in the interpretation of legal documents. All United Nations resolutions appear in all the official languages of the United Nations, and they are indeed official. But not all languages have the same capacity to express "the plain meaning" of those who negotiated, drafted, debated, and finally adopted a particular resolution. Security Council Resolution 242 was drafted, discussed, debated, and adopted in English. I reviewed the legislative history of the "missing" word "the" in this *Journal* in my article *The Illegality of the Arab Attack on Israel of October 6, 1973.*[2] Those pages treat the problem of translating the final English text into French, and report some of the diplomatic conversations which took place on the subject. At the time, we found no way to express the meaning of the English text in French, Spanish, or Russian. I am surprised that Mr. Toribio de Valdés did not address this material in his article.

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Mr. de Valdés replies:

With regard to Professor Rostow's comments, I wish to observe, first, that my note postulates the validity of the Spanish legal aphorism according to which "whatever is not in the records is not in this world" (*lo que no está en los autos no está en el mundo*). I believe that the full applicability of the principle underlying this colorful saying to the use of *travaux préparatoires* as a subsidiary means of interpreting treaties and decisions of international organs is beyond dispute. Accordingly, of the expressions of opinion that Professor Rostow cites in the relevant part of his article the only ones that can, in my view, carry any weight in interpreting Security Council Resolution 242 are those taken from the official records. This being so, I wish to point out that, in my considered opinion, neither these nor any other elements of the *travaux préparatoires* invalidate the last (parenthesized) sentence of footnote 6 of my note to the effect that those *travaux prépratoires* do not reveal the intention of the Council as to whether withdrawal under operative paragraph 1 (i) of the resolution was meant to be total or not. I would observe further that, since the Council did not, in considering and voting on the proposal that became Resolution 242, in any way deviate from its rules of procedure concerning working languages, Professor Rostow's assertion in his rebuttal of my note that the resolution "was . . . adopted in English" is factually incorrect, the resolution having been adopted, on a footing of complete equality, in both English and French. (I might add, incidentally, that I am surprised by Professor Rostow's reference to the Spanish and Russian versions of the resolution; since these two languages were, at the time, official but *not* working languages, the texts of the resolution in Spanish and in Russian, not having been submitted to the vote, carry no weight for purposes of interpretation.) Professor Rostow's assertion that the resolution was "drafted, discussed, [and] debated . . . in English" can be correct only with respect to actions and negotiations that, having been conducted informally and in private, are not reflected in the official records, on which alone any interpretation based on *travaux prépratoires* can rest.

With respect to Dr. Shihata's remarks, I now realize that my having attributed to him the implied judgment to which he takes exception rested on a misreading, which I regret, of footnote 70 (68 AJIL 604 (1974)) of

[2] 69 AJIL 272, at 282-86 (1975).

his article on the Arab oil embargo.[1] (I would add however, by way of extenuation, that readers of my note can hardly have been misled into believing that its subject is within the thrust of Dr. Shihata's article, for footnote 1 of my note makes it clear that the implied judgment that I incorrectly laid to him is confined to a footnote of his article.)

To THE EDITOR-IN-CHIEF

Legal Effects of Unilateral Declarations

Professor Rubin's characteristically carefully researched and thoughful study in the January issue of this *Journal*[1] is troubling in the somewhat pessimistic tone of its concluding paragraphs. Thus—"the supporters of such a rule must consider whether its cost is not too heavy for the international order to bear. . . . It is distressing to find the ICJ itself playing a role in this evolution" (p. 30).

In its actual application by the contemporary Court, first in the *Nuclear Tests* cases[2] discussed at length by Professor Rubin, the rule seems to have been used with a large element of pragmatism to correct the then already evident unfortunate political consequences of the Court's earlier majority, eight to six, decision in the same case on the indication of interim measures of protection[3]—a decision rendered in the absence, through illness, of the then President of the Court and one other key judge. In effectively reversing the interim measures decision in its final Judgment on *Nuclear Tests,* the Court majority, by its nine to six decision, in the words of one of the majority judges, Judge Ignacio-Pinto, in his separate opinion, "rightly puts an end to a case one of whose consequences would, in my opinion, be disastrous . . . and would thereby be likely to precipitate a general flight from the jurisdiction of the Court. . . ."[4] It is true, as Professor Rubin points out, that the key dictum of the Court's judgment in *Nuclear Tests* on unilateral declarations of intention,[5] does not command the express support of three of the nine majority judges (Judges Forster, Gros, and Petrén); although Professor Rubin perhaps exaggerates the degree of dissatisfaction of Judge Ignacio-Pinto who does, after all, in terms accept that rationale. The point is, nevertheless, that however unsatisfactory final judgment in the *Nuclear Tests* cases may be to common law students in search of a *ratio decidendi,* any more or less *avant-garde* international law proposition that can command the support of six judges on the contemporary Court, which has been undergoing rapid transition since the "watershed" eight to seven majority decision in *South West Africa* in 1966, may not be doing too badly. The most recent judgments of the Court reflect, in fact, serious philosophical conflicts and also widely different conceptions of the scope of the judicial office and of judicial legislation generally—something that shows up in the plethora of individual judicial opinions, both dissenting and specially concuring, present even in cases decided in voting terms by near unanimity and in the consequent difficulty in extracting clear, agreed majority principles from those cases.[6]

[1] What the footnote does imply (and which led to my error) is that Security Council Resolution 242 (1967) was adopted exclusively in English.

[1] Rubin, *The International Legal Effects of Unilateral Declarations,* 71 AJIL 1 (1977).

[2] [1974] ICJ REP. 253

[3] [1973] ICJ REP. 135.

[4] [1974] ICJ REP. 311.

[5] *Id.* 267.

[6] *See* in this regard this writer's studies *International Law-Making and the Judicial Process,* 3 SYRACUSE J. INT. L. & COMMERCE 9 (1975) (cited by Professor Rubin);