

ARTICLE 33

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ARTICLE 33

TEXT OF ARTICLE 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

INTRODUCTORY NOTE

1. The present study of Article 33 follows previous *Repertory* treatment of the Article in limiting the material it presents to the question of the relationship between the obligation of the parties concerned to seek peaceful settlement of a dispute or situation and its handling by the Security Council.

2. During the period under review, no constitutional debate concerning the application or interpretation of Article 33 took place in the Security Council. Nor did such discussion occur in the case of a resolution adopted by the General Assembly containing explicit reference to Article 33,

as described in paragraph 11 below. In another case where the principle of peaceful settlement was discussed by the Sixth Committee, no final resolution thereon was adopted by the General Assembly. Consequently, the material reviewed does not require treatment in the Analytical Summary of Practice. In so far as such material has been considered to have a bearing on the application or interpretation of Article 33, it is treated in the General Survey, which also contains an account of the decisions of the Security Council and the General Assembly bearing on Article 33.

I. GENERAL SURVEY

A. Action by the Security Council

3. The resolutions adopted by the Security Council during the period under review contained no explicit reference to Article 33. Nor did they contain provisions calling on Member States to enter into direct negotiations or to resort to any of the means of pacific settlement contained in paragraph 1 of that Article, in order to settle their differences by peaceful means.

4. The Security Council did on occasion adopt resolutions which might be considered as an indirect application of Article 33. In connexion with the situation in the Middle East, for instance, the Security Council, within a framework set by views of Council Members¹ that it should act within the provisions of Chapter VI and, in particular, those of Article 33, adopted a resolution which *inter alia* requested the Secretary-General to designate a Special Representative to proceed to the area of conflict, to establish and maintain contact with the parties concerned "in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement".² Subse-

quently, this resolution was reaffirmed by resolution 258 (1968) of 18 September 1968 whereby the Council also urged all the parties concerned "to extend their fullest co-operation to the Special Representative of the Secretary-General in the speedy fulfilment of the mandate entrusted to him" under resolution 242 (1967).³ In another instance, during the consideration of the Cyprus question, the Council invited the parties concerned "to avail themselves of the good offices proffered by the Secretary-General" and urged them "to undertake a new determined effort to achieve the objectives of the Security Council with a view . . . to keeping the peace and arriving at a permanent settlement" in accordance with a previous Council resolution.⁴

5. During the period under review, there were a few instances in which proposals seeking to call directly on the parties concerned to solve their differences by peaceful means were submitted. On one occasion, during the consideration of the situation in the Middle East, three draft resolutions⁵ which might be considered to fall within the

¹ For texts of relevant statements, see: S C, 22nd yr., 1373rd mtg.: Argentina, para. 266; India, para. 95; Nigeria, para. 107; 1377th mtg.: Canada, paras. 84-86; United States, para. 54; 1379th mtg.: United Kingdom, paras. 13 and 15-18; 1381st mtg.: USSR, para. 8; 1382nd mtg.: India, paras. 45-48.

² S C resolution 242 (1967) of 22 November 1967, para. 3.

³ S C resolution 258 (1968) of 18 September 1968, para. 2.

⁴ S C resolution 244 (1967) of 22 December 1967, paras. 3 and 5. For texts of relevant statements, see: S C, 22nd yr., 1385th mtg.: United Kingdom, paras. 171-176; 1386th mtg.: President (Nigeria), paras. 2 and 3; Secretary-General, para. 37.

⁵ A joint draft resolution by India, Mali and Nigeria would, *inter alia*,

scope of Article 33, were submitted to the Security Council but were not pressed to the vote, since a fourth and similar draft resolution⁶ was voted upon and adopted by the Council.

6. On occasion, Article 33 was referred to, explicitly and implicitly, during Council debates to support the following viewpoints: that Member States concerned should endeavour to settle their differences by peaceful means within the framework of Chapter VI of the Charter;⁷ that a situation had not reached the scope envisaged for the application of that Article;⁸ and that the main responsibility for peaceful settlement rested with the parties directly concerned.⁹

7. In some instances, Article 33 was cited to corroborate either the view that recourse to the Security Council had been made because attempts to settle differences through bilateral negotiations had failed and/or the necessary prerequisites for adopting the normal procedures provided for in Article 33 had been lacking in the given circumstances,¹⁰ or, alternatively, the view that such was not the case, namely, that all possible means of bilateral negotiations had neither been tried nor exhausted before the question was brought before the Security Council.¹¹ In this connexion, the following views were also expressed: that while parties to a dispute have an obligation to settle their differences, in the first instance, by means envisaged in Article 33, if efforts to resort to that procedure failed, every State would be within its rights in bringing its complaints before the Security Council;¹² that the Council should as-

have had the Security Council affirm that a just and lasting peace in the Middle East should be achieved "within the framework" of the Charter, and more particularly within the framework of certain principles and would also have had the Council request the Secretary-General to send a Special Representative to the Middle East to help the parties concerned to agree to achieve the purposes of the resolution. (See S C, 22nd yr., 1373rd mtg., para. 91, S/8227, paras. 1 and 3.) Under the provisions of a United States draft resolution, the Security Council would, *inter alia*, also have affirmed certain Charter principles within the framework of which solution of the situation in the Middle East should be sought and would have requested the Secretary-General to designate a Special Representative to proceed to the area to establish and maintain contacts with the States concerned in order to assist them in the working out of solutions in accordance with the purposes of the draft resolution. (See S C, 22nd yr., Suppl. for Oct.-Dec., p. 208, S/8229, paras. 1 and 3.) A third draft resolution, submitted by the USSR, would *inter alia* have had the Security Council declare that a final solution to the Middle East problem could be achieved within the framework of the Charter, and have had the Council continue its consideration of the situation in the Middle East, working directly with the parties concerned with a view to achieving a solution of all aspects of the problem on the basis of certain principles derived from the Charter. (See S C, 22nd yr., 1381st mtg., para. 7, S/8253, paras. 1 and 3.)

⁶ Adopted as S C resolution 242 (1967). See also footnote 2 above.

⁷ In connexion with the situation in the Middle East: S C, 22nd yr., 1343rd mtg.: United States, paras. 32-37; 1373rd mtg.: Argentina, para. 266; India, para. 95; Nigeria, para. 107; 1377th mtg.: Canada, paras. 84-86; United States, paras. 54-58; 1379th mtg.: United Kingdom, paras. 15-19; 1381st mtg.: USSR, para. 8; 1382nd mtg.: India, paras. 45-49.

⁸ In connexion with the complaint by Haiti, S C, 23rd yr., 1427th mtg.: Haiti, para. 9.

⁹ In connexion with the situation in the Middle East, S C, 23rd yr., 1440th mtg.: Canada, paras. 46 and 47.

¹⁰ In connexion with the complaint by Zambia: S C, 24th yr., 1486th mtg.: Zambia, paras. 12, 49 and 58; 1488th mtg.: Nepal, paras. 60 and 61; 1489th mtg., Madagascar, paras. 23-25; Zambia, paras. 90, 110 and 111. In connexion with the complaint by Senegal: S C, 24th yr., 1518th mtg.: Madagascar, para. 24; Nepal, paras. 116 and 117.

¹¹ In connexion with the complaint by Zambia: S C, 24th yr., 1486th mtg., Portugal, paras. 61, 80-81, 86 and 92. In connexion with the complaint by Senegal: S C, 24th yr., 1516th mtg., Portugal, para. 129.

¹² In connexion with the complaint by Zambia: S C, 24th yr., 1488th mtg., Finland, para. 88.

sist the parties to seek out a peaceful solution between themselves guided by a wide range of ways detailed in Article 33;¹³ that the procedures provided for under Article 33, in particular negotiations, were binding to the extent that all the parties so decided and that the situation giving rise to the dispute lent itself to a settlement;¹⁴ that non-implementation by one of the parties concerned of previous Security Council resolutions having a bearing on the subject of complaint justified recourse by the other party directly to the Security Council;¹⁵ and that, in instances where circumstances were such that solutions could not be sought to the complaint in question through negotiation and conciliation or where the necessary prerequisites for adopting the normal procedures provided for in Article 33 were lacking, it was the duty of the Security Council to investigate the complaint and to seek a remedy to the situation within the terms of Chapter VI of the Charter.¹⁶

8. In other instances, Article 33 has been mentioned *in passim* with reference to various means of pacific settlement set out in paragraph 1 of Article 33 and recourse thereto.¹⁷

B. Action by the General Assembly

9. During the period under review, two resolutions¹⁸ were adopted by the General Assembly on the "Question of methods of fact-finding",¹⁹ one of which might be considered to have a bearing on Article 33, while the other contained an explicit reference thereto. At its twenty-first session, the General Assembly, having been unable to consider the substance of this question, adopted resolution 2182 (XXI) of 12 December 1966, whereby it reaffirmed its belief that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organization and in bilateral and multilateral conventions; recalled its belief that a study of the question might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek other peaceful means of settlement of their own choice; and, decided to invite Member States to submit any views, or further views, they might have on this subject and to include the question of methods of fact-finding in the provisional agenda of its twenty-second session.²⁰

¹³ *Ibid.*, 1491st mtg.: United Kingdom, para. 13.

¹⁴ In connexion with the complaint by Senegal: S C, 24th yr., 1518th mtg.: Madagascar, para. 24.

¹⁵ *Ibid.*, Nepal, paras. 116 and 117.

¹⁶ *Ibid.*, 1519th mtg.: Finland, para. 35. In connexion with the complaint by Guinea: S C, 24th yr., 1526th mtg.: Finland, para. 13.

¹⁷ In connexion with the complaint by the Democratic Republic of the Congo: S C, 21st yr., 1304th mtg.: Netherlands, para. 43. In connexion with the complaint by Senegal: S C, 24th yr., 1520th mtg.: Spain, para. 54. Also, in connexion with the complaint by Guinea, S C, 24th yr., 1524th mtg.: Mali, paras. 56 and 57. 1526th mtg.: Spain, para. 5; United States, para. 9.

¹⁸ G A resolutions 2182 (XXI) and 2329 (XXII).

¹⁹ For the background of this question see: *Repertory, Supplement No. 3*, vol. II, under Article 33, and also under Article 34, paras. 63-65.

²⁰ G A resolution 2182 (XXI), 5th and 7th preamb. paras. and paras. 1 and 2.

10. At its twenty-second session, the General Assembly allocated this item to the Sixth Committee which established a Working Group to draw conclusions concerning the question. Having received the report of the Working Group,²¹ as well as the observations and additional comments from Governments in pursuance of General Assembly resolution 2182 (XXI),²² the Sixth Committee adopted a draft resolution co-sponsored by Czechoslovakia, Ecuador, Finland, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia and Togo which was identical with a compromise proposal which had been approved unanimously and submitted to the Sixth Committee by the Working Group.²³

11. The draft resolution recommended by the Sixth Committee was adopted by the General Assembly at its 1637th plenary meeting on 18 December 1967 as resolution 2329 (XXII).²⁴ The text of that resolution, the third paragraph of which contains an explicit reference to Article 33, reads as follows:

"The General Assembly,

"Recalling its resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

"Noting the comments submitted by Member States pursuant to the above-mentioned resolutions, and the views expressed in the United Nations,

"Noting with appreciation the two reports submitted by the Secretary-General in pursuance of the above-mentioned resolutions,

"Recognizing the usefulness of impartial fact-finding as a means towards the settlement of disputes,

"Believing that an important contribution to the peaceful settlement of disputes and to the prevention of disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions or through other appropriate arrangements,

"Affirming that the possibility of recourse to impartial methods of fact-finding is without prejudice to the right of States to seek other peaceful means of settlement of their own choice,

"Reaffirming the importance of impartial fact-finding, in appropriate cases, for the settlement and the prevention of disputes,

"Recalling the possibility of the continued use of existing facilities for fact-finding,

"1. Urges Member States to make more effective use of the existing methods of fact-finding;

"2. Invites Member States to take into consideration, in choosing means for the peaceful settlement of disputes, the possibility of entrusting the ascertainment of facts, whenever it appears appropriate, to competent international organizations and bodies established by agreement between the parties concerned, in conformity with the principles of international law and the Charter of the United Nations or other relevant agreements;

²¹ G A (XXII), Annexes, a.i. 88, pp. 5-8, A/6995, annex I.

²² A/6686 and Corr. 1 and Adds. 1-3 (mimeographed). See also G A (XXII), Annexes, a.i. 88, pp. 8-10, A/6995, annex II.

²³ *Ibid.*, pp. 5-8, A/6995, annex I.

²⁴ G A (XXII), Plenary, 1637th mtg., para. 95.

"3. Draws special attention to the possibility of recourse by States in particular cases, where appropriate, to procedures for the ascertainment of facts, in accordance with Article 33 of the Charter;

"4. Requests the Secretary-General to prepare a register of experts in legal and other fields, whose services the States parties to a dispute may use by agreement for fact-finding in relation to the dispute, and requests Member States to nominate up to five of their nationals to be included in such a register."

12. Excerpts from the report of the Sixth Committee submitted to the twenty-second session of the General Assembly, together with excerpts from the report of the Working Group, summarizing the discussion on the question of methods of fact-finding, are reproduced in parts A and B of the annex to the present study.

13. During the period under review, Article 33 was incidentally invoked or implicitly commented on during debates in the General Assembly in the following contexts: to support the view that peace-keeping operations were exceptional provisional measures for maintaining international peace and security and could not be a substitute for the existing procedures for the peaceful settlement of disputes detailed in Article 33 which, under the Charter, were considered to be the normal means for the maintenance of peace, and further that there was nothing in the Charter to suggest that such operations could continue indefinitely, freeing the Organization from the obligation to recommend and, if necessary, enforce the use of the measures envisaged in Article 33 with a view to a permanent solution;²⁵ to draw attention to the Charter obligations regarding peaceful settlement of disputes and the ensuing Charter injunction forbidding intervention by one State in the affairs of another;²⁶ to refer to the Charter provisions relating to the settlement of disputes between States exclusively through peaceful means in conformity with Article 33;²⁷ to note that negotiation, as a means of settling disputes, was assigned first priority under Article 33, which also provided for the solution of international disputes through referral to regional organizations, and further that the blocking by one party to a dispute of all means of its peaceful settlement would constitute a violation of the Charter no less grave than the threat or the use of force.²⁸

14. At its twenty-first session, the General Assembly, in connexion with the item: "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of

²⁵ During the consideration of the comprehensive review of the whole question of peace-keeping operations in all their aspects at the twenty-first session (a.i. 33) and twenty-second session (a.i. 37); see G A (XXI), Spec. Pol. Com., 523rd mtg.: Pakistan, paras. 13 and 14; 524th mtg.: Poland, paras. 21 and 22; 526th mtg.: Malta, para. 18; G A (XXII), Spec. Pol. Com., 570th mtg.: Ireland, paras. 33 and 34; 579th mtg.: Poland, paras. 28 and 29, 580th mtg.: India, paras. 76 and 78-80.

²⁶ During the consideration of the status of the implementation of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty at the twenty-first session (a.i. 96), see G A (XXI), First Com., 1479th mtg.: United States, para. 33, 1480th mtg.: Mali, para. 9.

²⁷ During the consideration of the report of UNRWA at the twenty-second session (a.i. 34), see G A (XXII), Spec. Pol. Com., 589th mtg.: Liberia, para. 41.

²⁸ During the consideration of the measures for the strengthening of international security at the twenty-fourth session (a.i. 103); see G A (XXIV), First Com., 1656th mtg.: Ukrainian SSR, para. 23, 1660th mtg.: Cyprus, paras. 87 and 88; 1664th mtg.: Pakistan, paras. 131-148.

the United Nations", adopted resolution 2181 (XXI) of 12 December 1966 by which it, *inter alia*, took note²⁹ of the formulation by the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States³⁰ of the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. The Assembly further requested³¹ the Special Committee to examine, at its 1967 session, any additional proposals with a view to widening the areas of agreement expressed in the 1966 formulation of the principle.

15. At its 1967 session, the Special Committee referred the principle concerning the peaceful settlement of international disputes to its Drafting Committee³² which in turn referred the principle to a Working Group and subsequently transmitted to the Special Committee the report of the Working Group. In that report it was stated that the Working Group was agreed on the desirability of maintaining the areas of agreement already achieved in the formulation agreed by the 1966 Special Committee.³³ The report also set out various positions on a number of additional proposals. The Special Committee, having taken note of the report of the 1967 Drafting Committee, transmitted it to the General Assembly.³⁴

16. By resolution 2463 (XXIII) of 20 December 1968, the General Assembly requested³⁵ the Special Committee to endeavour to resolve, at its 1969 session, all relevant questions relating to the formulation of the seven principles of international law concerning friendly relations and co-operation among States which had been set forth in General Assembly resolution 1815 (XVII) of 18 December 1962.³⁶

²⁹ This resolution, together with another resolution which also referred to the principle of peaceful settlement of disputes, is briefly treated under Article 2 (3). See in this *Supplement*, under Articles 1 (1), 1 (3), 1 (4), 2 (1), 2 (2), 2 (3) and 2 (5), para. 13 and annex II.

³⁰ G A (XXI), Annexes, a.i. 87, A/6230, para. 248; see also: *Reperatory, Supplement No. 3*, vol. II, under Article 33, para. 6.

³¹ G A resolution 2181 (XXI), para. 7.

³² G A (XXII); Annexes, a.i. 87, A/6799, para. 438.

³³ *Ibid.*

³⁴ *Ibid.*, para. 474. The General Assembly, by its resolution 2327 (XXII) of 18 December 1967, asked the Special Committee to continue its work during 1968 in order to complete the formulation of certain principles other than the principles concerning the peaceful settlement of international disputes.

³⁵ G A resolution 2463 (XXIII), para. 4.

³⁶ G A resolution 1815 (XVII), para. 1, listed, in the order given below, these principles as being "notably" the following seven: (a) the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; (b) the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; (c) the duty not to in-

17. At its 1969 session, the Special Committee agreed to concentrate for the duration of that session on completing its work on the formulation of the principles concerning the prohibition of the threat or use of force and the principle of equal rights and self-determination of peoples.³⁷ Consequently it did not consider at that session any question relating to the formulation of the principles concerning the peaceful settlement of international disputes. By its resolution 2533 (XXIV) of 8 December 1969, the General Assembly requested³⁸ the Special Committee to endeavour to resolve the remaining questions relating to the formulation of the seven principles, in order to submit to the Assembly at its twenty-fifth session a comprehensive report containing a draft Declaration on all of the seven principles.

18. Excerpts from the report of the Sixth Committee submitted to the twenty-second session of the General Assembly and from the report of the 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, summarizing the debates on the interpretation of the provisions of the principle concerning the peaceful settlement of international disputes are reproduced in parts C and D of the annex to this study.

19. On 23 May 1969, the United Nations Conference on the Law of Treaties, which had been convoked pursuant to General Assembly resolution 2166 (XXI) of 5 December 1966, adopted the Vienna Convention on the Law of Treaties.³⁹ An explicit reference to Article 33 is contained in Article 65 of this Convention, which pertains to the procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty.⁴⁰

tervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; (d) the duty of States to co-operate with one another in accordance with the Charter; (e) the principle of equal rights and self-determination of peoples; (f) the principles of sovereign equality of States; (g) the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

³⁷ G A (XXIV), Annexes, a.i. 89, A/7809, paras. 10-36. See also G A (XXIV), Suppl. 19 (A/7619), paras. 20, 23.

³⁸ G A resolution 2533 (XXIV), para. 4.

³⁹ *United Nations Juridical Yearbook, 1969* (United Nations publication, Sales No.: E.71.V.4).

⁴⁰ The relevant part of the text of Article 65 of the Vienna Convention reads as follows:

"1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

"2. . . .

"3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations."

** II. ANALYTICAL SUMMARY OF PRACTICE

**** A. In the Security Council: The question of the extent to which parties to a dispute are obligated to seek a pacific settlement before recourse to the Security Council**

**** B. In the General Assembly**

**** 1. THE QUESTION OF THE OBLIGATION OF THE PARTIES UNDER ARTICLE 33 (1) IN RELATION TO THE INTERVENTION OF THE GENERAL ASSEMBLY**

**** 2. THE QUESTION OF THE APPLICATION OF ARTICLE 33 THROUGH PROCEDURES OF A GENERAL CHARACTER INSTITUTED BY THE GENERAL ASSEMBLY**

ANNEX

A. Excerpts from the report^a of the Sixth Committee, dated 15 December 1967, submitted to the General Assembly at the twenty-second session

DISCUSSION

A. First stage

1. General debate

7. All speakers emphasized the importance of fact-finding for the pacific settlement of disputes. Different views were expressed, however, concerning the adequacy of the existing machinery for fact-finding and the reasons that machinery was not always used. It was nevertheless generally recognized that the Sixth Committee's consideration of the topic, the written comments of Governments and the reports prepared by the Secretary-General had usefully served to draw attention to the possibilities of greater recourse to methods of fact-finding.

8. The question of fact-finding procedures gave rise to a variety of suggestions, one of which was the establishment of a permanent body for fact-finding purposes. In support of this suggestion it was argued that such a body would have a number of advantages over the existing machinery, in particular, that of separating inquiry from conciliation. It would also have the advantage of being already in existence, whereas the machinery provided for in the instruments now in force was only brought into being after a dispute had arisen, that is, at a time when the general climate was not conducive to co-operation and agreement between the parties. Thirdly, the harmonization and centralization of fact-finding procedures, which had hitherto been somewhat lacking in coherence, might facilitate and thus encourage recourse to methods of impartial inquiry, and would also make it possible to derive the greatest benefit from past experience and to acquire appropriate experience for the future. The proposed body would not only be engaged in establishing facts concerning disputes; it might also lend its services to States parties to treaties which provided for inquiry as a means of ensuring their execution, and to international organizations which had to take decisions on the basis of established facts. It was made clear that the proposed new body was intended to supplement and not to supersede existing machinery and that States would still be completely free to decide whether or not to make use of its services.

9. Several delegations supported this suggestion, but many others took opposing views. Three main arguments were adduced against the establishment of a permanent international fact-finding body. In the first place, some delegations said that the establishment in the United Nations system of a permanent body which would have powers assigned to the Security Council would be contrary to the provisions of the Charter. In reply, it was argued that the proposed body could be used for fact-finding in many situations other than those in which the Council had competence, and that it would function in matters within the Council's competence only in so far as the Council decided to have recourse to it. That argument was countered by the observation that the Security Council could always establish an *ad hoc* organ if it saw fit and that there was no need for a permanent body. Secondly, it was pointed out that in addition to regional fact-finding machinery there were already institutions of a general character in that field, and that in all cases it was the prerogative of States, as sovereign entities, to decide what fact-finding body was most appropriate in a given instance. It was also pointed out that the present stage of development of international law did not permit the centralization of existing fact-finding procedures. Thirdly, it was claimed that there were no grounds for assuming that a permanent body would be more effective than the existing procedures. Experience had proved, on the contrary, that what had made these procedures successful was their flexibility and diversity, and that therefore nothing would be gained by trying to centralize or codify them.

10. In addition to the suggestion that a permanent fact-finding body should be established, it was asked what steps might be taken to improve the existing facilities for fact-finding and why those facilities were not used more frequently. In the course of the discussion it was suggested that the Assembly might again invite Member States to consider submitting names for inclusion in the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III), thereby taking up the suggestion made in the report of the Secretary-General on the question submitted at the twentieth session. More frequent recourse to the services of rapporteurs and mediators was also advocated in cases submitted to the Security Council or the General Assembly. Reference was

made to a number of other facilities, such as those provided for in the Hague Conventions of 1899 and 1907 and the 1928 General Act for the Pacific Settlement of International Disputes.^b Various regional facilities were also mentioned.

11. Other delegations supported the idea of a panel consisting of nationals of all Member States and representing a complete range of specialized fields, from which the States concerned would be invited to choose, in the light of the technical requirements of the inquiry, the members of each *ad hoc* commission, who would thus retain the confidence of the parties to the dispute. One delegation indicated that it was not adverse to the establishment of a special unit in the United Nations Secretariat for assisting and advising any *ad hoc* bodies which might be established.

2. Establishment of a working group

12. During the general debate on the question, the Committee also examined the proposal for the establishment of a working group on the question of methods of fact-finding. A formal proposal (A/C.6/L.624) was submitted by Colombia, Ecuador, Jamaica, Japan, Liberia, Madagascar, Mexico, the Netherlands, Pakistan, Somalia, Togo, and Turkey and read as follows:

"The Sixth Committee,

"Desiring to make every effort to give adequate consideration to agenda item 88 entitled 'Question of methods of fact-finding',

"Mindful that the item has been included in the agenda of the twenty-second session pursuant to General Assembly resolution 2182 (XXI), which requested its inclusion in the provisional agenda with a view to considering what further action might be appropriate,

"Noting that, with regard to methods of fact-finding in international relations, a considerable documentation has now been made available by the reports of the Secretary-General^c on practice in relation to settlement of disputes as well as in respect to the execution of international agreements, by chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,^d and furthermore by the views expressed and the proposals made by Member States since the seventeenth session of the General Assembly, including the written comments by Governments submitted in pursuance of Assembly resolutions 1967 (XVIII), 2104 (XX) and 2182 (XXI),^e

"Considering that the above-mentioned documentation shows that the main points of view on the subject have been expressed,

"Considering further that the examination of the agenda item in question would be greatly facilitated by the establishment of a working group, the more so since the Committee's heavy programme of work permitted it to allow only a very limited number of meetings for the consideration of the item,

"1. Decides that a working group shall be established as soon as possible whose task will be to report and to make recommendations to the Sixth Committee on possibilities for further action, in the light of the reports of the Secretary-General, the views expressed and the proposals made;

"2. Requests the Secretariat to prepare a document listing all the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding;

"3. Requests its Chairman after consultations to propose to the Committee the composition of the working group containing no more than fifteen members and being so designated as to ensure a balanced

^b League of Nations, *Treaty Series*, vol. XCIII (1929-1930), No. 2123, p. 345.

^c *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694; *ibid.*, *Twenty-first Session, Annexes*, agenda item 87, document A/6228.

^d *Ibid.*, *Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

^e *Ibid.*, documents A/5725 and Add.1-7; *ibid.*, *Twenty-first Session, Annexes*, agenda item 87, documents A/6373 and Add.1; A/6686 and Corr.1 and Add.1-3.

^a G A (XXII), Annexes, a.i. 88, pp. 1-4, A/6995, paras. 7-24.

representation of the various geographic groups within the United Nations."

13. This proposal was supported by many representatives. In favour of the proposed measure, reference was made to the encouraging precedent of the Working Group on the Draft Declaration on Territorial Asylum and to the recommendations, unanimously approved by the General Assembly in its resolution 1898 (XVIII), of the *Ad Hoc* Committee on the Improvement of the Methods of Work of the General Assembly. A number of delegations, however, criticized the text of the proposal. In the first place, it was stated that the phrase "on possibilities for further action" in operative paragraph 1 was unclear and that a working group could not achieve positive results unless there was agreement at the outset among the members of the Committee on clearly defined terms of reference. In addition, the expression "balanced representation" in operative paragraph 3 was considered an unfortunate innovation. In reply, it was said that the sponsors had used the words "further action" because that wording was used in operative paragraph 2 of General Assembly resolution 2182 (XXI) and that their intention had been to employ the usual formulation of "equitable representation".

14. At the 990th meeting on 3 November 1967, the United Arab Republic submitted the following amendments (A/C.6/L.626):

"1. In operative paragraph 1, after the word 'recommendations' replace the existing text by the following: 'on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee';

"2. In operative paragraph 3, third line, replace the words 'a balanced' by the word 'equitable'."

15. In view of those amendments and the above-mentioned observations, the co-sponsors submitted a revised version (A/C.6/L.624/Rev.1) of their text, in which the words "on possibilities for further action" in operative paragraph 1 were replaced by the words "on the subject in question", and the words "a balanced representation of the various geographic groups within the United Nations" in operative paragraph 3 by the words "equitable geographical representation". At the 991st meeting, the representative of the United Arab Republic announced that he was withdrawing the second of his amendments (see paragraph 14 above), which was no longer relevant, and the co-sponsors submitted orally a second revised version of operative paragraph 1, incorporating the first of the amendments submitted by the United Arab Republic. Operative paragraph 1 thus would read as follows:

"Decides that a working group shall be established as soon as possible whose task will be to report and to make recommendations on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee, in the light of the reports of the Secretary-General, the views expressed and the proposals made;"

16. At the 991st meeting, on 3 November 1967, the proposal (A/C.6/L.624/Rev.1), as amended, was adopted by 72 votes to none, with 12 abstentions. It was agreed that, in accordance with a proposal made during the debate, the Rapporteur of the Committee would attend the meetings of the Working Group.

17. At the 998th meeting, on 15 November 1967, the Committee unanimously decided to increase the membership of the Working Group, which it had originally fixed at fifteen, to sixteen. It was agreed that the Group would be composed of the following States. Ceylon, Czechoslovakia, Ecuador, Finland, France, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia, Togo, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

B. Second stage—Consideration of the report of the Working Group on the Question of Methods of Fact-Finding

18. At its 1023rd and 1024th meetings, held on 13 December 1967, the Sixth Committee considered the report submitted by the Working Group (A/C.6/L.639). The Sixth Committee also had before it a draft resolution (A/C.6/L.642), co-sponsored by the States listed in paragraph 6 above, identical in its terms with that submitted by the Working Group. It was stated in the course of the Sixth Committee's discussions that the Legal Counsel had given his opinion that, in accordance with standard United Nations practice, it was not necessary for the draft resolution,

which had been unanimously adopted by the Working Group, to be sponsored by individual Member States; the opening words of paragraph 17 of the Working Group's report had nevertheless been chosen so as not to prevent States from sponsoring the proposal if they wished to do so.

19. All representatives speaking on the item during the second stage of the Sixth Committee's debate expressed their support for the draft resolution which had been proposed. A tribute was paid to the efforts of the Working Group, which despite the difficulties encountered, had successfully led to a reconciliation of the different views held on the question of methods of fact-finding. Although the results achieved had not been spectacular, they represented a positive if modest step towards wider acceptance of the importance of recourse to impartial methods for the settlement of international disputes. In this sense the item could be said to have made distinct progress since its first inclusion in the agenda of the General Assembly. Several delegates, speaking in explanation of vote, wished to emphasize that the draft resolution was based on the assumption that no permanent organ would be established. They pointed out that the majority of members had not in fact favoured any advance along those lines; the draft resolution did not therefore institute any change in the obligations of Member States.

20. It was pointed out that the draft resolution distinguished the concept of fact-finding from that of conciliation, called upon States to make more effective use of the existing methods—thereby suggesting that they were not being effectively used at present—and incorporated the idea that the Secretary-General should prepare a register of persons proposed by Member States whose services might be used for purposes of fact-finding. Several delegations expressed regret that, although the draft resolution affirmed in general terms the importance of fact-finding, it had not gone further and included some of the other constructive ideas which had been put forward, such as the proposal that the Secretary-General should continue to consider favourably giving appropriate assistance with regard to fact-finding in response to requests made by States. A number of speakers also mentioned the formulation which had been examined by the Working Group whereby more explicit reference would have been made in the draft resolution to the main facilities for fact-finding which now exist and which had been specified in paragraph 13 of the Working Group's report.

21. It was agreed, in response to a request by one representative, that the report of the Working Group should be annexed to the present report (annex I below), and, in accordance with a recommendation of the Working Group itself (A/C.6/L.639, para. 4), that the document prepared by the Secretariat listing the suggestions made by Member States and by the Secretary-General in relation to methods of fact-finding (A/C.6/SC.9/L.1) should also be annexed to the report (annex II below).

22. In answer to a question raised by one representative, the Chairman of the Working Group, who was also one of the co-sponsors of draft resolution A/C.6/L.642, confirmed that the request made to Member States in operative paragraph 4 of the proposal to nominate up to five of their nationals for inclusion in the proposed register of experts did not constitute an obligation for Member States to comply with the request. On this understanding, the representative concerned agreed not to request a separate vote on operative paragraph 4 in order to record the abstention of his delegation.

VOTING

23. At its 1024th meeting, on 13 December 1967, the Sixth Committee unanimously adopted draft resolution A/C.6/L.642 without recourse to a formal vote. Statements in explanation of vote were made by the representatives of the Union of Soviet Socialist Republics, Italy and Nigeria.

Recommendation of the Sixth Committee

24. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

QUESTION OF METHODS OF FACT-FINDING

[Text adopted by the General Assembly without change. See "Action taken by the General Assembly" below.]

B. Excerpts from the report^a of the Working Group on the Question of Methods of Fact-Finding, dated 11 December 1967

DISCUSSION

5. In accordance with a suggestion made by the Chairman, the Group proceeded first, on the basis of the Secretariat document (A/C.5/SC.9/L.1), to the general debate on the methods to be followed, bearing in mind the terms of reference laid down by the Sixth Committee.

6. On the question of methods, it was stated that account should be taken of the tenor of the debate in the Sixth Committee, which had revealed that there was complete unanimity on the importance of fact-finding. It was also stressed that the Working Group should avoid becoming embroiled in unnecessary repetitions and should concentrate, as the Sixth Committee had asked it to do, on reconciling the different views that had been expressed. On the one hand, during the Sixth Committee's debate, some speakers had advocated the establishment of a permanent organ, while many delegations stated their position in favour of maintaining the *status quo*. A number of speakers also stressed the need to investigate what measures could be taken to improve existing machinery for fact-finding. Some representatives suggested that the authors of specific suggestions which required explanation should be invited to state their views to the Working Group. However, it was pointed out that, if each member presented his own analysis of the situation, the points of agreement would be more clearly apparent; it would then be possible to see whether the number of supporters for a given suggestion made it worth while to have the details elucidated.

7. In connexion with the Secretariat document (A/C.6/SC.9/L.1), it was stated that, as it had been intended solely to list the suggestions made in relation to the question of fact-finding, the document inevitably reflected only one of the schools of thought which had found expression during the debate in the Sixth Committee; at least it made it apparent that, even among the authors of specific suggestions, there were very few who proposed the establishment of a permanent organ for fact-finding. In reply to that, it was stated, firstly, that the Working Group was representative of all points of view, and, secondly, that the suggestions listed in the Secretariat document showed that there was a whole spectrum of shades of opinion on the basis of which it should be possible to find a generally acceptable formula. After a number of delegations had pointed out that only twelve Member States had made specific suggestions, one member stated that silence on the part of some States was not necessarily an indication of a negative attitude but might reflect some uncertainty as to the best way of resolving the problem. Another representative pointed out that his delegation had stated in the Sixth Committee that it was neither necessary nor useful to set up a permanent organ of inquiry but that, if the majority decided to proceed with the study of the question, that delegation's suggestion, as reproduced in the Secretariat document, should be taken into account.

8. Three working papers were submitted with a view to arriving at a common text which the Group would recommend to the Sixth Committee for adoption. They were produced by Finland, the Netherlands and Czechoslovakia respectively.

9. The text submitted by Finland was worded as follows:

"I. The Finnish delegation would like to put forward the following outline, proposed for the consideration of the Working Group.

"1. The General Assembly should adopt a resolution calling attention to the importance of fact-finding in connexion with international disputes.

"2. The General Assembly should request the Secretary-General to invite Member States to submit names for inclusion in a register of persons who would be competent in legal and other fields and who could be called upon to find the facts in relation to specific disputes. Member States would be asked to submit the names of a limited number (up to five) of their nationals for inclusion in such a register. The register would be published by the Secretary-General on the basis of the replies received from Member States.

"3. In the event of a dispute the States involved might, by agreement, each nominate one person from the register; the persons nominated would, in turn, select a Chairman, who might not necessarily be drawn from the register. The task of the fact-finding organ so established would be to ascertain the facts relating to the dispute and to submit a report to the States concerned.

"4. The task of the fact-finding organ would be confined exclusively to the finding of the facts relating to the dispute and would not extend to the making of proposals regarding the solution of the dispute.

"5. The expenses of the fact-finding organ would be divided between the parties to the dispute in the way assessed by that organ.

"6. The General Assembly should also recommend that greater use be made of existing machinery for fact-finding within the framework of international organizations.

"II. Consideration might be given, in addition to the above, to the possibility that individual members of the International Court of Justice might be asked to act as Chairmen of the fact-finding bodies established under paragraph 3 above.

"III. On the basis of the above, the Finnish delegation would like to submit the following operative paragraphs of a draft resolution for the attention of the Working Group:

"The General Assembly,

"1. Asks the Secretary-General to prepare a register of experts nominated by Government of Member States, to be used as a basis for the selection of *ad hoc* organs for fact-finding;

"2. Requests Member States to nominate not more than five of their nationals who would be competent in legal and other fields, for inclusion in the register of experts;

"3. Invites Member States, if possible, in the event of a dispute, to agree to have recourse to the register of experts for the purpose of establishing an *ad hoc* organ for fact-finding;

"4. Suggests that, in principle, one person should be nominated by each of the States parties to a dispute. The persons so nominated would select a chairman, who might not necessarily be drawn from the register;

"5. Agrees that the task of any *ad hoc* organ so established would be to ascertain the facts relating to the dispute and to submit a report to the States concerned;

"6. Agrees further that the expenses of the *ad hoc* fact-finding organ would be divided between the States parties to the dispute in the way assessed by the organ."

10. Several delegations noted with satisfaction that the formula proposed by Finland meant the setting up of *ad hoc* organs and had the advantage of allowing States complete freedom; approval of the suggested system of financing was also voiced. Nevertheless, it was pointed out that other methods of fact-finding already existed, that other suggestions had been made and that it might not be desirable to lay stress on one of those methods to the detriment of the others, especially as the Panel for Inquiry and Conciliation established by General Assembly resolution 268 D (III) had not fulfilled the hopes placed in it. One representative stated that some aspects of the suggested formula called for more thorough study and that the Working Group might be departing from its terms of reference if it made so specific a proposal. Nevertheless, in the interest of compromise, many delegations expressed willingness to support the main idea of the Finnish proposal, and it was decided to include the proposal in the text of the draft resolution recommended by the Working Group (see para. 17 below).

11. The text submitted by the Netherlands read as follows:

"The General Assembly,

"Recalling its resolution 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

"Noting with appreciation the two reports submitted by the Secretary-General in pursuance of the above-mentioned resolutions,

"Noting the comments submitted by Member States pursuant to paragraph 1 of resolution 1967 (XVIII), paragraph 2 of resolution 2104 (XX) and paragraph 1 of resolution 2182 (XXI), and the views expressed during its eighteenth, twentieth, twenty-first and twenty-second sessions,

"Noting chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established under General Assembly resolution 1966 (XVIII) of 16 December 1963,

"Considering that, in Article 33 of the Charter of the United Nations, inquiry is mentioned as one of the peaceful means by which the parties to any dispute, the continuance of which is likely to endan-

^a G A (XXII), Annexes, a.i. 88, pp. 5-8, A/6995, annex I.

ger the maintenance of international peace and security, shall seek a solution, and that inquiry, investigation and methods of fact-finding are also referred to in other instruments of a general or regional nature,

"Recognizing the importance of effective impartial fact-finding as a means towards the settlement of disputes and the need to promote its further development and strengthening,

"*Bearing in mind* that an early ascertainment of facts may be instrumental in preventing disputes and failure to comply with obligations,

"Considering that recourse to or acceptance of a procedure for impartial fact-finding, including any obligation freely undertaken to submit existing or future disputes concerning the facts to any such procedure, shall not be regarded as incompatible with sovereign equality,

"Having examined certain specific proposals put forward in the course of the discussions of this subject in the Assembly,

"Considering that certain facilities for impartial fact-finding by the method of inquiry already exist for use by the international community,

"Believing that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions,

"1. *Reaffirms* the importance of impartial fact-finding in appropriate cases, for the settlement and the prevention of disputes;

"2. [Paragraph on a fact-finding organ or the Panel for Inquiry and Conciliation as proposed by the Finnish or Netherlands delegation, if the Working Group decides to include one of these proposals];

"3. *Urges* Member States and United Nations organs in appropriate cases to make use of existing fact-finding machinery with a view to facilitating the settlement of disputes and compliance with multilateral and bilateral agreements;

"4. *Calls upon* Member States to make nominations to the Panel for Inquiry and Conciliation established by General Assembly resolution 268 D (III) of 28 April 1949 and to keep in mind the possibility of using that Panel in appropriate instances;

"5. *Recalls* the facilities for international commissions of inquiry to be formed *ad hoc* under the Hague Conventions of 1899 and 1907 and the facilities in connexion with fact-finding procedures offered by the Permanent Court of Arbitration established by those Conventions;

"6. *Appeals* to Member States which have not yet done so to accede to the Revised General Act for the Pacific Settlement of International Disputes;

"7. *Urges* organs of the United Nations and other organizations, in considering regional problems, and regional organizations to develop and use procedures of impartial fact-finding, wherever such procedures might assist in handling disputes with which they may be concerned;

"8. *Invites* the Secretary-General in the course of his routine examination of the Secretariat's structure to consider suggestions made for the facilities in the Secretariat to assist States desiring to use methods of fact-finding;

"9. *Invites* the Secretary-General to consider sympathetically requests for assistance in making qualified persons, staff and facilities available on the request of the parties to a dispute, and to assist them in carrying out fact-finding tasks;

"10. *Requests* the Secretary-General each year to communicate to the General Assembly and the Security Council the last consolidated list of persons designated by Member States to serve on the Panel for Inquiry and Conciliation;

"11. *Expresses the hope* that in the course of any study which the United Nations Institute for Training and Research may make on this subject it will take account of the studies, proposals and suggestions made and the views expressed during the consideration of this question by the General Assembly;

"12. *Requests* the Secretary-General to transfer the studies, proposals and suggestions made and the views expressed during the consideration of this question by the General Assembly to the International Law Commission if that Commission takes up this question."

12. The representative of the Netherlands pointed out that the fifth and eleventh preambular paragraphs of his proposal were based on preambular paragraphs contained in Assembly resolution 1967 (XVIII) and that the eighth preambular paragraph followed the wording agreed upon by the Special Committee on Principles of International Law concerning Friendly Relations and co-operation among States with regard to the principle of the peaceful settlement of disputes. As to operative paragraphs 4 and 6, he explained that they reflected the suggestions put forward by the

Secretary-General in his report;^b operative paragraph 10 was also to be read in the same context. Operative paragraphs 5 and 7 were founded on the proposals made by the United Kingdom and Japan (A/C.6/SC.9/L.1, paras. 16 and 11 respectively. Operative paragraphs 8 and 9 took up the ideas put forward by Ceylon and Nigeria (*ibid.*, paras. 7 and 13 respectively). Operative paragraph 11 was based on the report of the United Nations Institute for Training and Research,^c while operative paragraph 12 should be considered in the light of the report of the International Law Commission on the work of its nineteenth session.^d

13. In connexion with this text, the Working Group gave careful consideration to a proposal whereby reference would have been made in the preamble of the draft resolution put forward by the Group to some of the main facilities for fact-finding which now exist, such as those available under the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III), the facilities for the formation of *ad hoc* international commissions of inquiry under The Hague Conventions of 1899 and 1907, the facilities with respect to fact-finding existing within the framework of the Permanent Court of Arbitration and under the provisions of the General Act for the Pacific Settlement of International Disputes. A formulation along these lines was not acceptable, however, to certain members of the Group. It was eventually agreed, after informal discussions, that the following text should be included in the preamble of the proposed draft resolution (see para. 17 below):

"Recalling the possibility of the continued use of existing facilities for fact-finding,"

At the same time, the Group accepted that it should be stated in its report that the facilities referred to included those provided by the Panel for Inquiry and Conciliation set up under General Assembly resolution 268 D (III), the facilities for the formation of *ad hoc* international commissions of inquiry under The Hague Conventions of 1899 and 1907 and the facilities within the framework of the Permanent Court of Arbitration and under the provisions of the General Act for the Pacific Settlement of International Disputes. A few delegations stressed the fact that this statement was without prejudice to their position in regard to those facilities.

14. Operative paragraphs 7 and 9 of the Netherlands draft were not accepted. Some delegations said that they contained suggestions that were of interest. One representative observed, however, that if some of the suggestions that had been made were mentioned it might be necessary to list all of them, thus causing the whole attempt at reconciliation to break down. Paragraph 11 was also not accepted. Some delegations felt that there would be no danger in drawing attention to the study which the United Nations Institute for Training and Research intended to make, since to do so would not prejudice anyone's position. Others, however, took the view that an express reference to the work of the Institute was unnecessary in the context.

15. The representative of Czechoslovakia pointed out that his proposal, the text of which is given below, was based upon consultation with a large number of delegations:

"The General Assembly,

"Recalling its resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

"Noting the comments submitted by Member States pursuant to paragraph 1 of resolution 2182 (XXI) and the views expressed during its twenty-second session,

"Taking into account that *ad hoc* bodies constitute one of the methods of fact-finding,

"Reaffirming its belief that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by recourse to the methods of fact-finding within the framework of international organizations or under appropriate arrangements,

"1. *Invites* States to take into consideration, whenever it appears indispensable, in the selection of means for the solution of their disputes, also the possibility of entrusting the ascertaining of facts relating to the dispute to the existing competent organizations or to *ad hoc* bodies, in conformity with the principles of international law and the Charter of the United Nations and without prejudice to the right to seek other peaceful means of settlement of their own choice;

^b See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694, para. 386.

^c *Ibid.*, *Twenty-first Session, Annexes*, agenda item 48, document A/6500, para. 37 and annex II, para. 9 (g).

^d *Ibid.*, *Twenty-second Session, Supplement No. 9*, para. 46.

"2. *Draws attention* to the fact that, whenever methods for the peaceful settlement of disputes are applied in accordance with Article 33 of the Charter of the United Nations, in every concrete case recourse should be had according to the possibilities, if it appears appropriate, to investigation for fact-finding purposes in accordance with the provisions of the Charter."

16. Some comments were made concerning the third preambular paragraph, which appeared to refer only to *ad hoc* fact-finding bodies to the exclusion of permanent organs. With respect to operative paragraph 1, some delegations requested that a reference should be made to permanent fact-finding organs, if only through the use of the wording "*ad hoc* or other bodies". However, this was not acceptable to other delegations. It was ultimately decided to include in the text of the draft resolution the following wording: "to competent international organizations and bodies established by agreement between the parties concerned". In connexion with paragraph 2, some delegations stressed that, besides Article 33 of the Charter, Article 2, paragraph 3, among others, also applied, and that the paragraph should be worded accordingly. Agreement was ultimately reached on the following text, which it was decided to include in the Working Group's draft resolution:

"*Draws special attention* to the possibility of recourse by States in particular cases, where appropriate, to procedures for the ascertainment of facts, in accordance with Article 33 of the Charter of the United Nations,"

RECOMMENDATION OF THE WORKING GROUP

17. In the light of the above report and of the discussions which took place, the Working Group on the Question of Methods of Fact-finding unanimously adopted the following draft resolution, which it submits for the consideration of the Sixth Committee:

"*The General Assembly,*

"*Recalling* its resolutions 1967 (XVIII) of 16 December 1963, 2104 (XX) of 20 December 1965 and 2182 (XXI) of 12 December 1966 on the question of methods of fact-finding,

C. Excerpts from the report* of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, dated 26 September 1967

SECTION I. THE PRINCIPLE THAT STATES SHALL SETTLE THEIR INTERNATIONAL DISPUTES BY PEACEFUL MEANS IN SUCH A MANNER THAT INTERNATIONAL PEACE AND SECURITY AND JUSTICE ARE NOT ENDANGERED^b

A. Text setting out points of consensus adopted by the Special Committee in 1966

369. At its 49th meeting, on 21 April 1966, the Special Committee adopted unanimously^c a text setting out points of consensus on the principle of the peaceful settlement of disputes which had been recommended by its Drafting Committee. The text adopted read as follows:

[*For the text, see Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 248, section I.*]

B. Written proposals and amendments

370. In regard to the above principle, four written proposals or amendments were before the Special Committee at its present session with a view to widening the areas of agreement expressed in the formula-

"*Noting* the comments submitted by Member States pursuant to the above-mentioned resolutions, and the views expressed in the United Nations,

"*Noting with appreciation* the two reports submitted by the Secretary-General in pursuance of the above-mentioned resolutions,

"*Recognizing* the usefulness of impartial fact-finding as a means towards the settlement of disputes,

"*Believing* that an important contribution to the peaceful settlement of disputes and to the prevention of disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions or through other appropriate arrangements,

"*Affirming* that the possibility of recourse to impartial methods of fact-finding is without prejudice to the right of States to seek other peaceful means of settlement of their own choice,

"*Reaffirming* the importance of impartial fact-finding, in appropriate cases, for the settlement and the prevention of disputes,

"*Recalling* the possibility of the continued use of existing facilities for fact-finding,

"1. *Urges* Member States to make more effective use of the existing methods of fact-finding;

"2. *Invites* Member States to take into consideration, in choosing means for the peaceful settlement of disputes, the possibility of entrusting the ascertainment of facts, whenever it appears appropriate, to competent international organizations and bodies established by agreement between the parties concerned, in conformity with the principles of international law and the Charter of the United Nations or other relevant agreements;

"3. *Draws special attention* to the possibility of recourse by States in particular cases, where appropriate, to procedures for the ascertainment of facts, in accordance with Article 33 of the Charter;

"4. *Requests* the Secretary-General to prepare a register of experts in legal and other fields, whose services the States parties to a dispute may use by agreement for fact-finding in relation to the dispute, and requests Member States to nominate up to five of their nationals to be included in such a register."

tion adopted in 1966 by the Special Committee, namely: (a) the joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands submitted in 1966; (b) operative paragraph 4 of the draft resolution submitted by Chile in 1966; (c) the joint proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia submitted in 1966; (d) the proposal contained in part II of the draft declaration submitted by the United Kingdom (A/AC.125/L.44). The proposal on this principle, submitted in 1966 by Czechoslovakia,^d was not maintained at the 1967 session of the Special Committee, but the sponsor of that proposal stated orally that paragraph 1 of the consensus text should be made more imperative by stipulating that only peaceful means were admissible. A note at the end of the draft declaration by Algeria, Cameroon, Ghana, India, Kenya, Madagascar, Nigeria, Syria, the United Arab Republic and Yugoslavia (A/AC.125/L.48) explained that the co-sponsors of this declaration recognize the progress made with regard to the principle of the peaceful settlement of disputes without prejudice to the consideration of any additional proposal with a view to widening the areas of agreement on that principle. The written proposals or amendments before the Special Committee in 1967 are given below in the order in which they were submitted.

371. 1966 joint proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands:

[*For the text see Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 159.*]

372. Operative paragraph 4 of the draft resolution by Chile submitted in 1966:

[*For the text of the draft resolution, see Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 160.*]

^a G A (XXII), Annexes, a.i. 87, pp. 1-69, A/6799, paras. 369-408, 438-446, 474, 480.

^b An account of the consideration of this principle by the 1964 Special Committee appears in chapter IV of its report (*Official Records of the General Assembly, Twentieth Session, Annexes, agenda items 90 and 94, document A/5746*) and by the 1966 Special Committee in chapter III of its report (*ibid.*, *Twenty-first Session, Annexes, agenda item 87, document A/6230*).

^c See *Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 272.*

^d *Ibid.*, para. 158.

373. Joint proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia submitted in 1966:

[For the text, see Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 87, document A/6230, para. 161.]

374. The proposal by the United Kingdom (A/AC.125/L.44, part II) reproduced the 1966 agreed formulation with the following changes: (a) the words "with respect to existing or future disputes" were inserted after the word "parties" in paragraph 5 of the 1966 formulation; (b) paragraph 6 of the 1966 formulation was subsumed in the general provision in part VIII of the draft declaration contained in the proposal; (c) new paragraphs 6, 7, 8 and 9 were added to the 1966 formulation. The proposal read as follows:

1. Every State shall settle its international disputes with other States by peaceful means, in such a manner that international peace and security and justice are not endangered.

2. States shall accordingly seek early and just settlement of their international disputes by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of the dispute.

3. The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

4. States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

5. International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by the parties with respect to existing or future disputes shall not be regarded as incompatible with sovereign equality.

6. Such procedures may include reference to the International Court of Justice or other tribunals by virtue of agreements already in existence or which may be concluded in the future.

7. In order to ensure the more effective application of the foregoing principle:

(a) Unless they are capable of settlement by some other means, legal disputes should, as a general rule, be referred by the parties to the International Court of Justice, and in particular, States should endeavour to accept the jurisdiction of the International Court of Justice pursuant to Article 36, paragraph 2, of the Statute of the Court with as few reservations as possible;

(b) States should, as far as possible, include in the bilateral and multilateral agreements to which they become parties, provisions concerning the specific peaceful means by which they desire to settle their differences; in particular, general multilateral agreements concluded under the auspices of the United Nations should provide that disputes relating to the interpretation or application of the agreement, and which the parties have not been able to settle by negotiation or any other means, may be referred on the application of any party to the International Court of Justice or to an arbitral tribunal, the members of which are appointed by the parties or, failing such appointment, by an appropriate organ of the United Nations;

(c) States should give renewed consideration to the desirability of adhering to existing multilateral conventions, whether general or regional, providing means or facilities for the peaceful settlement of disputes, such as the Permanent Court of Arbitration, the American Treaty on Pacific Settlement of 30 April 1948, the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, and the Protocol of the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity, signed at Cairo on 21 July 1964.

8. Members of the United Nations and United Nations organs shall continue their efforts in the field of the codification and progressive development of international law, with a view to strengthening the legal basis of the judicial settlement of disputes.

9. The competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter of the United Nations in the field of peaceful settlement, with a view to ensuring that all disputes are settled by peaceful means

in such a manner that not only international peace and security but also justice are preserved.

C. Debate

1. General comments

375. Few general comments were made on the principle of the peaceful settlement of disputes at the 1967 session of the Special Committee. This principle, embodied in Article 2, paragraph 3, of the Charter, was considered a corollary of the prohibition of the threat or use of force in international relations. Its importance for the promotion of friendly relations and co-operation among States, the strengthening of peaceful co-existence and the maintenance of international peace and security was also generally recognized. Some representatives added that peaceful international relations would depend on the way in which this principle was applied in international life. One representative said that the principle required the refusal to resort to war as a means of settlement, the negotiated settlement of disputes, mutual understanding and trust, respect for the interests of others, non-interference in the internal competence of States, the right of any State to take part in the settlement of problems affecting its interests, respect for the territorial integrity of States and the development of economic and cultural co-operation on a basis of mutual advantage.

376. It was also emphasized by certain representatives that the formulation of the principle must be compatible with the provisions of Chapter VI of the Charter. In this connexion, one representative said that freedom to choose between the different means of peaceful settlement, enumerated as examples in Article 33 of the Charter, was required not only by virtue of the sovereignty and equal rights of the States which were parties to a dispute, but particularly because, as had been amply demonstrated, it was impossible to force States and peoples to accept procedures to which they had not agreed and to implement the results obtained by using such procedures. Other representatives considered that the choice of method was governed by the imperative obligation to keep the peace and to reach a settlement on the basis of judicial equality regardless of political or economic inequalities between the parties.

377. One representative observed that Article 33 of the Charter referred to disputes likely to endanger the maintenance of international peace and security; as its wording indicated, those who drafted the Charter might well have considered that disputes of a minor nature, if left alone, might settle themselves, unlike the disputes referred to in Article 33.

378. Lastly, another representative referred to the particular interest that attached to preserving peaceful relations between the newly independent African States and drew the Special Committee's attention to the recent adoption within the Organization of African Unity, in pursuance of article XIX of its Charter, of a Protocol on Mediation, Conciliation and Arbitration,⁵ and also to the conclusion, under the auspices of the International Bank for Reconstruction and Development, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.⁶

2. Comments on the consensus text adopted by the Special Committee in 1966

379. Some representatives considered the 1966 consensus text as generally satisfactory and an important achievement. Others said that the agreed text should certainly be maintained because it represented a substantial measure of progress, but that it was necessary to make a further effort to render the text complete. Consequently, they supported the addition to the 1966 consensus text of certain proposals on the principle which had been submitted to the Special Committee. In the opinion of those representatives, the consensus text was far from exhausting the whole content of the principle as established in the relevant provisions of the Charter and by the general practice of States. Some of those representatives stated that the 1966 consensus text was clearly inadequate from the point of view of the codification and progressive development of international law. Lastly, one representative reminded the Special Commit-

⁵ Resolutions and Recommendations of the First Session of the Assembly of Heads of State and Government and Third Session of the Council of Ministers.

⁶ Dated 18 March 1965. See International Bank for Reconstruction and Development, *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (Washington, 1965).

tee that the text adopted in 1966 was the result of a number of compromises, and that additional proposals should only be evaluated by using the fundamental characteristics of the 1966 consensus text as the point of departure.

380. One representative considered that paragraph 1 of the 1966 consensus text should be made more imperative by stipulating that only peaceful means were admissible. It would contribute, in his view, to eliminating from international life the idea that there was a choice between peaceful settlement or resort to war. Certain representatives supported the idea of stressing in a formulation of the principle that international disputes should be settled "solely" by peaceful means. Others considered it unwise in such a context to introduce any changes into a provision of the 1966 consensus text which reproduced the language of the Charter.

381. One representative expressly approved the insertion of the words "early and just settlement" in paragraph 2 of the 1966 consensus text. Another commended the second sentence of paragraph 2 of that text. A third representative criticized the words "agreed upon by them", in paragraph 3 of the 1966 consensus text, because such a reference, unless it was specified that the agreement might well exist prior to the dispute, might encourage a restrictive interpretation. For the same reason, he did not consider satisfactory the reference to "free choice of means" contained in paragraph 5 of the 1966 consensus text.

3. Comments on the additional proposals designed to supplement the 1966 consensus text

382. The comments made on the additional proposals, designed to supplement the 1966 consensus text, are summarized below under the relevant sub-headings. In the debate, in order to facilitate the Committee's work, many representatives refrained from repeating a detailed explanation or justification of their respective positions on the issues involved in such additional proposals.

(a) *The duty to settle international disputes by peaceful means as "the expression of a universal legal conviction of the international community"*

383. Paragraph 1 of the proposal submitted in 1966 by Dahomey, Italy, Japan, Madagascar and the Netherlands stated that the principle set forth in Article 2, paragraph 3, of the Charter, was a corollary of the prohibition of the threat or use of force and, as such, the expression of "a universal legal conviction of the international community". One representative expressly supported the insertion in the formulation of the principle of a statement of that nature.

(b) *Judicial settlement*

384. The debate on judicial settlement centred on the question whether in the 1966 consensus text specific mention should be made of the role of the International Court of Justice and whether it was advisable to recommend that States should accept the jurisdiction of the Court in accordance with Article 36, paragraph 2, of its Statute. Provisions concerning both these questions were contained in paragraph 3 (b) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands and in paragraphs 6 and 7 (a) of the proposal contained in the United Kingdom draft declaration (see para. 374 above).

385. The representative of the United Kingdom, explaining his proposal, said that the reference to the International Court of Justice and to judicial settlement in paragraphs 6 and 7 of the proposal was made in a form which reflected the factual circumstances in modern international law and practice, and which did no injury to the position of any member of the Special Committee. He appreciated, although he did not share, the point of view of those who approached with caution and reservations the question of judicial settlement as a whole and of the acceptance of the Court's compulsory jurisdiction in particular, but considered that those reservations ought not to stand in the way of an appropriate reference to the Court's role in the peaceful settlement of disputes. In this connexion, he added that the provision concerning the codification and progressive development of international law contained in paragraph 8 of the proposal was intended to reflect the views of those members of the Special Committee whose reservations about the processes of judicial settlement stemmed in part from the acknowledged gaps in codified international law or its limited state of development. The representative of Madagascar said that the intention of the sponsors of the proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands was not to make resort to the International Court of Justice compulsory but simply to draw attention to the fact that that method of settlement should not be overlooked.

386. Some representatives insisted on the desirability of including in the formulation of the principle of the peaceful settlement of disputes an appropriate reference to the International Court of Justice and found it difficult to contemplate the omission of such a reference in that formulation. The Court was one of the principle organs of the United Nations, Member States were *ipso facto* parties to its Statute and the Court's role in the settlement of legal disputes was recognized in many provisions of the Charter itself. In fact, it was said that the International Court of Justice was at the base of the international legal order established by the Charter. Attention was also drawn to General Assembly resolution 171 (II) of 14 November 1947 which recommends "as a general rule that States should submit their legal disputes to the International Court of Justice". In this connexion, certain representatives emphasized, the rule of law was an essential foundation of the organized international community, and it was by the rule of law that succeeding generations could be saved from the scourge of war. The important role played by international courts in the law-making process, especially because no legislative organ yet existed in the international community, was likewise emphasized by certain other representatives.

387. The representatives mentioned in the foregoing paragraph considered that the 1966 consensus text was incomplete on the point and supported the relevant additions or alterations of that text contained in the proposal submitted by the United Kingdom. Some of those representatives observed that the source of the provision embodied in paragraph 7 (a) of the United Kingdom proposal was Article 36, paragraph 3, of the Charter, which stated, as a matter to be taken into consideration by the Security Council in recommending appropriate procedures for the settlement of disputes, that legal disputes should be as a general rule referred by the parties to the International Court of Justice. Therefore, they considered it incomprehensible that there could be any hesitation in applying the same recommendation also to the parties to the disputes. Another representative supported the United Kingdom's proposed additions to the 1966 consensus text because, in his view, such proposed additions took into consideration the preference for judicial settlement of legal disputes before the International Court of Justice and widened the acceptance of the compulsory jurisdiction of the Court.

388. One representative made the following drafting suggestions in connexion with paragraphs 6 and 7 (a) of the United Kingdom's proposed addition: (a) paragraph 6 was rather weak and seemed to diminish the value of paragraph 7; (b) it might be better to confine reference to judicial settlement and to the International Court of Justice to paragraphs 2 and 7; (c) the phrase "unless they are capable of settlement by other means", in paragraph 7 (a), should be replaced by the phrase "unless they are settled by other means".

389. By contrast, other representatives opposed or did not consider appropriate or useful any specific reference to the International Court of Justice in the enunciation of the principle or any recommendation for the general acceptance of its jurisdiction, in particular of its compulsory jurisdiction. Certain representatives, in opposing such additions, referred to the reasons given by them in 1964 and 1966. Others expressly said that such changes would be contrary to Article 33, paragraph 1, of the Charter, which stated that States were free to choose from among the means enumerated therein for the peaceful settlement of disputes. It was also argued by certain representatives that respect for the principle of sovereign equality of States required that all the parties to a dispute should express their will to choose the particular means which might lead to the settlement of the dispute. One representative considered that compulsory jurisdiction was a secondary means of settling disputes and that it was on the decline because it was incompatible with the requirements of the contemporary international legal order and the very facts of international life. Another representative expressed the view that the recent decision in the South West Africa case in favour of a colonial Power did not do credit to the International Court of Justice.

390. The representatives mentioned in the foregoing paragraph opposed the relevant proposed additions to the 1966 consensus text. They considered that those additions, and in particular the United Kingdom proposal, changed the balance between the different methods of settling disputes peacefully, as established in the formulation already approved by the Special Committee in 1966. Some of those representatives emphasized that such proposals were not in accordance with the provisions of Chapter VI of the Charter, which did not contemplate, in their view, any special role for the International Court of Justice and judicial settlement in relation to the other means for the peaceful settlement of disputes.

391. One representative expressed the view that the basis of the Special Committee's consideration of the additional proposals concerning the application of the principle should be the principles contained in the Charter which stressed the optional character of judicial settlement by the International Court of Justice and the need for prior acceptance of its ju-

isdiction by the parties concerned, and, on the other hand, the need to limit reference to the importance of the International Court of Justice and other legal procedures to the minimum in view of the small role the Court and such procedures played in contemporary international life. In his opinion, it might be wise for the Special Committee to leave aside any ideas which did not take realities into account, and for its members to avoid insisting on certain aims which were not at the present juncture acceptable to the majority.

392. Some representatives regretted that the idea of encouraging the acceptance by States of the compulsory jurisdiction of international tribunals had been so much criticized in the Special Committee. They rejected the contention that the acceptance of the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2, of the Court's Statute conflicted with the principle of sovereign equality of States, and failed to see how there could be any objection to a mere recommendation to States to accept such jurisdiction of the Court. One representative said that the International Court of Justice's decisions were sometimes open to justifiable criticism, but that that was not a sufficient reason for rejecting its jurisdiction. According to him, that would be tantamount to undermining the very principle of the establishment of the Court and to abandoning any idea of improving a situation which was probably open to improvement. Another representative reminded the Special Committee that his country had recently accepted the compulsory jurisdiction of the Court, subject only to the condition of reciprocity, because it believed that the proper course for all peace-loving countries was to demonstrate their faith in an ordered world and not because everything was right with the Court or with the state of international law itself. Some other representatives did not share the view of those that seemed to consider it retrograde to advocate the acceptance of the compulsory jurisdiction of the International Court of Justice on the dubious ground that the number of States bound by such jurisdiction was diminishing.

393. Certain representatives observed that the present composition of the International Court of Justice, and the application by the Court of certain norms of customary international law which the newly independent States did not recognize and in the elaboration of which they had not participated, explained also why many States had misgivings about accepting the compulsory jurisdiction of the Court. According to those representatives, a proper geographical distribution and the representation of the main legal systems and forms of civilization within the Court and an acceleration in the process of progressive development of international law would increase the use made by States of the method of the judicial settlement of disputes. In this connexion, mention was made of the fact that only about one third of the States Members of the United Nations had accepted the compulsory jurisdiction of the Court and in some cases this acceptance had been so restricted by reservations as to make it almost meaningless. This view was not accepted by another representative, who considered that the imperfect or incomplete development of municipal law had never prevented the municipal courts from playing an important role in its application and development, and that the Court's composition was not so unreasonable as to justify discouraging acceptance of its jurisdiction.

(c) *Resort to regional agencies or arrangements*

394. All observations made in connexion with this matter centred around operative paragraph 4 of the draft resolution submitted in 1966 by Chile, which provided that the right to have recourse to a regional agency did not preclude or diminish the right of any State to have recourse direct to the United Nations in defence of its rights.

395. Rejecting the view that States members of a regional agency or arrangement, such as the Organization of American States, were precluded by virtue of the operation of interregional systems from any direct resort to the competent organs of the United Nations to solve their local disputes, the sponsor of the proposal urged the incorporation of his proposal in the formulation of the principle. According to him, although States members of regional agencies should make every effort to settle their regional disputes peacefully by the machinery provided for in regional agencies or arrangements, that could not prevent such States from having direct access to United Nations organs if one State party to the dispute believed that the regional procedures were not capable of settling it. The sponsor added that his proposal was based mainly on the provision contained in paragraph 4 of Article 52 of the United Nations Charter, which specifically stated that the Article in no way impaired the application of Articles 34 and 35 of the Charter, precisely those articles—in particular Article 35—which allowed all States, even States not Members of the United Nations, to bring to the attention of the Security Council and of the General Assembly any dispute to which they were parties. Therefore, the Charter would empower, according to the above-mentioned rep-

resentative, the competent United Nations organs to take cognizance of regional disputes at any time and at any stage, and to make recommendations on means of settlement in accordance with Articles 36 and 37. Such powers would be exercised, in his view, when a State belonging to a regional agency and party to the dispute believed the regional procedures failed to solve it, or when because of the very nature of the dispute, it considered that it could not be settled within the regional system. Finally, he considered that the right of States members of regional agencies to resort directly to the competent organs of the United Nations was even more unquestionable in cases falling under Chapter VII of the United Nations Charter. In support of his views, the sponsor of the proposal said that although some inter-American treaties, such as the Charter of the Organization of American States, the Treaty of Rio de Janeiro^a and the Pact of Bogotá^b referred to the obligation to resort first to the regional agency, that fact was irrelevant because Article 103 of the United Nations Charter stated that United Nations Charter obligations should prevail in cases of conflict with obligations assumed under any other international agreement.

396. Certain representatives considered justified or viewed with sympathy the Chilean proposal. One of those representatives said that the requirements of Article 52, paragraph 2, of the Charter to make every effort to achieve pacific settlement of local disputes through regional arrangements was difficult to define and was not consistently followed in practice. In this connexion, he referred to the United Nations proceedings in the case of Guatemala (1954), the Cuban crisis (1960), the case of Haiti (1963) and that of Panama (1964). Referring to the situation within the Organization of American States, he added that, by virtue of Article 103 of the United Nations Charter, in the event of a conflict between the obligations laid down in article 20 of the Charter of the Organization of American States, article 2 of the Treaty of Rio de Janeiro and part II of the Pact of Bogotá, and obligations assumed by the States as Members of the United Nations, the obligations under the Charter should prevail. Among those representatives, another was of the opinion that the word "direct" in the Chilean proposal should be deleted, since it might give rise to misunderstanding and controversy in relation to the operation of basic instruments of regional agencies.

397. Certain other representatives shared the view that before taking a final position on the Chilean proposal they would wish to examine closely the relation to that proposal with the obligation, imposed by paragraph 2 of Article 52 of the Charter on the States members of a regional arrangement or agency, to make every effort to settle a dispute regionally before referring it to the Security Council, though that paragraph said nothing about the General Assembly, and it was not altogether clear whether Article 52, paragraph 4, was intended to modify this rule. If it did not, they said, a member of a regional arrangement or agency could not ignore the arrangement or agency and go direct to the United Nations, or at any rate to the Security Council, in the first instance. Perhaps, they added, in those circumstances it might be preferable to avoid the inclusion of a provision such as that in the Chilean proposal, which paraphrased only part of the Charter provision to which it referred. One of those representatives, after reminding the Special Committee that Article 52, paragraph 2, of the Charter obliged Member States of the United Nations to make every effort to achieve the peaceful settlement of local disputes through regional arrangements or agencies before referring such disputes to the Security Council, said that, in his view, there was no conflict between the provision of the Charter dealing with the peaceful settlement of disputes through regional arrangements and the provisions describing the powers and functions of the Security Council.

(d) *Resort to the competent organs of the United Nations*

398. Paragraph 3(d) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands, and paragraph 9 of the United Kingdom proposal (see para. 374 above), provided that the competent organs of the United Nations should avail themselves more fully of the powers and functions conferred upon them by the Charter in the field of peaceful settlement.

399. Some representatives supported the insertion in the formulation of the principle of a provision emphasizing the desirability of fuller exercise by the competent organs of the United Nations of the powers already

^a Inter-American Treaty of Reciprocal Assistance (United Nations, *Treaty Series*, vol. 21 (1948), I, No. 324).

^b American Treaty on Pacific Settlement (United Nations, *Treaty Series*, vol. 30 (1949), I, No. 449).

vested in them by the Charter in respect to the peaceful settlement of disputes. It was said that that would contribute to ensuring peace as well as to guaranteeing a settlement based upon justice and equity. One representative emphasized that the over-all competence of the United Nations bodies in the field of the peaceful settlement of international disputes was the basic element of the Charter and an essential feature of the United Nations system. Another representative said that situations or disputes endangering the maintenance of peace were a matter of concern not only to the States parties but likewise to the United Nations as a whole. Lastly, another representative was of the opinion that the United Nations had often been successful in peace-keeping operations but had frequently failed to get to the root of the underlying disputes in dealing with them.

(e) *Good offices*

400. Paragraph 2 (b) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands listed "good offices" among the peaceful means of settlement of disputes. Certain representatives spoke in favour of the inclusion of "good offices" among the other means of settlement in the formulation of the principle.

(f) *Disputes relating to the application and interpretation of conventions*

401. Paragraph 3 (b) of the 1966 proposal by Dahomey, Italy, Japan, Madagascar and the Netherlands, paragraph 3 of the 1966 proposal by Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia, paragraph 7 (b) of the proposal contained in part II of the draft declaration by the United Kingdom reproduced in paragraph 374 above dealt with the question of the inclusion in international conventions of clauses relating to the settlement of disputes.

402. Some representatives supported the relevant proposals submitted by the United Kingdom or by Dahomey, Italy, Japan, Madagascar and the Netherlands, stating that general multilateral agreements concluded under the auspices of the United Nations should provide that disputes relating to the interpretation or application of an agreement, and which the parties had not been able to settle by negotiation or any other peaceful means, might be referred on the application of any party to the International Court of Justice or to an arbitral tribunal. In this connexion, it was considered by one of those representatives that there was every reason to deny to the parties to such multilateral conventions the power to decide for themselves how such conventions should be interpreted or applied. The same representatives said that the formulation of the principle of the peaceful settlement of disputes was not directed to avoiding resort to illegal means but rather to ensuring the peaceful settlement of existing or future disputes. In connexion with the drafting of paragraph 7 (b) of the United Kingdom proposal, a representative suggested that a better word might be found to replace "desire".

403. Certain representatives did not share these views and opposed the insertion in the 1966 consensus text of a provision of this kind. Others favoured the insertion of a provision along the lines of that contained in the 1966 proposal of Algeria, Burma, Cameroon, Ghana, Kenya, Lebanon, Nigeria, Syria, the United Arab Republic and Yugoslavia.

(g) *Desirability of adhering to existing multilateral conventions providing means or facilities for peaceful settlement*

404. Paragraph 7 (c) of the United Kingdom proposal contained in part II of its draft declaration (see para. 374 above) provided that States should give renewed consideration to the desirability referred to in the sub-heading above. Certain representatives supported the proposal. One of them made the following drafting suggestions in order to improve the text of the proposal: (a) a better word might be found for "renewed"; (b) the list of multilateral instruments referred to might be revised; (c) a more logical formulation should be devised in order to avoid mixing the list of organs with the list of international instruments establishing them. Another representative said that the United Kingdom proposal was acceptable apart from the part of the sentence beginning with the words "such as the Permanent Court of Arbitration".

(h) *Codification and progressive development of international law*

405. Paragraph 3 (c) of the 1966 proposal submitted by Dahomey, Italy, Japan, Madagascar and the Netherlands and paragraph 8 of the United Kingdom proposal urged States Members of the United Nations and the United Nations organs to continue their efforts in the codification and progressive development of international law. Some representatives supported the inclusion in the formulation of the principle of a provision to that effect. In this connexion, it was said that the codification of international law contributed in large measure to the certainty of existing law and thereby strengthening the basis for the judicial settlement of disputes.

(i) *Insertion of the words "with respect to existing or future disputes" after the word "parties" in paragraph 5 of the 1966 consensus text*

406. Paragraph 5 of the proposal contained in part II of the draft declaration submitted by the United Kingdom inserted the words "with respect to existing or future disputes" after the word "parties" in the 1966 consensus text. The sponsor of the proposal explained that the phrase had been added to take account of the agreed statement made to the Special Committee by the Chairman of the Drafting Committee in 1966 explaining that "the phrase" recourse to, or acceptance of, a settlement procedure freely agreed to by parties' was intended to cover not only recourse to or acceptance of a settlement procedure by the parties to an existing dispute, but also the acceptance in advance by States of an obligation to submit future disputes or a particular category of future disputes to which they might become parties to a specific settlement procedure'.¹ Certain representatives expressly considered the United Kingdom proposal an improvement and fully endorsed it. Others opposed the insertion in the 1966 consensus text of such words.

407. Generally speaking, one representative said that an important defect in the 1966 consensus text was the inadequate emphasis placed on the necessity of developing the advance acceptance of obligations concerning the peaceful settlement of disputes. The practice of accepting arbitration or other settlement procedures prior to the emergence of a dispute should be expressly mentioned in the formulation of the principle as being compatible with the sovereignty of States under international law.

(j) *Transfer of paragraph 6 of the 1966 consensus text to the general provisions of a future draft declaration*

408. The draft declaration submitted by the United Kingdom substituted paragraph 6 of the 1966 consensus text in paragraph 2 of part VIII of that draft declaration, which was a general provision applying to all the principles. The sponsor of the proposal explained that in an integrated draft declaration it was considered unnecessary to maintain the individual saving clauses in relation to each principle if agreement could be reached on a general operative saving clause which would be foreshadowed in the preamble. Only certain individual clauses not wholly covered by the general formula should be retained in an integrated declaration. There was no intention of departing in substance from the saving clause as agreed to, to which he attached particular importance. One representative criticized such a transfer because it implied a modification of the 1966 consensus text on the principle.

SECTION 3. REPORT OF THE DRAFTING COMMITTEE ON THE TWO PRINCIPLES REFERRED TO IN PARAGRAPH 7 OF GENERAL ASSEMBLY RESOLUTION 2181 (XXI)

438. At its 75th meeting, on 14 August 1967, the Special Committee referred the two principles to the Drafting Committee. The Drafting Committee, having referred the principles to a working group, submitted the following report to the Special Committee at its 79th meeting, on 18 August 1967:

THE PRINCIPLE THAT STATES SHALL SETTLE THEIR INTERNATIONAL DISPUTES BY PEACEFUL MEANS IN SUCH A MANNER THAT INTERNATIONAL PEACE AND SECURITY AND JUSTICE ARE NOT ENDANGERED
and
THE PRINCIPLE OF SOVEREIGN EQUALITY OF STATES

The Drafting Committee takes note of the report of the Working Group and transmits it to the Special Committee for its information:

REPORT OF THE WORKING GROUP (A/AC.125/DC.21)

The Working Group considered the additional proposals referred to it by the Drafting Committee with respect to the principle that States shall settle their international disputes by peaceful means in such manner that international peace and security and justice are not endangered and also with respect to the principle of sovereign equality of States.

All additional proposals were considered on the same basis.

It was understood that questions of drafting were of great importance.

¹ See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 249.

I. *The principle of the peaceful settlement of disputes*

A. *Consensus text*

The Working Group was agreed on the desirability of maintaining the areas of agreement already achieved in the formulation agreed by the 1966 Special Committee.

It considered a proposal to add the word "solely" to paragraph 1 of the consensus text, or alternatively, a new sentence to be added to paragraph 1 which would read as follows:

"Consequently, the threat or use of force shall never be used as a means of settling international disputes."

It also considered another proposal to include in paragraph 5 of the consensus text language based upon the agreed statement by the Chairman of the Drafting Committee at the 1966 session of the Special Committee, namely, "with respect to existing or future disputes". No agreement was reached on these proposals.

B. *Additional proposals*

1. There was not disagreement in substance on the proposition that settlement procedures may include in accordance with the Charter reference to judicial or arbitral processes by virtue of existing or future agreements, but no agreement was reached on the inclusion of a provision to this effect in the statement of the principle.

2. There was agreement in substance on the proposition that States should, as far as possible, include in the bilateral and multilateral agreements to which they became parties, provisions concerning the specific peaceful means by which they desire to settle their differences, but no conclusion was reached on the inclusion of this proposition since it was suggested *inter alia* that it was a topic which might be better considered in the context of the codification and progressive development of the law of treaties.

3. No agreement was reached on the inclusion of a specific reference to the settlement of international disputes through the International Court of Justice, on a recommendation to States to give renewed consideration to the desirability of adhering to existing multilateral conventions providing means for the peaceful settlement of disputes, or on a recommendation that the competent organs of the United Nations should avail themselves more fully of their powers in the field of the peaceful settlement of disputes.

4. There was agreement in principle on the proposition that continued efforts should be made in the field of the codification and progressive development of international law with a view to strengthening the legal basis of the settlement of disputes, but there was no agreement on the precise language of this text.

5. The Working Group also considered a proposal concerning the right of States members of a regional agency to have direct recourse to the United Nations. A revised version of this proposal was submitted to the Working Group, as follows:

(1) The right to have recourse to a regional agency in pursuit of a pacific settlement of a dispute does not preclude or diminish the right of any State to have recourse to the United Nations in pursuit of a pacific settlement of the dispute.

(2) Notwithstanding what is set forth in the preceding paragraph, States which are members of regional agencies or parties to regional agreements shall make all possible efforts to bring about the peaceful settlement of disputes which are of a local character by means of such agencies or agreements before submitting them to the United Nations.

(3) Nevertheless, no provision of the Charter of the United Nations may be interpreted so as to prevent any Member State which is a victim of aggression from having direct resort to the competent organs of the United Nations for the protection of its rights.

D. Excerpts from the report^a of the Sixth Committee, dated 11 December 1967, submitted to the General Assembly at the twenty-second session, containing observations on the principles examined by the Special Committee in 1967

3. Principles referred to in operative paragraph 7 of General Assembly resolution 2181 (XXI)

- (a) *The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered*

^a G A (XXII), Annexes, a.i. 87, pp. 70-89, A/6955, paras. 93-97.

There was a general exchange of views on the scope and content of this revised proposal. In view of the lack of time available, it was not possible to reach any conclusions on the desirability of including this concept. There was no agreement on the text of the revised proposal.

SECTION 4. COMMENTS IN THE SPECIAL COMMITTEE ON THE REPORT OF THE DRAFTING COMMITTEE

A. *Comments in regard to the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.*

439. Statements regarding the report of the Drafting Committee on the principle of the peaceful settlement of disputes were made, in the order indicated, by the representatives of Czechoslovakia, the United Kingdom, Syria, the Netherlands, Australia, Nigeria and Japan at the 79th meeting. At the 80th meeting, the representative of Italy associated himself with the comments made by the representatives of Australia, Japan and the United Kingdom.

440. The representative of Czechoslovakia said that the principle of the peaceful settlement of disputes was satisfactorily formulated in so far as it reaffirmed the previous consensus text, but it would have been better if paragraph 1 could have been strengthened by a statement that international disputes should be settled solely by peaceful means.

441. The representative of the United Kingdom regretted that it had not been possible to reach agreement on additional proposals concerning the principle. His Government, he said, was still committed to the proposals in paragraphs 6 to 9 of his delegation's draft (see para. 374 above).

442. The representative of Syria hoped that further efforts would be made to improve the wording and scope of the formulation.

443. The representative of the Netherlands reaffirmed his delegation's comment at the 1966 session of the Special Committee. The compromise text was, in his view, not adequate, but perhaps later on it would be possible to broaden the area of agreement.

444. The representative of Australia expressed the hope that eventually the consensus text would contain some reference to the International Court of Justice.

445. The representative of Nigeria considered that the word "solely", or some similar expression, should be included in paragraph 1 of the 1966 consensus text on the principle of the peaceful settlement of disputes. That amendment was justified, he said, since the Special Committee was called on to widen the area of agreement.

446. The representative of Japan regretted that it had proved impossible to widen the area of agreement on the principle of the peaceful settlement of disputes. His delegation urged that the final report of the Special Committee should contain a statement making it clear that the reason why the phrase "with respect to existing or future disputes" in paragraph 5 of the United Kingdom draft (see para. 374 above) had not been added to the 1966 consensus text, was not opposition to its substance but merely the fact that it was regarded as unnecessary because the existing text already covered future disputes.

D. DECISION OF THE SPECIAL COMMITTEE REGARDING THE REPORT OF THE DRAFTING COMMITTEE

474. After the discussions described above, the Special Committee proceeded to take a decision on the six reports of the Drafting Committee reproduced in paragraphs 107, 161, 231, 285, 365 and 438 above. The representative of Sweden, taking up a suggestion by the representative of Chile, proposed that the Special Committee take note of the Drafting Committee's reports and transmit them to the General Assembly. This proposal was adopted without objection.

93. Various representatives expressed regret that the Special Committee, despite a further exchange of views, had been unable in 1967 to amplify the consensus text adopted on this principle in 1966.^b Some representatives thought, however, that an amplification could still be achieved by taking into account some of the proposals submitted to the Special Committee in 1967.

^b *Ibid.*, para. 248.

94. It was affirmed that this principle, which is closely akin to the principle prohibiting the threat or use of force, should be respected by all States, since the establishment of peaceful international relations depends on its implementation. In the opinion of one representative, the formulation of the principle must be compatible with Chapter VI of the Charter, in that States must be allowed to choose among the various means of peaceful settlement listed in Article 33. He drew attention to the adoption on 21 July 1964 by the Organization of African Unity, in accordance with article XIX of its Charter, of a Protocol on Mediation, Conciliation and Arbitration.

95. Various representatives commented on some aspects of the principle in relation to the consensus text of 1966. One of them considered that that text was open to misinterpretation because it ignored the principle which appeared in Article 95 of the United Nations Charter. Another representative expressed the view that, with regard to the right of States members of a regional agency to have direct recourse to the United Nations, the consensus text struck a just balance by recommending that such States should make all possible efforts to bring about the peaceful settlement of disputes of a local character by means of those agencies. On this subject, however, another representative maintained that the formulation could be improved by insertion of the amendment proposed in the Special Committee by Chile.^c According to another representative, the formulation should stress that only the United Nations, through its appropriate organs, could use force to impose its decisions, except in cases of self-defence against an armed attack pending action by the United Nations. Lastly, another representative expressed support for the five-Power proposal^d relating to the application and interpretation of general multilateral

agreements, since the fact that such agreements were carefully drafted with the participation of the entire international community seemed sufficient reason to recommend that the parties should deny themselves the power to decide unilaterally on the interpretation or application of them.

96. A number of representatives expressed the opinion that the procedure for judicial settlement, and in particular the role of the International Court of Justice, should be taken into account in the final formulation of the principle. One representative stressed the need for the compulsory jurisdiction of the Court in legal disputes arising from treaties or conventions, and for compulsory resort to arbitration in disputes of any other kind. Another representative, however, thought it unwise to include any reference to the Court or to the recognition of its jurisdiction as compulsory, owing to the present structure and membership of the Court. On this point, some representatives stressed the need for a truer and fairer geographical representation in the Court of all legal systems and of the principal forms of civilization.

97. Lastly, one representative said that the new States would have to be given a larger role in the creation of international law. In his opinion, the codification and progressive development of the principles studied by the Special Committee afforded those States that possibility. Recalling that the new States had played no part in the creation of the rules of international law which were in existence at the time they became independent, he expressed the view that in so far as the new rules that were being formulated were the legal expression of existing practice and met the just aspirations of the new States, the latter would be more inclined to submit freely to their application.

^c *Ibid.*

^d *Ibid.*, para. 159.