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-tive status. Memorandum by the Legal Dept.

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Agenda item 34

ADMISSION OF REPRESENTATIVES OF NON-GOVERNMENTAL  
ORGANIZATIONS ENJOYING CONSULTATIVE STATUS

Memorandum by the Legal Department

1. This memorandum is transmitted in compliance with the request, made on 9 April 1953 at the 679th plenary meeting of the Economic and Social Council, for a legal opinion on the extent to which the denial by the United States of the applications by two representatives of non-governmental organizations for transit to the Headquarters District is consistent with the terms of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.

A. Summary of Facts

2. In accordance with resolution 288 (X) concerning consultative arrangements with non-governmental organizations, adopted by the Economic and Social Council under the authority of Article 71 of the Charter, the Women's International Democratic Federation, a non-governmental organization in consultative relationship with the Council in Category B, designated Mrs. Margarette Rae Luckock as its representative to attend the seventh session of the Commission on the Status of Women, which adjourned on 3 April 1953, and thereafter to attend the current session of the Economic and Social Council. The World Federation of Trade Unions, a non-governmental organization in consultative relationship with the Council in Category A, designated Mr. Jan Dessau as its representative to attend the current session of the Council. Both representatives made application for a visa at appropriate United States Consulates and the Secretariat of the Economic and Social Council made notification to the United States Mission to the United Nations of these applications, in accordance with established procedures.

3. The representative of the United States reported to the Economic and Social Council at its 679th plenary meeting on 9 April 1953 that his Government had found it impossible to grant these applications. He explained the position of his Government as follows:

"In denying these applications, my Government has found it necessary to invoke the right to safeguard its security which it reserved to itself in Section 6 of the Joint Resolution (Public Law 357) of the 80th Congress, which authorized the United States to enter into the Headquarters Agreement, and in the note of its Representative, dated November 21, 1947, bringing the Headquarters Agreement into effect."

B. Provisions of the Headquarters Agreement

4. Section 11(4) of the Headquarters Agreement provides:

"The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of... (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter..."

5. Section 13(a) of the Headquarters Agreement reads as follows:

"(a) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that Section, they shall be granted without charge and as promptly as possible."

6. These are the only provisions in the Headquarters Agreement bearing upon the right of transit to the Headquarters District on the part of properly designated representatives of non-governmental organizations. Nothing in the text of the Headquarters Agreement reserves to the United States the authority to deny a visa to any of the classes of persons specified in Section 11. Indeed, Section 13(d) specifies that, except as provided above, "... the United States retains full control and authority over the entry of persons or property into the territory of the United States..."

C. Joint Resolution of the 80th Congress

7. By Joint Resolution (Public Law 357 - 80th Congress) the Senate and House of Representatives of the United States Congress authorized the President of the United States to bring the Headquarters Agreement into effect on the part of the United States.

8. Section 6 of the Joint Resolution stated that nothing in the Agreement should be construed as in any way diminishing, abridging or weakening the right of the United States to safeguard its own security and completely to control the entry of aliens into any territory of the United States other than the Headquarters District and its immediate vicinity, and such areas as it was reasonably necessary to traverse in transit between the same and foreign countries.<sup>1/</sup>

9. The Secretary-General of the United Nations was authorized to bring the Headquarters Agreement into force by the General Assembly, which approved the text of the Agreement in its resolution 169 (II). But in the event that the provision in section 6 of the Joint Resolution had been intended by the United States to constitute a reservation, it was never made known to the General Assembly as such, and it was never considered by the General Assembly nor accepted by it.

10. It is an established principle of international law that a reservation to a bilateral treaty or agreement is in effect a proposal to amend the text of the agreement and must therefore be accepted by the other party if it is to have any effect. David Hunter Miller, for example, in his well-known work on "Reservations to Treaties", after reviewing the history of qualifying declarations in United States treaty practice, states (p. 76), "One conclusion supported by all of the foregoing precedents is that the declaration, whether in the nature of an explanation, an understanding, an interpretation, or reservation of any kind, must be agreed to by the other Party to the treaty... Accordingly, in a treaty between two Powers only, the difference between a reservation of any nature and an amendment, is purely one of form." (Author's emphasis.)

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<sup>1/</sup> "SEC.6. Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13(3) (e) of the agreement, and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws."

11. Pursuant to its section 28, the Headquarters Agreement was brought into force by an exchange of notes between the Secretary-General and the representative of the United States. The United States note, dated 21 November 1947, added:

"Pursuant to instruction from my Government, I have the honor to inform you that the Government of the United States of America is prepared to apply the above-mentioned Headquarters Agreement subject to the provisions of Public Law 357."

This observation is in general terms and did not make reference to any reservation. It was made subsequent to the final adoption of the Agreement by the General Assembly. For these reasons, and because it appeared in a formal note of entry into force, it did not give notice to the Secretary-General that the United States might claim the authority to restrict transit to and from the Headquarters District.

12. Finally, even if the United States had intended to formulate a reservation, it would not appear from a reading of section 6 of the Joint Resolution that it could have application to the present cases. It refers to control by the United States of the entrance of aliens into any territory of the United States other than the Headquarters District, its immediate vicinity, and the necessary area of transit.

#### D. Conclusion

13. It appears from the foregoing that persons falling within the classes referred to in section 11 of the Headquarters Agreement are entitled to transit to and from the Headquarters District, and that this right of transit has not been made the subject of any reservation.

14. Should the United States adhere to its position, it is clear that there would then exist a dispute between the United Nations and the United States concerning the interpretation or application of the Headquarters Agreement. The Council will note that section 21 of the Headquarters Agreement establishes the procedures for handling any such dispute. If the dispute is not settled by negotiation or other agreed mode of settlement, it "shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice."

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