.

60. 18 C/PLEN/DR.6, paras. 5-7 (1974); Doc. III.C.11. The draft resolution added the words "all" and "still" in the paragraph urging the breaking of relations with organizations having members in Taiwan. See 93 EX/Dec. 6.9 (1973); Doc. III.C.3.

61. 18 C/VR.47 (prov.), paras. 13.1-13.2, p. 7 (1974). Japan explained that it had abstained because the paragraph urging the breaking of relations with organizations having members in Taiwan "seems to go beyond the competence of Unesco." Id., at para. 14, p. 7. The General Conference vote does not appear in the verbatim record.



In its main operative paragraph, the General Conference resolution thus "urges" non-governmental organizations, "in which bodies or elements linked with Chiang Kai-shek still participate, having illegally usurped the name of China," to exclude such "bodies and elements" immediately, and "to break off all relations with them."⁶²

The Director-General's Survey, 1975

In January 1975, the Director-General sent a letter "to all international non-governmental organizations maintaining official relations with Unesco", informing them of the General Conference resolution, and asking those organizations "having branches, sections or members linked with Chiang Kai-shek to send [him] as detailed information as possible on the points raised in the resolution."⁶³ By the September 1975 Executive Board meeting replies had been received from 21 of the 37 organizations which had stated that they had branches, sections or members in Taiwan.⁶⁴

Seven of the 21 organizations stated that the question of the action to be taken pursuant to the General Conference resolution was a matter to be determined by their governing bodies, which were scheduled to meet in the latter part of 1975 or in 1976.⁶⁵ Two other organizations merely declared that they were prepared to seek means of giving effect to the resolution.⁶⁶ There were, therefore, only 12 replies of substance submitted for consideration by the Board.

Five organizations indicated that they had only individual members in Taiwan, two of these indicating further that "their national members did not represent either country or government."⁶⁷

62. 18 C/Res. 6.51, para. 1 (1974); Doc. III.C.13.

63. 98 EX/20, para. 3, p. 2 (1975). The Director-General's letter went to organizations having consultative status with UNESCO. Ibid. Cf. note 4 supra.

64. 98 EX/21, paras. 5-6, p. 2 (1975). See note 37 supra.

65. 98 EX/20, p. 3 (1975). One such organization was the World Psychiatric Association; see text at note 27 supra.

66. The two were the International Astronautical Federation and the World Fellowship of Buddhists. Ibid.

67. The latter two were the World Young Women's Christian Association and the International Society for Rehabilitation of the Disabled. 98 EX/21, para. 5, p. 2 (1975). The others were the International Federation of Women Lawyers, id., at para. 6, p. 2; the World Council for the Welfare of the Blind and the International Water Supply Association, 98 EX/20, p. 3 (1975).



Two organizations indicated that the name of their branch or section in Taiwan had been changed. International PEN said that the PEN Centre in Taiwan would be known as the "Taipei Chinese PEN Centre."⁶⁸ The International Montessori Association said that it could not agree to expel "people or institutions who support the effort to better world conditions of childhood," but it had already taken action to "cancel the word 'China' where it appears as being represented by the Minister of Education of Taipei."⁶⁹

Finally, three organizations indicated that they had no authority to deprive a branch or section of its membership rights in response to a request by UNESCO,⁷⁰ and two organizations appeared to indicate that they would not carry out the General Conference request.

The International Association of Lions Clubs stated that it believed that the resolution "is contrary to the principles of Unesco," and that its Board of Directors had "affirmed its conviction to continue working with all the member clubs of our Association in whatever country or geographical area they may be found."⁷¹

The International Council of Scientific Unions (ICSU) stated that it was soliciting the views of its member unions, and that "those who have answered uniformly agree that we could not take the position of casting out one of our members as a political precondition to another's applying for membership." ICSU stated, however, that it would be proper "for ICSU or a Union to insist that a national member not pretend to represent scientists in geographical areas over which it has no effective control," and that ICSU had obtained "a formal statement from the Academy of Sciences in Taiwan subscribing to this principle."⁷²

Executive Board Review, 1975

The report submitted by the Director-General was examined in the Executive Board's Committee on Non-Governmental Organizations in September, 1975. During that examination, the Chinese representative stated that:

[C]ertain organizations made pretexts for their stand against the expulsion of the Chiang clique. They argued, for example, their sections in Taiwan represent neither a country nor a government, or 'the members are accepted as individuals, regardless of the place of their residence' All these allegations are absolutely groundless. Those in Taiwan who have sneaked their way into these non-governmental organizations, be they individuals or bodies, are in fact all under the control of the Chiang clique.⁷³

68. Id., at p.3.

69. Id., at p.4.

70. The three were the International Council for Scientific Management, and possibly Caritas Internationalis and the International Confederation of Free Trade Unions. Id., at pp. 2-3.

71. Id., at p. 4.

72. Id., at p. 2.

73. 98 EX/21, para. 8, p.2 (1975).



The Chinese delegate said that it was obvious that the question was political, not technical. He said that "Taiwan is an inalienable part of China's territory," and that the "Government of the People's Republic of China is the sole legal representative of the Chinese people." He therefore hoped that the non-governmental organizations in question would not "go against the historical trend," but would "make a decisive change of their stand and sever their relations with the Chiang clique."⁷⁴

At the motion of the Chinese representative, the Committee decided without taking a vote to transmit to the Executive Board a draft resolution asking the Director-General to continue to request non-governmental organizations "to inform him of the action they have taken to comply" with the General Conference resolution, and to report to the Board at its Autumn session in 1976.⁷⁵

The Chinese draft resolution was adopted by the Executive Board without discussion and without change.

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74. Ibid. There was apparently no response to the Chinese statement by any member of the Executive Board.

75. Id., at para. 9, p. 3. Two members stated that, if the draft resolution had been put to the vote, they would have abstained.
Id., at para. 10, p. 3.



PART III: OTHER UNESCO ACTIONS

D. PLO Participation in UNESCO

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D. PLO PARTICIPATION IN UNESCO

The question of participation by the Palestine Liberation Organization (PLO) in the work of UNESCO was raised in the Executive Board in October 1974, just prior to the opening of the 1974 session of the General Conference.

Executive Board Proposal, September 1974

A draft resolution introduced in September 1974 by seventeen members of the Executive Board¹ sought to have the Board ask the General Conference to take the following action:

- (1) amend the Rules of Procedure to provide for invitations to the PLO to send observers to sessions of the General Conference;
- (2) amend the Rules of Procedure to provide that PLO observers may make oral or written statements in plenary meetings and in meetings of committees, etc., with the consent of the presiding officer;
- (3) amend the "Regulations for the general classification of the various categories of meetings convened by Unesco"² to provide for invitations to the PLO to send observers to all such meetings;
- (4) amend the General Conference resolution on the UNESCO Programme of Participation³ to enable aid to be granted to the PLO; and
- (5) "request the Director-General to cater for the participation" of the PLO, "in consultation with the League of Arab States, in the appropriate fields of the activities of Unesco."⁴

1. 95 EX/DR.11 Rev. (1974). The 17 sponsors were: Afghanistan, Algeria, Bulgaria, Czechoslovakia, Egypt, India, Lebanon, Pakistan, People's Republic of China, People's Republic of the Congo, Saudi Arabia, Senegal, Sri Lanka, Togo, U.S.S.R., Yugoslavia and Zaire.
2. The "Regulations for the general classification of the various categories of meetings convened by Unesco" are described in Part II, sections B and D, above.
3. 12 C/Res. 7.21 (1962).
4. 95 EX/DR.11 Rev., para. 9(a) and (c) through (f) (1974).



The draft resolution would also have the Executive Board decide that the PLO "shall be invited to send observers to the eighteenth session of the General Conference, subject to the latter's approval of the proposed amendment" of the Rules of Procedure.⁵

The draft resolution was based upon three developments. First, it "re-called" earlier United Nations General Assembly resolutions that had called upon states to aid "peoples struggling for liberation, self-determination and independence against colonial and alien domination," and that had stated that "the people of Palestine are entitled to equal rights and self-determination."⁶ Second, the draft resolution "reaffirmed" the 1972 UNESCO General Conference resolution concerning "Unesco's contribution to peace and its tasks with respect to the elimination of colonialism and racialism,"⁷

which had stated in its preamble that the peoples struggling for their liberation should be associated with Unesco's activities, and which had decided the increase and intensification of Unesco's activity in providing all appropriate assistance within its means and competence to all people struggling against colonialism and racialism.⁸

Finally, the draft resolution referred to a similar recent action of the World Health Assembly, which had asked the Director-General of WHO "to take the necessary steps to invite the representatives of the national liberation movements recognized by the Organization of African Unity or by the League of Arab States to attend the meetings of WHO in an observer capacity."⁹

The sponsors of the draft resolution pointed out that the Palestine Liberation Organization had been recognized by the League of Arab States as the "sole representative of the Palestinian people," and that this fact had been officially communicated by the League of Arab States to the Director-General of UNESCO.¹⁰ They also noted that the same recognition had been accorded the PLO by the Fourth Summit Conference of Non-Aligned Countries

5. Id., at para. 9.

6. General Assembly Resolutions 2787, para. 3 (XXVI)(1971), 26 GAOR Supp. 29, pp. 82-83 (A/8429)(1971); and 2672(c), para. 1 (XXV)(1970), 25 GAOR Supp. 28, p. 36 (A/8028)(1970); draft resolution paras. 2 and 3.

7. 17 C/Res. 10.1 (1972), quoted in draft resolution para. 4. See Part III.A above, and Doc. III.A.11.

8. 95 EX/DR.11 Rev., para. 4 (1974).

9. Id., at para. 5. The draft resolution also noted at para. 6 that the 1974 Geneva Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts had decided "to invite the representatives of the liberation movements recognized by the regional governmental organizations to participate in its work."

10. See remarks by the delegate of Lebanon, Mr. Abu-Izzeddin, and by the Director-General, 95 EX/SR.1-23, at SR.14, paras. 14.1-14.2 and 31.1-31.2, pp. 120 and 127 (1974).



held in Algiers in September 1973, and by the Islamic Summit Conference held in Lahore in February 1974.¹¹ As to the Specialized Agencies of the United Nations, PLO observers had attended both the 1974 session of the World Health Assembly and the 1974 General Conference of the Universal Postal Union.¹²

Executive Board Action, October 1974

During the discussion of the draft resolution in the Executive Board, on October 3, 1974, many speakers referred to the necessity of "restoring the rights of the people of Palestine," which "was a prerequisite for a just and lasting peace in the Middle East."¹³ It was said that UNESCO, whose Constitution called upon it to "further universal respect for justice, for the rule of law and for human rights and fundamental freedoms," should be "in the forefront of the battle for justice and peace" in respect of the "rights of the Palestinian people."¹⁴ The Soviet delegate said that his government "unswervingly advocated that the Israeli aggressors be made to liberate the Arab territories . . . and to restore the legitimate rights of the Palestinian people." He considered that the "voice of the PLO should ring out at the eighteenth session of the General Conference of Unesco, which would beyond any doubt respond to it."¹⁵ The Chinese delegate referred to his government's consistent support of the "Palestinian people in their struggle against Israel and Zionist aggression," and said that the "PLO had every right . . . to send observers" to the 18th General Conference and to UNESCO meetings.¹⁶

The representative of Israel stated that his government totally rejected the proposal to invite the PLO to participate in UNESCO meetings. He referred to provisions of the Charter of the PLO which in his view showed that the PLO sought through violence to establish an Arab state in Palestine and to expel the Jewish people from the area. He also charged that the PLO had a philosophy of violence that was clearly shown in its use of terrorist tactics that had horrified the world in the past several years. Furthermore, he said that the PLO had no basis to pose as the sole representative of the

11. Id., at SR.14, para. 35.2, pp. 128-29. The representative of Pakistan stated that the PLO "had been accorded exactly the same honours as those extended to the other delegations" at the Lahore Islamic Summit Conference. Id., at para. 15.2, p. 121.
12. Id., at SR.14, para. 35.2, pp. 128-29.
13. Id., at SR.14, para. 18.2, p. 122 (Sri Lanka). See also 95 EX/INF.5 (1974).
14. Ibid. See also id., at paras. 16.1-16.3, pp. 121-22 (Algeria).
15. Id., at SR.14, para. 24.3, pp. 124-25.
16. Id., at SR.14, para. 25.1, p. 125.



Palestinian people, and that it would not fulfill the goal of self-determination for the people of Palestine to accord the PLO recognition as their sole representative. Israel therefore opposed any invitation to the PLO, and deplored the importation into the Executive Board of political debates that properly belonged elsewhere, which was increasingly leading to the politicization of UNESCO.¹⁷

The delegate of Jamaica, Mr. Wynter, said that the debate reminded him of earlier discussions of the composition of the Board and the question "whether Board members represented themselves as individuals, their Governments and the General Conference or not." In the current debate "Board members were speaking as individuals," but "political overtones were strong and reflected their individual Government's views." His Government "had instructed him to say that the question at issue was a matter being discussed currently by the United Nations General Assembly, and that the Board was therefore not acting in isolation in considering it." He considered that "the question was mainly of a political nature" and his Government "would act in accordance with the commitments it had entered into during the Fourth Summit Conference of Non-Aligned Countries," and support "the Arab people of Palestine in its struggle against colonialism, Zionism . . . and for the recovery of their national rights."

Mr. Wynter observed that "political decision [in UNESCO] must be taken in line with the Constitution of Unesco and its aim of working for peace and security," which included "the security of Member States in the region concerned." One way of promoting peace "was through the advancement of mutual understanding among peoples," which was the way in which the draft resolution should be interpreted. He said that "although the decision of recognition may be political, the PLO would not be coming to Unesco for a political purpose." In this light, he said he would support the draft resolution.¹⁸

With minor changes introduced in the course of the debate in the Executive Board, the seventeen-power draft resolution was adopted by the Board by a vote of 25 in favor, to 2 against, with 7 abstentions.¹⁹

Following the vote, the United States delegate, who had not participated in the debate, explained that he had voted against the draft resolution because it had gone beyond the procedure that had been contemplated under the agenda item. The United States had "grave reservations about the advisability of admitting national liberation movements, or indeed any

17. *Id.*, at SR.14, paras. 33.1-33.6, pp. 127-28. See *id.*, at paras. 35.1-35.4, pp. 128-29, for the response given by the representative of the Arab Organization for Education, Science and Culture (ALESCO).

18. *Id.*, at SR.14, paras. 36.1-36.5, pp. 129-30.

19. *Id.*, at SR.14, para. 52, p. 132.



political group which was not a State, to international conferences, particularly to conferences devoted to non-political subjects and of which States were normally members."²⁰ The United States had been prepared, however, to agree to a formula under which "the appropriate regional inter-governmental organization" would designate the national liberation movements, and the designated national liberation movements would be invited to attend international meetings as observers under the sponsorship of the regional inter-governmental organization. The draft resolution presented to the Executive Board went beyond this formula, and was therefore unacceptable to the United States.²¹

Under the draft resolution as adopted by the Executive Board,²² the Palestine Liberation Organization would be given the right to send observers to sessions of the General Conference and to all UNESCO meetings.²³ The PLO observer status would thus be independent of action by any other inter-governmental organization, including a regional organization such as the League of Arab States.

The 1974 Session of the General Conference

When the General Conference met later the same month, October 1974, it had before it two sets of proposals: first, the action just recommended by the Executive Board with regard to the Palestine Liberation Organization, discussed above; and, second, a parallel set of proposals relating to "African liberation movements recognized by the Organization of African Unity."²⁴

The latter proposals stemmed from the 1972 decision of the General Conference "to associate with the Organization's activities, including those of the General Conference, the representatives of African liberation movements recognized by the Organization of African Unity" (OAU). The 1972 General Conference resolution asked the Executive Board to decide on "the means necessary to this end," reporting as necessary to the General Conference at its 18th Session.²⁵

The Executive Board's proposals relating to African liberation movements recognized by the OAU contemplated the approval by the Executive Board prior to each session of the General Conference of a list of such movements which

20. Id., at SR.14, para. 53, p. 132.

21. Ibid. The United States would thus apparently have accepted a procedure whereby the PLO obtained observer status under the sponsorship of the League of Arab States.

22. 95 EX/Dec. 7.8 (1974); Doc. III.D.3.

23. The resolution recommends that the General Conference take the necessary action to grant the observer status to the PLO. Id., at para. 8; see text at notes 1-4 above.

24. See 18 C/20 (1974); and 18 C/111 (1974); Doc. III.D.4.

25. 17 C/Res. 10.1, paras. 5-6 (1972). See Part III.A, above, and Doc. III.A.11.

would be invited to send observers to that session.²⁶ With regard to other UNESCO meetings, the Board's proposals would empower the appropriate body, that is, the General Conference, the Executive Board, or the Director-General, according to the category of the meeting, to determine which African liberation movements recognized by the OAU would be invited to send observers to the meeting.²⁷ The proposals would also amend the UNESCO Programme of Participation "to enable aid to be granted to African liberation movements recognized by the OAU, using the latter as an intermediary."²⁸

Both sets of proposals were referred by the General Conference to the Conference Legal Committee, which decided to examine them simultaneously and to submit a single report to the Conference.²⁹

During the discussion in the Legal Committee, the delegate of Israel pointed out that "up to the present time, the General Conference had taken a decision only on the African liberation movements recognized by the Organization of African Unity, and not on the Palestine Liberation Organization." He said that the proposed amendments would violate the UNESCO Constitution, which in his view appeared to limit observer status to organizations having co-operative arrangements with UNESCO.³⁰ The Israeli delegate referred to Article IV, paragraph 13, of the UNESCO Constitution, which authorized the General Conference to invite as observers at specified sessions of the General Conference, "representatives of international organizations, such as those referred to in Article XI, paragraph 4." The latter provision authorizes co-operative arrangements between UNESCO and "non-governmental international organizations concerned with matters within its competence."³¹ Since the PLO had no agreement or consultative status with UNESCO, the Israeli delegate considered that the General Conference would not be justified in granting it observer status.³²

26. 93 EX/Dec. 6.5, para. 2(a) (1974); Doc. III.D.2. The Executive Board decision would also permit the observers to make oral or written statements in plenary meetings and in committees of the General Conference. *Id.*, at para. 2(c). See the parallel provisions relating to the PLO, text at note 1 above.

27. 93 EX/Dec. 6.5, *supra*, at para. 4. See text at note 2 above.

28. *Id.*, at para. 5. See text at note 3 above.

29. Legal Committee, First Report, 18 C/117, para. 3, p. 1 (1974); Doc. III.D.5.

30. *Id.*, at para. 13, p. 3.

31. UNESCO Constitution, Art. IV, para. 13, provides that: "The General Conference...may...invite as observers at specified sessions of the General Conference...representatives of international organizations, such as those referred to in Article XI, paragraph 4." 4 UNTS 275, 284. Art. XI, para. 4, provides for co-operation arrangements between UNESCO and "non-governmental international organizations concerned with matters within its competence." *Id.*, at p. 292.

32. 18 C/117 para. 13, p. 3 (1974).



An amendment offered in the Legal Committee to the proposal submitted by the Executive Board concerning African liberation movements recognized by the OAU sought to bring that proposal into line with the corresponding proposal relating to the Palestine Liberation Organization. The Executive Board had proposed that, prior to each session of the General Conference, the Board shall "decide upon the list of African liberation movements recognized by the OAU which are to be invited to send observers to that session" of the General Conference.³³ The amendment, submitted by Algeria, Senegal, Dahomey, Ethiopia and Niger,³⁴ sought to remove the provision for a decision by the Executive Board. The resolution would thus direct the Board to "include in the appropriate list the African liberation movements" recognized by the OAU "which are to be invited to send observers" to the session of the General Conference, implying that the decision on the list would lie with the OAU rather than with the Executive Board.³⁵ The amendment was accepted by the Legal Committee and became part of the draft resolution as reported to the General Conference.³⁶

The two sets of proposals, with the change indicated above, were reported to the Plenary Meeting of the General Conference by the Legal Committee without substantial opposition. There was only one dissenting vote in the Legal Committee, which was cast in opposition to the proposal to grant observer status to the Palestine Liberation Organization.³⁷

Action by the General Conference, October 1974

During the debate in the Plenary Meeting of the General Conference on October 25, 1974, the Israeli delegate repeated his position that under the UNESCO Constitution, non-governmental bodies could be invited to send observers to UNESCO meetings only when they had concluded consultative agreements with UNESCO.³⁸ There had been no such agreement with the PLO, so that, in Israel's view, it was not consistent with the UNESCO Constitution to invite the PLO to send observers to UNESCO meetings.³⁹

33. 93 EX/Dec. 6.5, para. 2(a) (1974), transmitted to the General Conference as 18 C/20, Annex IV (1974); Doc. III.D.2.

34. 18 C/LEG/DR.1 (1974).

35. See 18 C/117, para. 8, pp. 2-3 (1974).

36. Ibid. The Legal Committee vote on the amendment was 11 in favor, to none opposed, with 7 abstentions. The resolution as amended was approved by the Legal Committee for transmission to the General Conference by a vote of 15 to zero, with 4 abstentions. Ibid.

37. 18 C/117, paras. 8-9 and 17-20, pp. 2-4 (1974).

38. See text at notes 30-32 above.

39. 18 C/VR.15 (prov.), paras. 14.2-14.3, p. 7 (1974); Doc. III.D.6.



The Israeli delegate pointed out that in the case of the African liberation movements, there had been a specific request made by the General Assembly, and a decision by the 1972 General Conference.⁴⁰ Furthermore, the organization had given extensive and detailed consideration to the means of associating African liberation movements with the work of UNESCO, and a decision had been reached only after three meetings of the Executive Board and two years of preparatory work.⁴¹

In contrast to the procedure that had been followed in the case of the African liberation movements, in the case of the Palestine Liberation Organization the Israeli delegate pointed out that there had been no resolution of the General Assembly that specifically referred the PLO to the Specialized Agencies, and there had been no mandate from the UNESCO General Conference. The Israeli delegate said that in the case of the PLO there had been:

no request or even opportunity for the Director-General to prepare documentation on the constitution and aims of the party requesting to be admitted; there is no inquiry into the categories of activities of the PLO which would correspond to the activities of Unesco in education, in science and in culture; there is no report on the kind of reciprocal benefits which the parties might enjoy by some form of association. On the contrary, there is, in the case of the PLO, an unseemly haste and a by-passing of the regulations and practices of Unesco.⁴²

Referring to the decision that had just been taken by the General Assembly of the United Nations to grant observer status to the Palestine Liberation Organization,⁴³ the Israeli delegate stated that the General Assembly deals with political questions, including specifically the question of Palestine. In contrast, he said that UNESCO was being asked to grant "permanent observer status to a single organization completely unrelated to any specific issue which is the business of this Organization."⁴⁴

The Israeli delegate then turned to the nature and activities of the Palestine Liberation Organization, reiterating the views that had been expressed by Israel in the Executive Board.⁴⁵ He concluded by saying that the problem was "highly controversial, highly complex [and] highly dangerous," and that UNESCO was being "asked to take a partisan, one-sided stand, perhaps not even within [Unesco's] competence."⁴⁶

40. See 17 C/Res. 10.1 (1972), and Part III.A above.

41. 18 C/VR.15 (prov.), paras. 14.4-14.6, pp. 7-8 (1974).

42. *Id.*, at para. 14.8, p. 8.

43. General Assembly Resolution 3210 (XXIX) (1974), 29 GAOR Supp. 31, p. 3 (A/9631) (1974).

44. 18 C/VR.15 (prov.), para. 14.10, p. 9 (1974).

45. See text at note 17 above.

46. 18 C/VR.15 (prov.), para. 14.18, p. 10 (1974).



The United Nations General Assembly decision referred to by Israel was taken on October 14, 1974; it invited the PLO to "participate in the deliberations of the General Assembly on the question of Palestine."⁴⁷ The October 14 decision was followed by a resolution adopted November 22, 1974, in which the United Nations General Assembly invited the PLO to participate as an observer in the work of the General Assembly and in "the sessions and the work of all international conferences convened under the auspices of the General Assembly."⁴⁸ The November 22 resolution also "considered" that the PLO is "entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations."⁴⁹ The term "organs" refers, for example, to the Economic and Social Council, but not to the Specialized Agencies; the resolution made no mention of participation by the PLO in the work of the Specialized Agencies. Having been adopted on November 22, 1974, however, the General Assembly resolution came after the UNESCO General Conference discussion of PLO participation, which took place on October 25, 1974, and thus did not affect the UNESCO General Conference decision.

The draft resolutions with respect to participation by African liberation movements were adopted by the General Conference without a negative vote and with few abstentions.⁵⁰ Those relating to the Palestine Liberation Organization were adopted with 2 negative votes and approximately 20 abstentions.⁵¹

Following the vote, the delegate of the United States, who had not participated in the debate in the Plenary Meeting, stated that the United States had voted against the draft resolutions relating to observer status for the Palestine Liberation Organization, but that the United States would not have opposed a resolution providing for "the admission of liberation movements recognized by the League of Arab States."⁵² The United States delegate said that the vote by the United States did not reflect a "lack of understanding for the very real concerns of the Palestinian people" or "indifference to the recognized fact that the Palestinian problem lies at the heart of the settlement of the middle-eastern conflict." The United States vote represented:

47. Note 43 *supra*.

48. General Assembly Resolution 3237, paras. 1-2 (XXIX) (1974), 29 GAOR Supp. 31, p. 4 (A/9631) (1974).

49. *Id.*, at para. 3.

50. The votes on the three separate draft resolutions relating to the African liberation movements were: 101 to none, with 7 abstentions; 102 to none, with 8 abstentions; and 102 to none, with 7 abstentions. 18 C/VR.15 (prov.), paras. 53.3-53.7, p. 21 (1974). The resolutions as adopted are 18 C/Res. 6.32, 17.2 and 18.1; Doc. III.D.7.

51. The votes on the three separate draft resolutions relating to the Palestine Liberation Organization were: 86 to 2, with 17 abstentions; 87 to 2, with 20 abstentions; and 85 to 2, with 22 abstentions. *Id.*, at paras. 55.3-55.7, p. 22. The negative votes were cast by the United States and Israel. The resolutions as adopted are 18 C/Res. 6.33, 17.3 and 18.2; Doc. III.D.7.

52. *Id.*, at para. 56.1, p. 22. See note 21 above.



[United States] opposition to injecting into the Rules of Procedure a highly political element. These Rules of Procedure, like any set of rules of procedure, provide for the orderly conduct of business and are addressed to strictly procedural problems that arise in the normal course of events. They are, therefore, general, non-political and impersonal in character and do not take account of political issues.⁵³

The United States delegate repeated his government's reservations as to the advisability of admitting national liberation movements to international conferences devoted to non-political subjects, but affirmed again his government's willingness to accept the "use of a formula under which the appropriate regional, intergovernmental organization may designate such groups to attend international meetings under its sponsorship." Had such a formula been adopted here, he said, the United States would not have opposed the resolution.⁵⁴

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53. Id., at para. 56.2, pp. 22-23.

54. Id., at para. 56.3, p. 23. See, for example, the World Health Assembly decision referred to in the text at note 9 above.

