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Legal Writing

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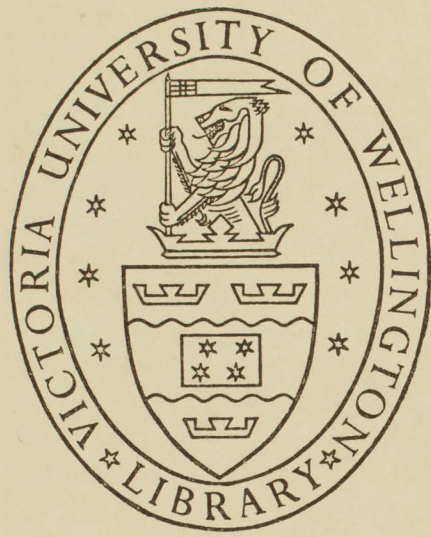
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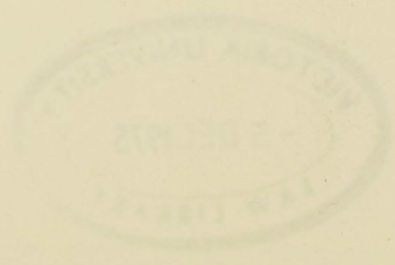
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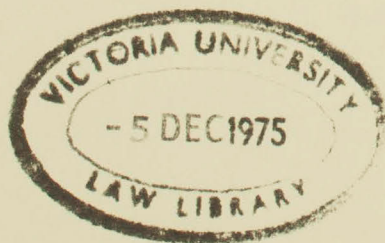
ALASTAIR STEWART

The legal scope of Rules 27, 28 and 29 of the General Assembly's Rules of Procedure, with special reference to South Africa.

Submitted for the L.L.B. (Honours) Degree at the Victoria University of Wellington.

1 September 1975





333,990

It is proposed to ascertain in this paper, with special reference to South Africa, the legal scope of Rules 27, 28 and 29 of the United Nations General Assembly Rules of Procedure. These Rules which relate to the question of credentials are as follows:

Rule 27: The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the opening of the session. The credentials shall be issued either by the Head of State or Government or by the Minister of Foreign Affairs.

Rule 28: A Credentials Committee shall be appointed at the beginning of each session. It shall consist of nine members, who shall be appointed by the General Assembly on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives and report without delay.

Rule 29: Any representative to whose admission a Member has made objections shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision. "Credentials" can be defined as a

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document issued by the Head of State or Government or by the Minister of Foreign Affairs of a State Member of the United Nations submitted to the Secretary-General designating the persons entitled to represent that Member at a given session of the General Assembly.

The Credentials Committee is a non-plenary, procedural committee of the General Assembly: its main task is to examine the validity of the credentials of the United Nations member states' delegations to the General Assembly and then submit its report to the General Assembly for approval. The composition of the committee is based on an informal agreement before the opening of the session. The United States, and the Soviet Union are usually among the members. At the 29th Session of the General Assembly the following states made up the Committee: Belgium, China, Costa Rica, Philippines, Senegal, U.S.S.R. Tan^zania, U.S.A., and Venezuela. It should be noted that by virtue of G.A. Resolution 396(V), the General Assembly recommended that whenever a question arises on the legality of a government, this question should be considered by the General Assembly or its Interim Committee and the attitude adopted by these organs should be taken into account in other organs of the United Nations and in the specialised agencies.

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Usually, approval of credentials is a formality. In practice, most problems that do arise, arise not out of the authenticity of the credentials, but from the competence of those who issued them. On a few occasions, the opportunity has been taken to challenge the credentials as a means of challenging the legality of a government, rather than in order to point out mere procedural errors.

Apart from the procedural requirements mentioned in Rule 27, no criteria are set down in the General Assembly's Rules of Procedure which may be relevant to the situation where the legality of a government is disputed. An analysis of past credentials cases may help to clarify the position.

Past Credential Cases

Past credentials cases can be divided into 2 major categories - (1) where rival governments claim to be the sole representative of the member state, and

(2) where there is no rival government but the government has reached or remains in power in a manner unacceptable to the majority of the member states of the United Nations.

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Ethiopia

The first acute credentials case in the context of a world-wide international organisation was that of Ethiopia in the League of Nations. By 1937 it would be true to say that Ethiopia was under the control of Italy as a result of a bitter and often savage war. At the seventeenth Assembly, an Ethiopian delegation presented its credentials as it had done in the past. The Committee on Credentials was faced with a very delicate problem in its interpretation of the Assembly's Rules of Procedure.

Rule 5:

1. Each member shall communicate to the Secretary-General, if possible one week before the date fixed for the opening of the session, the names of its representative, of whom there shall be not more than three.
2. The full powers of the representatives shall be delivered to the Secretary-General, if possible, one week before the date fixed for the opening of the session. They shall be issued by the Head of State or by the Minister for Foreign Affairs.
3. A Committee of nine members for the examination of the full powers shall be elected by the Assembly on the proposal of the President. The

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Committee shall appoint its own Chairman and Vice-Chairman. It shall report without delay.

4. Any representative to whose admission objection has been made shall sit provisionally with the same rights as other representatives, unless the Assembly decides otherwise.

(These rules were similar to those of the United Nations General Assembly.) If it admitted an Ethiopian delegation whose credentials had been issued by the exiled Haile Selassie, it would be opening the debates of the Assembly to persons who could not carry out its resolutions. On the other hand by recognising Italian sovereignty over Ethiopia, the Committee and the Assembly could be seen to be impliedly accepting the activities of a belligerent Member State which had blatantly violated the League's Covenant. Interesting from the point of view of this paper, is that, the question of credentials was treated as a substantive issue and not as a merely procedural matter. F.P. Walters in his book A History of the League of Nations, comments at P. 689, "In the past the appointment of the Credentials Committee and its proceeding, once appointed, had been a matter of quick moving routine, necessary to the

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Assembly as to every other international conference, but totally devoid of political interest....".

In the end, the Credentials Committee resolved the problem by stating that the credentials offered were derived from the same authority that had issued those unquestionably accepted by previous assemblies. In view of the situation in Ethiopia, could these credentials be held to meet the League's requirements? The members of the Credentials Committee were unanimous in their desire not to deny their validity. They therefore recommended that, since the rules of procedure provided that unless the Assembly decided otherwise, any representative to whose admission objection had been made should sit provisionally with the same rights as other representatives, the Ethiopian credentials should be considered sufficient to permit its delegation to be seated. This was approved by the Assembly.

The only inference that can be drawn from this case is that the legitimacy of origin of the authority issuing credentials was the criterion deemed to be the most appropriate to be applied. Since Italy controlled the country the acceptance of Ethiopian credentials was clearly based on a fiction. Yet the Member States opted to recognise this fiction. The Ethiopian credentials complied on a very tenuous basis with the rules of procedure, for

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Haile Selassie was no longer the effective Head of State, the King of Italy having replaced him. A further factor to be taken into account seems to be the question of recognition - this important problem will be treated in greater depth later on in the paper. However, it seems clear that the majority of the Member States were not prepared to recognise the King of Italy as Head of State of Ethiopia at this stage, at least.

China

From 1949 to 1971, the credentials issued by the Nationalist Chinese Government were challenged by the U.S.S.R. on the grounds that the Nationalists did not represent China and that the Communist representative should take the Nationalist representative's place since it was contended that he was legally entitled to the position. The question of the representation of China originally arose as a question of credentials. The General Assembly repeatedly decided that the representation of China should be considered as a matter of credentials, which in the opinion of the General Assembly, was a procedural question. The question of representation was considered to be an important question in regard to China requiring a two-thirds majority. (G.A. Resolution 1668 XVI). Until October, 1971,

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the General Assembly had taken the view that the Nationalist Government was the lawful one and that credentials signed on its behalf were valid credentials for the delegation of China. Rules 27, 28 and 29 might have been invoked to discuss the legality of the Taiwan Government had it not been for the fact that the question of China's representation was, from 1961, placed on the General Assembly's agenda and debated openly in the General Assembly, rather than in the context of a report of the Credentials Committee.

Hungary

The Hungarian credentials case is perhaps the most akin to the South African problem in that it did not involve the question of rival authorities claiming to represent the Member State. At the twelfth session of the General Assembly (1957), the Credentials Committee adopted as U.S. motion to "take no decision regarding the credentials submitted on behalf of Hungary".⁽¹⁾ The representative of Hungary protested against what he termed a U.S. attempt at discrimination and interference. The credentials of his delegation, he declared, had been issued in conformity with the requirements of the Hungarian Constitution and the General Assembly's Rules of Procedure. Notwithstanding this, the General Assembly approved the report of the Credentials Committee. This decision should be viewed

(1) U.N.G.A. docs. - 12th Session.

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against the back drop of the United Nations Report of the Special Committee on the problem of Hungary which refused to consider the Kadar Government as representing the Hungarian people (U.N. document A/3592). The decision to take no action on the Hungarian credentials was a condemnation or harsh disapproval by the majority of the Assembly of the Kadar Government. It is clear that the latter were in effective control of the country. Nevertheless it was felt that to accept the Hungarian credentials would be to condone the means by which the Kadar government had obtained power. Many states therefore did not wish to recognise credentials signed on behalf of this government, but most states did not wish to reject these credentials either. The General Assembly accordingly decided at each of its sessions between the 11th and 17th to take no decision regarding credentials submitted on behalf of the representatives of Hungary. This meant that the credentials were not approved, but that the Hungarian delegation could (provisionally) participate in the session. After the 17th session, the Hungarian credentials were no longer challenged.

Iraq

The Iraqi credentials case was dealt with in the context of the Security Council. After the revolution in

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1958 which resulted in the death of King Feisal, an interesting problem of representation arose. After the overthrow of the old government, an attempt was made by the new government to issue credentials to a new Iraqi representative in the Security Council of the United Nations. The Secretary-General received a communication to this effect signed merely "The Minister of Foreign Affairs", but giving no name. The Secretary-General suggested that the cable was not in order as far as the credentials were concerned.

The representative of the United Kingdom argued that Mr. Abbas had been given his credentials by a government (although overthrown) that was legitimate and that he should continue to sit in the Security Council under Rule 17 of the Security Council Rules of Procedure until a vote came about rejecting his credentials. (It should be noted that the Security Council Rules of Procedure on credentials are very similar to those of the General Assembly - Rule 29 in the General Assembly would be the equivalent of Rule 17 in the Security Council). Subsequent to this, the Secretary-General received a letter from the new Iraqi Government authorising Dr. Jawad to appear in the Security Council as the representative of Iraq. The letter was signed

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"A. Jounaro, Minister of Foreign Affairs". This was considered to be acceptable and accordingly Dr. Jawad's credentials were deemed to be valid.

The inference may be drawn that the test of effective control over the country seems to have been the decisive criterion applied in this case. The fact that the new Iraqi Government obtained power through force initially, at least, made certain Members, e.g. the United Kingdom, reluctant to accept the new credentials. In the final analysis, however, this factor took second place to the criterion of effectiveness. This is to be contrasted with the Hungarian and Ethiopian cases where the reverse occurred.

Yemen

Following the revolt in the Yemen in 1962, credentials were submitted by both the Minister of Foreign Affairs of the Kingdom of the Yemen and by the President of the Yemen Arab Republic. The royalist delegation was seated provisionally in the General Assembly in accordance with Rule 29 but subsequently the Credentials Committee recommended to the General Assembly that the credentials issued by the President of the Republic be approved. The General Assembly ultimately approved the report of the Committee.

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The criteria applied in coming to this decision seems to have been the test of effectiveness. In other words, who was in effective control of the country? The legitimate Government of the Imam Al-Badr or the new Government headed by Brigadier Al-Sallal. It was felt by the majority of Members that the latter fulfilled this requirement.

It is to be noted that the rules in regard to credentials were interpreted in a substantive rather than merely procedural manner because it was first of all necessary to establish who was the authorised person to issue the credentials.

Congo (Leopoldville)

In 1960, Congo-Leopoldville was admitted as a member of the United Nations, however, no delegation was seated due to the unstable political and constitutional situation prevailing in the country. At the time the Credentials Committee had to decide whether to recommend to accept the Credentials of the delegation issued by President Kasavubu or those of the representative of Prime Minister Lumumba. The Ghanaian representative submitted information from Leopoldville upholding the view that under the Congolese Consitution the Prime Minister was responsible for Foreign

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Affairs. It was suggested by the Government of the President that as there were credentials issued by President Kasavubu, it would be an intrusion into the domestic affairs of the Republic of Congo to question the validity of a document issued by a Head of State. It was also argued that the duty of the Credentials Committee was to pass judgment on the legal validity of the credentials (i.e. the procedural requirements) and that it should not take into account political considerations. The Soviet representative made reference to the Kasavubu credentials being contrary to the formalities required by the Congolese Constitution, hence introducing an internal element for the Committee to measure validity against.

The Committee, however, recommended that the credentials issued by the President be accepted and the General Assembly approved this. Due to the apparent lack of clarity as to who was in effective control of the country, discussion was largely barred^s on the constitutional position in the Congo. It may be said that implicit in Rule 27 is the notion that a Head of State supersedes a Prime Minister in terms of capacity to issue credentials; this may also be a general principle of international law. One may deduce from this credentials case that the internal law of a member state is irrelevant to the question of competence to issue

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credentials. Perhaps an analogy may be found in Article 46 of The Vienna Convention in the Law of Treaties which provides that: "A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance". On the other hand, in the case of treaties internal law can be invoked, to a limited extent, to ascertain the validity of a State's consent to a treaty; in the field of credentials, a State's constitutional law does not seem to have the same significance.

Despite variations in the scope of power wielded by contemporary Heads of State in the conduct of external relations, they are as a rule empowered to appoint diplomatic officers and representatives in international institutions and conferences. Furthermore foreign diplomats are accredited to them. It would seem therefore, that a Head of State has precedence over a Prime Minister in terms of capacity to issue credentials, notwithstanding the possibility that a violation of internal law may have occurred as a result of such action.

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Discussion of Past Credential Cases

Before embarking upon an analysis of the South African case, it would be appropriate to point out the divergent views that exist on the question of credentials. When credentials have been challenged, the problem has centred around the legitimacy of the authority issuing the credentials.

The main criteria to be applied in order to resolve this question appears to be the test of effective control and possibly the view that regard should not be had to the internal law of the member state. On the question of effective control conflicting views have been expressed, e.g. the U.S.A. constantly argued that Rules 27, 28 and 29 were merely procedural in regard to the challenge by the Communist states to the Nationalist Chinese Government's credentials; yet, it was the U.S.A. which instigated the move to take no action on Hungary's credentials which fulfilled the procedural requirements of the General Assembly's Rules of Procedure. Although those credentials were not rejected, the point is that the U.S.A. used the Rules on credentials to show its disapproval of a regime in a context that it had previously deemed to be purely procedural.

It can be seen that Rules 27, 28 and 29 are not

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wholly procedural but also raise substantive issues when rival authorities claim to represent the one Member State. It remains to be determined what is the legal scope of the rules regarding credentials where there are no rival authorities claiming representation of the Member State.

South Africa

Although past credential cases all differ to a greater or lesser extent, the position of South Africa is unique. One is not dealing with a government that has gained power through a revolution, or is opposed by a rival Government, but with a government whose domestic racial policies have come under increasing criticism in the United Nations. The paroxysm of this attack was reached in 1974 when South Africa was prevented from participation in the General Assembly proceedings. In order to gain a better understanding of the problem, it is appropriate to consider the main events that led up to South Africa's de facto expulsion from the General Assembly.

The history of South Africa's troubles in regard to its credentials date back to 1958 when at the eighteenth session of the General Assembly, in the Credentials Committee, Algeria, the U.S.S.R. and Liberia thought "the time had come

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for the United Nations to undertake a review of the validity of credentials submitted by South Africa. The South African Government, in their view, was not "representative of the people of South Africa and persistently violated the principles of the United Nations Charter and continued to defy resolutions adopted by the United Nations Organs".⁽²⁾

In 1965, once again in the Credentials Committee, the U.S.S.R. said that four-fifths of the people of South Africa were victims of unprecedented colonialist oppression and racial discrimination and were deprived of various fundamental rights, in particular the right to vote. The U.S.S.R. therefore considered that the representatives of the Government of South Africa did not legitimately represent the people of South Africa. The Committee decided, however, to recommend acceptance of its First Report, including the credentials of the South African representatives. This report was put to the General Assembly and an amendment was proposed and approved by the General Assembly. This amendment stated that the Assembly would take no action on the credentials of the representative of South Africa. As in the case of Hungary, this decision was seen as a strong disapproval of the South African Government's policies. It is to be noted

(2) United Nations General Assembly docs. 18th Session or, Report of the Credentials Committee.

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that the scope of the rules in regard to credentials was extended beyond mere procedural matters, taking into account political factors and thereby raising substantive issues.

In 1966, a new development took place whereby the General Assembly approved the report of the Credentials Committee which expressed strong reservations in regard to the representatives of South Africa.

In 1970, the situation changed dramatically. The representative of Somalia stated that Somalia did not recognise the South African delegation as representative of all peoples of South Africa, black and white. He cited rule 27 of the General Assembly's Rules of Procedure and challenged the South African credentials in the General Assembly moving that the Assembly request its Committee on Credentials to consider as a matter of urgency the credentials of the South African delegation. The Credentials Committee considered the Somali request yet recommended approval of South Africa's credentials.

When the Credentials Committee report was submitted to the General Assembly, an amendment was proposed which would approve the Committee's report "except with regard

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to the credentials of the representatives of South Africa".⁽³⁾

For the first time, the Assembly had before it a statement by the United Nations Legal Counsel (U.N. document A18160) regarding the scope of the rules on credentials. This paper will be discussed in greater depth at a later stage, however, it is clear that in the legal opinion, the rules on credentials were seen primarily as rules of procedure rather than of substance. The President of the Assembly, Mr. Hambro, stated that if the amendment were to be approved, he would interpret the rejection of South Africa's credentials as not meaning that the South African delegation would be unseated - in other words, this move would not, in his opinion, affect South Africa's powers to participate in the proceedings of the General Assembly. As a result, the Assembly approved the first report of the Committee except with regard to the credentials of the representative of South Africa.

In 1974, for the first time the Credentials Committee advised the rejection of the South African credentials. The General Assembly, as on previous occasions, approved the Committee's recommendation and then called upon the Security Council "to review the relationship between the

(3) O.R.G.A., 25th Session, Supplement No. 28.
Resolution 2636 A (XXV).

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United Nations and South Africa in the light of the constant violations by South Africa of the principles of the Charter and the Universal Declaration of Human Rights".⁽⁴⁾ This move was clearly an attempt to have South Africa expelled from the Organisation in accordance with Article 6 of the Charter.⁽⁵⁾

The Security Council defeated this draft proposal by way of the veto votes cast by the U.S.A., France and the United Kingdom.

The President of the Assembly took the view that, notwithstanding the decision of the Security Council "on the basis of the consistency with which the General Assembly has regularly refused to accept the credentials of the delegation of South Africa, one may legitimately infer that the General Assembly would in the same way reject the credentials of any other delegation authorised by the Republic of the Government of South Africa to represent it, which is tantamount to saying in explicit terms that the General Assembly refuses to allow the delegation of South Africa to participate in its work."⁽⁶⁾ This interpretation was approved by the General Assembly; as a result, South Africa was excluded from the Assembly.

(4) General Assembly Resolution 3207 (XXXIX).

(5) Article 6. A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.

(6) A/PV. 2281.

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Recognition versus Representation

The view seems to have been taken by some member states opposed to South Africa that approval of credentials amounts to recognition. The attitude of Somalia is such an example. It may be argued that to accept the credentials of a representative of a Member State is in effect, to recognise that Government as the representative of the State Member. But the legal opinion delivered in 1970 (Doc A18160) states "Unlike the acceptance of credentials in bilateral relations, the question of recognition of a Government of a Member State is not involved...." (in the General Assembly). This opinion corresponds with an earlier opinion delivered on 8 March 1950 dealing with the legal aspects of the problem of representation of states in the United Nations. The memorandum stated "Since recognition of either State or government is an individual act, and either admission to membership or acceptance of representation in the organisation are collective acts, it would appear to be legally inadmissible to condition the latter acts by a requirement that they be preceded by individual recognition ... the members have made it clear by an unbroken practice that -

- (1) a member could properly vote to accept a representative of a government which it did not recognise, or with which it had no

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diplomatic relations, and

- (2) that such a vote did not imply recognition or readiness to assume diplomatic relations". (7)

The memorandum emphasised the question of effective control, stating that the obligations of membership could only be carried out by Governments which, in fact, possessed the power to do so. Where a revolutionary government presented itself as representing a state, in rivalry to an existing government, the question at issue should be which of these two governments in fact was in a position to employ the resources and direct the people of the state in the fulfilment of the obligations of membership. In essence, this meant an inquiry as to whether the new government exercised effective authority within the territory of the state and was habitually obeyed by the bulk of the population. If so, the memorandum stated it would seem to be appropriate for the United Nations organisation, through their collective action, to accord the new government the right to represent the state in the organisation, even though individual members of the organisation refused and might continue to refuse to accord that government recognition as the lawful government which were valid under their national policies.

(7) United Nations doc. S/1466.

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A United Kingdom draft resolution on representation was very similar in that the predominant test was that of effective control. Recognition, it was stated, was not a factor to be taken into account. Rosalyn Higgins, in her book, The Development of International Law through the Political Organs of the United Nations (p. 148) comments:

"The United Kingdom, believing representation to be a question quite distinct from recognition thought that an objective test was needed which implied no moral or political approval of the Government concerned. Refusal to allow a Government exercising effective control to represent a State meant that the State was being denied its right as a Member."

Finally it was decided that whenever more than one authority claims to be the government entitled to represent a Member State, the question of representation should be decided in the light of the Principles and Purposes of the Charter. (G.A. Resolution 396 (V)).

Resolution 396 (V) appears to be a somewhat vague guideline, but it is interesting to note that recognition was not seen as a necessary prerequisite to representation

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of a particular Member State. The Assembly declared "that the attitude adopted by the General Assembly or its Interim Committee concerning and such question shall not of itself affect the direct relations of individual member states with the state concerned". Resolution 396 (V).

P.B. Potter in his article Membership and Representation in the United Nations 49 A.J.I.L. 234 (p. 235), adopts the opposite view in relation to China. "The Members of the United Nations are entirely free to decide upon recognition of the Communist government of China as the representative thereof in accordance with the terms of the Charter, the facts as they see them, and their own policies the Members of the United Nations are also entirely free to refuse to admit Red China to the United Nations - so to speak - with possible similar results".

It is submitted that the better view is contained in the Memorandum by the United Nations Secretariat of 8 March 1950 (referred to earlier). It would appear that implicit in the Charter is the right of Members to be represented by the authorities which under international law are to be regarded as their government. It is suggested that H.M. Blix in his article Contemporary Aspects of Recognition 130 Recueil des Cours 1970 II 593 (p. 693) is correct when he

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states: "However, by accepting treaties constituting international organisations, they (States) must be deemed to have obliged themselves to accept the measure of relations which is necessary under their constitutions - but no more - with authorities which fulfil the international law criteria of governments of state members, although in a pursuit of a policy of non-recognition, they may refuse relations outside the framework of such organisations".

It is suggested that an objective test for representation based on effective control is most desirable if applied consistently. Furthermore, it would seem that in cases of representation, recognition of a government should not be a valid consideration.

The Question of Credentials versus that of Representation

Hitherto, the question of credentials and of representation have been somewhat intertwined. It is now hoped to make a distinction between these two concepts.

General Assembly Resolution 396 (V) was specifically concerned with representation in relation to a situation where more than one authority claimed representation of a Member State. It was recommended that the problem should be resolved in the light of the Charter. South Africa is

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in a different position, for it is clear that the South African government is the sole and effective government in the country. In this case it is suggested that the question of representation does not arise since this concept is mainly concerned with rival governments. The rules on credentials in the case of South Africa should be strictly construed and relate to the authenticity of the documents, the identity of the delegates and the scope of the powers conferred upon the delegates. On the surface, the rules on credentials are designed for that very purpose and should, it is suggested, be treated as such whenever possible.

It therefore may be argued that the decision by the Assembly to reject South Africa's credentials was ultra vires because considerations extraneous to the procedural issue such as the question of recognition and the status of the South African Government were taken into account. The South African delegation had complied with the requirements of Rules 27, 28 and 29; accordingly, the view may be advanced that their credentials should have been approved by the General Assembly.

Legal Effects of Alleged Abuse of the Rules of Procedure

Article 21 of the Charter specifically states that the General Assembly shall adopt its own rules of procedure.

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This could be interpreted as meaning that the Assembly is "master of its own procedure" and consequently that the majority's views will always supersede those of the majority. In fact, the rules of procedure are usually followed, otherwise the General Assembly would ground to a halt. On occasions, however, exceptions to the principle of strict adherence to the rules of procedure should be allowed in terms of practical utility and flexibility, provided that the derogations involve matters of minor importance. The problem of South Africa's credentials is, however, more difficult - one cannot point to a rule which has been blatantly breached, e.g. a resolution requiring qualified majority would be such an example, if it were passed on the basis of a simple majority. The fact is that the legal scope of rules 27, 28 and 29 is uncertain and Member States can invoke reasonable arguments supporting the view that South Africa's credentials should be rejected on the basis that its government does not represent the total population of South Africa.

Looking at the practice of the General Assembly, it would seem that there is no opportunity to determine whether a resolution is ultra vires or not, apart from a ruling by the President on the matter. It would seem that

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the majority of Member States are the ultimate judges of the legality of a resolution. This can lead to a great deal of uncertainty, especially in regard to states such as South Africa which do not have the benefit of the majority's goodwill.

At this stage, it is appropriate to inquire into the means by which greater certainty can be arrived at when dealing with the rules of procedure relating to credentials.

One possible avenue would be for the General Assembly to request an Advisory Opinion on the matter from the International Court of Justice. In 1950, the United Kingdom proposed that the Court should give an opinion indicating the relevant criteria to be taken into account in regard to the question of the representation of States in the United Nations. Many Members thought that this was inadvisable and that every case should be decided on its own merits; as a result the Court was never allowed to set forth the criteria to be given regard to in relation to representation.

It is probable that a resolution asking the Court to give an indication of the scope of the rules on credentials would suffer a similar fate. Most regrettably because an

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advisory opinion delivered by the International Court of Justice, although not binding, would give persuasive guidelines as to the scope of the rules on credentials, thereby giving greater certainty to the procedure of the General Assembly.

Another proposal would be to amend the rules on credentials in accordance with Rule 164 ⁽⁸⁾ of G.A. Rules of Procedure so as to enable the General Assembly to exclude delegations whose validity in terms of representation is doubtful. The writer does not suggest that this is the best approach, however, it would, at least, give any decision to exclude a delegation some sort of legal basis.

If such action is not taken the Assembly will continue to be absolute "master of its own procedure" within this delicate field, with the result that abuses such as an illegal interpretation of the rules on credentials cannot be reviewed in a judicial manner.

Consequences of the Rejection of Credentials

In 1974, the President of the 29th General Assembly Session, Mr. Bonteflika, based his ruling, which in effect excluded the South African delegation from the General Assembly, on the grounds that Mr. Hambro's ruling in 1970,

(8) These rules may be amended by a decision of the General Assembly taken by a majority of the Members.

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was confined to the amendment (to the Credentials Committee's report) as it was then worded. The 1970 amendment was worded to the effect that the credentials of all Members be approved "except with regard to the credentials of the representative of South Africa". In 1974, no amendment was necessary as the Committee itself: "Accepts those credentials of representatives of Member States to the twenty-ninth session of the General Assembly that have already been submitted with the exception of the credentials of the representatives of South Africa". (9)

It might be argued that Mr. Bonteflika was correct on the basis of the distinction between the two means by which the General Assembly came to reject the South Africa's credentials. However, it is submitted that this difference in rulings introduces a great deal of uncertainty. It would appear that a delegation may or may not be deprived of participation in the General Assembly depending on who happens to be the President at the actual time. The U.S.A. representative at the Assembly challenged the President's ruling on a point of order, arguing that the Assembly cannot deny a Member state its right to participate in the Assembly's work other than in accordance with Articles 5 or 6 of the Charter which both require the recommendation of the Security Council. Expulsion had clearly failed due to the veto votes of the U.S.A., France

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and the United Kingdom in the Security Council. The view was taken that participation in meetings of the General Assembly is one of the important rights and privileges of membership and that suspension of this right through the rejection of credentials would be contrary to the Charter. On the other hand, one might argue that a Member State can only participate through its duly accredited representatives and that rejection of these representatives' credentials precludes them from participation.

It is submitted that the American view is to be preferred. The exclusion of a delegation is a very serious matter indeed and should be administered in accordance with the Charter. Nowhere in the Charter is there express provision for the exclusion of a delegation apart from suspension or expulsion of the Member State itself. It is suggested that the exclusion cannot be implied in the context of a rule of procedure.

It is therefore submitted that the President's ruling, preventing the South African delegation from participating in the General Assembly, was contrary to the Charter and, consequently unconstitutional. Benedetto Conforti in his Article The Legal Effect of Non-Compliance with Rules of

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Procedure in the United Nations General Assembly and Security Council 63 A.J.I.L. 479 (p. 486) comments that "non-compliance with the internal rules of procedure by the majority of the General Assembly amounts to a violation of the Charter whenever it results in the impairment of the individual state's right to express its opinion or whenever normal internal procedure is seriously subverted". It would seem that once a ruling excluding a delegation has been passed by the majority of Members, there is nothing the minority can do to have the decision reviewed. There is no provision for an appeal to a judicial body to pronounce judgment on the legality of the resolution and this appears to be a grave defect in the system. The criteria to be applied in determining the scope of Rules 27, 28 and 29 seem to depend on which government's credentials are being examined.

This lack of uniformity suggests that the majority's will shall always be the decisive factor even if the decision is illegal. The General Assembly is an organ whose function is to deal with international problems having a predominantly political nature, hence, the need that the discussions be carried out in accordance with rules which may impartially guarantee to each Member State an effective participation in the work of the organisation.

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The thesis of this paper is to show that the rejection of the South African credentials was illegal in that the decision was ultra vires and that the expulsion of the South African delegation from participation in the General Assembly was unconstitutional. Fundamental to these two contentions is the argument that where no rival authorities claim representation of a Member State, Rules 27, 28 and 29 should be interpreted strictly as rules of procedure as opposed to rules raising substantive issues.

By way of conclusion, it is suggested that if the rules on credentials are interpreted as questions of the legality of government, the United Nations will be converted into an organisation of like-minded governments, thereby ceasing to be a universal institution. It is quite possible that at the 30th session of the General Assembly the Israeli delegation might be excluded from the General Assembly. Obviously such a course of action can only help to defeat the aims of the United Nations.

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