STATISTICAL COMMISSION
Seventh session
Item 14 of the provisional agenda

INTERNATIONAL CONVENTION RELATING TO ECONOMIC STATISTICS
Memorandum prepared by the Legal Department

1. The opinion of the Legal Department has been requested on what would be the effect upon the International Convention relating to Economic Statistics of resolutions by the Economic and Social Council recommending to States the adoption of statistical criteria which would be partially at variance with certain Annexes to the Convention.

2. It is understood that the Council resolutions in question or proposed resolutions relate to the subjects contained in Annexes I, IV and V to the Convention. The question arises therefore whether these Annexes are legally binding upon the States parties to the Convention.

3. As regards Annex I, Article 3 of the Convention, as amended by the Protocol of 9 December 1948, reads:

"The High contracting Parties, in order to facilitate comparison of the statistics of external trade of different countries, undertake to adopt for the purpose of the compilation of this class of statistics the principles set out in Annex I, Part I."

Annex I, Part I provides that statistics of external trade "shall be compiled" in one of the two ways indicated in the Annex itself. It seems clear from the wording of Article 3 that the Parties to the Convention are legally bound to adopt the principles set out in the Annex. The Annex, being specifically referred to in Article 3, is to be considered an integral part of the Convention.
Furthermore, since the Annex itself uses a mandatory language, in our opinion, Annex I, Part I is legally binding upon the Contracting Parties.

4. As regards Annexes IV and V, Articles 6 and 7 of the Convention read:

**ARTICLE 6**

"The High Contracting Parties express their general acceptance of the principles underlying Annex IV, which is attached as a model scheme of census of industrial production, and agree to consider the question of giving effect to such of them as may be applicable when it becomes possible to contemplate a complete or partial census of the type indicated in that Annex.

**ARTICLE 7**

"The High Contracting Parties express their general acceptance of the principles underlying Annex V, which is attached as an illustration of a scheme for the compilation of indices of industrial activity, and agree to consider the question of giving effect to such of them as may be applicable when it becomes possible to contemplate the preparation of indices of industrial activity on a comprehensive scale."

The wording of these articles shows that the Contracting Parties did not consider themselves bound either to accept the exact wording of Annexes IV and V or to give effect to the principles set forth in those Annexes. It appears, therefore, that these Annexes should be regarded as having a merely illustrative character, and that the failure by a Contracting Party to adopt the principles of Annexes IV and V, or the adoption of different principles, would not constitute a violation of a legal obligation.

5. The next question is whether a Council resolution containing a set of principles different from Annexes I, IV and V could have the effect of modifying those Annexes.

6. Under Article 8 of the Convention, the Council "may make any suggestions which appear to be useful, for the purpose of improving or amplifying the principles and arrangements laid down in the Convention concerning the classes of statistics dealt with therein". It is also provided that the Council "shall examine all suggestions to the same end which may be submitted to it by the Governments of any of the High Contracting Parties". Finally, the Council "is requested, if at any time a desire to that effect is expressed by not less
than half the Parties to the present Convention, to convoke a conference for
the revision and, if it seems desirable, the amplification of the present
Convention".

On the basis of the foregoing provisions it is considered that a Council
resolution could not supersede the Annexes to the Convention. Under Article 8
the Council was merely given the power to make suggestions and to consider
other suggestions submitted by any Contracting Party. There is no indication
that such Council suggestions would have the legal effect of superseding or
modifying the Annexes. On the contrary, the provision whereby the Council
was requested to convoke a conference for the revision and amplification of
the Convention clearly indicates that the only way of modifying the
Convention (and therefore also its Annexes) is by way of a conference, and
not by a resolution of the Economic and Social Council.

7. It is concluded that in the opinion of the Legal Department:
   (a) A Council resolution would not have the effect of superseding
       or modifying either the text of the Convention or any of its
       Annexes;
   (b) In the compilation of statistics on external trade, Parties to
       the Convention are legally required to adopt the principles contained
       in Annex I, Part I.
   (c) In the compilation of censuses of industrial production and
       indices of industrial activity, Parties to the Convention are not
       legally required to adopt the principles contained in Annexes IV and V.

8. On the basis of the foregoing conclusions it is considered that the
   adoption by the Council of a resolution recommending to States the application
   of principles at variance with Annex I would not relieve States Parties to the
   Convention of their legal obligations under that Annex, and further action
   would be necessary to provide such relief. On the other hand, States Parties
   to the Convention, in complying with a Council resolution recommending
   principles at variance with Annex IV or Annex V, would not be violating any
   legal obligation arising from the Convention.