

NOTES AND COMMENTS

NAGENDRA SINGH (1914–1988)

Nagendra Singh, who died in The Hague on December 11, 1988, was among the last of the great generation of Indian jurists whose academic and professional legal formation was acquired under the British raj in the preindependence period (in Cambridge and Dublin as well as in Indian universities). On the announcement, at war's end in 1945, by Prime Minister Attlee of the British Labour Government's decision to give up sovereignty over India, Dr. Singh became a member of the Constituent Assembly charged with the elaboration of the new postdecolonization, republican, federal Constitution of India. He was to continue these constitutional law interests throughout his professional legal life, which included, among other offices, Secretary to the President of India from 1966 to 1972. Dr. Singh was elected to the International Court of Justice in 1973, serving continuously as a judge until his death in December 1988, and holding the office of President of the Court for the 3-year term from early 1985 until early 1988.

Dr. Singh's intellectual interests in law, as reflected in his published works and in his active involvement in scientific legal organizations like the Institut de Droit International, the International Law Association and the American Society of International Law (of which he was an elected Honorary Member), were broad and eclectic, covering such widely varied fields as maritime law, international environmental protection law, and nuclear and general disarmament. He had published a legally innovative and politically influential monograph on the legality of nuclear arms, in 1959; it was republished, in a revised and updated and expanded version (with a coauthor), under the title *Nuclear Weapons and Contemporary International Law*, just a week before his sudden death.

Apart from his numerous judicial opinions, Dr. Singh will be remembered for his longstanding commitment to peace and disarmament, and also for his ability, as a graceful, tactful and persuasive interlocutor between East and West, to rally an intersystemic consensus in support of new international legal norms and norm making for the protection of the Earth's scarce resources, including the rapidly vanishing wildlife.

EDWARD MCWHINNEY*

CORRESPONDENCE

TO THE EDITOR IN CHIEF:

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I read with attention the article by Professor Yehuda Z. Blum, *The Seventh Emergency Special Session of the UN General Assembly: An Exercise in Procedural Abuse* (80 AJIL 587 (1986)). Its principal idea is that

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[t]he formal basis for holding emergency special sessions of the General Assembly is to be found in Resolution 377A (V), adopted by the General Assembly on November 3, 1950 (commonly known as the "Uniting for Peace" Resolution), and the Rules of Procedure of the General Assembly, as amended in the annex to that resolution [p. 587].

Similar views can be found in other influential pronouncements on emergency special sessions. Thus, for example, the representative UN publication, *The United Nations at Forty* (1985), asserts that "[u]nder the 'Uniting for Peace Resolution' adopted by the General Assembly in 1950 an emergency session of the General Assembly can be convened within 24 hours" (p. 27). These propositions, however, do not reflect exactly the present-day situation in this area. In my opinion, any relevant contemporary discussion concerning this kind of General Assembly session is bound to take into account the new facts and trends that have emerged in the course of the more than 40 years of existence of the United Nations. The main reason for my writing this letter is that I failed to detect the proper acknowledgment of these new trends in Professor Blum's article.

The first general remark that has to be made in this connection is that Resolution 377A (V) is not the exclusive basis for convening emergency special sessions of the General Assembly. Out of the nine such sessions held to this day, five were convened without any reference to this resolution. In the latter case, emergency special sessions may be convened either (1) at the initiative of the UN Security Council; or (2) at the initiative of a majority of the member nations, represented by one member nation; or (3) at the initiative of a single state after obtaining the consent of the majority of UN members.

An emergency special session was first convened without reference to the "Uniting for Peace" Resolution in 1958, when the third emergency special session was held to discuss the Middle East problem. This procedure recurred in one instance in the late sixties, and several times again in the eighties when several emergency special sessions of the General Assembly were convoked without any reference to the resolution. These sessions were summoned either by the Security Council or by some member states of the United Nations (*cf.* the table on p. 344). In all these cases, we can speak of a new practice of the United Nations brought about by the need to secure international peace and security. Emergency special sessions of this kind represent an effort by the United Nations as a whole to maintain international peace and security immediately after the Security Council becomes unable to act owing to the veto of one or more of its permanent members. This practice of the Security Council and/or member states has helped create a new mode of procedure that, in conjunction with Article 20 of the UN Charter, has extended the original concept of the "special session of the General Assembly" to include a new kind of session with more flexible timing. In contrast to the emergency special sessions called by referring to Resolution 377A (V), this kind of General Assembly session takes place in full agreement with the UN Charter in that it does not encroach upon the exclusive authority of the Security Council under chapter VII to adopt collective measures for the preservation of peace.

Another development which creates a new precedent in this field is the practice of adjournment and subsequent reconvening of the emergency special session, providing that certain requirements are met. This trend was commenced at the fifth emergency special session of the General Assembly

TABLE 1
EMERGENCY SPECIAL SESSIONS

ESS	Topic	Date(s)	Convened by	Referring to Res. 377A (V)
First	Middle East	Nov. 1–10, 1956	Security Council	Yes
Second	Hungary	Nov. 4–10, 1956	Security Council	Yes
Third	Middle East	Aug. 8–21, 1958	Security Council	No
Fourth	The Congo	Sept. 17–19, 1960	Security Council	Yes
Fifth	Middle East	June 17–Sept. 18, 1967	Soviet Union	No
Sixth	Afghanistan	Jan. 10–14, 1980	Security Council	No
Seventh*	Palestine	July 22–29, 1980	Senegal (Chairman,	Yes
		Apr. 20–28, 1982	Palestinian	
		June 25–26, 1982	Rights	
		Aug. 16–19, 1982	Committee)	
		Sept. 24, 1982		
Eighth	Namibia	Sept. 3–14, 1981	Zimbabwe	No
Ninth	Occupied Arab Territories	Jan. 29–Feb. 5, 1982	Security Council	No

* This session has not been formally adjourned and can be resumed whenever circumstances so require.

in 1967, even though there was no follow-up meeting in this case. Paragraph 2 of Resolution 2256 (ES-V) of July 21, 1967, dealing with the "Situation in the Middle East," states that the General Assembly "decides to adjourn the fifth emergency special session temporarily and to authorize the President of the General Assembly to reconvene the session as and when necessary." The preconditions for such a resumption are (1) the presence of a danger to international peace and security not resolved for an extended period of time due to the lack of unanimity of the permanent members of the Security Council, and (2) the agreement among member nations of the United Nations to present a sustained reaction to this situation on the part of the General Assembly while using a flexible procedural mechanism for calling the subsequent meeting(s) of the emergency special session. In practice, the mechanism of triggering a resumed emergency special session through the Security Council or the Secretary-General is only used for the first meeting. A simpler mechanism is applied for the calling of the following meetings: at the request of UN member nations these meetings are called by the President of the latest regular session of the General Assembly.

At present, there are two topical issues in world politics warranting the potential application of this procedure, the Palestinian and Namibian questions. In both instances, we can speak of problems unresolved for an extended period of time and endangerment to international peace and security, *inter alia*, due to the lasting inability of the Security Council to act effectively. The second requirement (*i.e.*, the agreement of member states) so far has only been met in connection with the Palestinian question. In fact, in some of the resolutions of the seventh emergency special session devoted to the Palestinian question, explicit mention is made of both of the requirements mentioned above. The first of these is Resolution ES-7/2 of July 29, 1980, concerning the "Question of Palestine," which in paragraph 14 says that the General Assembly "[d]ecides to adjourn the seventh emergency

special session temporarily and to authorize the President of the latest regular session of the General Assembly to resume its meetings upon request from Member States." Similar provisions are included in the subsequent resolutions concerning the "Question of Palestine": in paragraph 17 of Resolution ES-7/4 of April 28, 1982; in paragraph 10 of Resolution ES-7/5 of June 26, 1982; in paragraph 12 of Resolution ES-7/6 of August 19, 1982; and finally (so far), in paragraph 10 of Resolution ES-7/9 of September 24, 1982. These resolutions have generated the simplified procedure for calling follow-up meetings of the seventh emergency special session by the President of the latest regular session of the General Assembly, replacing at the same time the indefinite wording "as and when necessary" with the formula "upon request from Member States." The obligation of the President of the General Assembly is derived from Article 36 of its Rules of Procedure, which states: "The President of the General Assembly performing his function remains within the jurisdiction of the General Assembly." (*Cf.* in this connection, for instance, the statement of Ismat T. Kittani, President of the 36th session of the General Assembly in April 1982, that the resumption of the session "had been specifically provided for by the resolution adopted in July 1980."¹)

Up to this point, I have tried to analyze the question of emergency special sessions only in connection with its relation, or lack thereof, to the "Uniting for Peace" Resolution, but not from the standpoint of the Rules of Procedure of the General Assembly, which were supplemented with new articles as a consequence of the adoption of that resolution in 1950. These new articles, namely, Articles 8(b), 9(b), and 85, create the possibility of calling emergency special sessions of the General Assembly *exclusively* on the basis of the "Uniting for Peace" Resolution. What if an emergency special session of the General Assembly is called *without reference* to the resolution? In such a situation, it is absolutely out of the question to use the provisions of the Rules of Procedure added in 1950 because these are "reserved" *solely* for the emergency sessions called by reference to Resolution 377A (V). However, analysis of the new type of emergency special sessions unrelated to that resolution shows that the *contents* of the rules (i.e., the requirements for convening an emergency special session, the time factor, and the mono-thematic character of the session) are also applied to these sessions. This situation represents a natural reflection of this new kind of emergency special session of the General Assembly in the procedural aspect of the matter.

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TO THE EDITOR IN CHIEF:

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In his answer to my *Appeal for Ratification by the United States of Protocol I Additional to the Geneva Conventions of 12 August 1949*,¹ the Legal Ad-

¹ UN CHRON., September 1982, at 27.

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¹ *Agora: The U.S. Decision Not to Ratify Protocol I to the Geneva Conventions on the Protection of War Victims: Letter of Transmittal (of Protocol II) from President Reagan*. 81 AJIL 910 (1987), followed by my *An Appeal for Ratification by the United States*, *id.* at 912.