*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

## 1962

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter III. Selected decisions, recommendations and reports of a legal character by the United Nations and related inter-governmental organizations

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# PART TWO

# LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

# CHAPTER III

## SELECTED DECISIONS, RECOMMENDATIONS AND REPORTS OF A LEGAL CHARACTER BY THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS

### A. UNITED NATIONS GENERAL ASSEMBLY - SEVENTEENTH SESSION

### 1. THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES (AGENDA ITEM 25)

Resolution adopted by the General Assembly[1]

(Excerpts)

1810 (XVII). THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COICNIAL COUNTRIES AND PEOPIES

The General Assembly,

.....

3. Solemnly reiterates and reaffirms the objectives and principles enshrined both in the Declaration contained in resolution 1514 (XV) and in resolution 1654 (XVI);

4. Deplores the refusal of certain administering Powers to co-operate in the implementation of the Declaration in territories under their administration;

5. Calls upon the administering Powers concerned to cease forthwith all armed action and repressive measures directed against peoples who have not yet attained independence, particularly against the political activities of their rightful leaders;

6. Urges all administering Powers to take immediate steps in order that all colonial territories and peoples may accede to independence without delay in accordance with the provisions of paragraph 5 of the Declaration;

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1195th plenary meeting,
17 December 1962.

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1/ On the item as a whole.

## 2. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (AGENDA ITEM 39)

Resolution adopted by the General Assembly

### 1803 (XVII). PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

The General Assembly,

Recalling its resolutions 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952,

Bearing in mind its resolution 1314 (XIII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of developing countries,

Bearing in mind its resolution 1515 (XV) of 15 December 1960, in which it recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

Considering that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

Considering that nothing in paragraph 4 below in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

Noting that the subject of succession of States and Governments is being examined as a matter of priority by the International Law Commission,

Considering that it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination,

Considering that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

Considering the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connexion,

Attaching particular importance to the question of promoting the economic development of developing countries and securing their economic independence,

Noting that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence,

Desiring that there should be further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries,

I

Declares that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of

peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

II

Welcomes the decision of the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly;[1/]

III

Requests the Secretary-General to continue the study of the various aspects of permanent sovereignty over natural resources, taking into account the desire of Member States to ensure the protection of their sovereign rights while encouraging international co-operation in the field of economic development and to report to the Economic and Social Council and to the General Assembly, if possible at its eighteenth session.

1194th plenary meeting,
14 December 1962.

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# 3. CONSULAR RELATIONS (AGENDA ITEM 74)

## (a) Report of the Sixth Committee[1]

/Original text: Spanish/
/12 December 1962/

## INTRODUCTION

1. The General Assembly, at its 1129th plenary meeting on 24 September 1962, placed on the agenda of its seventeenth session an item entitled "Consular relations" and decided to allocate it to the Sixth Committee.

2. The Sixth Committee examined this agenda item at its 771st to 775th meetings, from 3 to 6 December 1962.

3. The item entitled "Consular relations" had been included in the provisional agenda of the seventeenth session under paragraph 11 of General Assembly resolution 1685 (XVI), dated 18 December 1961, concerning the convening of an international conference of plenipotentiaries on consular relations at Vienna at the beginning of March 1963. The decision to include the item was taken "to allow further expressions and exchanges of views concerning the draft articles on consular relations" which were set forth in chapter II of the report of the International Law Commission covering the work of its thirteenth session[2] and which were referred to the future conference of plenipotentiaries at Vienna as the basis for its work.

4. The General Assembly also requested Member States, in paragraph 2 of the aforesaid resolution, "to submit to the Secretary-General written comments concerning the draft articles" on consular relations prepared by the International Law Commission "by 1 July 1962, in order that they may be circulated to Governments prior to the beginning of the seventeenth session of the General Assembly". The Secretary-General, in a note verbale of 21 February 1962, asked Governments for their written comments. The Governments of twenty-two Member States and the

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1/ Document A/5343, reproduced from Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 74.

2/ Official Records of the General Assembly, Sixteenth Session, Supplement No. 9, paras. 8-37.

Government of one non-member State invited to participate in the future Vienna conference sent in such written comments, which appear in documents A/5171 and Add.1 and 2.

5. The Secretary-General submitted a note (A/5191) reviewing the background of the item entitled "Consular relations".

## PROPOSAL

6. The United Kingdom submitted a draft resolution (A/C.6/L.515) under which the General Assembly would, first, request the Secretary-General to transmit to the conference on consular relations the summary records and documentation relating to the considertation of this item at the seventeenth session; and secondly, invite States which intended to participate in the conferenee to submit to the Secretary-General as soon as possible, and in any event not later than 10 February 1963, for circulation to Governments any amendments which they might wish to propose in advance of the conference to the draft articles prepared by the International Law Commission.

## DISCUSSION

### (a) Draft articles on consular relations prepared by the International Law Commission and referred to the Vienna Conference of 1963

7. The representatives who spoke in the discussion of this item congratulated the International Law Commission on its work on consular relations and said that it would be desirable and useful to codify the rules of international law which were applicable or capable of application in that connexion.

8. It was also stated that the conclusion of a general multilateral convention on a subject in which international custom had not so far presented the characteristics of uniformity and generality observable in other cases - such as that of diplomatic relations - would be a great step forward in the codification and progressive development of international law and would at the same time strengthen friendly relations among States and peoples in political, commercial, economic, cultural and scientific matters, irrespective of their differing constitutional and social systems.

9. Most of the representatives who took part in the discussion referred to the observations made by their delegations at the General Assembly's sixteenth session on the draft articles prepared by the International Law Commission, and to the comments on the draft articles sent in by Governments in reply to the Secretary-General's note verbale (see para. 4 above). A number of representatives, however, without prejudice to their Government's position at the future Vienna conference, advanced new or additional general considerations with regard to the principles on which the draft articles were or should be based and to specific provisions thereof.

10. These representatives considered the draft articles as a whole to be an excellent basis of work for the conference to be held at Vienna at the beginning of March 1963. Many of them expressed, at the same time approval of the basic principles embodied in the draft articles. It was emphasized that the draft articles formed a balanced whole which would unquestionably be of great assistance to the future conference in adopting a general multilateral convention on consular relations which would satisfy all or most of the interests there represented.

11. Several representatives said that the draft articles reflected, in broad outline, the modern development of international law on the subject. Some expressed satisfaction that the Commission had based its work on the principle of respect and mutual consent in consular relations, thus eliminating all traces of the system of capitulations which was historically bound up with consulates in certain parts of the world. It was also noted with approval that the draft articles sought to place consular relations on a footing of equality, taking into account the interests of all States, large and small, and were based on the latest bilateral conventions and practice.

12. Other aspects of the draft articles, in particular those concerning consular privileges and immunities were more controversial. Some representatives laid stress on the similarities between consular and diplomatic relations. Others, on the contrary, pointed out that such similarities did not mean that the two kinds of functions were identical, for whereas persons exercising diplomatic functions were in essence political representatives, those exercising consular functions were really economic and commercial representatives. The Committee members holding the latter view did not think that consular representatives should be accorded the

same treatment as diplomatic representatives, and they stressed that the future convention should clearly indicate the basic distinction between consular and diplomatic functions. They also considered that this distinction was the real source of the difference in legal status as between consular and diplomatic representatives, since in modern international law the legal status of both was ultimately justified by the need to safeguard and protect in an effective manner the exercise of their respective functions and the respect to which the dignity of their office entitled them, and not, as in the past, by the more or less representative character of diplomatic and consular functions or by the legal fiction of the extraterritoriality of embassies and consulates. The view was also expressed that an excessive broadening of consular privileges and immunities, which were not justified by the requirements of the consular function, was prejudicial to the interests of the smaller countries, particularly those which had just constituted themselves into independent States.

13. It was pointed out in this connexion that one of the most difficult problems which the future Vienna conference would have to solve was precisely the problem of the present or eventual duality of diplomatic and consular status vesting in the same person as a result of the introduction of a single diplomatic and consular service in most States and the exercise by the members of that service of diplomatic or consular functions on the sole basis of the post to which they were assigned. Difficulties were apt to arise in practice in the determination of the privileges and immunities which apply to or may be claimed by such persons.

14. Some representatives stated that the future Vienna conference should also devote considerable attention to the nature of the rules applicable to consular relations. A reasonable balance must be struck between, on the one hand, the existing rules of international law, whether derived from customary law or based on conventions, and, on the other hand, the relevant internal regulations. Every provision embodied in the future general multilateral convention will have to reflect this balance so that the changes in the domestic regulations which the conclusion of such a convention may necessitate can be accepted without opposition by the public and the parliaments of the States which might become parties to the convention.

15. The views expressed during the discussion which related to specific provisions of the draft articles were considered mainly with the articles governing "consular relations in general" and "facilities, privileges and immunities of consular officials and employees".

16. Among those articles concerning "consular relations in general" which were referred to in the discussion, article 5, dealing with consular functions, was the principal object of attention on the part of the representatives who spoke. While some speakers favoured a non-exhaustive enumeration of consular functions in accordance with the procedure followed in the draft articles, others expressed a preference for a general definition of those functions. With regard to the question which functions should be expressly mentioned in article 5 of the draft articles, some representatives thought that the function of furthering the development of relations between the sending State and the receiving State should be included, for they felt that consular functions in the world of today were no longer limited to the traditional one of protecting in the receiving State the interests of the sending State and of its nationals. The view was also expressed that the functions enumerated in article 5 should include the function of arbitrator or conciliator ad hoc in any disputes which nationals of the sending State submitted to a consul, provided that this was not incompatible with the laws and regulations of the receiving State. Other representatives stated that a distinction should be made between the functions proper to a consul and other functions, with a view to including in the future convention an express provision that the latter functions would be subject to the laws and regulations of the receiving State. Some representatives similarly believed that those aspects of a consul's or consular official's functions which required him to act as notary or civil registrar should be subordinated to the legislation or agreement of the receiving State. Lastly, it was emphasized that the question of defining consular functions was difficult and complex and that, in consequence, may attempt to deal with that question in summary fashion at an international conference which would necessarily be pressed for time would do more harm than good.

17. The question was also raised of the consequences with regard to recognition where one of the most important consular functions, namely, the protection in the receiving State of the nationals of the sending State, was being exercised,

but where there had been no previous recognition. The question, in other words, is whether the exercise of this function, or the granting of authorization for its exercise, does or does not imply that the State exercising the function recognizes the authorities of the territory in which the function is being exercised and vice versa.

18. The other articles dealing with "consular relations in general" were the subject of only isolated comments by a few representatives. The topics thus commented upon were the status of the head of a consular post (articles 8, 14, 17 and 18), the classes of heads of consular posts (article 9), the exequatur (article 11) and its withdrawal (article 23), the temporary exercise of the functions of head of a consular post (article 15), notification of the order of precedence as between the officials of a consulate (article 21), the appointment of nationals of the receiving State (article 22) and the right to leave the territory of the receiving State (article 26).

19. Thus it was considered desirable that the classes of heads of consular posts should be enumerated, but some concern was expressed at the apparent tendency of the draft articles to give to the head of a consular post a position comparable to that of the head of a diplomatic mission. It was indicated that the question of the admission of consular agents or agencies should be regulated by means of bilateral conventions. It was considered that the text of the convention should state explicitly that granting of the exequatur could be refused by the receiving State and that the latter was not obliged to give reasons either for its refusal to grant the exequatur or for the latter's subsequent withdrawal, in accordance with the provisions, mutatis mutandis, of the Vienna Convention on Diplomatic Relations. With regard to the temporary exercise of the functions of head of a consular post by an acting head, it was represented, on the one hand, that the draft seemed unduly restrictive in the choice of the persons who might exercise those functions temporarily and, on the other hand, that it would be necessary to add, in the case of the choice falling upon a member of the administrative or technical staff, that the consent of the receiving State would be required and that the person in question would enjoy only the prerogatives essential to the exercise of those functions. It was also stated that the necessary communication of the name of the acting head, or communication of the order of precedence as

between the officials of a consulate, should be made through the diplomatic mission to which the head of the consular post in question was subordinate. Furthermore, the wording of the article concerning the appointment of nationals of the receiving State was regarded as unnecessarily restrictive, since that State could refuse to grant the exequatur for reasons of nationality. Finally, with regard to the end of consular functions, it was stated that the right of members of the family to leave the territory of the receiving State should be subject to the provisions of the laws of the receiving State, since such members of the family might be nationals of that State, although the persons enjoying the consular privileges and immunities involved, on whom they were dependent, might not be nationals thereof.

20. The provisions of the draft articles concerning the "facilities, privileges and immunities of consular officials and employees" which were mentioned by some representatives during the discussion were those dealing with inviolability of the consular premises (article 30), freedom of communication (article 35), communication and contact with nationals of the sending State (article 36), obligations of the receiving State (article 37), personal inviolability of consular officials (article 41), immunity from jurisdiction (article 43), the exemption from obligations in the matter of registration of aliens and residence and work permits of career consular officials (article 46) and honorary consular officials (article 62), the exemption from taxation of career consular officials (article 48) and honorary consular officials (article 63), the exemption, from customs duties of career consular officials (article 49) and honorary consular officials (article 63), acquisition of the nationality of the receiving State (article 52), and inviolability of the consular archives and documents of a consulate headed by an honorary consul (article 60). Almost all who spoke on these articles advocated limiting their content or making their meaning clearer.

21. In the matter of the "facilities, privileges and immunities relating to a consulate", the provision for the inviolability of the consular premises was regarded, by some, as unduly liberal. Others considered that it provided for a right essential to the exercise of consular functions. It was added, however, that for reasons connected with security, fire or force majeure the agents of the receiving State should be authorized to enter the consular premises. It was

considered that inviolability of the consultate's official correspondence should not apply to correspondence found in possession of nationals of the receiving State or of any other private individual. The protection extended by the draft articles to the consular bag was thought to be excessive. The right of nationals of the sending State to communicate with the consular officials of their country was stressed as essential to the exercise of consular functions, and it was represented that the right should be strengthened even more in the wording of the relevant provisions. On the other hand, it was thought that an exception should be made in the case in which the national himself clearly indicated that he did not desire to communicate with his country's consular officials, and that the right of visit by consular officials, in cases of detention or imprisonment, should be similar to that enjoyed by legal representatives under the criminal procedure laws. It was also suggested that among the obligations of the receiving State should have been included the obligation to inform the sending State of searches carried out in ships, boats or aircraft flying the flag or bearing the markings of the sending State or belonging to its nationals. Finally, it was also said that the articles dealing with communication and contact with nationals of the sending State and with the obligations of the receiving State seemed completely foreign to the main context of the draft articles, and that it would therefore be better to delete them.

22. Some of the articles dealing with the "facilities, privileges and immunities regarding consular officials and employees" were also the target of criticism which would limit their scope, particularly with regard to the case of honorary consuls. It was stated that the wording of the provision on the personal inviolability of consular officials went too far, and that it ought not to cover serious offences. The immunity from jurisdiction provided for, it was said, seemed somewhat excessive and shcuild be specified more clearly, being limited to the official exercise of consular functions. In connexion with immunity from jurisdiction, the problem was raised of compensation for the victims of traffic accidents caused by members of consulates. It was also suggested that exemption from obligations in the matter of registration of aliens and residence and work permits should be granted solely on a basis of reciprocity. The provisions concerning exemption from taxation and from customs duties seemed, to some representatives, to be too

liberal. Lastly, it was stated that a clearer distinction should be drawn between the consular archives and documents in charge of an honorary consul, which enjoyed inviolability, and the other archives and documents in his possession, since the latter were not inviolable.

23. Some representatives stated that the provision relating to the acquisition of the nationality of the receiving State would raise constitutional problems in many countries and that it should therefore be the subject of a separate protocol, as had been done at the 1961 United Nations Conference on Diplomatic Intercourse and Immunities in Vienna in the case of the corresponding provision of the draft articles on diplomatic relations.

24. It was also recalled that the question of the exercise of consular functions by diplomatic missions, mentioned in article 2, paragraph 2 and in articles 3 and 68 of the draft, had not been resolved at the Vienna Conference because it had been felt that it could be dealt with more appropriately in connexion with the codification of consular relations. Some representatives stated in that regard that the express consent of the receiving State should be required for such exercise.

25. Some representatives suggested that the conference should include in the future convention provisions which did not appear in the draft articles. Thus, it was observed that the future convention should contain a preamble, stating that the privileges granted by the convention were accorded for the purpose of guaranteeing the exercise of consular relations and not for the personal benefit of the officials concerned; a new article on the interruption of consular relations, such as had been included in the original draft of the Special Rapporteur; a federal clause; provisions regarding possible reservations to the convention; and final clauses modelled on articles 48 to 53 of the Vienna Convention on Diplomatic Relations. While some representatives favoured the inclusion of a clause stipulating that the privileges and immunities conferred by the future convention should be subject to the principle of reciprocity, others maintained that such a procedure would merely increase the present diversity of treatment and might result in inequality and discrimination. It was also added that the question of the settlement of any controversies with regard to the application or interpretation of the terms of the convention should be dealt with in a separate protocol, as had

been done in the case of the Vienna Convention on Diplomatic Relations and the Conventions on the law of the sea.

26. Lastly, as regards form, it was stated that the future conference should regroup some of the articles, but that the division into chapters and sections should be maintained, with appropriate sub-titles, as in the draft submitted by the International Law Commission.

### (b) Submission of amendments to the draft articles prior to the opening of the 1963 Vienna Conference on consular relations

27. In the course of the discussion on "consular relations", the procedural point was raised regarding the submission of amendments to the draft articles on consular relations prior to the opening of the Vienna Conference scheduled for the beginning of March 1963. It was suggested that, in order to facilitate initial negotiations and to save the conference's time, States which intended to participate in the conference should be allowed to transmit to the Secretary-General for circulation to Governments any amendments which they might wish to propose to the draft articles, in advance of the conference. In this way, Governments which wished to participate in the conference would be aware of each other's intentions and positions as regards the actual text of the draft articles and would therefore be prepared to act from the very first day of the conference.

28. This practical suggestion was favourably received by the representatives who spoke on the subject and was given expression in operative paragraph 2 of the draft resolution (A/C.6/L.515) subsequently adopted by the Committee.

29. In the discussion preceding the adoption of the draft resolution it was made clear that: first, such preliminary amendments would be presented for information purposes and would not be formally before the conference; second, their nature, priority, and subsequent action upon them would depend on the rules of procedure adopted by the conference; third, the word "amendment" also included new proposals; fourth, the reason for the time-limit for submission - not later than 10 February 1963 - was to enable the Secretary-General to circulate the amendments to Governments in good time; fifth, amendments received by the Secretary-General after that date would be communicated directly to the conference; sixth, the

possibility of submitting such preliminary amendments in no way detracted from the right of the participating States to propose amendments during the conference. Lastly, the suggestion was made that the Secretariat should group those amendments by articles and not by countries in transmitting them to Governments.

VOTING

30. At its 775th meeting on 6 December 1961 the Sixth Committee adopted unanimously the draft resolution submitted by the United Kingdom (A/C.6/L.515).

Recommednation of the Sixth Committee

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

/Text adopted by the General Assembly without change. See "Resolution adopted by the General Assembly" below./

(b) Resolution adopted by the General Assembly

At its 1196th plenary meeting, on 18 December 1962, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para.31 above). For the final text, see resolution 1813 (XVII) below.

1813 (XVII). INTERNATIONAL CONFERENCE OF PLENIPOTENTIARIES ON CONSULAR RELATIONS

The General Assembly,

Recalling that by resolution 1685 (XVI) of 18 December 1961 it decided to convene an international conference of plenipotentiaries at Vienna at the beginning of March 1963 to consider the question of consular relations, and referred to that conference chapter II of the report of the International Law Commission covering the work of its thirteenth session (A/4843), together with the records of the relevant debates in the General Assembly, as the basis for its consideration of the question.

Having considered the item entitled "Consular relations" at its seventeenth session,

Having heard the further expressions of opinion and exchanges of views on the draft articles on consular relations prepared by the International Law Commission (A/4843, para. 37).

Considering that the work of the conference would be facilitated if States which intended to participate were to submit in advance of the conference amendments which they might wish to propose to the draft articles prepared by the International Law Commission, and that their action in so doing would be without prejudice to their right to propose amendments in the course of the conference,

1. Requests the Secretary-General to transmit to the international conference of plenipotentiaries on consular relations the summary records and documentation relating to the consideration of this item at the seventeenth session;

2. Invites States which intend to participate in the conference to submit to the Secretary-General as soon as possible, and in any event not later than 10 February 1963, for circulation to Governments, any amendments which they may wish to propose in advance of the conference to the draft articles prepared by the International Law Commission.

1196th plenary meeting,
18 December 1962.

# 4. CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS (AGENDA ITEM 75)

## (a) Report of the Sixth Committee[1]

[Original text: French]
[14 December 1962]

## INTRODUCTION

1. The General Assembly, at its 1129th plenary meeting on 24 September 1962, placed on the agenda of its seventeenth session an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" and decided to allocate it to the Sixth Committee.

2. The Sixth Committee examined this agenda item at its 753rd to 774th meetings, from 5 November to 5 December 1962, and at its 777th meeting, on 12 December 1962.

3. The Secretary-General submitted a note (A/5192) reviewing the historical background of the item.

4. This report is in two main sections; section I relates to the agenda item proper and section II to a related question, raised during the discussion, concerning technical assistance to promote the teaching, study, dissemination and wider appreciation of international law.

## I. CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

### Proposals and amendments

5. Czechoslovakia submitted a draft resolution (A/C.6/L.505) proposing that the General Assembly should proclaim a declaration of principles of international law concerning friendly relations and co-operation among States. The draft declaration contained the following nineteen principles: (1) the obligation to take measures for the maintenance of peace and international security; (2) the principle of peaceful settlement of disputes; (3) the principle of prohibition of the threat or use of force; (4) the principle of prohibition of weapons of mass destruction;

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1/ Document A/5356, reproduced from Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 75.

(5) the principle of general and complete disarmament; (6) the principle of prohibition of war propaganda; (7) the principle of collective security; (8) the principle of State sovereignty; (9) the principle of territorial inviolability; (10) respect for the independence of the State; (11) the principle of sovereign equality; (12) the right of the State to participate in international relations; (13) the principle of non-intervention; (14) the right of self-determination; (15) the principle of the elimination of colonialism in all its forms; (16) the principle of respect for human rights; (17) the principle of co-operation in the economic, social and cultural fields; (18) the principle of the observance of international obligations; and (19) the principle of State responsibility. The nineteen principles were accompanied by commentaries and were divided into three sections. Section I comprised principles 1 to 7; section II, principles 8 to 13; and section III, principles 14 to 19.

6. Bolivia submitted an amendment (A/C.6/L.511) to the Czechoslovak draft resolution (A/C.6/L.505), to add at the end of the commentary on principle 11, that of sovereign equality, a phrase to the effect that no reasons could limit the capability of the State "to develop to the full the possibilities offered by its natural resources".

7. Another draft resolution (A/C.6/L.507 and Add.1-4) was submitted by Cameroon, Canada, Central African Republic, Chile, Dahomey, Denmark, Japan, Liberia, Nigeria, Pakistan, Sierra Leone and Tanganyika. This draft resolution proposed that the General Assembly should: (1) affirm that the rule of law was essential for the achievement of the purposes of the United Nations, particularly the development of friendly relations and co-operation among States based on respect for the principles set forth in the Charter of equal rights and self-determination of peoples and of the sovereign equality of all Member States; (2) affirm also that the Charter was the fundamental statement of principles of international law governing friendly relations and co-operation among States, notably, the obligation to respect the territorial integrity and political independence of States and the obligation to settle disputes by peaceful means; (3) resolve to consider, in relation to specific principles of international law of immediate and universal concern such as those referred to in paragraph 2, the development of the rules of international law and international procedures with a view to the more effective

application of those principles; (4) decide accordingly to inscribe on the provisional agenda of its eighteenth session the topics of the obligation to respect the territorial integrity and political independence of States and of the obligation to settle disputes by peaceful means; and (5) request the Secretary-General to invite Member States to transmit written comments concerning the topics referred to in paragraph 4, and to communicate those comments to Member States before the beginning of the eighteenth session.

8. A revised text (A/C.6/L.507/Rev.1 and Rev.1/Add.1) was submitted by the same Powers, with Colombia and Congo (Leopoldville). The revision consisted of (1) adding three new paragraphs to the preamble, and (2) re-drafting operative paragraphs 3, 4 and 5.

9. Afghanistan, Algeria, Cambodia, Ceylon, Ethiopia, Ghana, India, Indonesia, Mali, Morocco, Somalia, Syria, the United Arab Republic and Yugoslavia also submitted a draft resolution (A/C.6/L.509 and Add.1 and 2). Under this draft resolution the General Assembly would declare that relations among States and nations should be governed by the following principles: (1) abstention from the threat or use of force; (2) settlement of international disputes and differences by negotiations and other peaceful means; (3) co-operation in all spheres of international relations; (4) the right of peoples to self-determination; (5) the right of States to sovereign equality; and (6) the duty of States to respect and carry out their obligations under treaties and other sources of international law in accordance with the purposes and principles of the United Nations.

10. The same Powers later submitted a revised draft resolution (A/C.6/L.509/Rev.1). Apart from some drafting changes in the preamble, the revision affected the beginning of the operative part, under which the General Assembly would "reaffirm" instead of "declaring" that the six principles enumerated in the resolution should govern relations among States. The revision also included the addition of operative paragraphs 2 and 3.

11. Bolivia submitted an amendment (A/C.6/L.512) to the fourteen-Power draft resolution (A/C.6/L.509 and Add.1 and 2), proposing the insertion of the words "paragraph 1 of this declaration and" before the words "the purposes and principles of the United Nations" in principle 6.

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12. Afghanistan, Algeria, Cambodia, Cameroon, Canada, Ceylon, Central African Republic, Chile, Congo (Leopoldville), Cyprus, Czechoslovakia, Dahomey, Denmark, Ethiopia, Ghana, Greece, Hungary, India, Indonesia, Iran, Japan, Liberia, Mali, Mongolia, Morocco, Nigeria, Pakistan, Philippines, Poland, Romania, Sierra Leone, Somalia, Syria, Tanganyika, Turkey, United Arab Republic and Yugoslavia also submitted a draft resolution (A/C.6/L.524 and Corr.1 and Add.1), identical in text with draft resolution I which appears in paragraph 97 of this report.

13. At the request of the Permanent Representative of Czechoslovakia to the United Nations, a statement by the Government of the German Democratic Republic on the item under discussion was circulated in document A/C.6/L.513.

## Debate

### (1) General considerations

14. The importance of the subject was stressed by the representatives who spoke on this item. Many representatives emphasized that the means of destruction were at present so powerful that a general conflict might end in the extermination of mankind. It was therefore increasingly imperative to maintain and strengthen international peace, and one of the means of achieving that end was the development of international law.

15. Some representatives recalled that the question had been placed on the agenda of the present session partly as a result of a movement within the Sixth Committee for strengthening the role of international law in the maintenance of international peace and security. This movement had led to the adoption by the General Assembly of resolution 1505 (XV) of 12 December 1960 and 1686 (XVI) of 18 December 1961. These representatives pointed out that the Sixth Committee had an opportunity to make an effective contribution to the codification and progressive development of international law in accordance with Article 13 of the Charter, without encroaching on the work of the International Law Commission or duplicating the activities of the Commission or other United Nations organs.

16. Many representatives emphasized the paramount importance of the Charter, of respect for its principles and the attainment of its purposes. The Charter was the basic instrument stating the principles of international law governing friendly

relations and co-operation among States, for, in the terms of the Charter, the peoples of the United Nations were determined to practise tolerance and live together in peace with one another as good neighbours.

17. It was the view of some representatives that the Charter, while it continued to be the basic instrument, was not sufficient, for the rule of law was an essential condition of the attainment of the purposes and principles of the United Nations. The concept of the rule of law implied that law was not a tool of policy, and that political organs should be subject to the rule of law like other organs of the State. Experience showed that it was only when States agreed to settle their disputes by legal means and respect the rights of other States that friendly relations and co-operation among them could really be established.

18. Those representatives also considered that the progressive development of international law was an indispensable precondition to bringing about the reign of justice and of respect for obligations arising from treaties and other sources of international law. While the rule of law was founded on stability and was itself a stabilizing factor, it was not, however, a simple affirmation of the status quo. The many new States which had become Members of the United Nations in the last few years had been confronted with a pre-existing social, political and economic order based on well-established rules and principles of international conduct. These new nations could not be expected to accept these rules and principles as irrevocable. Some areas of international law were in need of revision and development, so that these new States might make their contribution and so that the law would be more conducive to social progress and co-operation among States.

19. However, all the rules of customary international law, the product of several centuries of experience, could not be [illegible] in the progressive development of international law. Moreover, the process of development should be based on the free consent of the international community as a whole and should take due account of the needs of all its members. This process was slow, but slowness was preferable to hasty action resulting in the formulation of rules which were not universally respected, and which would thus prejudice the authority of the law as a whole.

20. Other representatives believed that the world's survival depended on its ability to find means of ensuring peace among all States, whatever the differences in their political, economic and social systems. Relations among States accordingly

should be based on the principle of peaceful coexistence, which was an essential feature of the modern age and the only means of ensuring a lasting peace and establishing friendly relations among nations.

21. The principle of peaceful coexistence was at the basis of contemporary international law. It had found expression in the establishment of the United Nations, whose Charter was based on an awareness of the common interest which all nations had in the maintenance of international peace and security. To reject peaceful coexistence was, therefore, tantamount to challenging the purposes and principles of the United Nations and the categorical nature of general international law, and to justifying the cold war and the policy of "positions of strength", both of which were an evil and a threat to mankind.

22. Furthermore, the fact that peaceful coexistence was one of the fundamental concepts of the United Nations was reflected in the unanimous adoption of many General Assembly resolutions recognizing the idea of peaceful coexistence, such as resolutions 1236 (XII) of 14 December 1957 on peaceful and neighbourly relations among States, 1301 (XIII) of 10 December 1958 on measures aimed at the implementation and promotion of peaceful and neighbourly relations among States, and 1495 (XV) of 17 October 1960 on co-operation of Member States.

23. Other representatives said that the term "peaceful coexistence" did not have a definite and generally accepted meaning; it was an essentially political concept and, moreover, an ancient one, which did not constitute either a principle of positive international law or a general principle of international law. The replacement of the term "peaceful coexistence" by the expression "friendly relations and co-operation among States in accordance with the Charter of the United Nations" in resolution 1686 (XVI) had settled the question. Even if it was admitted that peaceful coexistence was a principle, it was neither new nor different from the principles of the Charter; in addition, the proponents of "peaceful coexistence", in contending that rejection of that principle was tantamount to challenging the purposes and principles of the United Nations, were in effect identifying "peaceful coexistence" with the Charter and even with general international law.

24. In reply, some representatives pointed out that at all times international law had been the law of coexistence and that only its character and its substance had changed in the course of history. Moreover, this question of semantics was

secondary, and the countries which had proposed the term had given proof of their desire to coexist by accepting the replacement of "peaceful coexistence" by the expression used in the title of the agenda item.

25. Some representatives held, furthermore, that coexistence should be not only peaceful but active. Thus interpreted, the term "peaceful and active coexistence" was synonymous with "friendly relations and co-operation among States", since "peaceful coexistence" was analogous to the idea of friendly relations and "active" coexistence to the concept of co-operation among States.

26. Some representatives stated that the argument that "peaceful coexistence" was more a political than a legal concept was not convincing, for there were few purely legal principles and international law in most cases could not be dissociated from social and political principles.

27. Other representatives pointed out that, while political co-operation was necessary, it was not enough, since the contemporary world was divided not only politically and ideologically but also into rich and poor nations, into developed and developing countries. The situation of the under-developed countries tended to worsen as a consequence of the rising price of manufactured goods and the declining price of primary products. As long as that gap existed, the essential conditions for peace and equilibrium would not be achieved. Accordingly, an appeal must be made to the collective responsibility of States and to international solidarity. Nations and individuals should practice solidarity and work for the common good.

28. Some representatives also stressed the importance of the principle of good faith in the fulfilment of international obligations; that principle was the very foundation of any international legal order, and there could be no truly friendly relations or real co-operation without it. The ethical and juridical quality of the principle of good faith must not reduce it to a mere abstraction, for it was a principle that should truly guide States in their conduct, particularly in their implementation of the United Nations Charter.

29. Two trends of thought had become apparent with regard to the most appropriate measures for applying resolution 1686 (XVI). The first, reflected in the Czechoslovak draft resolution (A/C.6/L.505), favoured as complete as possible a declaration of principles of international law. The second, represented by draft resolution A/C.6/L.507 and Add.1-4, while recognizing that none of the principles

of the Charter could, a priori, be excluded from the discussion, considered that the General Assembly should restrict itself for the moment to developing and defining a few essential principles, while at the same time leaving the way clear for the future consideration of other principles and their ultimate incorporation in a draft declaration open for acceptance by States in accordance with their constitutional procedures. A compromise solution which emerged during the discussion took the form of draft resolution A/C.6/L.509 and Add.1 and 2. As this draft encountered opposition, another solution had to be sought. After a number of informal meetings held by the sponsors of the three drafts and various interested representatives, by representatives appointed by the sponsors and by the representatives of the sponsors together with some other representatives, draft resolution A/C.6/L.524 and Corr.1 and Add.1 took shape and was submitted by thirty-seven Powers.

(2) Czechoslovak draft resolution

30. Several representatives supported the Czechoslovak draft (A/C.6/L.505) as regards both its form and its substance. They were in favour of its postulate that the principle of "peaceful coexistence" had penetrated contemporary international law, the development of which was closely related to the radical changes in the nature and structure of the international community. The General Assembly must therefore seek and formulate general rules of international law which would impose on States the obligation to live in peace and endeavour to establish friendly co-operation with each other. They maintained that the nineteen principles of the Czechoslovak draft declaration concerning friendly relations and co-operation among States would contribute to the formulation of such rules. That draft declaration was based on the purposes and principles of the Charter and took into account all the main factors of the political and juridical development of the international community. It appeared to be the most appropriate instrument for expressing the General Assembly's faith in the existence, the content and the influence of fundamental legal rules.

31. Those representatives noted that section I of the declaration enunciated the basic principles of international law concerning the maintenance and strengthening of international peace and security. Section II was devoted to principles

concerning the juridical status of States, for peaceful coexistence was inconceivable without respect for the principles of the sovereign equality of States within the international community. The main obstacle to peaceful coexistence was not sovereignty but the impairment of sovereignty and of other fundamental attributes of States. Section III, which dealt with the right of peoples to self-determination, the principle of the elimination of colonialism and other principles of importance to international coexistence and the establishment of economic co-operation, aimed at strengthening the progressive nature of international law and at giving the world stability and well-being, conditions indispensable to peace and friendly relations among States.

32. Several representatives, including some who did not support the Czechoslovak draft resolution, paid a tribute to the effort made in that draft to obtain as complete as possible a definition of peaceful coexistence through a synthesis of all the relevant elements.

33. Many other representatives, however, thought the Czechoslovak draft resolution too ambitious, since it dealt with practically all the matters covered in the Organization's work and seemed to be aimed at rapid attainment of certain objectives in the field of the codification and progressive development of international law. Over-hasty adoption of the declaration might condemn it to the same fate as the Declaration on Rights and Duties of States drafted by the International Law Commission at its first session in 1949 (see General Assembly resolution 375 (IV), annex), consideration of which had been postponed by General Assembly resolution 596 (VI) of 7 December 1951 and which had been lying dormant ever since.

34. Still other representatives pointed out in this connexion that a number of the principles contained in the Czechoslovak proposal appeared already in the draft Declaration on Rights and Duties of States. Since only sixteen countries had submitted comments on the draft Declaration, they thought it would help discussion of the present item if Governments were again asked for their comments and if the question were submitted once more to the International Law Commission or the General Assembly.

35. Other representatives were of the opinion that the Czechoslovak draft resolution served no purpose, because international law could not be developed by drawing up a list of general principles of a political and moral nature and calling them legal rules. If new rules were to be formulated, they must be detailed provisions, clearly applicable to particular circumstances and acceptable to the whole international community.

36. Furthermore, in so far as the Czechoslovak draft was based on the principles of the Charter, it was doubtful whether there was really any purpose in restating those principles in the form of a declaration. By paraphrasing the obligations laid down in the Charter, the draft Declaration might distort its meaning, and any attempt to add to the Charter situations for which it did not now provide would be to go so far beyond the limits within which agreement was possible as to enter the realm of propaganda.

37. Some representatives also maintained that the adoption of a declaration by a resolution of the General Assembly was not a method of creating international law, since it dod not bind Members of the Organization. The fact that the General Assembly had adopted declarations in other fields was no argument, given the nature of international law and its present stage of development.

38. Some representatives said that the concept of a "principle of international law" needed to be clarified and that as clear a distinction as possible should be made between genuinely legal principles and those which were mainly of a moral nature.

39. Representatives also criticized particular principles in the Czechoslovak draft. Thus it was pointed out that principles 4 (prohibition of nuclear weapons), 5 (general and complete disarmament) and 6 (prohibition of war propaganda) came within the competence of other United Nations bodies and would be better left to them, that principles 2 (peaceful settlement of disputes) and 12 (right of States to participate in international relations) were incompatible with the provisions of the Charter, and that principle 14 (right of self-determination) raised problems with regard to the definition of certain concepts, because of their vague and general character. Principle 15 (elimination of colonialism in all its forms) was considered unacceptable in its present form, and it was said that principle 16 (respect for human rights) would scarcely encourage States to accept the specific

obligations stated in the draft Covenants on Human Rights, since they would be able to use the declaration to avoid entering into any real commitments.

40. Some representatives felt that the declaration laid too much stress on the idea of sovereignty and completely disregarded the role which international organizations could play.

41. Other representatives replied that the Czechoslovak draft was not a collection of abstract propositions, but a reflection of the present state of international affairs and of the extent to which the world had become law-minded. Section I of the draft contained only principles which were stated in the Charter or which derived directly from it. Section II set forth the democratic principles of classical international law as they could and should be applied in the modern world. Section III reaffirmed the right of self-determination in accordance with Articles 1 and 2 of the Charter. They maintained that it was necessary to state all the principles relating to friendship and co-operation instead of limiting oneself to one or two principles, however important they might be.

42. There were representatives who argued that some of the principles stated in the Czechoslovak draft were not merely a repetition of the principles set forth in the Charter; many changes had taken place since 1945, so that some principles of the Charter needed to be amplified and others to be studied from a new angle. Certain principles, such as the right of self-determination, which had barely been formulated in 1945, had become an established part of legal theory. The ideas expressed in Chapters XI, XII and XIII of the Charter no longer sufficed, and as a result the General Assembly had had to adopt the Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV)). The principles of independence and sovereign equality in international relations had taken on a new significance because nowadays political independence was not possible without economic independence. The General Assembly had already recognized that fact by adopting resolution 626 (VII) on the right to exploit freely natural wealth and resources. Article 26 of the Charter, on the regulation of armaments, dated from before the atomic era and had to be given a wider and more modern interpretation.

43. Some representatives made the point that a declaration, although lacking in any obligatory force, would have great psychological value; it would be a guide and a source of inspiration for States, peoples and individuals. To spread knowledge

of the declaration and instruct the public in its contents could not fail, in the long run, to form opinion; that declaration would play the same role in relations between States as the Universal Declaration of Human Rights in the field of individual rights.

(3) Draft resolution A/C.6/L.507

44. Various representatives agreed with the idea contained in draft resolution A/C.6/L.507 (see para. 7 et seq. above) that the rule of law was essential for the achievement of the purposes of the United Nations, particularly the development of friendly relations and co-operation among States based on respect for the principles set forth in the Charter of equal rights and self-determination of peoples and of the sovereign equality of all Member States.

45. The same representatives also endorsed the affirmation that the Charter was the fundamental statement of principles of international law governing friendly relations and co-operatio. among States, notably, the obligation to respect the territorial integrity and political independence of States and the obligation to settle disputes by peaceful means. They stated that such principles were of immediate and universal concern and that it would be useful for the Sixth Committee to deal with them.

46. A number of representatives thought that the principle of the peaceful settlement of disputes, which had been the preoccupation of international lawyers since the beginning of the century, had unfortunately not been as widely applied in practice as it should be. The Committee should therefore consider suitable, modernized, complete and universally accepted methods and procedures to ensure a wider application of that principle and increase its effectiveness, since it was very closely linked with disarmament problems. Some representatives specified the condition that the peaceful settlement of disputes should be based on the right to self-determination, the principle of sovereign equality (including its economic aspects) and the principle of non-intervention.

47. Some representatives said that the compulsory jurisdiction of the International Court of Justice was essential for the existence of the universal rule of law and that a study should therefore be made of how all Member States could be brought to use the Court more widely. So far only a very small number

of States had accepted the compulsory jurisdiction of the Court and the numerous conditions subject to which they had done so showed that the effect of the declarations of acceptance was limited. The situation was even less satisfactory with regard to the settlement of disputes concerning the interpretation and application of general multilateral treaties.

48. Other representatives emphasized that the Committee should consider methods of settlement, other than judicial means, as envisaged in Article 33 of the Charter. For example, it was suggested that a permanent international organ of inquiry should be created. Such a body, which would offer the necessary guarantees of impartiality and competence, would certainly facilitate the conclusion of agreements between States and would make it possible to avoid or to settle disputes.

49. Several representatives thought that there should not be too long a list of topics to be considered, so that the Committee would not be bound for years by a programme of work which would deprive it of its freedom of action; they likewise felt that all political and legal questions already examined by other United Nations organs should be disregarded. The principles referred to in draft resolution A/C.6/L.507 were those which were the least controversial and, for that reason, were perhaps the best ones to start with.

50. Although they acknowledged the importance of the principles which draft resolution A/C.6/L.507 proposed for study, some representatives did not agree that the study should be restricted to certain principles only. A discussion under those conditions would be sterile and would give a false impression of the other principles by implying that they were no longer topical. For example, the draft resolution did not mention complete decolonization, although the disappearance of the colonial system was the great event of the present epoch. Consideration should therefore be given to all the general principles of international law relating to peaceful coexistence among States.

51. Some representatives also said that the principle of the right of peoples to self-determination, proclaimed in the Charter and developed in resolution 1514 (XV) of 14 December 1960, containing the Declaration on the granting of independence to colonial countries and peoples should have been given greater emphasis in draft resolution A/C.6/L.507.

52. Various representatives who considered the Czechoslovak draft resolution over-ambitious thought that draft resolution A/C.6/L.507 was too limited and that other principles not mentioned in that draft resolution deserved study. Among those principles, in addition to decolonization, were respect for human rights, the legal equality of States and the observance of treaties.

53. Some representatives would have preferred the draft resolution at least to say that, after taking up the two topics suggested, the Assembly would continue its work on other topics. The sponsors of the draft resolution took that preference into account by including in their revised text the possibility of considering at the next session what further topic or topics should be included in the Assembly's agenda at subsequent sessions.

54. Some representatives pointed out that draft resolution A/C.6/L.507, like the Czechoslovak draft resolution, reflected a political or legal tendency that was open to criticism. The draft resolution was based on the notion of the rule of law, which was embodied in Anglo-Saxon domestic law and for which there was no exact translation in the other languages. The discrepancies between the terms used in various countries reflected real differences of substance. It was therefore inappropriate to apply that idea to international law and still less appropriate to make it the central point of a resolution of the General Assembly.

(4) Draft resolution A/C.6/L.509

55. The draft resolution (A/C.6/L.509) (see para. 9 et seq. above) was put forward as the middle way between an unduly ambitious programme and excessive perfectionism of legal technique. It enumerated six fundamental principles which should govern relations among States, in accordance with the Charter of the United Nations, against the background of the main problems which require solution by the proper application of those principles.

56. Of the representatives who supported the draft resolution, some recognized that the application of a few basic principles would be a difficult matter, for every right was accompanied by a duty and the rights and duties would require skilful formulation if they were not to conflict with one another. However, the draft resolution provided a sound basis for discussion.

57. Several representatives felt that the draft resolution raised the same delicate problems as the Czechoslovak draft resolution and was open to the same objections. In their view, it amounted to a declaration of the rights and duties of States, which would very probably meet with no better fate than the many texts drafted on the subject in the past and which, furthermore, the Sixth Committee had no instructions to prepare at the present time.

58. Some representatives found it disturbing that, while the principles embodied in the draft resolution were taken from the Charter, there were appreciable discrepancies in the drafting; the adoption of the draft resolution might be interpreted as an implicit revision of the Charter carried out in a manner at variance with its Articles 108 and 109.

(5) Thirty-seven-Power draft resolution

59. The thirty-seven-Power draft resolution (A/C.6/L.524 and Corr.1 and Add.1) (see para. 12 et seq. above) was submitted as essentially a compromise solution, arrived at after long and difficult discussion and designed to gain general acceptance by the Committee without sacrificing positions of principle. While it was not perfect and did not really fulfil the hopes originally entertained, the text would nevertheless allow the General Assembly to undertake a task whose importance could not be over-estimated.

60. Most of the representatives who spoke on this point expressed satisfaction at the successful outcome of the efforts made to reach agreement.

61. However, the draft resolution was criticized on various grounds of both form and substance.

62. Some representatives said that the enunciation of Charter principles in the draft resolution should not be interpreted to mean that those principles were necessarily principles of international law; they were rather principles on which international law was based.

63. One representative criticized as of no legal validity the distinction drawn in the operative part of the draft resolution between the principles and the duties deriving therefrom.

64. Some representatives took exception to the order in which the principles were enumerated as being liable to give the impression, on comparison with the Charter, that there had been a change in the order of importance of those principles. The idea of national sovereignty, in particular, had been given undue prominence.

65. In contrast, one representative maintained that international law was conceivable only in a community of sovereign States; he agreed with the proposal to include the principle of sovereign equality of States among those to be studied.

66. One representative expressed the fear that paragraph 1, as drafted, might leave the Committee open, in the course of its future work, to the suggestion of additional principles, which would certainly entail further discussion.

67. He regretted that a vague formula, concerning the fulfilment in good faith of obligations assumed in accordance with the Charter, had been used instead of a reference to the execution of obligations arising from treaties and other sources of international law. He also regretted that the thirty-seven-Power draft resolution should be more concerned with the development of principles than with the establishment of rules to give full effect to those principles.

68. As to the four topics chosen for study at the Assembly's eighteenth session, one representative emphasized that the selection was not limitative and did not preclude the possibility of studying the main trends and the real problems of modern international law.

69. Reservations were expressed in regard to the relationship established in the draft resolution between the progressive development of international law and the promotion of international co-operation in economic, social and related fields.

70. As to the duty of States to co-operate with one another in accordance with the Charter, one representative considered that, if carried to extremes, that duty might prejudice the freedom of every State to maintain or not to maintain diplomatic relations with other countries and to participate in regional and collective activities of the type referred to in Article 52 of the Charter.

## Voting

71. At its 777th meeting, on 12 December 1962, the Sixth Committee decided to vote on the thirty-seven-Power draft resolution (A/C.6/L.524 and Corr.1 and Add.1), and adopted it by 73 votes to none, with 1 abstention.

72. As a result of the vote, the sponsors of the other draft resolutions did not press for a vote on their proposals.

73. The Sixth Committee therefore recommended that the General Assembly should adopt draft resolution I, which appears in paragraph 97 of this report.

## II. TECHNICAL ASSISTANCE TO PROMOTE THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

74. Ghana and Ireland submitted a draft resolution (A/C.6/L.510) under which the General Assembly would (1) urge Member States to undertake broad programmes of training in international law; (2) request the Secretary-General, in conjunction with the Director-General of the United Nations Educational, Scientific and Cultural Organization and in consultation with Member States, to study ways in which Members could be aided, through the United Nations system and other channels, in establishing and developing such programmes; and to report the results of such study to the General Assembly at its eighteenth session; and (3) decide to inscribe on the provisional agenda of its eighteenth session the item: "Technical assistance for the teaching and study of international law: report of survey by the Secretary-General in conjunction with the Director-General of the United Nations Educational, Scientific and Cultural Organization".

75. Afghanistan put forward amendments (A/C.6/L.514) to the draft resolution submitted by Ghana and Ireland (A/C.6/L.510); the purpose of the amendment was:

(1) To insert as a first preambular paragraph the following:

"Considering that lasting solutions to the grave problems that confront humanity can be achieved only by understanding, mutual co-operation, and strengthening of international law and its application in the relations among nations."

(2) To amend paragraph 1 to read as follows:

"Urges Member States to undertake broad programmes of training in seminars and exchanges of fellows in the field of international law."

(3) To amend operative paragraph 2 to read as follows:

"Requests the Secretary-General, in conjunction with the Director-General of the United Nations Educational, Scientific and Cultural Organizations and technical co-operation organs of the United Nations, and in consultation with Member States, to study ways in which Members could be aided, through the United Nations system and other channels, in establishing and developing such programmes, including in this context the possibility of proclaiming a United Nations Decade of International Law dedicated to the strengthening of International law, and to report the results of such study to the General Assembly as its eighteenth session."

(4) To amend the title of the item to be included in the provisional agenda of the eighteenth session to read as follows: "Technical assistance for the teaching and study of international law: report of the Secretary-General on the strengthening of the role of international law".

76. Several sub-amendments to the Afghan amendments (A/C.6/L.514) were proposed.

77. The United States of America submitted sub-amendments (A/C.6/L.517), the purpose of which was:

(1) In paragraph 3 of the amendment, to delete the words "and technical co-operation organs of the United Nations" and the words "including in this context the possibility of proclaiming a United Nations Decade of International Law".

(2) To redraft paragraph 4 of the amendment to read as follows:

"Amend operative paragraph 3 to read as follows:

"'Decides to inscribe on the provisional agenda of its eighteenth session the item "Technical assistance for the teaching and study of international law: report of the Secretary-General on the teaching and study of international law with a view to the strengthening of its practical application"'."

78. The United States of America later withdrew the second part of its sub-amendment (1).

79. Peru submitted a sub-amendment (A/C.6/L.518) to amend paragraph 2 of the amendments to read as follows:

"Amend operative paragraph 1 to read as follows:

"'Urges Member States to undertake broad programmes of teaching in seminars, grants and exchanges of teachers, students and fellows in the field of international law'."

80. Spain proposed in a further sub-amendment (A/C.6/L.519) that in paragraph 3 of the amendments the word "strengthening" should be replaced by the word "dissemination".

81. Colombia submitted sub-amendments (A/C.6/L.520), the purpose of which was:

(1) In paragraph 2 of the amendments, after the words "exchanges of fellows", to insert the words "and of publications".

(2) In paragraph 4 of the amendments, to replace the words "strengthening of the role of international law" by the words "measures to promote the dissemination of international law".

82. The representative of the United States of America proposed orally that the title of the item to be included in the agenda of the eighteenth session of the General Assembly should be amended to read as follows: "Technical assistance to promote the teaching, study, dissemination and thorough knowledge of international law: report of the Secretary-General with a view to the strengthening of the practical application of international law".

83. These sub-amendments were accepted by Afghanistan and incorporated in a set of revised amendments (A/C.6/L.514/Rev.1).

84. The representative of the United States later proposed orally that in the title of the item to be included in the agenda of the eighteenth session the words "thorough knowledge" should be replaced by the words "wider appreciation". This sub-amendment was accepted by Afghanistan.

85. Belgium also put forward an amendment (A/C.6/L.516) to the draft resolution submitted by Ghana and Ireland (A/C.6/L.510); the purpose of the amendment was:

(1) To add the following paragraph after the second preambular paragraph:

> "Desiring to ensure that these measures are also aimed at promoting the dissemination and thorough knowledge of international law, over and above its teaching in universities and higher educational institutions."

(2) In paragraph 3, to replace the words "for the teaching and study of international law" by the words "to promote the teaching, study, dissemination and thorough knowledge of international law".

Debate

86. The representatives who spoke on this item warmly welcomed the draft resolution submitted by Ghana and Ireland (A/C.6/L.510) on appropriate measures to extend the teaching of international law. They pointed out that the General Assembly had already considered the question at its second session and, in an endeavour to promote the teaching of international law, had adopted resolution 176 (II) of 21 November 1947; however, that resolution had not really been implemented as yet and was no longer fully consonant with contemporary needs.

87. Those representatives were in favour of the idea of commissioning a study of ways in which Members could be aided in establishing and developing programmes of training in international law. Once international law was more widely known and accepted, international relations and co-operation would certainly be improved. A better knowledge of international law would be a factor in the maintenance of peace.

88. As regards practical methods, some representatives suggested the establishment of legal libraries, exchanges of students and teachers, the grant of fellowships, the exchange of publications, the organization of seminars on international law, and liaison with independent specialized bodies such as the Academy of International Law, the Institute of International Law and the International Law Association.

89. Several representatives took the view that the study should be carried out in conjunction with the United Nations Educational, Scientific and Cultural Organization (UNESCO), for educational questions were within the purview of that Organization and it was also interested in certain legal questions. UNESCO had informed the Committee, through its observer, that it would consider itself honoured if it could give the help which was requested of it. Its assistance might take the form of expert missions, fellowships or refresher courses.

90. Some representatives proposed that the possibility of enlisting the assistance of States should be explored because, so far as technical assistance was concerned, UNESCO had only the small budget allocated to it under the Expanded Programme of Technical Assistance. That point was confirmed by the UNESCO observer.

91. Some misgivings were expressed on the subject of technical assistance; some representatives feared that it might serve the interests of the donor country. Assistance should be rendered only at the request of the country concerned, and always through the United Nations. It would also be necessary to specify the standards to which the teaching of international law should conform in all cases.

92. Many representatives held that it was feasible to proclaim a United Nations Decade of International Law. Some of them believed that it would be a very effective way to strengthen the role of international law.

93. Some representatives, however, considered that the idea was premature and that, at the current session, all that could be done was to state the problem without going into details.

94. It was pointed out in reply that the Afghan amendments merely requested the Secretary-General to study the possibility of proclaiming a United Nations Decade of International Law and did not provide for any immediate action by the Assembly.

## Voting

95. At its 774th meeting, on 5 December 1962, the Sixth Committee voted on the draft resolution submitted by Ghana and Ireland (A/C.6/L.510); the amendments submitted by Afghanistan (A/C.6/L.514/Rev.1) (as amended orally by the United States) and the amendments submitted by Belgium (A/C.6/L.516). The results of the voting were as follows:

(a) The revised amendments submitted by Afghanistan (as amended orally by the United States) were adopted by 51 votes to none, with 16 abstentions;

(b) Paragraph 1 of the amendments submitted by Belgium was adopted by 55 votes to 1, with 17 abstentions.

(Paragraph 2 of the Belgian amendments was not put to the vote because of the adoption of the corresponding Afghan amendment.)

(c) The draft resolution submitted by Ghana and Ireland, as amended, was adopted unanimously.

96. The Sixth Committee therefore recommends that the General Assembly should adopt draft reoolution II, which appears in paragraph 97 of this report.

## Recommendations of the Sixth Committee

97. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

### Draft resolution I

CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

/Text adopted by the General Assembly without change. See "Resolutions adopted by the General Assembly" below./

Draft resolution II

TECHNICAL ASSISTANCE TO PROMOTE THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

/Text adopted by the General Assembly without change. See "Resolutions adopted by the General Assembly" below./

(b) Resolutions adopted by the General Assembly

At its 1196th plenary meeting, on 18 December 1962, the General Assembly adopted draft resolutions I and II submitted by the Sixth Committee (para. 97 above). For the final texts, see resolutions 1815 (XVII) and 1816 (XVII) below.

1815 (XVII). CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

The General Assembly,

Recalling that the Charter records the determination of the peoples of the United Nations to practise tolerance and live together in peace with one another as good neighbours,

Convinced of the paramount importance of the Charter in the progressive development of international law and in the promotion of the rule of law among nations,

Taking into account that the great political, economic, social and scientific changes that have occurred in the world since the adoption of the Charter have further emphasized the vital importance of the purposes and principles of the United Nations and of their application to present-day conditions,

Recognizing the urgency and importance of maintaining and strengthening international peace founded upon freedom, equality and social justice, and therefore of developing peaceful and neighbourly relations among States, irrespective of their differences or the relative stages or nature of their political, economic and social development,

Considering that the conditions prevailing in the world today give increased importance to the fulfilment by States of their duty to co-operate actively with one another and to the role of international law and its faithful observance in relations among nations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation is an impediment to the promotion of world peace and co-operation,

Mindful of the close relationship between the progressive development of international law and the establishment of conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained through the promotion of international co-operation in economic, social and related fields and through the realization of human rights and fundamental freedoms,

Considering it essential that all 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, that disputes be settled by peaceful means in accordance with the Charter, that the arms race be eliminated and general and complete disarmament achieved under effective international control,

Conscious of the significance of the emergence of many new States and of the contribution which they are in a position to make to the progressive development and codification of international law,

Recalling its authority to consider the general principles of co-operation in the maintenance of international peace and security and to make recommendations for the purpose of encouraging the progressive development of international law and its codification,

1. Recognizes the paramount importance, in the progressive development of international law and in the promotion of the rule of law among nations, of the principles of international law concerning friendly relations and co-operation among States and the duties deriving therefrom, embodied in the Charter of the United Nations which is the fundamental statement of those principles, notably:

(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 intervene 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 principle 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;

2. Resolves to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application;

3. Decides accordingly to place the item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" on the provisional agenda of its eighteenth session in order to study:

(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 intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

(d) The principle of sovereign equality of States; and to decide what other principles are to be given further consideration at subsequent sessions and the order of their priority;

4. Invites Member States to submit in writing to the Secretary-General, before 1 July 1963, any views or suggestions that they may have on this item, and particularly on the subjects enumerated in paragraph 3 above, and requests the Secretary-General to communicate these comments to Member States before the beginning of the eighteenth session.

1196th plenary meeting,
18 December 1962.

## 1816 (XVII). TECHNICAL ASSISTANCE TO PROMOTE THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

The General Assembly,

Considering that lasting solutions to the grave problems that confront humanity can be achieved only by understanding, mutual co-operation, and strengthening of international law and its application in the relations among nations,

Recalling its resolution 176 (II) of 21 November 1947 by which it requested the Governments of Member States to take appropriate measures to extend the teaching of international law in all its phases, including its development and codification, in universities and institutions of higher education,

Desirous of ascertaining what additional means and resources could profitably be employed in the accomplishment of the objectives of resolution 176 (II),

Desirous of ensuring that these measures are also designed to promote the dissemination and thorough knowledge of international law, over and above its teaching in universities and institutions of higher education,

Confident that such measures would contribute to the progressive development of international law and to friendly relations and co-operation among States,

1. Urges Member States to undertake broad programmes of training, including seminars, grants and exchanges of teachers, students and fellows, as well as exchanges of publications in the field of international law;

2. Requests the Secretary-General, together with the Director-General of the United Nations Educational, Scientific and Cultural Organization and in consultation with Member States, to study ways in which Members could be aided, through the United Nations system and other channels, in establishing and developing such programmes, including in this context the possibility of proclaiming a United Nations Decade of International Law dedicated to the dissemination of international law, and to report on the results of such study to the General Assembly at its eighteenth session;

3. Decides to include in the provisional agenda of its eighteenth session an item entitled "Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law: report of the Secretary-General with a view to the strengthening of the practical application of international law".

1196th plenary meeting,
18 December 1962.

# 5. REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FOURTEENTH SESSION (AGENDA ITEM 76)

## (a) Report of the Sixth Committee[1]

[Original text: Spanish]
[14 November 1962]

## INTRODUCTION

1. At its 1129th plenary meeting held on 24 September 1962, the General Assembly decided to include the item entitled "Report of the International Law Commission on the work of its fourteenth session" in the agenda of its seventeenth session, and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this agenda item from its 734th to its 752nd meetings from 1 October to 2 November 1962.

3. At the 734th meeting, the Chairman welcomed Mr. Radhabinod Pal, Chairman of the International Law Commission, on behalf of the Sixth Committee, and invited him to present the Commission's report (A/5209 and Corr.1).[2] At the 740th meeting, held on 12 October, Mr. Pal replied to the comments and suggestions made by certain representatives during the debate.

4. The report of the International Law Commission consisted of five chapters, devoted respectively to the organization of the session, the law of treaties, future work in the field of codification and progressive development of international law, the planning of the work of the Commission for the next session, and other decisions and conclusions of the Commission.

## PROPOSALS AND AMENDMENTS

5. Japan, Turkey and the United States submitted a draft resolution (A/C.6/L.500) under which the General Assembly would (1) take note of the report of the

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1/ Document A/5287, incorporating documents A/5287/Corr.1 and 2, reproduced from Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 76.

2/ Mr. Pal's statement was reproduced in document A/C.6/L.497.

International Law Commission and (2) express its appreciation of the work done by the Commission.

6. Another draft resolution (A/C.6/L.5C1) was submitted by Ghana, Indonesia and the Ukrainian SSR, under which the General Assembly would (1) take note of the report of the International Law Commission; (2) express its appreciation to that Commission for the work accomplished by it, especially in regard to the topic of the Law of Treaties; (3) recommend the International Law Commission: (a) to continue the codification work in the field of the law of treaties, taking into account the views expressed during the discussion in the Committee during the seventeenth session of the General Assembly as well as comments which might be submitted by Governments and the recent developments in this field, in order that the law of treaties might be placed upon the widest and most secure foundations based on strict respect for principles of the sovereign equality of States; (b) to adopt a broader approach to the codification of rules of State responsibility, including in its study those governing the responsibility consequent upon the violation of the basic principles of international law relating to the maintenance of international peace and security; (c) to take into account when elaborating on the subject of State succession the views of new States which have recently become members of the international community; and (4) request the Secretary-General to provide the necessary technical services to the Commission, as referred to in paragraphs 84 and 85 of its report.

7. These draft resolutions were later withdrawn by their sponsors, who, together with other representatives, submitted a new draft resolution.

8. This draft resolution (A/C.6/L.503) was submitted by the following fifteen Powers: Australia, Czechoslovakia, Ghana, Hungary, India, Indonesia, Israel, Japan, Mongolia, the Netherlands, Poland, Turkey, the Ukrainian SSR, the United Kingdom and the United States. Austria subsequently added its name to the list of sponsors. Under this draft resolution, the General Assembly would (1) take note of the report of the International Law Commission covering the work of its fourteenth session; (2) express its appreciation to the Commission for the work accomplished at its fourteenth session, especially with regard to the law of treaties; (3) recommend that the Commission: (a) continue the work of codification and progressive development of the law of treaties, taking into

account the views expressed at the seventeenth session of the General Assembly and the comments which may be submitted by Governments, in order that the law of treaties may be placed upon the widest and most secure foundations;
(b) continue its work on State responsibility, taking into account the views expressed at the seventeenth session of the General Assembly and the report of the Sub-Committee on State Responsibility; and giving due consideration to the purposes and principles enshrined in the Charter of the United Nations; and
(c) continue its work on succession of States and Governments, taking into account the views expressed at the seventeenth session of the General Assembly and the report of the Sub-Committee on Succession of States and Governments with appropriate reference to the views of States which have achieved independence since the Second World War; (4) request the Secretary-General to forward to the International Law Commission the records of the discussions at the seventeenth session of the General Assembly on the report of the Commission; and (5) further request the Secretary-General to provide the necessary technical services to the Commission, referred to in paragraphs 84 and 85 of its report.

9. The Secretariat submitted a report (A/C.6/L.502) on the financial implications of the draft resolutions (A/C.6/L.500 and A/C.6/L.501). With the withdrawal of those drafts, that report became applicable to the draft resolution (A/C.6/L.503) which replaced them.

10. As requested by the Committee at its 734th meeting, held on 1 October 1962, in connexion with paragraph (10) of the commentary on articles 8 and 9 of the draft articles on the law of treaties contained in the report of the International Law Commission, the Secretariat prepared and presented to the Committee a working paper containing a "List of multilateral agreements concluded under the auspices of the League of Nations in respect of which the Secretary-General of the United Nations acts as depositary and which are not open to new States by virtue of their terms or of the demise of the League" (A/C.6/L.498).

11. The representatives of Australia, Ghana and Israel submitted a draft resolution (A/C.6/L.504) on the problem of the accession of new States to general multilateral treaties concluded in the past, under the first revised text of which (A/C.6/L.504/Rev.1) the General Assembly would: (1) request the Secretary-General to ask the Parties to the Conventions enumerated in the list of multilateral

agreements concluded under the auspices of the League of Nations, prepared by the Secretariat (A/C.6/L.498), to state, within a period of twelve months from the date of the inquiry, whether they objected to the opening of those of the Conventions to which they were Parties, for accession by any State Member of the United Nations or member of any specialized agency; (2) authorize the Secretary-General, if the majority of the parties to a convention had not, within the period referred to in paragraph 1, objected to opening that convention to accession, to receive in deposit instruments of accession thereto which were submitted by any State Member of the United Nations or member of any specialized agency; (3) recommended that all States Parties to the Conventions listed recognize the legal effect of instruments of accession deposited in accordance with paragraph 2.

12. The sponsors of the draft resolution (A/C.6/L.504/Rev.1) later submitted a second revised text (A/C.6/L.504/Rev.2) which (1) substituted in paragraphs 1, 2 and 3 the word "acceptance" for the word "accession"; (2) added at the end of paragraph 3 "and communicate to the Secretary-General as depositary their consent to participation in the Conventions of States so depositing instruments of acceptance"; and (3) added a new paragraph 4 whereby the General Assembly would "request the Secretary-General to inform Members of communications received by him under this resolution".

13. Another draft resolution (A/C.6/L.508) on the same question was submitted by India and Indonesia. According to its operative part, the General Assembly would: (1) request the International Law Commission to study the question of the participation of new States in general multilateral treaties concluded under the auspices of the League of Nations, with special reference to the proposal made in the Sixth Committee (A/C.6/L.504/Rev.2) and to the views expressed in the discussion at the seventeenth session of the General Assembly, and to include the results of the study in the report covering the work of the fifteenth session of the Commission; (2) request the Secretary-General to place on the provisional agenda of the eighteenth regular session of the General Assembly the question of the participation of new States in general multilateral treaties concluded under the auspices of the League of Nations.

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14. The sponsors of the draft resolution (A/C.6/L.508) and Ghana later submitted a revised text of that draft (A/C.6/L.508/Rev.1) under which the General Assembly would: (1) request the International Law Commission to study further the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations, giving due consideration to the views expressed during the discussions at the seventeenth session of the General Assembly, and to include the results of the study in the report covering the work of the fifteenth session of the Commission; (2) decide to place on the provisional agenda of its eighteenth session the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations.

15. Pursuant to a request made at the 748th meeting, which took place on 29 October 1962, the Secretariat prepared a note (A/C.6/L.506) reproducing:

(a) A resolution adopted by the General Assembly of INTERPOL at its thirty-first session held in Madrid from 19 to 26 September 1962 and transmitted to the Secretary-General by the Secretary-General of INTERPOL;

(b) A statement made by the Legal Counsel at the 748th meeting regarding the majority contemplated in paragraph 2 of the draft resolution submitted by Australia, Ghana and Israel (A/C.6/L.504/Rev.1).[1]

## DEBATE

16. The representatives who spoke in the debate on this subject congratulated the International Law Commission on the work it had done at its fourteenth session. Many expressed the conviction that the quality of the first report submitted by the Commission after the increase in its membership, approved by the General Assembly in 1961, showed that the increase in membership had benefited the codification and progressive development of international law by making it possible for the various existing legal systems to be better represented in the Commission.

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1/ Text reproduced in this Yearbook, pp. 264-265.

## 1. Law of treaties

### (a) Draft articles respecting the conclusion, entry into force and registration of treaties

17. As the draft articles respecting the conclusion, entry into force and registration of treaties had been submitted to the various Governments so that they could make such written observations as they considered relevant, most of the representatives pointed out that they would confine themselves to general remarks on the text of the draft articles in question.

18. In the first place all the representatives who spoke on the subject agreed with the International Law Commission that the draft articles made provision both for the progressive development and for the codification of the law of treaties.

19. The great majority of the representatives approved the decision adopted by the International Law Commission at its thirteenth session to give the codification of the law of treaties the form of a convention. It was emphasized that the drafting of one or more conventions would enable the new States to participate directly in drawing up the law of treaties so that the law would be placed on a wider and firmer foundation. It was also added that conventions, as a principal source of contemporary international law, were of greater value in the codification and progressive development of the law of treaties than mere expository codes. A number of representatives pointed out that the question whether the law of treaties should be codified in a single convention or in a series of conventions should be left over for decision to the future conference of plenipotentiaries that would be convened for that purpose. Nevertheless, some representatives maintained that for practical reasons, based partly on considerations of an internal constitutional nature and partly on the need for accelerating codification of the law in question, it would be preferable to keep the convention form for the provisions of the law of treaties that were of a substantive character and to give the procedural provisions the form of a model code approved by the General Assembly. The General Assembly's approval of the model code would also give all States an opportunity to participate in the formulation of the procedural rules contained in the code.

20. Some representatives felt that the Commission should reconsider the wording of some of the definitions, specially the generic definitions of "treaty", "treaty

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in simplified form", and "signature", "ratification", "accession", "acceptance" and "approval".

21. It was considered right that the International Law Commission had abandoned the notion of "plurilateral treaty" thus simplifying the general economy of the draft. On the contrary the expression "treaties concluded between a small group of States", which appeared in a number of articles, was criticized by some representatives on the ground that the vagueness and lack of precision of the expression would only lead to difficulties.

22. A number of representatives doubted whether it was advisable to use the expression "other subjects of international law" with reference to the capacity to conclude treaties side by side with the term "States". On the assumption that jus contrahendi was derived from the sovereignty of the State, it was felt that the use of an expression which was wide enough to include groups such as "insurgents" or "recognized insurgents" might lead to serious disputes and was furthermore not justified as the draft articles submitted by the International Law Commission were only intended to regulate treaties between States. It was also pointed out that a federal State must not be allowed to claim the right to evade its international conventional obligations by alleging the incompatibility of such obligations with its internal constitution.

23. The broad approach of the International Law Commission to the question of participation in general multilateral treaties was approved in principle almost unanimously. Nevertheless, certain differences of opinion arose with regard to the wording of the corresponding articles of the draft. A considerable number of representatives favoured the deletion of any term having the effect of restricting the general rule that any State may be a party to general multilateral treaties. Those representatives considered that such treaties were concluded on behalf, and in the interest, of the international community as a whole; to restrict participation in them would amount to discrimination in conflict with the principle of the universal character of modern international law and would be prejudicial to its codification and progressive development. Some of these representatives proposed that an amendment be accordingly made to article 8 of the draft. Other representatives, on the other hand, maintained that the fact of participation in a treaty was intimately bound up with the aims

and object of the treaty and that consequently the question of whether participation in a treaty should be open to other States could only be answered by the parties that had had a share in drawing it up, or by the organs of the international organization under whose auspices the treaty had been drafted. It was suggested also that it might be more prudent to recommend that treaties drawn up on the occasion of an international conference should contain a provision specifying the conditions in which other States might participate in them. Finally, some representatives reserved their attitude with regard to the wording of the provisions of the draft regarding participation in a treaty.

24. The system adopted by the International Law Commission with regard to the formulation, consent or objection to, and effects of reservations to multilateral treaties was generally approved by those representatives who spoke in connexion with that part of the draft. All of them expressed their satisfaction that a flexible and well-balanced method had been adopted which facilitated the participation in general multilateral treaties of the largest possible number of States wishing to accede to them. Emphasis was laid on the fact that the Commission had eschewed sterile dogmatism and had adopted a progressive approach in harmony with the current requirements of international society and with the guiding ideas found in the jurisprudence of the International Court of Justice as well as the "Pan-American rule". Some representatives suggested or proposed amendments to certain provisions of the system outlined in the draft. In the first place they queried the propriety of introducing the notion of the incompatibility of the reservation with the object and purpose of the treaty into the draft articles, and asked who would be responsible for deciding whether a reservation was incompatible. Other representatives favoured a minimum, rather than a maximum, presumption concerning the effects of objections to a reservation, so that it would be presumed that the objection would suspend the validity of only those treaty provisions to which the reservation referred, as between the State that had made it and the objecting State, while the contractual relationship between both States with respect to the rest of the treaty would be preserved. The provision that when the treaty expressly authorized the making of a specified category of reservations all other reservations were "by implication excluded" also evoked criticism. Lately, reference was made to the

advisability of retaining the criterion of unanimity in the case of treaties concluded between "a small group of States".

25. With regard to consent, seen as one of the cornerstones of treaty law, it was suggested that the International Law Commission should devote its most careful attention to that question, since the general scheme that had been adopted for the draft seemed to suggest that the necessary distinction had not been made between procedures for obtaining the consent of the State, which were governed by domestic constitutional law, and the manner in which that consent was expressed in international conduct, which was governed by international law.

26. Incorporation in the draft of a rule regarding the majority required for the adoption of the text of a treaty drawn up at an international conference drew a measure of criticism. Representatives said that the question would be more appropriately left to be decided individually at each conference. Others questioned whether the requirement of a two-thirds majority, which applied to the adoption of the text of a treaty, should also apply in deciding what voting rule should be adopted, which was a procedural question.

27. The provisions concerning signature, ratification and accession, and their legal effects, brought forth hardly any comments. Some representatives favoured including in the draft, as a consideration affecting the progressive development of international law, the requirement of good faith that a signatory State must submit the instrument it had signed for ratification. Other representatives considered it correct that the retroactive effect of ratification had been discarded and thought that it would be appropriate to provide that ratification should be unconditional. Some representatives also were in agreement that accession might antedate the entry into force of the treaty, and that accession subject to ratification should be considered merely as a notification of participation. In connexion with the provisions relating to the rights and obligations of States prior to the entry into force of the treaty, some doubts were expressed regarding the propriety of extending the obligation to refrain from acts calculated to frustrate the objects of the treaty to all States that had had a share in the general business of drawing up the treaty, instead of restricting that obligation to States that had actually signed it.

28. Lastly, certain suggestions were also made regarding the provisions relating to the functions of a depositary, the registration and publication of treaties and the correction of errors.

(b) Participation of new States in the general multilateral treaties mentioned in paragraph (10) of the commentary on articles 8 and 9 of the draft articles on the conclusion, entry into force and registration of treaties

29. During the debate on the International Law Commission's draft articles on the conclusion, entry into force and registration of treaties, the question arose of the participation of new States in general multilateral treaties concluded in the past, the provisions of which limited participation to specific categories of States.

30. In accordance with the suggestions made by the International Law Commission in paragraph (10) of the commentary on draft articles 8 and 9, it was agreed that, since the sole purpose of the draft articles was to establish a general system for the future, it would be desirable to study the problems arising from treaties concluded in the past, and more particularly those concluded under the auspices of the League of Nations, since they constituted an important part of the contemporary international law of treaties.

31. A number of representatives submitted a draft resolution (A/C.6/L.504) which was not discussed in its original form, since a revised text (A/C.6/L.504/Rev.1) was submitted before the debate on the question had started. This latter text proposed that the General Assembly should adopt, at its present session, a resolution authorizing certain measures so that the Secretary-General of the United Nations could receive in deposit such instruments of acceptance to the Conventions still in force and concluded under the auspices of the League of Nations as might be handed to him by any State Member of the United Nations or member of a specialized agency.

32. The draft resolution authorized the Secretary-General to receive in deposit the instruments of acceptance of new States Members of the United Nations or members of a specialized agency, if the majority of the States Parties to those Conventions had not objected, within a period of twelve months, to opening the Conventions in question to accession.

33. The representatives who presented the proposal pointed out that the question was of interest to more than half of the States Members of the United Nations. Many representatives recognized the practical and immediate importance of the question, but expressed doubts regarding the proposed procedure as well as concerning some of the rules contained in it.

34. It was pointed out, for example, that the drafting of a formal protocol in the opening to accession of the aforementioned Conventions, which would enter into effect when it had been accepted by the number of parties regarded as necessary by the protocol itself, would be more in accordance with international practice and the domestic constitutional laws of many States.

35. It was also pointed out that the consent of the parties should be expressed and not, as proposed, in the form of a mere assumed tacit acquiescence. That suggestion was taken up by the sponsors of the proposal in a further revised version (A/C.6/L.504/Rev.2), in the part relating to the legal effects of the instruments of acceptance deposited. They explained that that had been their intention in the corresponding part of the original proposal.

36. Several representatives were against any restriction of the principle of universality by reserving the procedure to be followed to specific categories of States, while excluding others. It was pointed out that the use of the term "all States" in the further revision of the draft resolution (A/C.6/L.504/Rev.2) would affirm the principle of universality and would raise no difficulties for anyone - the draft providing for the express consent of the parties to the convention - in the matter of the legal effects of the instruments of acceptance deposited. Every contracting State would thus be completely free to establish, or not to establish, treaty relations with any State wishing to accede to the convention or conventions in question. This interpretation was, however, rejected by one of the sponsors of the draft resolution.

37. The relationship between this proposal (A/C.6/L.504/Rev.2) and the question of the succession of States aroused the concern of a number of representatives. In their view, the determination of the States now parties to the Conventions in question involved a problem of the succession of States, since new States had been able to accede to old conventions under agreements made on their behalf by the States which formerly represented them in the international field. It was also

pointed out that the proposal was meant to apply to situations in which there were no problems of succession of States.

38. With regard to the nature of the acceptance, some representatives felt that it should be made clear that such acceptances could not be accompanied by "reservations", since that was a practice which had been introduced since the conclusion of conventions under the auspices of the League of Nations.

39. Finally, most representatives considered that a more thorough study was needed of the possible implications of the question. A number of representatives submitted a draft resolution (A/C.6/L.508), which was subsequently revised (A/C.6/L.508/Rev.1), requesting the International Law Commission to study the problem further - with special reference to the debate in the General Assembly - and to inform the General Assembly of the result of its studies in the report on the work of its fifteenth session, and requesting the inclusion of the question on the agenda of the next session of the General Assembly. Although some representatives considered that the problem involved in the participation of new States in treaties concluded under the auspices of the League of Nations would be more appropriately resolved by the General Assembly and had doubts regarding the suitability of referring the question to the International Law Commission, the Sixth Committee adopted the draft resolution (A/C.6/L.508/Rev.1).

## 2. Future work of the International Law Commission and planning of its work

### (a) Programme of work of the Commission

40. All representatives who spoke in the debate endorsed the programme of work and order of priorities adopted by the Commission, and remarked on the skill with which the Committee of eight members established by the Commission had performed its task. There was also general agreement that it would be inadvisable for the time being to add any new topics which might overload the Commission's work programme, since the three main subjects in its programme - the law of treaties, State responsibility, and the succession of States and governments - were so wide, complex and important that they would occupy it for a number of years to come.

41. A great many representatives expressed satisfaction that in preparing its work programme the Commission had followed the directives and recommendations of the General Assembly, particularly those set forth in resolution 1505 (XV) of 12 December 1960 and resolution 1686 (XVI) of 18 December 1961. Several representatives declared that the Sixth Committee should continue to assist the Commission through its debates and recommendations. Others, without questioning the competence of the General Assembly to give directives to the Commission, expressed the view that the Commission should not have excessively rigid or redundant recommendations pressed upon it but that the organization of its work should be left to its own discretion. Some representatives stated that it was important for the Commission, in carrying out its work programme, to bear in mind recent developments in international law, in order that its progressive evolution might be guided in the direction indicated by the United Nations Charter and by the changes which the international community has undergone in the past few years.

(b) Law of treaties

42. Speaking of the Commission's future work on the law of treaties, a number of representatives hoped that the Commission would adopt a progressive attitude towards the validity and duration of unjust or inequitable treaties. They held that instruments which disregarded the principle of the sovereign equality of States, which had been obtained through extortion, violence or bad faith, or which contained provisions contrary to the fundamental principles of modern international law, were illegal and could not enjoy or continue to enjoy the protection of the principle pacta sunt servanda. They added that the Commission should place the law of treaties on the broadest and firmest foundation, paying due regard to current realities and to existing provisions of international law, such as the United Nations Charter, which proclaimed the sovereign equality of States and condemned the threat or use of force against the territorial integrity or political independence of any State.

43. Other representatives, while agreeing that the law of treaties should be built on the broadest and firmest possible foundation, maintained that emphasis should not be placed on only a few of its principles, such as the sovereign

equality of States, while other equally important principles, like that of strict compliance with the obligations arising out of treaties, were disregarded. To stress some principles to the detriment of others would place matters in the wrong perspective, for the Commission must eventually consider all pertinent principles. Several representatives noted that the problem of adapting old treaties to modern circumstances went beyond the strict limits of the law of treaties, since it was intimately bound up with the construction of an international régime allowing for peaceful changes in the existing legal order. It was also said that the invalidation of inherently unjust treaties should be studied objectively and carefully, for their general invalidation would merely endanger international peace and security, seeing that most peace and armistice treaties and agreements on the cessation of hostilities were preceded by the use of force and might consequently be regarded as unjust.

(c) State responsibility

44. The majority of representatives expressed approval of the Commission's new approach to the codification of State responsibility beginning with a study of the general aspects of the topic. Nevertheless, views had differed in the Sixth Committee on the scope of those general aspects of State responsibility and doubts had been expressed about whether it was suitable or possible at the present time to proceed with the codification of certain possible concrete aspects.

45. A fairly large number of representatives felt that the Commission should take into account recent changes in international life when codifying this topic. They saw no further reason to restrict codification to the traditional concept of responsibility for damages caused to aliens and their compensation, since that would evade the substance of the question and substitute matters of secondary for matters of primary importance. For example, it was said that modern international law should define the legal principles which should govern responsibility for acts endangering international peace and security in violation of the purposes and principles laid down in the United Nations Charter. Such acts included aggression, the threat or use of force, denial of the right to self-determination, violation of the principle of peaceful coexistence, and

violation of human rights. A study should be made of responsibility for damages caused to aliens, but that should not be the main or only aspect of State responsibility. Some representatives, referring to the problem of expropriation and nationalization, questioned the legality of rights acquired under the protection of the occupation of a colonized country.

46. Other representatives, on the contrary, insisted that in determining the scope to be given to the codification of State responsibility the Commission should first take into account those aspects of the question which were already ripe for codification. It was stressed that the essentially limited and technical classic concept of State responsibility hinged on the obligation to make reparation, its most highly developed aspect being responsibility and compensation for damages caused to aliens. If the Commission was to consider the aspects of State responsibility calling for legislation, it ought to avoid those which were not yet sufficiently systematized or generally accepted and which therefore might considerably delay its work on the topic. While the legal aspects of the concept should be codified, codification of its predominantly political aspects should be postponed.

47. Lastly, some representatives stated that, although the concept of State responsibility should be extended beyond the limits set for it in the traditional conception and raised to the level of general principles, an effort should be made not to extend it too far, lest it become linked with every branch of international law.

(d) Succession of States and Governments

48. The importance of codification of the rules of international law concerning the succession of States and Governments was acknowledged by all representatives who spoke on the subject. The majority emphasized the special importance which the topic now had for the new States which had attained independence since the Second World War as a result of the abolition of colonialism, and held that the Commission should pay particular attention to the practice followed and the experience acquired by these new States. Other representatives pointed out that the topic concerned all States, including States not concerned with the elimination of the colonial system.

49. During the debate some views were advanced on the way in which the Commission should approach the codification of rules governing the succession of States and Governments. For example, it was said that, although a distinction between the succession of States and the succession of Governments was not always easy to draw, rules concerning the two should not be confused, and that to avoid this the Commission should take care not to consider the concepts of State and of Government identical. With respect to the priority to be given to the codification of those rules, some representatives said that, if that question should arise, codification of the succession of Governments was just as urgent as codification of the succession of States. In that event, however, the majority seemed to prefer to avoid any delay in the codification of rules governing the succession of States. It was also said that in the codification of this topic the Commission should be guided by the idea that it was necessary to protect the sovereignty of the new States, especially over their natural resources. Lastly, reference was made to the peaceful revision of treaties concluded before the attainment of independence by new States and involving them in obligations.

(e) Establishment by the Commission of two sub-committees on State responsibility and on the succession of States and Governments

50. The establishment by the Commission of sub-committees to undertake the necessary work preparatory to codification of State responsibility and of the succession of States and governments was generally welcomed. Many representatives thought that their establishment was called for by the complexity and scope of the subjects they were to study, and would be bound to speed up the codification of the important questions entrusted to them. On the question whether this method of work should be used more generally, some representatives thought that a decision would be premature and they should wait until experience showed whether the innovation was justified.

(f) Relations between States and inter-governmental organizations

51. Most of the representatives welcomed the Commission's appointment of Mr. El-Erian as Special Rapporteur on relations between States and inter-

governmental organizations. A number of representatives stressed the importance that the question had acquired in international relations; some thought that a very valuable study could be made within the topic of such questions as the international personality of international organizations, their capacity to enter into treaties, their international responsibility, and the privileges and immunities of the staffs of international organizations.

(g) Special missions

52. Certain representatives thought that codification of the topic "special missions" would supplement the codification of the rules governing diplomatic relations, and so contribute to the advancement of international law and the strengthening of international co-operation.

(h) Suggestions for accelerating the Commission's work

53. Some representatives expressed the opinion that, to avoid waste of time, the Commission should give its special rapporteurs clear and precise instructions on the range and scope of the topics, following the criterion adopted in 1961 for the codification of the law of treaties.

54. During the debate the Austrian representative referred to the need to speed up the Commission's preparatory work. He recalled the list of organizations concerned with international law prepared for the Commission by the Secretariat in 1949,[1] the information and studies sent by those organizations to the Commission at that time, and the resolve expressed in the Commission's report on the work of its third session[2] to rely to a greater extent on the contributions of unofficial groups, and proposed that: (1) the Secretariat should prepare a new list of international and national organizations, official or unofficial, concerned with questions of international law; (2) steps should be taken to encourage contributions by unofficial organizations of jurists to the codification of topics included in the Commission's work programme; (3) the United Nations

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1/ A/CN.4/14. Mimeographied.

2/ See Official Records of the General Assembly, Sixth Session, Supplement No. 9, para. 90.

should from time to time organize seminars on international law to facilitate the Commission's preparatory work.

## 3. Other decisions and conclusions of the Commission

### (a) Co-operation of the Commission with other bodies

55. A number of representatives welcomed the Commission's continued co-operation with the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee, and hoped that it would continue to develop and its foundations to become ever firmer and more durable. Some representatives thought that the Commission's report should state the results obtained more clearly. The Commission's decision to send observers to the forthcoming meetings of the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee was also welcomed, particularly since some of the topics in its work programme appeared on the agenda of those meetings.

### (b) Date and place of the next session

56. The suggestion in paragraph 83 of the Commission's report that its session should begin on the first Monday in May was approved by all the representatives who spoke on the subject. They emphasized that it would be most desirable if the General Assembly, when it discussed the "pattern of conferences" established by its resolution 1202 (XII), altered the rule obliging the Commission to begin its sessions at the end of April. In a letter sent to the Chairman of the Fifth Committee on 9 November 1962, the Chairman of the Sixth Committee had drawn attention on his Committee's behalf to the suggestior in paragraph 83 of the Commission's report in order that, for the reasons given in the paragraph it might be considered when item 65 of the General Assembly's agenda, entitled "Review of the pattern of conferences", came up for discussion.

### (c) Prcduction of documents, summary records and translation facilities

57. Several representatives hoped that the inadequacies of the technical services placed at the Commission's disposal for the production of documents, summary records and translations would be remedied, and supported the proposal that the Secretary-General be requested to do so (A/C.6/L.503, para. 5).

VOTING

58. At its 747th meeting, held on 26 October 1962, the Sixth Committee unanimously adopted the sixteen-Power draft resolution (A/C.6/L.503).

59. The revised draft resolution submitted by Ghana, India and Indonesia (A/C.6/L.508/Rev.1) was also adopted unanimously at the 752nd meeting of the Sixth Committee, held on 2 November 1962.

RECOMMENDATIONS OF THE SIXTH COMMITTEE

60. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FOURTEENTH SESSION

/Text adopted by the General Assembly without change. See "Resolutions adopted by the General Assembly" below./

Draft resolution II

QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS

/Text adopted by the General Assembly without change. See "Resolutions adopted by the General Assembly" below./

(b) Resolutions adopted by the General Assembly

At its 1171st plenary meeting, on 20 November 1962, the General Assembly adopted draft resolutions I and II submitted by the Sixth Committee (para. 60 above). For the final texts, see resolutions 1765 (XVII) and 1766 (XVII) below.

## 1765 (XVII). REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FOURTEENTH SESSION

The General Assembly,

Having considered the report of the International Law Commission covering the work of its fourteenth session (A/5209 and Corr.1),

Recalling resolution 1686 (XVI) of 18 December 1961, by which the General Assembly recommended that the Commission should consider its future programme of work and report its conclusions to the General Assembly,

Emphasizing the need for the further codification and progressive development of international law with a view to making it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Noting that, as regards State responsibility and succession of States and Governments, the International Law Commission, in order to expedite its work, has established two sub-committees, which are to meet at Geneva in January 1963 and report to the Commission at its fifteenth session,

Bearing in mind that the sub-committees are to study the scope of, and approach to, these topics, and that the work of the Sub-Committee on State Responsibility is to be devoted primarily to the general aspects of that topic,

1. Takes note of the report of the International Law Commission covering the work of its fourteenth session;

2. Expresses its appreciation to the Commission for the work accomplished at its fourteenth session, especially with regard to the law of treaties;

3. Recommends that the Commission should:

(a) Continue the work of codification and progressive development of the law of treaties, taking into account the views expressed at the seventeenth session of the General Assembly and the comments which may be submitted by Governments, in order that the law of treaties may be placed upon the widest and most secure foundations;

(b) Continue its work on State responsibility, taking into account the views expressed at the seventeenth session of the General Assembly and the report of the Sub-Committee on State Responsibility and giving due consideration to the purposes and principles enshrined in the Charter of the United Nations;

(c) Continue its work on the succession of States and Governments, taking into account the views expressed at the seventeenth session of the General Assembly and the report of the Sub-Committee on the succession of States and Governments, with appropriate reference to the views of States which have achieved independence since the Second World War;

4. Requests the Secretary-General to forward to the International Law Commission the records of the discussions at the seventeenth session of the General Assembly on the report of the Commission;

5. Further requests the Secretary-General to provide the Commission with the necessary technical services referred to in paragraphs 84 and 85 of its report.

1171st plenary meeting,
20 November 1962.

## 1766 (XVII). QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS

The General Assembly,

Taking note of paragraph 10 of the commentary to articles 8 and 9 of the draft articles on the law of treaties contained in the report of the International Law Commission covering the work of its fourteenth session (A/5209 and Corr.1),

Desiring to give further consideration to this question,

1. Requests the International Law Commission to study further the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations, giving due consideration to the views expressed during the discussions at the seventeenth session of the General Assembly, and to include the results of the study in the report of the Commission covering the work of its fifteenth session;

2. Decides to place on the provisional agenda of its eighteenth session an item entitled "Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations".

1171st plenary meeting,
20 November 1962.

B. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. GENERAL CONFERENCE - TWELFTH SESSION
(9 November-12 December 1962)

12 C/REP/4
PARIS, 30 November 1962
/Translated from the French/

FOURTH REPORT OF THE LEGAL COMMITTEE

Item 13.2 of the Agenda - Interpretation of Article IV, paragraph 4, of the Constitution (submission of conventions and recommendations to the competent authorities)

....

4. The question put to the Legal Committee hinges upon the meaning to be attached to the term "competent authorities" in Article IV, paragraph 4, of the Constitution. The relevant sentence in this paragraph is as follows:

> "... Each of the Member States shall submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted."

5. The Legal Committee believed that the question, thus stated, in no way implied that UNESCO must determine which internal bodies in each State actually constituted the competent authorities to which a convention or recommendation should be submitted. The determination of such a point raised questions of constitutional law which could be answered only in the light of the domestic law of each State. On the other hand, the Committee thought that the general question of defining the nature of such competent authorities, as understood in the Constitution, was indeed a matter of interpreting the Constitution, a question on which the Committee should pronounce, subject to the competence of the International Court of Justice or the arbitral tribunal prescribed in Article XIV of the Constitution.

6. For this purpose, the Legal Committee took cognizance of the information contained in document 12 C/12 concerning both the background of the relevant provision of the Constitution and the analogous constitutional provisions or

regulations in force in other specialized agencies. The Committee was also informed of the Reports Committee's discussions and conclusions on this question at the eleventh session of the General Conference.

7. After a preliminary exchange of views, the Legal Committee directed its chief attention towards the passage in document 12 C/12 which describes the provisions in force in the International Labour Organisation, and its practice as regards the nature of the "competent authority", in the meaning of Article 19 of its Constitution. That practice is described as follows in the Memorandum of the Governing Body of the International Labour Office, quoted in paragraph 30 of document 12 C/12:

> "I. Nature of the Competent Authority
>
> The expression 'competent authority' means the body empowered to legislate in respect of the questions to which the convention or recommendations relate, i.e., as a rule, the Parliament. The Committee is aware that in certain cases the power to legislate may be conferred on the governmental organ vested with executive power or the power to ratify, either because the national Constitution does not provide for the separation of powers, or in virtue of constitutional provisions which empower the executive to legislate in certain matters, or as a result of a general or special delegation of powers granted by Parliament to the Government. The Committee therefore considers it necessary for the Government of a State Member to indicate on each occasion, with regard to each convention or recommendation, what authority is regarded as competent."

8. In this connexion, some members of the Legal Committee pointed out that the practice of the International Labour Organisation, as set forth in the foregoing passage, was based on texts similar to UNESCO's Constitution, and might well serve as a starting-point for a definition of the practice to be followed by UNESCO in this matter.

9. Other members of the Committee pointed out that the wide variety of fields in which UNESCO was called upon to lay down standards would no doubt make it impossible to adopt this practice too rigidly. Lastly, several members urged that UNESCO should not intervene in matters relating essentially to the domestic jurisdiction of Member States.

10. The Legal Committee felt it necessary to emphasize, in the first place, that it would be highly desirable for UNESCO to incorporate either in its Rules or in

the form of a Memorandum approved by the competent bodies of the Organization, a suitable definition of the practice to be followed by Member States in fulfilling their constitutional obligations, and in the procedure to be adopted within the Organization in asking for and considering the reports to be submitted by Member States on action taken by them with regard to conventions and recommendations.

11. In this text the Committee agreed that the "Rules of Procedure concerning recommendations to Member States and international conventions", adopted by the General Conference at its fifth session, were not sufficiently explicit on the subject of the obligation to submit conventions and recommendations to the competent authorities, as prescribed by Article IV, paragraph 4, of the Constitution. The general opinion was that these Rules of Procedure would benefit from revision in the light of the discussions held on this subject by the Reports Committee and by the Legal Committee, with due allowance for whatever opinion the Legal Committee might express on the specific question submitted to it regarding the meaning of the terms "competent authorities".

12. The Committee also observed that, contrary to the position in the International Labour Organisation, for example, neither the Constitution of UNESCO nor the above-mentioned Rules of Procedure contained any provision covering the special position of federal States. In the same connexion, some members asked that allowance should also be made for the situation of certain States in which large spheres of activity of outstanding interest to UNESCO, such as that of education, were often not under the authority of a single central organization, but were controlled by decentralized or regional bodies.

13. Against this same background, the Legal Adviser of the Organization outlined the problems arising in connexion with the consideration by the General Conference of the special reports submitted by Member States on action taken by them upon conventions and recommendations. He noted that the first of these special reports had in any event to be submitted two months before the opening of the first ordinary session of the General Conference following that at which the convention or recommendation was adopted, and that they therefore dealt essentially with the procedure for submitting such texts to the "competent authorities". He further indicated that in the very

near future Member States could be required to furnish supplementary reports on the implementation of previously adopted conventions and recommendations. It would be for the General Conference to determine the content of these reports, which would be of a different nature from that of the initial reports, and it would be advisable to specify in what manner the plan or outline of these supplementary reports should be drawn up, and what procedure should be adopted for considering them. The Legal Committee did not enter into an examination of these questions.

14. In view of the foregoing considerations, the Legal Committee decided unanimously to express the following opinion:

> "The competent authorities, in the meaning of Article IV, paragraph 4, of the Constitution, are those empowered, under the Constitution or the laws of each Member State, to enact the laws, issue the regulations or take any other measures necessary to give effect to conventions or recommendations. It is for the Government of each Member State to specify and indicate those authorities which are competent in respect of each convention and recommendation."

## 2. STATUTES OF THE INTERNATIONAL INSTITUTE FOR EDUCATIONAL PLANNING

### Article I

### Establishment of the Institute

An International Institute for Educational Planning (hereinafter termed "the Institute") is hereby established within the framework of the United Nations Educational, Scientific and Cultural Organization.

### Article II

### Aims and functions

The purpose of the Institute is to promote instruction and research on educational planning in relation to economic and social development.

To realize this purpose, the Institute will:

(a) provide instruction, by organizing in-service training courses, seminars and symposia, for senior civil servants, educational planners

and economists or experts attached to institutions responsible for the promotion of social and economic development;

(b) endeavour to co-ordinate existing knowledge and experience gained on this subject, and to promote research into new concepts and methods of educational planning likely to further economic and social development.

## Article III

## Governing Board

### Membership

1. The Institute shall be administered by a Governing Board (hereinafter called "the Board"), consisting of:

(a) the Director-General of UNESCO or his representative, the Secretary-General of the United Nations or his representative, the President of the International Bank for Reconstruction and Development or his representative;

(b) the following persons who shall hold office in turn for a period of three years in the following order:

the Director-General of the International Labour Office or his representative,

the Director-General of the United Nations Food and Agriculture Organization or his representative,

the Director-General of the World Health Organization or his representative;

(c) and the following persons, who shall hold office in turn for a period of three years in the following order:

the Directors of the three regional institutes for economic planning established by the United Nations Economic Commission for Latin America, the United Nations Economic Commission for Asia and the Far East and the United Nations Economic Commission for Africa, respectively.

The members referred to in sub-paragraphs (a), (b) and (c) of the present paragraph may appoint deputies who shall be empowered to represent them at meetings of the Board.

(d) two educators recognized for their contribution in the field of human resource development;

(e) three members elected from among educators, economists and other specialists, one of whom shall be from each of Latin America, Asia and Africa, who have made contributions in the field of human resource development.

The members referred to in sub-paragraphs (d) and (e) shall be elected for a period of four years, in accordance with the provisions of paragraph 2 of the present article. They shall be eligible for re-election.

(f) a Chairman elected from among educators, economists and other specialists of international repute in the field of human resource development. He shall hold office for five years, and shall be eligible for re-election.

2. Should a seat on the Board fall vacant through expiry of a member's term of office or through death or resignation, the members of the Board mentioned in sub-paragraphs (d), (e) and (f) shall be elected by the Board as a whole. For the purpose of setting up the first Board, however, they shall be elected solely by the five members of the Board mentioned in sub-paragraphs (a), (b) and (c).

3. When the Directors-General of the International Labour Office, the United Nations Food and Agriculture Organization and the World Health Organization and the Directors of the three regional institutes for economic planning are not exercising the functions referred to in sub-paragraphs (b) and (c), respectively, of paragraph 1, they shall be invited to appoint representatives who shall express their views and participate in the Board's deliberations without the right to vote.

## Article IV

## Functions

The Board shall determine the general policy and the nature of the Institute's activities.

It shall decide how the funds available for the operation of the Institute are to be used, in accordance with the provisions of Article VIII, and shall adopt the budget. The budget ceiling shall not exceed the total sum available, including contributions and subventions paid to the Institute under formal agreement for the relevant financial year.

The Board shall lay down conditions for the admission of participants to the Institute's courses and meetings. It shall make whatever general arrangements it may deem necessary for the administration of the Institute and for the general supervision of the activities of the Director.

The Board shall be consulted as to the appointment of the senior officials of the Institute and shall make recommendations to the Director-General of UNESCO as to the appointment of the Director.

The Board shall submit a report on the Institute's activities to each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

## Article V

## Procedure

1. The Board shall meet in ordinary session once a year. It may meet in extraordinary session when convened by its Chairman, either on his own initiative or at the request of four of its members.

2. The Board shall adopt its own Rules of Procedure.

3. The Board shall set up an Executive Committee consisting of its Chairman, the three members mentioned in Article III, paragraph 1 (a), and two members to be appointed in accordance with the provisions of the Rules of Procedure. Between the sessions of the Board, the Executive Committee shall perform the functions assigned to it by the Board.

## Article VI

## The Director

The Director of the Institute shall be appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization on the recommendation of the Governing Board.

The Director shall be responsible for the administration of the Institute. He shall prepare its draft programme of work and budget and estimates and submit them to the Board for approval.

Subject to the latter's approval, he shall draw up detailed plans for teaching and research, and shall direct their execution.

## Article VII

1. The Director and members of the staff of the Institute shall be regarded as officials of UNESCO within the meaning of Article VI, Section 18, of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. The working hours for specialized staff members of the Institute, and in particular its teaching staff, shall be so calculated as to enable them to devote sufficient time to a study of problems arising in the field of educational and economic planning.

3. Members of the Institute's specialized staff may be authorized, under conditions to be laid down by the Director, to take part in research and planning or in surveys organized by other international institutions or by governments on questions which fall within the Institute's field of competence. In no case, however, may the loan of the services of a staff member of the Institute entail interruption or serious delay in the instruction provided by the Institute.

## Article VIII

## Finance

1. The funds set aside for the operation of the Institute shall consist of the annual allocation determined by the General Conference of the United Nations Educational, Scientific and Cultural Organization of such subventions, gifts and bequests as are allocated to it by other United Nations agencies, governments, public or private organizations, associations or individuals, and of fees collected for special purposes.

2. Funds allocated for the operation of the Institute shall be paid into a special account to be set up by the Director-General of the United Nations Educational, Scientific and Cultural Organization, in accordance with the relevant provisions of the Organization's Financial Regulations. This special account shall

be operated and the Institute's budget administered in accordance with the above-mentioned provisions.

3. Upon termination of the life of the Institute its assets shall be vested in UNESCO.

## Article IX

## Transitional provisions

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall make all necessary arrangements for the Institute's entry into operation and for the establishment of its Governing Board. For this purpose, pending the adoption of the Institute's first annual budget, the Director-General shall incur the necessary expenditure from funds voted by the General Conference.

2. Notwithstanding the provisions of Articles IV and VI, the Director-General of UNESCO shall appoint the first Director and, in agreement with the latter, the first senior officials of the Institute without consulting the Governing Board.

## Text of the Accompanying Resolution

.213 The General Conference,

Noting that the importance of co-ordinating educational plans with over-all national plans for social and economic development was stressed by the United Nations General Assembly (resolution 1717 (XVI)),

Noting also that the recent meetings of Ministers of Education of Africa (Paris, March 1962) and Asia (Tokyo, April 1962), and the Conference on Education and Economic and Social Development in Latin America (Santiago, Chile, March 1962), as well as the meeting of representatives of the Ministers of Education of the Arab States (Beirut, February 1960) have all emphasized the need for long-term educational planning as an essential means for promoting social and economic development,

Noting further Recommendation No. 54 of the XXVth International Conference on Public Education,

Considering the rapidly increasing demand from Member States for assistance in drawing up their national educational plans, in establishing planning offices and for training personnel,

Taking into account the demands for detailed educational planning required by the international and other financial agencies which are granting credits for educational development,

Realizing the severe world-wide shortage of personnel qualified in educational planning and the need for research into the basic problems involved in designing and implementing educational plans,

Taking into account the recommendations of the report of the Committee of Consultants on the International Institute of Educational Planning contained in document 12 C/PRG/19, Annex I,

Recognizing the need of existing and proposed regional centres for assistance in developing their training programmes in educational planning, grounded in research,

Taking into account the importance of studying and disseminating the experience of all countries which are applying a system of educational planning,

Being informed of the results of the consultations between the Director-General and the President of the International Bank for Reconstruction and Development and the responsible officers of other institutes interested in the training of personnel for educational planning,

Decides to establish in Paris an International Institute for Educational Planning in accordance with the Approved Statutes annexed to this resolution;

Authorizes the Director-General:

(a) to take such action as may be needed to ensure establishment of the Institute in accordance with the statutes, in consultation with the International Bank for Reconstruction and Development, the other organizations of the United Nations system, interested universities and foundations and other appropriate bodies; and

(b) to accept on behalf of the Institute financial or other assistance from the interested appropriate international, regional or national organizations, governmental and non-governmental, in conformity with UNESCO regulations and subject to the approval of the Governing Board of the Institute.

...