

Oral History Interview

with

John Maktos

Career in U.S. Dept. of State, 1929-62. Chief of the legal office of the Div. of International Org. Affairs, 1945-47; asst. legal adviser in charge of international org. affairs, 1947-51; and asst. legal adviser in charge of Near Eastern, South Asian, and African Affairs, 1951-62. In addition to participation in many U.N. meetings served at the U.N. Conf. on International Org., San Francisco, 1945, and as the U.S. representative and chairman of the U.N. Committee on Genocide, 1948.

Washington, D.C

May 28, 1973

by Richard D. McKinzie

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Independence, Missouri

Memoir of

John Maktos

Mr. Maktos prepared two short memorandums concerning his work with the Department of State during the Truman years. These memorandums (pp. 1-16) are followed by remarks which supplement the memorandums.

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John Maktos

For my biography see Who's Who. Some of my functions in the Department of State were:

1945. Participated in the San Francisco Conference on International Organization and in its preparation in the Department of State.

1945-47. Chief of the Legal Office of the Division of International Affairs of the Department.

1947-51. Assistant Legal Adviser of the Department in charge of International Organization Affairs.

1951-62. Assistant Legal Adviser of the Department in charge of Near Eastern, South Asian and African Affairs.

Some of the issues that come to my mind from my functions during the administration of President Truman follow.

1. BYELORUSSIA and UKRAINE as members of the United Nations.

In connection with the preparation for the 1945 San Francisco Conference, I had to deal with the problem of whether Byelorussia and Ukraine could be admitted to membership in the United Nations. My function was to consider this issue from the legal point of view. In my memorandum on this subject I pointed out that, under international law,

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neither of them could be considered as a state. They had no ambassadors to any foreign country; their foreign relations were in the hands of the USSR; in brief, they were no more entitled to become members of the U.N. than any state of the United States. However, they became members, the only non-states to be admitted to the U.N. How was this accomplished?

This issue was considered all the way to President Roosevelt's desk where it was solved on policy grounds. Was it desirable to have the U.N. without the USSR which wanted these two additional members? His answer was in the negative.

2. GENOCIDE

The mass extermination of millions of Jews by the Hitler regime shocked the conscience of mankind. At its first session the United Nations General Assembly adopted unanimously Resolution 96 (I), of December 11, 1946. It provided that genocide is a crime under international law. Pursuant to this resolution there was established a United Nations Committee on Genocide. Its mandate was to prepare a draft convention on the crime of genocide. In the Department I prepared the draft that the United States was

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to submit to the Committee at its session in the spring of 1948, and was appointed U.S. Delegate to the Committee.

At the 1945 San Francisco Conference the so-called Big-Five powers -- China, France, USSR, United Kingdom and U.S. -- had a gentleman's agreement to refrain, as much as possible, from seeking to head U.N. organs. This was to avoid possible claims of dominance by them of the U.N. Aware of this understanding, I did not accept nomination for the Committee's chairmanship. When, however, the USSR delegate was nominated for this office, he accepted.

During the recess prior to the voting I remember my calling the Department of State from New York where we were meeting. After referring to the above developments, I pointed out the increased difficulty of implementing our position regarding certain provisions we wanted incorporated in the convention, with the USSR delegate as a presiding officer. I asked and received authorization to be renominated and to accept the nomination. I did so and was elected chairman of the Committee.

With a few changes, my draft was approved. In 1948,

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the draft convention prepared by the Committee was considered in the Legal Committee (Sixth Committee) of the U.N. General Assembly later in 1948. It was unanimously approved by Assembly Resolution 260A (III), of December 9, 1948, under the title "Convention on the Prevention and Punishment of the Crime of Genocide."

President Truman transmitted the Convention to the Senate on July 16, 1949, for its advice and consent to ratification, and said, in part:

"By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlining the world-shocking crime of genocide, we have established before the world our firm and clear policy toward that crime." Senate Ex. O, 81st Congress, 1st session, pp. 2-6.

The Senate has not acted on the convention and it could not, therefore, be ratified by the United States. Pursuant to Article VIII of the Convention, it came into force for certain states on January 12, 1951.

This pact is a milestone in international relations. For the first time in that field, a State is made, by

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treaty, criminally responsible for its treatment of its own nationals.

On the history of the drafting of this convention, see the files of the Department of State for my draft and the background reasons therefor. For the draft prepared by the aforesaid Committee on Genocide and the Committee's discussions, see U.N. document "Report of the Committee and Draft Convention Drawn by the Committee," E/79A, May 24, 1948. For the Legal Committee (Sixth Committee) discussion of the draft, see U.N. Official Records of the Third Session of the General Assembly in 1948. For the text of the Convention, see Assembly Resolution 260A(III), December 9, 1948; 78 U.N. Treaty Series 277.

3. INTERNATIONAL CRIMINAL COURT

By its Resolution 260B (III), of December 9, 1948, the U.N. General Assembly requested the International Law Commission to study the desirability and possibility of creating an international criminal organ "for the trial of persons charged with genocide or other crimes over

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which jurisdiction will be conferred upon that organ by international conventions." The Commission's study led it to report to the U.N. General Assembly that the creation of such a court was both desirable and possible (U.N. Document A/1316).

On December 12, 1950, the Assembly adopted Resolution 489 (V) which set up a committee of seventeen member states to meet in Geneva on August 1, 1951 "for the purpose of preparing one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court."

As part of my functions as Assistant Legal Adviser for International Organization Affairs, I drafted such a statute in Preparation for the Geneva meeting. Having been approved by the Department, it served as the basis of the U.S. position at the meetings of the U.N. Committee on International Criminal Jurisdiction which concluded its work on August 31, 1951. The late George Maurice Morris, U.S. Delegate to the Committee, having been elected Chairman thereof, I became the U.S. spokesman at the daily meetings of the Committee.

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For the text of my draft statute, see the files of the Department of State. For the draft statute for an International Criminal Court, submitted to the General Assembly by the Committee, see Annex I of the Committee's report, U.N. Document A/AC48/4. For discussions by the Committee of the various provisions of the draft statute, see the U.N. official records of the Committee, U.N. Documents A/AC48/SR.

At its seventh session in 1952, the Assembly considered again this issue. See U.S. participation in the U.N., Report by the President to Congress for the year 1951, page 255. For an account of the 1952 proceedings and of subsequent ones by the United Nations see 1 Whiteman, Digest of International Law, page 205.

4. THE INTERNATIONAL LAW COMMISSION

For nearly a quarter of a century the International Law Commission established by the United Nations -- hereinafter the Commission -- has been confronted with important responsibilities in resolving both political and legal questions. It has considered and prepared drafts of conventions and reports on tens of topics of international law and relations.

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The genesis of the Commission began with a 1946 memorandum which I prepared in connection with my functions as Chief of the Legal Office in charge of International Organization Affairs of the Department of State. I called attention in it to the following provisions in Article 13, paragraph 1 of the U.N. Charter

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
 - a. ...encouraging the progressive development of international law and its codification.

I pointed out that these provisions would remain a dead letter absent any implementation thereof. I proposed that the U.S. initiate steps at the U.N. with a view to discharging the Assembly's responsibility under Article 13, paragraph 1 (a). The Department approved my memorandum and, on the initiative of the U.S., the question of implementation was placed on the agenda of the Second Part of the First Session of the General Assembly. (U.N. Document A/98, August 2, 1946.) A joint proposal by the U.S. and China (U.N. Document A/C.6/54, November 6, 1946), called for the appointment

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of a committee to consider this matter. Pursuant to a Report of the U.N. Sixth (Legal) Committee (U.N. Document A/222, December 6, 1946), the General Assembly, on January 31, 1947, adopted Resolution 94 (I), establishing the Committee on the Progressive Development of International Law and its Codification -- hereinafter the Committee. (U.N. Document A/64/Add 1, January 31, 1947.) The Resolution directed the Committee to consider "The methods by which the General Assembly should encourage the progressive development of international law and its eventual codification."

The Committee met from May 12, 1947, to June 17, 1947. (U.N. Document A/AC/SR 1-30.) Philip C. Jessup, later Judge of the International Court of Justice, was the U.S. Delegate and I was his adviser. As part of my legal functions, I prepared in the Department a draft statute for what later became the International Law Commission. My draft, having been approved by the Department, formed the basis of the U.S. position during the work of the Committee. It recommended the establishment of an international law commission, and, although it did not prepare a draft statute, it set forth provisions

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designed to serve as the basis for such a statute.

For my aforesaid 1946 memo -- random and draft statute see files of the Department of State.

The U.S. took the initiative at the Second Session of the General Assembly in 1947 by proposing a resolution for the establishment of an International Law Commission. (U.N. Document A/C.6/137, September 1947.) It was to function largely along the recommendations of the aforesaid Committee. The subject was discussed by the Sixth (Legal) Committee of the Assembly. A draft statute of the Commission, prepared by a subcommittee was adopted by the Sixth Committee on November 20, 1947. (U.N. Document A/C.6/58.58.) By its Resolution 174 (II) of November 21, 1947, the General Assembly established the International Law Commission and approved its statute. (U.N. Document A/519, pages 105 ff.) The first annual session of the Commission opened on April 12, 1949.

5. DEFINITION OF AGGRESSION

At its sixth session, in 1951, the U. N. General Assembly referred the question of defining aggression to

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its Sixth (Legal) Committee on November 13, 1951. Again, in the course of my legal duties in the Department of State, I had to, and did, prepare a paper setting forth the position that the U.S. should take on this matter at the sixth session of the Assembly. (See files of the Department.) This paper was approved by the Department and became the official U.S. position.

I stated that we should oppose any definition of aggression on the ground that such a definition would be neither desirable nor useful as a guide for the U.N. Such a definition could not include all conceivable acts of aggression. It might even be dangerous, by restricting the necessary freedom of action of U.N. organs in specific cases. As U.S. representative on the Sixth Committee, on January 10, 1952, I delivered a lengthy statement opposing the adoption of any definition of aggression. Some of my reasons are quoted in Julius Stone, *Aggression and World Order*, 1958; pages 113, 132. (See also files of the Department and U.N. records of the Assembly's sixth session.)

During the discussion of this matter in the Sixth Committee, it was stated, by the USSR delegate, that my

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opposition was not in accord with the view of the U.S. at the 1945 San Francisco Conference. I replied that I was cognizant of that view but that the then picture of the Organization had changed considerably. Anticipated cooperation of member states was not evident in the frequent use of the veto power in the U.N. and that foreign policy may have to change in the light of

changed circumstances. We do not wear a heavy overcoat in the summer, I pointed out, merely because we may do so in winter.

With respect to a Soviet proposal that a state that uses armed attack first should be considered an aggressor, I recall my mentioning the Pearl Harbor attack by Japan. I raised the question whether the U.S., if it had had prior notice of an impending Japanese attack there, would have been an aggressor if it had first destroyed the Japanese forces destined to make the attack. (U.N. Document A/2211, paragraphs 392-93.)

By its Resolution 599 (VI), of January 31, 1952, the General Assembly, adopted the proposal of the Sixth (Legal) Committee on January 21, 1952, that concluded that it was "possible and desirable...to define

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aggression." (U.N. Document 2211.)

I recall that the Sixth Committee's resolution was carried by, I believe, a vote of 25 to 26. One of the delegates, who voted for the resolution had promised me privately that he would vote against it. Had he kept his word the chances are that the many fruitless efforts in the U.N. to effectuate a definition would have been avoided.

By its Resolution 688 (VII), of December 20, 1972, the Assembly established a Committee which was requested to submit to the ninth session of the Assembly, in 1954, "draft definitions of aggression or draft statements on the notion of aggression." As U.S. Delegate to this Committee I took the same position as before. The Committee met on August 24, 1953. It decided not to put to a vote the several proposed definitions but to transmit them to the General Assembly and to Member States for comments. (Official Records of the General Assembly, Ninth Session, Supplement No. 11. See also those records for subsequent U.N. consideration of the question, as well as Julius Stone, *op.cit.*).

JOHN MAKOTOS

May 28, 1973

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Department of State Method of Dealing With Legal Problems Relating to the United Nations

After I finished the preceding memorandum of May 28, 1973 it occurred to me that it might be useful to make some observations regarding the above subject. They relate to the time, during the administration of President Truman, when I was in charge of U.N. affairs in the Department of State.

At each of the annual sessions of the U.N. General Assembly, after adoption of its agenda, legal topics thereon would generally be referred to its Sixth (Legal) Committee for consideration or to

a special committee, again generally proposed to the Assembly by the Sixth Committee. Action by such special committee would again be referred by the Assembly to its Sixth Committee when the topic was on the Assembly's agenda. The Sixth Committee's action would be referred to the Assembly for final decision.

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On page 1 of the attached memorandum I set forth the positions I held in regard to legal questions relating to International Organization Affairs including problems of the U.N.

Before I retired from the Department in 1962, a person occupying those positions had the responsibility of preparing a so-called position paper . It set forth the attitude to be taken by the U.S. at the aforesaid organs of the U.N. regarding legal topics to be considered by them.

Each position paper would deal with a single item and was divided into three parts. The first would describe the nature of the problem or problems involved in the topic. The second part would make specific recommendations as to the position to be taken by the U.S. at the U.N. And the last part would set forth the reasons for the recommended action.

The position paper would then be submitted to the Legal Adviser of the Department and other appropriate officials thereof. If approved by them, it would become the official position of the U.S. It would serve as the guideline in

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the U.N. discussions. If they raised points not specifically covered by the position paper, the ad hoc U.S. representative had, of course, to exercise his judgment in dealing with such points.

During the annual sessions of the U.N. General Assembly, the U.S. Delegation to the Assembly would hold daily meetings. Members of the Delegation would then present to the Delegation a report on their activities at their respective U.N. organs and would raise any issues on which they wanted instructions. After discussion by the Delegation, the presiding officer, usually the U.S. Ambassador to the U.N. or, at times, the Secretary of State, would summarize what he considered to be the sense of the meeting on any particular issue. If necessary, the issue would be referred to the Department for decision.

JOHN MAKOTOS

May 28, 1973

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Oral History Interview with
John Makotos

Washington, D.C

May 28, 1973

by Richard D. McKinzie

MAKTOS: I want to give a brief history of how I got into the functions that I described in my memorandum of May 28, 1973. After getting my AB degree at Harvard in 1923, and my degree in the law school in 1926, I went to Oxford for two years until 1928, and in 1929 I got my doctorate of juridical science SJD at Harvard Law School. Upon graduation in 1929, I entered the legal office of the State Department and remained with it until 1962 when I retired.

This is not relevant to my functions except as a personal reaction of a man born abroad, in Greece. For all those years I must admit I was treated with the utmost consideration and kindness and was given every chance, even though I'm not a native. But to the credit of our

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country there wasn't a single day when I regretted being in the Department or being associated with my colleagues. They treated me with the fairness and justice which I found throughout my life after coming here from Greece.

As you know, the United Nations was not formed until 1945. Prior to that, I had some other functions in the legal office. For instance, I had to do with international claims, and, in connection with that, I was sent to Turkey to take care of our claims against Turkey growing out of World War I. I also dealt with claims against other countries. Additional assignments included problems of a legal nature in South America, immigration and nationality.

After Pearl Harbor, there was created an inter-departmental visa review committee. Its functions were to see whether immigration laws were complied with and also whether national security allowed the entry or exit of aliens from this country. I was chairman of the committee, as representative of the State Department. The other members represented Justice,

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Immigration, Naval Intelligence, Military Intelligence, and FBI.

In preparation for the San Francisco Conference I was assigned certain duties, and one of them, of course, was the organization of the United Nations. After the formation of the United Nations (and now we come really to the specific functions I had), there was created in the State Department the International Organizations Affairs Division, and I took charge of the legal section of that unit. As such, then, I performed the functions described in the memorandum of May 28, 1973.

Later, under Charles Fahy, then Legal Adviser of the State Department, all lawyers in various divisions in the Department of State were made part of the Office of the Legal Adviser, and, at that time, I became Assistant Legal Adviser in charge of International Organizations.

Parenthetically, on television in connection with the Watergate case, I see one of the lawyers, Bernard Fensterwald, who was in my section there.

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There were other lawyers. One of them is Carl Marcy. I think he is now on the Hill as chief of the staff of the Senate Foreign Relations Committee.

As Assistant Legal Adviser in charge of International Organizations, I had to deal with those matters that I described in the memorandum of May 28, 1973.

MCKINZIE: You are knowledgeable about Germany's raids on art treasures in Europe at the end of the war. I wonder if you might say something about your work in connection with that?

MAKTOS: Yes, indeed. Immediately after Pearl Harbor, there was created in the State Department a committee to deal with problems that would require action either during the war or after the anticipated victory over our enemies. This committee consisted of political advisers and economic advisers of the Department.

Having been assigned from the Legal Adviser's Office to that committee, I naturally was dealing with legal problems rather than economic or political. And

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one of the functions of that committee was about stolen art treasures. What would happen after the end of the war? We decided that they should be restored to their respective owners and that Germany, of course, should be made to return them.

Also, in connection with what reparations should be paid by Germany, I had to study the Versailles Treaty and its provisions, so as to have a guideline as to the reasons why some of those provisions were never effectuated. I remember that I said, "Well, a pie is just that much, and you cannot increase it by dividing it. Germany has just that much economic capacity and no matter how we want to divide it among the victors, we cannot increase such capacity." And from the legal provisions of the Versailles Treaty I found why the Young plan, and the Dawes plan did not succeed after World War I. Although this was not a legal problem, from the provisions that I examined in the Versailles Treaty and from their effect later on, my advice was that we should try not to overestimate the economic capacity. Our proposals for the future

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peace treaty should be along those lines. We should take into account how much Germany was really able to pay.

One of the other problems developed to be a very serious one, namely access to Berlin. I had proposed that there should be a written agreement between the victors giving to all of them a right of passage to Berlin from the Soviet sector.

MCKINZIE: But you proposed this in that same committee?

MAKTOS: No, this was not in the committee. It was later. I had in mind specifically a real property problem. If I have to go through your property to get to mine, I have to get an easement from you allowing me to go through your property. I had the same problem in mind; namely, that the Soviet Union should give, so to speak, an easement to the other Allies -- France, England, ourselves -- to go through its sector. This easement should be in writing, and it should make it crystal clear that they would have a right to pass through.

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Going back now to the creation of the United Nations and the establishment in the Department of a special U.N. division, I remember how, at first, I did not want to become a member of such a division, because I thought it would be temporary and what would happen to my position should the U.N. or the division prove to be ephemeral. I'd rather be in the Legal Adviser's Office, at that time called the Solicitor's Office. It shows you that some things, that one may fear, never happen.

Well, I remained in that division. As I said, later, Charles Fahy, as Legal Adviser, incorporated in his office my position as well as other legal ones in the Department. It was in connection with my position in the Legal Adviser's Office that I prepared those so-called "position papers," mentioned in one of my memorandums of May 28, 1973.

MCKINZIE: Could you speak about the substantive issues with which you had to deal at the San Francisco Conference? Was most of your work completed by the time that you reached San Francisco, and if so, then what was there

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left to do?

MAKTOS: I was adviser in connection with the problem as to whether the present International Court of Justice would be the successor to the Permanent Court of International Justice, under the League of Nations -- in other words, the problem of the establishment of the present International Court of Justice.

Harold Stassen was the U.S. representative on the committee that was considering the problems of the court. I was his legal adviser and was sitting by him when the question arose! "Would the contemplated court, the International Court of Justice, be an entirely new court or would it really

be a successor to the old one?" And I still recall pointing out to him, orally, for his action before that committee that the Permanent Court of International Justice was formed under the League of Nations to which certain states, including Germany and Japan -- the defeated nations in the war - were parties. Since those states would not be parties to

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the United Nations Charter, obviously the new court would have to be really a new court between the states that agreed to the U. N. Charter, because, as you know, a treaty cannot be amended except with the consent of all the parties to the treaty. And, as I say again, Japan and Germany, of course, were not represented at the San Francisco Conference. It was, therefore, an important issue: How could we overcome this difficulty that the defeated nations were not at San Francisco? And I remember giving an advice somewhat like this: "Well, this would be a court between the states that agree here, in San Francisco, to form a court." What happened to the old court was really more of an academic question, because many states were represented in San Francisco, and, if they agreed to form a court between themselves, they had a perfect right to do so. And, therefore, the fact that Japan and Germany or any other state would not be a member of this new court would not prevent the states at the Conference from agreeing to form a new court.

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A few sidelights in connection with that Conference may give a little local color. Alger Hiss, who later was convicted of a crime, had been in an automobile that had driven him to the Opera House where the meetings of our delegation to the United Nations were taking place. He got out (we knew each other from the State Department), and I got into the car. I remember the woman driver, a volunteer, saying that she had never met a more polite person than the gentleman (she didn't know his name) that had just gotten out of the car.

Another vignette at that time, as you remember, there was gas rationing and it was difficult to find taxis. San Francisco women formed a volunteer association to drive delegates. So, the women were most wonderful and helpful.

MCKINZIE: Did you personally attend the plenary sessions of the U.N.?

MAKTOS: Yes, I did. And of course, as you remember, President Truman came there.

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Some other personal recollections are of Secretary [George C.] Marshall. At a U.N. meeting in Paris, the U.S. delegation was headed by General Marshall. The first time we met at the Avenue Kleber building where our delegation had its offices, he saw me walking lame, he motioned to me and would not enter the elevator until I got in. This was just a small indication of the wonderful character of Americans. Now being 70 years old, I have nothing but similar fine

recollections of my fellow Americans and I can't recall one that was not a credit to our wonderful country.

MCKINZIE: I wonder if I might ask you to amplify a bit upon the legal problems of Byelorussia and the Ukraine in the United Nations? I notice in your memorandum that you point out that neither could be considered a state, and therefore were not entitled to representation in an international organization and that this had to be passed up to President Roosevelt.

MAKTOS: Right.

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MCKINZIE: Was this widely discussed in the State Department, as you recall? How strong were the recommendations to the President?

MAKTOS: I was discussing in that memo the problem of membership in the organization, preparatory of course, to the San Francisco Conference. I don't know who raised the problem that the two states, Ukraine and Byelorussia, should become members. Since President Roosevelt was the one who made the final decision, my guess is that the proposal that those two become members must have been on the initiative of the Soviet Union.

I do not recall having seen a note from the Soviet embassy to the State Department proposing that Byelorussia and Ukraine become members. If I did, I don't recall definitely that the question that came to me for consideration was: Should Ukraine and Byelorussia become members of the United Nations? The reasons stated in my memo of May 28, 1973 are given only in one or two sentences; but my original

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memo must have gone into this question considerably in order to determine whether those two states had the attributes of international states. Every other member of the organization was to be an international state.

I recall writing that they were not entitled to be members. I did not write in my memo of May 28, 1973 that at the time these working level memos were prepared there was an Assistant Secretary of State in charge of this work, [Leo] Pasvolsky. Then there was also a committee consisting, I think, of Senator [Arthur H.] Vandenberg, Senator [Tom] Connally, and of course the Secretary of State, who would pass on important questions of policy. So, the probability is that this problem came up to that committee, and they probably submitted it -- I don't know whether with any recommendations for or against -- to President Roosevelt in view of its importance. But I do recall definitely that the decision that they (Ukraine and Byelorussia) should be members came from the White House, on the basis that the Soviet Union would not

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become a member unless it had these two additional votes.

MCKINZIE: Did this create any particular problems from a legal standpoint in the State Department, after the Charter was adopted?

MAKTOS: Once it was decided and they became members, they were treated like every other state, which again indicates how some ghosts never materialize in life, and why sometimes legal considerations may have to give way to policy matters.

MCKINZIE: I note that in your memorandum of May 28, you write about the genocide issue before the United Nations, and you seem to write with some feeling about this. Was this a subject of particular personal interest to you?

MAKTOS: I must admit that it was. I tried to be objective, as objective as I could be, but there is no doubt that the killing of millions of human beings had really moved me. On the other hand, I could not

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but present the issues to the Department in an objective manner, for instance as to what legal provisions should be incorporated in the treaty that was to be drafted. And I prepared a draft, not with any personal feelings, but with a viewpoint as to what provisions would be effective.

For instance, I thought of including a ban against extermination of political ideologists. I felt that that would be inadvisable because some countries might not accede to the treaty to be prepared, because of political difficulties. They may think that they may be accused of being genocidal should they take certain steps in relation to parties not forming part of an existing government. Therefore, I excluded that from enumeration of the kinds of classes -- racial, ethnic, religious -- that should be treated in the convention. But my appointment to the committee to draft the genocide convention, was not because of my personal views, but because of my functions. I did not include in the memo of May 28, how we spent a good deal of time, after I got

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authorization to be renominated as chairman of the committee, wrangling about whether or not it was permissible to be renominated having once rejected nomination. Of course, there was no law, or regulation of the United Nations, that prevented anything like that, but fortunately those who nominated me really put it across -- and I don't remember even who did, although I think it was the French delegate, (Pierre) Ordonneau.

I'm sure that you are familiar with the prerogatives of a chairman who may try to impede anything they may dislike. For instance, he may give prior recognition to another delegate who has a proposal more in accord with the chairman's views; and once that proposal is made it can be voted upon, which of course, could make another proposal academic. I'm not accusing

anybody in particular, but there is no doubt that a chairman may be able to recognize a delegate ahead of another, put a resolution ahead of another, and so forth. And it was such reasons that made me call the State

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Department to see whether I should be renominated as chairman of the committee. It may reflect a little personal thing, but there was really more of that substantive nature that made me take action.

Discussions of the position that I took in the Legal Committee of the United Nations, and on which I did not expatiate in my memo, would be found in the official records of that committee at the Paris Conference in 1948. I did not put in that short memo that, after every meeting, there was a summary record made by the United Nations' staff which summarized the discussion at the meeting. U.N. documents could be given the letter A/, A being for the General Assembly. C.6. for instance would be Committee 6; C.1., Committee one, or C.5.; the capitals SR would mean Summary Record, and those summaries would be numbered consecutively. The first meeting would be SR1, the next meeting SR2, and all the discussions in the Legal Committee can be found in its Summary Records in the official records of the United Nations.

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MCKINZIE: You said that with a few changes your draft in 1948 was approved. Were there any particular changes which you would have preferred not to have occurred?

MAKTOS: I don't recall any significant inappropriate provision that was excluded or included in the final draft. I must admit that at the final meeting of the drafting committee, when I congratulated its members, I did not mention that they had put across our position in relation to genocide so successfully. The only regret that I still remember very poignantly was in connection with an entirely different problem, the definition of aggression. We really wanted to defeat any definition in the United Nations. To give you a reason that I did not give in my memo. Assume that there is a definition that says: aggression elements are a, b, c, d, e, f. By the time you discuss those elements in the United Nations, aggression may already have been accomplished. How successfully such a definition would have prevented the Czechoslovak invasion?

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And so I remember thinking that it would be so much better to leave the term aggression undefined, elastic. If, driving a car, you are "negligent," you are guilty of a violation of law. Who would ever attempt to incorporate in the definition of "negligence" all the myriad of circumstances that may amount to negligence.

Well, a thing that I regretted was this: One of the delegates had told me he would vote against defining aggression. Had he done so, the vote in the Legal Committee would have been 26

against defining and 25 for it. That would have ended any further steps in the future to define aggression. This conversation was a private one and nothing else. And when I saw him voting for definition, I was quite disappointed because we had to continue to deal in the U.N. with this issue for years.

MCKINZIE: In the International Criminal Court discussions -- could you tell me something about George Morris the delegate?

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MAKTOS: He was a former president of the American Bar Association. He generously declined to accept any compensation or per diem for his service to our Government. A fine fellow, he was chosen chairman at the first meeting of the U.N. Committee. Thereupon, of course, he did not take part in any discussions or proposals in the position paper I had already prepared in the State Department. I can tell you how difficult it was for me to prepare that paper. I'm not trying to exaggerate my functions, but there wasn't any precedent for an International Criminal Court. There was the Kellogg-Briand Pact and the Nuremberg trials. But there wasn't really any statute creating a permanent International Criminal Court. I foresaw the difficulty that we would have in subjecting particular persons, or matters, to any such organ. Our position at the Committee was: let's build a car and decide who will get into it later. In other words, let's create the machinery by which responsibility may be established. Who is going to be tried need not prevent creation of the organ,

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because -- as I stated during the meeting and as I pointed out in my paper -- this problem of who is to be tried would be settled by separate conventions to which the United States Senate might or might not give consent, and which of course would be drafted in the light of all our constitutional and legal precepts. Therefore, the creation of the court would not be an obstacle from that point of view. I really was quite -- well, I was married to the idea that there should be a court and later on we could have a separate convention as to who could be tried by it.

MCKINZIE: Were there discussions as to whether or not creation of this court would infringe upon what nation states consider to be their sovereignty?

MAKTOS: No, as a matter of fact, there was hardly any such discussions. Again, there are SR, Summary Records, of all the discussions in that Committee which must be 300 or 400 pages. So far as I remember, after the meeting sovereignty was involved in objections from

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George Finch, Secretary of the American Society of International Law. Very properly he raised the question of trial by jury. It was discussed before the Committee and it was quite a problem. I'm sorry to say I don't recall all the discussions, but I have in mind that any convention by which

we would submit any particular matter to the jurisdiction of the court (a separate convention which would have to be made later, after the creation of a court) might be subject to a reservation by us which would require that no citizen of the U.S. would be triable unless there was created a jury to decide his guilt or innocence.

This gives rise to a problem which I did not set forth in my memo of May 28. It was interesting that there was a distinct disagreement between the U.K. delegation and ours. Incidentally, the U.K. delegate in the committee that I'm referring to became later Sir Gerald Fitzmaurice, former judge of the International Court of Justice. In connection with the reservation that I mentioned a while ago, we had, in

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dealing with a general issue relating to treaties, the problem of what reservations to a treaty would be effective. The U.K. delegate, then Mr. Fitzmaurice, took the position that unless all the parties to a treaty agreed to a reservation, for instance by the United States, the United States could not become a party to that treaty. This is the so-called unanimity rule. Let's say that in our treaty submitting certain matters to the jurisdiction of the International Court of Justice we made a reservation that no citizen of this country could be involved without a separate U.S. consent.

Well, Mr. Fitzmaurice took the position that no reservation could take effect unless all the parties to the treaty agreed to that reservation. This was not my view meaning by "my," the view which I had prepared in the position paper. Our position was that if a certain reservation was not accepted by State A, the United States and State A would not be in treaty relationship as between themselves. But this fact should not prevent let us say 50 other states that accepted our reservation, or did not object

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to it, to be parties with the United States in relation to that treaty. Why should the objection of one state to a reservation prevent 50 states from becoming parties to a treaty in relation to the United States?

Well, this was not the position of the U.K. but was the position of the Soviet Union. The Soviet delegate at that time was Mr. [Leonid] Morozov, who agreed with our position.

Well, the U.K. delegate, Mr. Fitzmaurice, in connection with the genocide convention, made this point which I remember in particular: he said, suppose Germany, in ratifying the convention on genocide, made a reservation to the effect that Germany reserves the right to exterminate Jews. In other words, not to include Jews in the benefits of the convention. Would Germany be a party to such a treaty?

I recall my reply was that such a reservation would really go to the very heart of a treaty, to its very *raison d'etre*, and if a reservation negated

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the very nature of a treaty, of course no state would accept it and that problem would be academic.

As I recall, again, the delegate from the Soviet Union on the Legal Committee stated that -- I'm not quoting of course -- that the example given by Mr. Fitzmaurice, was absurd. I don't think that "absurd" was the word, but something like it. As I recall, he said this is the same problem as if Mr. Fitzmaurice would ask: What would be the effect of voting not by raising the hand, but by raising a leg?

Well, Mr. Fitzmaurice took this remark quite seriously. Alphabetically U.K., U.S., U.S.S.R. were next to each other and at the end of a meeting we, the 3 delegates, used to shake hands. This time Mr. Morozov, as usual, extended his hand to Mr. Fitzmaurice and I remember the latter, a wonderful man, stating something like, "I do not shake hands with a man who calls me absurd."

Mr. Morozov, by that time, had learned some English. After Mr. Fitzmaurice had departed Morozov asked me what did the U.K. delegate mean?

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And then I told him that he probably thought that he had been called absurd. Morozov said to me something like, "Oh, no, I didn't do that. I said that his example was not logical."

"Well," he said, "I'll apologize if that was his impression."

And sure enough, in the afternoon session, he apologized and Mr. Fitzmaurice accepted the apology graciously. And that was the end of that incident which is not germane to this memo really; it's merely a vignette.

MCKINZIE: Did the Soviet legal positions seem to have coherence generally, or often could you tell that there were political overtones?

MAKTOS: They had great coherence. I must admit that the Soviet delegate on the Legal Committee, Mr. Morozov, was a very able advocate. There were others; Mr. [Vladimir M.] Koretsky, who later became judge of the International Court of Justice, and at times, Minister of Foreign Affairs [Andrei Y.] Vyshinsky. Some of the proposals, of necessity,

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were political. For instance, they initiated this matter of defining aggression. They wanted it defined. We took the opposite position. They wanted, for instance, the first one who strikes, the first state that strikes, to be defined as an aggressor.

Well, query whether that would have been in their favor in the Czechoslovak matter. There were some political overtones, but, on the whole, I would say that as an advocate the regular Soviet delegate on the Legal Committee, Mr. Morozov, was very able as a lawyer.

MCKINZIE: You then participated in the International Law Commission, and, indeed, proposed an International Law Commission. This, I gather was more fulfilling to you personally after the Truman administration than at this point.

MAKTOS: Well, I really think from the very beginning. At Harvard at the time of my student days, there was what they called a research in international law project. Being in charge of U.N. legal matters I asked myself: What does this U.N. Charter provision mean; "The

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Assembly shall contribute to the development and classification of international law?" Are those to be just so many words? The thought came to me to propose something concrete. My great satisfaction was that my idea was accepted by the Department. And then I had to prepare a draft statute for the commission that I proposed. Again, I had no real precedent. Mr. [Philip] Jessup, later Judge of the International Court of Justice, was the U.S. delegate on the Committee that was to prepare the statute of the International Law Commission. I was his adviser. He's as fine a person as anyone could be.

MCKINZIE: You became Mr. Jessup's adviser.

MAKTOS: Yes.

MCKINZIE: Could you say a bit more than is in your memorandum of May 28 about the consideration of the international law commission?

MAKTOS: Again, I did not point out in that short memo of May 28, '73, how the U.S. delegation was formed.

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There would be appointed as delegate a well-known person, like Mr. Jessup or Mr. Morris. But since they would be new to the subject there would be an adviser from the Department of State. Since I was head of the legal division dealing with U.N. and since I would prepare the Department's position paper, I would be appointed the adviser of the delegate.

Some of the important issues were the following: One was whether the members proposed for the Commission should or should not be representing states. In my paper I took the strong position that they should not be; that they should be experts in international law, acting in the Commission as private individuals rather than as delegates. They should not be subject to the control of any state, but be independent in their judgment in relation to the issues before the Commission. We hear so much now about let us say the law of the sea. Well, if any such

problem were put in an examination paper when I was a student you would write on something about freedom of the seas

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and two or three other principles, but not much more. But the Commission really prepared the convention which later became the basis of that branch of the law of the sea and many, many other conventions. The Commission also discussed the question whether or not aggression should be defined; its decision was that it should not be defined.

Then as to membership and number, that also raised some questions. I tried to make it as limited as I could because large committees are not very workable generally speaking. Another problem was: How much should they be paid? I proposed the same thing which I had proposed for the International Criminal Court, namely that only when they were exercising their functions they should be paid a certain sum. That was a problem that came up also with respect to the International Court of Justice.

"Well, how much should the judges be paid?"

And I thought: "Not a cent, unless they were trying a case or working a particular case." I

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had in mind the International Court of Justice which unfortunately does not have too much work, I'm sorry to say.

MCKINZIE: Of all of the proposals that you made during those Truman years, which was the most pleasing to you personally, to see accepted, and which was the most disappointing to see rejected?

MAKTOS: Accepted, I would say the International Law Commission was absolutely my favorite. You might ask why not the genocide convention? The reason is that that convention, although it afforded me great satisfaction, was related to one particular subject, while the Commission was to deal for many years to come, with many important subjects which would be settled or developed by the Commission.

And my greatest regret, as I said before, was when the question of the definition of aggression was decided in favor of a definition by one vote, especially the vote of a delegate who had promised me he would vote for the U.S. position that opposed

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a definition.

MCKINZIE: Thank you very much, Mr. Maktos.

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