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Notes on USON comments conc. sy9
draft memo of 30 June 54.

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NOTES ON USUN COMMENTS CONCERNING SYG DRAFT MEMO OF 30 JUNE, 1954

1. The point of departure of the USUN comments is that the Secretary-General's memo is slanted in favor of United Nations authority and gives short weight to the "balanced" relationship between the universal and regional systems.

The USUN comments are therefore predicated on the assumption that the purpose or effect of the Secretary-General's memo is to induce the Security Council to deprive the regional agency "of its responsibilities under the Charter".

2. The premise of the Secretary-General's memo, on the other hand, is that the United States position in the Guatemalan case (not explicitly referred to in the memo) threatens to destroy the "balance" envisaged in the Charter. The Secretary-General's memo is, therefore, designed to redress the balance.

3. These divergent points of departure make it difficult to match the two documents. The USUN comments clearly are intended to vindicate a position taken in a specific case, without at the same time making clear just what that position was. For example:

(a) The comments in one part read as if the Security Council were under an obligation to avoid action in cases of local disputes "falling within the scope of a fully developed and actively functioning regional agency". The comments state that "appropriate" use of regional agencies is "mandatory" upon the Security Council and the members of the United Nations.

Nevertheless, in the same paragraph the comments assert that neither a regional agency nor the Security Council has "exclusive competence" in such matters.

(b) The comments criticize the Secretary-General's memo for omitting an "accurate description of the balancing mechanism".

In support, the comments refer to Ambassador Lodge's statement of June 25, 1954 in the Security Council. In that statement, the United States Representative, arguing against adoption of the agenda, asserted that the United States was "legally bound" to oppose Security Council consideration of the Guatemalan dispute "until the matter has first been dealt with by the OAS".

Later in the same statement, he asserted that if the Security Council "assumed jurisdiction" over disputes which are the "proper responsibility" of regional organizations, the clock of peace would have been turned back.

These arguments are inconsistent with the statement in the USUN comments that no claim can rightfully be made that either a regional agency or the Security Council has "exclusive competence" in such matters.

4. The USUN comments are predicated on the assumption that by refusing to adopt the agenda, the Security Council made a "decision" not to resume consideration of the matter. Hence, that portion of the Secretary-General's memo which treats of the rights of members under Article 35 is evaded by the USUN comments, rather than contested. The Secretary-General's memo expressly recognizes the possibility that in exercising a sound discretion the Council might hear the aggrieved member and then postpone consideration of the matter.

The USUN comments, just as the United States Representative's statement of June 25, deals with the matter of adoption of the agenda as if it were the same as a decision to postpone consideration of an agenda item. The only difference between the statement of June 25 and the USUN

comments in this respect is - interestingly enough - that the latter does not at any place refer to the fact that the Security Council refused on June 25 to adopt an agenda. The statement of the United States Representative of June 25 was much more frank in this respect. Indeed, his statement went so far as to say that "if we adopt the agenda" the Security Council would in effect give Guatemala "a veto on the Organization of American States".

It is this wholly untenable position which threatened to destroy the "balancing mechanism" of the Charter.