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1965

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

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Chapter III

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

A. Decisions, recommendations and reports of a legal character by the United Nations

United Nations General Assembly—twentieth session

1. URGENT NEED FOR SUSPENSION OF NUCLEAR AND THERMONUCLEAR TESTS: REPORTS OF THE CONFERENCE OF THE EIGHTEEN-NATION COMMITTEE ON DISARMAMENT (AGENDA ITEM 30)

Resolution [2032 (XX)] adopted by the General Assembly

2032 (XX). Urgent need for suspension of nuclear and thermonuclear tests

The General Assembly,

Having considered the question of the cessation of nuclear and thermonuclear weapon tests and the relevant sections of the reports of the Conference of the Eighteen-Nation Committee on Disarmament (A/5731, A/5986),

Recalling its resolution 1762 (XVII) of 6 November 1962 and 1910 (XVIII) of 27 November 1963 on the cessation of all test explosions of nuclear weapons,

Noting with regret that notwithstanding these resolutions nuclear weapon tests have taken place,

Recalling the undertaking given by the original signatories to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, signed at Moscow on 5 August 1963, to continue negotiations for the discontinuance of all test explosions of nuclear weapons for all time,

Recognizing the mounting concern of world opinion for the fulfilment of this undertaking,

Mindful of the crucial importance of a comprehensive test ban to the issue of non-proliferation of nuclear weapons,

Noting with satisfaction the joint memorandum on a comprehensive test ban treaty submitted by Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic and annexed to the report of the Conference of the Eighteen-Nation Committee on Disarmament,[1]

Convinced that agreement in regard to taking this further step towards nuclear disarmament would be facilitated, *inter alia*, by the important improvements made in detection and identification techniques,

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[1] See *Official Records of the Disarmament Commission, Supplement for January to December 1965*, document DC/227, annex 1, sect. F.

1. *Urges* that all nuclear weapon tests be suspended;

2. *Calls upon* all countries to respect the spirit and provisions of the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;

3. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to continue with a sense of urgency its work on a comprehensive test ban treaty and on arrangements to ban effectively all nuclear weapon tests in all environments, taking into account the improved possibilities for international co-operation in the field of seismic detection, and to report to the General Assembly.

1388th plenary meeting
3 December 1965

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2. REPORT OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (AGENDA ITEM 37)

Resolution [2086 (XX)] adopted by the General Assembly

2086 (XX). Transit trade of land-locked countries

The General Assembly,

Considering that, in order to promote economic and social development through international trade, the land-locked States need adequate facilities to enable them to overcome the effects of their land-locked position on their trade,

Recalling its resolution 1028 (XI) of 20 February 1957, in which it recognized the problems of land-locked countries and invited the Governments of Member States to give full recognition to the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries,

Taking into account the recommendation contained in annex A.VI.1 of the Final Act of the United Nations Conference on Trade and Development,[2] which paved the way for the establishment of the Convention on Transit Trade of Land-locked States,

Noting with satisfaction that, upon that recommendation, the Convention on Transit Trade of Land-locked States was successfully concluded at the United Nations Conference on Transit Trade of Land-locked Countries as a step towards the normalization of transit trade of all land-locked countries,

1. *Reaffirms* the eight principles relating to transit trade of land-locked countries, adopted by the United Nations Conference on Trade and Development at its first session, in 1964, and contained in annex A.I.2 of the Final Act of the Conference;[3]

2. *Requests* that the Convention on Transit Trade of Land-locked States be signed by 31 December 1965 and ratified or acceded to as soon as possible in order to promote the economic and social development of the land-locked countries through international trade;

3. *Requests* the Secretary-General of the United Nations and the Secretary-General of the United Nations Conference on Trade and Development to be guided by the terms of the present resolution and the above-mentioned Convention in assisting the land-locked countries to overcome their difficulties regarding transit trade.

1404th plenary meeting
20 December 1965

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[2] *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), p. 62.

[3] *Ibid.*, p. 25.

3. DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (AGENDA ITEM 58)

Resolution [2106 (XX)] adopted by the General Assembly

2106 (XX). International Convention on the Elimination of All Forms of Racial Discrimination

A

The General Assembly,

Considering that it is appropriate to conclude under the auspices of the United Nations an International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced that the Convention will be an important step towards the elimination of all forms of racial discrimination and that it should be signed and ratified as soon as possible by States and its provisions implemented without delay,

Considering further that the text of the Convention should be made known throughout the world,

1. *Adopts* and opens for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination, annexed to the present resolution;

2. *Invites* States referred to in article 17 of the Convention to sign and ratify the Convention without any delay;

3. *Requests* the Governments of States and non-governmental organizations to publicize the text of the Convention as widely as possible, using every means at their disposal, including all the appropriate media of information;

4. *Requests* the Secretary-General to ensure the immediate and wide circulation of the Convention and, to that end, to publish and distribute its text;

5. *Requests* the Secretary-General to submit to the General Assembly reports concerning the state of ratifications of the Convention, which will be considered by the General Assembly at future sessions as a separate agenda item.

1406th plenary meeting
21 December 1965

ANNEX

International Convention on the Elimination of All Forms of Racial Discrimination

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514(XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid*, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(*a*) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(*b*) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(*c*) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(*d*) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(*e*) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia:*

(*a*) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(*b*) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organization or activities as an offence punishable by law;

(*c*) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(*a*) The right to equal treatment before the tribunals and all other organs administering justice;

(*b*) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

(*c*) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(*d*) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;

(*e*) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;
(v) The right to education and training;
(vi) The right to equal participation in cultural activities;

(*f*) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (*a*) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

(*b*) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (*a*) within one year after the entry into force of the Convention for the State concerned; and (*b*) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (*a*) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Com-

mission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention.

(*b*) If the States Parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States Parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States Parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States Parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (*a*) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.

(*b*) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (*a*) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged.

(*b*) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (*a*) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.

(*b*) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in sub-paragraph (*a*) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information revelant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (*a*) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in

this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

(*a*) Signatures, ratifications and accessions under articles 17 and 18;

(*b*) The date of entry into force of this Convention under article 19;

(*c*) Communications and declarations received under articles 14, 20 and 23;

(*d*) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

B

The General Assembly,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in its resolution 1514 (XV) of 14 December 1960,

Bearing in mind its resolution 1654 (XVI) of 27 November 1961, which established the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to examine the application of the Declaration and to carry out its provisions by all means at its disposal,

Bearing in mind also the provisions of article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination contained in the annex to resolution A above,

Recalling that the General Assembly has established other bodies to receive and examine petitions from the peoples of colonial countries,

Convinced that close co-operation between the Committee on the Elimination of Racial Discrimination, established by the International Convention on the Elimination of All Forms of Racial Discrimination, and the bodies of the United Nations charged with receiving and examining petitions from the peoples of colonial countries will facilitate the achievement of the objectives of both the Convention and the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recognizing that the elimination of racial discrimination in all its forms is vital to the achievement of fundamental human rights and to the assurance of the dignity and worth of the human person, and thus constitutes a pre-emptory obligation under the Charter of the United Nations,

1. *Calls upon* the Secretary-General to make available to the Committee on the Elimination of Racial Discrimination, periodically or at its request, all information in his possession

relevant to article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination;

2. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other bodies of the United Nations authorized to receive and examine petitions from the peoples of the colonial countries, to transmit to the Committee on the Elimination of Racial Discrimination, periodically or at its request, copies of petitions from those peoples relevant to the Convention, for the comments and recommendations of the said Committee;

3. *Requests* the bodies referred to in paragraph 2 above to include in their annual reports to the General Assembly a summary of the action taken by them under the terms of the present resolution.

1406th plenary meeting
21 December 1965

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4. DRAFT RECOMMENDATION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES (AGENDA ITEM 59)

Resolution [2018 (XX)] adopted by the General Assembly

2018 (XX). Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

The General Assembly,

Recognizing that the family group should be strengthened because it is the basic unit of every society, and that men and women of full age have the right to marry and to found a family, that they are entitled to equal rights as to marriage and that marriage shall be entered into only with the free and full consent of the intending spouses, in accordance with the provisions of article 16 of the Universal Declaration of Human Rights,

Recalling its resolution 843 (IX) of 17 December 1954,

Recalling further article 2 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956,[4] which makes certain provisions concerning the age of marriage, consent to marriage and registration of marriages,

Recalling also that Article 13, paragraph 1 b, of the Charter of the United Nations provides that the General Assembly shall make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling likewise that, under Article 64 of the Charter, the Economic and Social Council may make arrangements with the Members of the United Nations to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly,

1. *Recommends* that, where not already provided by existing legislative or other measures, each Member State should take the necessary steps, in accordance with its constitutional processes and its traditional and religious practices, to adopt such legislative or other measures as may be appropriate to give effect to the following principles:

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[4] United Nations publication, Sales No.: 57.XIV.2.

Principle I

(*a*) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person, after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

(*b*) Marriage by proxy shall be permitted only when the competent authorities are satisfied that each party has, before a competent authority and in such manner as may be prescribed by law, fully and freely expressed consent before witnesses and not withdrawn such consent.

Principle II

Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Principle III

All marriages shall be registered in an appropriate official register by the competent authority.

2. *Recommends* that each Member State should bring the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages contained in the present resolution before the authorities competent to enact legislation or to take other action at the earliest practicable moment and, if possible, no later than eighteen months after the adoption of the Recommendation;

3. *Recommends* that Member States should inform the Secretary-General, as soon as possible after the action referred to in paragraph 2 above, of the measures taken under the present Recommendation to bring it before the competent authority or authorities, with particulars regarding the authority or authorities considered as competent;

4. *Recommends further* that Member States should report to the Secretary-General at the end of three years, and thereafter at intervals of five years, on their law and practice with regard to the matters dealt with in the present Recommendation, showing the extent to which effect has been given or is proposed to be given to the provisions of the Recommendation and such modifications as have been found or may be found necessary in adapting or applying it;

5. *Requests* the Secretary-General to prepare for the Commission on the Status of Women a document containing the reports received from Governments concerning methods of implementing the three basic principles of the present Recommendation;

6. *Invites* the Commission on the Status of Women to examine the reports received from Member States pursuant to the present Recommendation and to report thereon to the Economic and Social Council with such recommendations as it may deem fitting.

1366th plenary meeting
1 November 1965

5. REPORTS OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTEENTH AND SEVENTEENTH SESSIONS (AGENDA ITEM 87)

(*a*) Report of the Sixth Committee[5]

[*Original text: Spanish*]
[*4 November 1965*]

INTRODUCTION

1. At its 1336th plenary meeting held on 24 September 1965, the General Assembly decided to include the item entitled "Reports of the International Law Commission on the work of its sixteenth and seventeenth sessions" in the agenda of its twentieth session, and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this agenda item from its 839th to its 853rd meetings, held from 29 September to 15 October 1965.

3. At the 839th meeting, the Chairman welcomed Mr. Milan Bartoš, Chairman of the International Law Commission at its seventeenth session, on behalf of the Sixth Committee and invited him to present the Commission's report on the work of that session (A/6009). At the 842nd and 851st meetings, held on 6 and 14 October, respectively, Mr. Bartoš replied to the questions asked and comments made by certain representatives during the debate.

4. At the 843rd meeting, the Chairman welcomed Mr. Roberto Ago, Chairman of the International Law Commission at its sixteenth session, on behalf of the Sixth Committee and invited him to present the Commission's report on the work of that session (A/5809). At the 851st meeting, held on 14 October, Mr. Ago replied to the comments made by certain representatives during the debate.

5. The report of the International Law Commission on the work of its sixteenth session consisted of five chapters, dealing respectively with the organization of the session, the law of treaties, special missions, the programme of work and organization of future sessions, and other decisions and conclusions of the Commission.

6. The report of the International Law Commission on the work of its seventeenth session also consisted of five chapters, dealing respectively with the organization of the session, the law of treaties, special missions (with an annex containing draft provisions concerning so-called high-level special missions, prepared by the Special Rapporteur), the programme of work and organization of further sessions, and other decisions and conclusions of the Commission.

PROPOSALS AND AMENDMENTS

7. Lebanon and Mexico submitted a draft resolution (A/C.6/L.559) under which, after noting with approval that the International Law Commission "has proposed to hold a four-week series of meetings in January 1966, and has asked to reserve the possibility of a two-week extension of its summer session in 1966, in order to enable it to complete its draft articles on the law of treaties and on special missions before the end of the term of office of its present members", the General Assembly would (1) take note of the reports of the International Law Commission on the work of its sixteenth and seventeenth sessions; (2) express appreciation to the Commission for the work it had accomplished; (3) recommend that the Commission should: (*a*) continue the work of codification and progressive development of the law of treaties and of special missions, taking into account the views expressed at the twentieth session of the General Assembly and the comments which might be submitted by Govern-

[5] Document A/6090, reproduced from *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 87.

ments, with the object of presenting final drafts on those topics in the report on the work of its eighteenth session in 1966; (*b*) continue, when possible, its work on State responsibility, succession of States and Governments and relations between States and intergovernmental organizations, taking into account the views and considerations referred to in General Assembly resolution 1902 (XVIII) of 18 November 1963; and (4) requests the Secretary-General to forward to the International Law Commission the records of the discussions at the twentieth session on the reports of the Commission.

8. Ghana and Romania submitted an amendment (A/C.6/L.560) to the draft resolution (A/C.6/L.559), proposing that the following paragraphs should be added after the fifth paragraph of the preamble: "*Noting with appreciation* that the European Office of the United Nations organized, during the seventeenth session of the International Law Commission, a Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law," and "*Noting* that the Seminar was well organized and functioned to the satisfaction of all,"; and that the following new paragraph should be added after operative paragraph 3: "*Expresses the wish* that in conjunction with future sessions of the International Law Commission other seminars be organized which should ensure the participation of a reasonable number of nationals from the developing countries;". This amendment was accepted by the sponsors of the draft resolution.

9. Costa Rica submitted an amendment (A/C.6/L.561) to the draft resolution (A/C.6/L.559) proposing that the following new paragraph should be added at the end of the operative part: "5. *Requests* the Member States, non-governmental organizations and foundations which may be able to do so to grant fellowships to participants in the Seminars on International Law who come from developing countries." This amendment was withdrawn by the sponsor at the 852nd meeting.

10. Lastly, Tunisia submitted a further amendment (A/C.6/L.562) to the draft resolution (A/C.6/L.559) which would amend operative paragraph 4 of the draft resolution to read as follows: "4. *Requests* the Secretary-General: (*a*) to forward to the International Law Commission the records of the discussions at the twentieth session on the reports of the Commission; (*b*) to transmit to Governments at least one month before the opening of the twenty-first session of the General Assembly the final drafts prepared up to that time by the International Law Commission, and in particular the draft articles on the law of treaties." This amendment was accepted by the sponsors of the draft resolution.

11. The Secretary-General submitted a note (A/C.6/L.557) on the financial implications of the decisions contained in paragraphs 65 and 66 of the report of the International Law Commission on the work of its seventeenth session. At the 852nd meeting, the Secretary of the Committee drew the attention of the Committee to the financial implications of the draft resolution submitted by Lebanon and Mexico (A/C.6/L.559) and of the amendment submitted by Ghana and Romania (A/C.6/L.560) incorporated therein. With regard to the Tunisian amendment (A/C.6/L.562), which had also been accepted by the sponsors of the above-mentioned draft resolution, the Secretary of the Committee made a statement at the same meeting concerning the circulation of the reports of the International Law Commission.

Debate

12. The representatives who took part in the debate on this subject congratulated the International Law Commission on the work it had done at its sixteenth and seventeenth sessions, with regard to the progress made in the codification of the Law of Treaties and the rules concerning special missions. In the course of the discussions emphasis was placed on the urgent need for the codification and progressive development of international law in accordance with current interests of the international community. The importance of international law, its codification and progressive development was acknowledged by all as a

means of strengthening the rule of law in international life, peaceful coexistence and friendly relations among all States and of maintaining peace and security in accordance with the purposes and principles of the United Nations Charter.

13. Some representatives pointed out that a study of the reports of the International Law Commission by the Sixth Committee made it possible to associate the General Assembly with the codification and progressive development of international law and, at the same time, constituted an assurance that the work of the International Law Commission was directed towards the latest developments in the international community and took into account the aspirations of all States Members of the United Nations. In that connexion it was recalled that it was the States themselves that established international law. The role of the International Law Commission was to facilitate the task of those States by defining rules and drawing up and codifying drafts. Some representatives pointed out that the International Law Commission had in recent years, therefore, given up drafting codes or scientific documents and had instead submitted draft conventions to the States. Other representatives stressed the necessity for Governments to co-operate in the work of the International Law Commission by sending written comments on the drafts prepared by the latter. Knowledge of the opinions of Governments rendered the work of the International Law Commission easier since the absence of comments by a Government was open to different interpretations.

14. Referring to historic experiences in codifying national laws, some representatives warned the International Law Commission against the dangers of a codification based purely and simply on existing law and jurisprudence and advised it to take into account in its work the requirements of the progressive development of international law, so as to avoid adding to the advantages of the certainty surrounding codification, the disadvantages of the accompanying rigidity, since the latter could in a very short time render the codified rules inappropriate for the social environment to which they were directed.

15. Other representatives stressed that international law should be a dynamic force serving the interests of an international community in perpetual evolution. Recalling the profound political, economical and social transformation undergone by the international community in recent years, the achievement of independence by a great many countries that had been subjected to a colonial régime and the progress of science and technology, some representatives declared that international law could not be an instrument to defend the interests of the powerful but should give equal protection to all States, great and small, old and new, developed and developing. Only a truly universal international law, based on justice and equity and respecting the sovereign equality of States would have sufficient authority to be recognized and appealed to by all States.

16. Some representatives, while acknowledging the importance of the codification of international law, pointed out that codified rules should not be too detailed if they were to have any practical value. Codified law should be simple and flexible, otherwise it would impede the establishment of new practices, while doing little or nothing to facilitate the establishment of harmonious international relations. According to those representatives, any intention of settling controversial matters by means of codification would have the opposite effect since codification could not by itself eliminate the causes of the controversies. Other representatives were opposed to attempting to codify only those items or residuary rules on which general agreement had been reached. According to the latter representatives, such an attitude would not meet the present needs of the codification of international law. If the work of the International Law Commission were to be really useful, the Commission should also study controversial matters and submit solutions to the States. One representative called attention to the advisability of attempting to standardize the terminology used in international law.

17. Some representatives stressed the importance of customary international law in the life of the international community. As one representative had indicated, the need for cus-

tomary law would not disappear even when international law had been completely codified and nothing was left but to interpret treaties and conventions. Codified international law would necessarily include references to customary law and, at times, those called upon to apply codified law would have to decide if codified or customary rules would apply to a given situation. The application of one or other of the rules would depend ultimately on the opinion concerning customary law held by those applying codified law.

18. Some representatives made certain reservations regarding the supremacy of peremptory norms of international law (*jus cogens*) over other rules of law. The lack of criteria for determining with certainty whether a rule of international law was a part of *jus cogens* would, according to those representatives, make it difficult to apply that principle. In the opinion of those representatives, the only principles that could be considered pre-eminent were those embodied in the United Nations Charter and even in that case they derived their authority from conventional law.

19. Lastly, one representative suggested that the Sixth Committee, in order to ensure that the codification of international law should not become a work without practical value owing to an insufficient number of ratifications or accessions, should examine as soon as possible the manner in which the General Assembly, while respecting the sovereign independence of the States, could take effective steps to obtain the fullest possible participation in the conventions on codification concluded under the auspices of the United Nations, by providing, for example, a procedure similar to that prescribed in article 19 of the Constitution of the International Labour Organisation.

I. Law of treaties

20. The representatives who spoke in the debate expressed their satisfaction at the considerable progress achieved in the codification of the law of treaties, which already made it possible to form an idea of the future codification of that important chapter of international law. They congratulated the International Law Commission and the Special Rapporteur concerned on the high quality, usefulness and value of the work that had been completed and on the proposal to complete the codification of the law of treaties in the course of the following year.

21. Many representatives stressed the importance of the progressive development and codification of such a fundamental part of international law as the law of treaties, for strengthening and guaranteeing international legal transactions, peaceful coexistence, co-operation between States with different economic, political and social systems and the peaceful settlement of international disputes, and for strengthening international peace and security which was the supreme purpose of the Charter of the United Nations.

22. Some representatives stressed the fact that the International Law Commission in carrying out a codification of the law of treaties had borne in mind, in a general way, the profound changes which had occurred in contemporary international law and had consequently contributed to the progressive development of the law of treaties in conformity with the interests and aspirations of the international community. Other representatives considered that the International Law Commission would still have to delete from the draft some excessively traditionalist elements and, taking the idea of justice as a foundation, endeavour to formulate the final draft articles with an eye to the future.

23. A number of representatives who spoke emphasized the need for the progressive development and codification of the law of treaties to be fundamentally based on and inspired by the major principles of contemporary international law. It was pointed out that if the codification of the law of treaties was to have the meaning, impact and usefulness which the urgent needs of contemporary international life demanded and not become a purely academic work without any practical value, the law of treaties would have to come under the authority of contemporary international law and conform to the principles set forth in the Charter of

the United Nations. Some representatives stated that the final position of their Governments on the draft articles prepared by the International Law Commission would depend on the extent to which the Commission took those fundamental principles into account.

24. The fundamental principles mentioned by those representatives can be summed up as follows: (*a*) the universality of the law of treaties; (*b*) the strict observance of freely contracted contractual obligations; (*c*) the sovereign equality of States; (*d*) the right of people to self-determination; (*e*) good faith in the conclusion and application of treaties; (*f*) prohibition of the use or the threat of force as a means of solving international disputes; (*g*) a true freedom to undertake obligations and not purely formal legal consent; and (*h*) the promotion of peaceful coexistence.

25. A number of representatives stated that the draft articles on the law of treaties could not acknowledge unjust, unfair or unequal treaties, the consequences in many cases of the colonial system. Those representatives considered that instruments which were imposed without the consent of the populations concerned or without taking their interests into account; instruments which were the price of accession to independence, instruments taking advantage of the situation of the developing countries, instruments entered into under direct, indirect or economic coercion; instruments which ignored the sovereign equality of States and instruments which were discriminatory as well as other instruments in which the consent of one of the parties was, in one form or another, vitiated by the conditions under which they had been concluded, were by their very nature illegal, could not be protected by the law of treaties and should be eliminated from international relations. Some representatives added that those instruments which were formally called treaties weakened the confidence of States in international law and were an obstacle to more frequent recourse to the jurisdiction of the International Court of Justice.

26. Some other representatives said that the law of treaties should be based on the free will of the parties and should ensure that the confidence that should prevail in relations between States was not weakened. While stressing the need for observance of the treaties concluded, some of those representatives expressed the fear that the draft articles drawn up by the International Law Commission did not provide sufficient protection against the likelihood of unilateral or arbitrary action by parties which might wish to avoid observing the obligations they had undertaken. While regretting that the draft articles did not provide for an independent and objective body to settle disputes which might occur in that connexion, the representatives in question considered that in order to amend or terminate conventional obligations undertaken it was necessary to bear in mind the provisions of the treaty or the opinion of all the parties to the treaty. One representative pointed out that the International Law Commission should consider the possibility of including in the draft articles a provision concerning the compulsory jurisdiction of the International Court of Justice.

27. The majority of representatives who spoke approved the decision of the International Law Commission to codify the law of treaties in the form of a single draft convention. It was pointed out that the preparation of a convention would enable new States to participate directly in the formulation of the law of treaties which would thus be based on wider and more secure foundations. It was also added that conventions, as the main source of contemporary international law, were more effective for the codification and progressive development of that law than simple expository codes. In fact, recourse to the form of a convention would be the only appropriate method if it was wished to give the contents of the codification of the law of treaties the value of norms which would be legally binding on all States. With regard to the question of whether the draft articles on the law of treaties should be formulated as a single draft convention or as a series of related conventions, the majority of representatives raising that question opted for a single draft convention since they considered that the law of treaties had an organic unity which should be respected. Some, however, said that if it were only possible to adopt and to bring into force a convention on a part of

the draft articles prepared by the International Law Commission, that would already represent a valuable result.

28. One representative stated that for reasons of substance and not of form it was difficult to decide whether the codification of the law of treaties should contain solely a statement of obligations or also the constitution and declaratory rules of law. Three representatives continued to express their preference for the form of a code adopted by the General Assembly in a declaration, resolution or recommendation. They considered that the conclusion of a treaty on the law of treaties would hardly be sufficient. A code would have the advantage of including a certain amount of declaratory and explanatory provisions which would have no place in a convention which, by its very nature, would tend to be limited to the strict enunciation of obligations. One representative emphasized that when the International Law Commission had moved from the idea of a code to the idea of a convention, it had been forced to revise and delete provisions contained in the original draft articles. Another of the above-mentioned representatives declared that a treaty on the law of treaties would establish a dual system: a conventional law of treaties and a customary law of treaties, and would add to the doubts about the interpretation of any treaty, further doubts about the interpretation of the treaty on the law of treaties. While one of those representatives stated that he reserved his position on the matter, another said that he would not oppose the adoption of a multilateral convention if that was the wish of the General Assembly. The same representative pointed out that a third solution might have been adopted by incorporating the code on the law of treaties in a multilateral convention or annexing it to that convention with the same binding force as the convention. Some other representatives pointed out that perhaps the term "code" had caused a misunderstanding and that the question really was what was to be done with the draft articles on the law of treaties: whether they were to be simply a model or a guide or whether they were to be a body of compulsory norms for all States. If the latter was to be the function of the draft articles on the law of treaties, it would not be of great importance whether the instrument codifying them was called a convention, a code or a declaration.

29. With regard to the formulation of the provisions to be included in the draft articles on the law of treaties, some representatives favoured brevity and simplicity while others stated that the elimination of descriptive elements should not result in excessive generalization. Many representatives considered that the provisions of the draft articles should be drafted with clarity and precision in order to avoid disputes and should link ideal solutions to the needs and realities of international life. It was also pointed out by some representatives that the draft articles should eliminate all reference to practices of a transitory nature. One representative said that the draft articles should deal with the continuing applicability of treaties in the event of one of the parties changing without the consent of the other, while another representative considered that the International Law Commission had been correct in not including provisions on the succession of States or the responsibility of States in the draft articles on the law of treaties.

30. Finally, some representatives considered that customary law would continue to retain its value even after the codification of the law of treaties, since the draft articles themselves mentioned customary law in their provisions which would mean, on more than one occasion, that those who had to apply them would have to rule on the applicability of customary law.

(a) *Part III (articles 55-73) of the draft articles on the law of treaties: application, effects, modification and interpretation of treaties* (A/5809, chap. II)

31. As the draft articles on the application, effects, modification and interpretation of treaties had been submitted to Governments for their observations, most of those who took part in the debate said that they would limit themselves to considerations of a preliminary character concerning part III of the draft articles or would refer to the observations already made by their Governments. Some representatives said that their Governments would send the written comments requested at an early date.

32. Among those who made preliminary observations during the debate, some limited themselves to commenting only on certain provisions, while others analysed the whole draft or the greater part of its provisions. Further, due to the close connexion between all the parts of the draft articles on the law of treaties, some representatives, when commenting on part III, referred, alluded to, or even analysed in detail, provisions contained in other parts of the draft, especially in part II (articles 30-54) [6] concerning the invalidity and termination of treaties. Many representatives expressly reserved their Governments' definitive position until all the opinions expressed by other Governments were known, until the International Law Commission had examined the opinions expressed and until they had studied the general arrangement of the final draft articles when completed.

33. Representatives who made statements considered that the draft articles on the application, effect, modification and interpretation of treaties were generally acceptable, although there were a few differences of opinion concerning terminology, formulation, relevance, usefulness, necessity, meaning and gaps in the concrete provisions figuring in them. Some representatives indicated that the draft articles reflected correctly, in their general lines, the practice of States and that the combination of elements of codification and of progressive development of the law of treaties was well balanced.

34. Some representatives considered that the provisions contained in part III of the draft articles needed to be brought into harmony with the contents of the other parts of the draft articles. Others indicated occasional examples of lack of precision or inconsistency in the use of certain terms or expressions. Thus, for example, the expression "rule of customary law" appeared in article 68, paragraph (*c*), while article 69, paragraph 1 (*b*), spoke of "rules of general international law". The English version of the text used the word "modifying" in articles 67 and 68 and "amending" in articles 65 and 66. One representative suggested that in article 69 "term" should be replaced by "word" and another that the use of the word "texts" in article 73 should be avoided. It was also indicated that the English version of article 68, sub-paragraph (*c*) should be brought into line with the French version of the same sub-section. Finally one representative pointed out that while in part I (articles 0-29*bis*) of the draft articles there was a definition of "good faith" in article 17 (A/6009, chap. III), in part III, articles 55 and 69 mentioned "good faith" without defining it. As it was a question of a fundamental principle of the law of treaties, in this representative's opinion the same attention should be given to "good faith" in each part of the draft articles.

35. The rule *pacta sunt servanda*, according to which treaties were binding upon the parties to them and must be performed by them in good faith, was considered by those representatives who commented on it to be a firmly established and generally recognized basic and fundamental principle of international law. Underlining the capital importance of the principle for the stability of international juridical relations, some representatives stated that without respect for it neither the provisions of the Charter nor the development of friendly relations between States could be achieved. One representative recalled that according to some authors *pacta sunt servanda* was the fundamental rule which summed up international law. The observations made on the rule *pacta sunt servanda* in the course of the debate concerned more often the suitability of its inclusion in the draft articles on the law of treaties, its formulation if it were included and its purport and scope in the general arrangement of the draft articles.

36. Many representatives declared themselves in favour of including the rule *pacta sunt servanda* in the draft articles on the law of treaties. In their opinion, although the provision containing it in the draft articles did no more than recognize an evident principle of international law, its inclusion was suitable and appropriate as it was the corner-stone of the law of treaties without which all the other rules would be of little or no value. Some representatives added that it was necessary to restate that treaties in force should be scrupulously

[6] See *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9*, chap. II.

and strictly observed in a spirit of goodwill by all parties and that their violation should be firmly condemned if it was desired to consolidate and develop peaceful and friendly co-operation between States. Others, on the other hand, feared that there were risks in putting into writing a flexible rule like *pacta sunt servanda* in a text that was to be converted into international treaty law.

37. The formulation of the rule *pacta sunt servanda* in article 55 of the draft articles was the object of certain comments and criticism. Some representatives declared that perhaps the International Law Commission might complete the rule thus formulated by declaring explicitly the obligation of States to abstain from any act which might compromise or invalidate the objects and purposes of the treaty. For one representative a clause purely and simply recognizing that obligation would be preferable to the present formulation of the article. Other representatives criticized the fact that the rule formulated in the draft articles was limited to treaties "in force", since that might introduce an element of controversy, and they suggested the elimination of those words. This opinion was not shared by the other representatives who thought that the International Law Commission was fully justified in having specified that the rule applied to treaties "in force". One representative declared that the present formula was axiomatic and obvious and that it should be redrafted in the following manner:

> "A treaty is binding upon the parties to it, which must fulfil their obligations and exercise their rights under it in good faith."

38. Concerning the significance and scope of the rule *pacta sunt servanda* in the general layout of the draft articles on the law of treaties, two trends of opinion were revealed among those representatives who referred to it in their statements. For some the rule *pacta sunt servanda* as formulated in the draft articles must be interpreted in relation to the other provisions of the draft, particularly those concerning the invalidity and termination of treaties (part II) and in the light of the provisions of the United Nations Charter and the dictates of justice. It was recalled that in Article 103 of the Charter it was stated that in the event of a conflict, obligations incurred under the Charter should prevail and that Article 2, paragraph 2 provided that States Members should fulfil in good faith the obligations assumed by them in accordance with the Charter. For those representatives the rule *pacta sunt servanda* could not protect a treaty which was suffering from a defect which invalidated it, which violated the principles of the Charter or was contrary to an imperative norm of contemporary international law. Thus, for example, treaties imposed by force, obtained by trickery or fraud, which were entered into when one of the parties was not in a position to decide freely, which violated peremptory norms of a general character, which could not be carried out because of a fundamental change of circumstances, and unjust treaties could not be protected by the rule *pacta sunt servanda* unless it was desired to sanctify injustice in international relations. In the opinion of those representatives the inclusion in the draft articles of rules on the nullity or termination of treaties, such as those relating to defects of consent, *jus cogens*, the doctrine of *rebus sic stantibus*, the termination of treaties in due and proper form, did not mean the destruction of the rule *pacta sunt servanda*, but rather would lead to a real strengthening and clearer interpretation of it.

39. Other representatives held that a treaty which made no provision for its termination or denunciation could not be terminated unilaterally by one of the parties and would remain in force until all the parties decided otherwise. While acknowledging that that could be inferred from the rule *pacta sunt servanda* (article 55) in relation to some of the provisions of part II of the draft (articles 31, 38, 39 and 40), one representative thought it advisable to include a provision to that effect, particularly in view of the number and presentation of the provisions on the invalidity and termination of treaties (part II). Referring to the peace treaties concluded prior to the adoption of the United Nations Charter, he expressed the view that the draft should explicitly reaffirm that the causes of nullity defined in it would not have

retroactive effect. He also observed that certain provisions relating to the invalidity and termination of treaties (articles 31-37, 42 and 44) were incomplete and that it was essential to define objectively the circumstances giving rise to the nullity or premature termination of treaties, to fix time-limits for alleging such nullity or premature termination, and to provide that, even in cases of absolute nullity, the alleged cause must be defined by an arbitral tribunal or court of law. Another representative asserted that the principle *rebus sic stantibus* could be applied only by agreement among the parties or by an impartial judicial or arbitral body.

40. Some representatives, referring to the provision governing the application of a treaty in point of time (article 56), expressed agreement with paragraph 1, which held it to be a rule of *jus dispositivum* that the parties could depart from the principle of the non-retroactivity of treaties if they wished. Two different views were expressed with regard to paragraph 2 of the article. One representative thought that the paragraph should be reworded to take account of the acquired rights arising from the application of a treaty, which could be accomplished partly by replacing the words "unless the treaty otherwise provides" by the words "unless the contrary appears from the treaty". Another representative thought it advisable to delete the phrase "unless the treaty otherwise provides", since there could be no exception to the rule stated in paragraph 2. The same representative felt that the International Law Commission should include in the text of that article a provision which, reflecting paragraph (4) of the commentary on the article, regulated the question of facts or acts which occurred or arose "in part" while the treaty was in force. Finally, another representative stated that he found the entire article satisfactory as it stood.

41. The provision in the draft relating to the territorial scope of a treaty (article 57) met with the approval of some representatives and criticism from others. One of those expressing criticism felt that the provision had the effect of creating a refutable legal presumption and, moreover, was neither useful nor necessary. Other representatives observed that the article did not take account of the possibility that the provisions of a treaty might be intended to apply outside the territory of the parties, and they urged that it should be revised so as to cover treaties the scope of which went beyond the territory of the parties. One representative said that, if that change was not made, it would be preferable to delete the article. Another representative, however, said that he would have preferred to see article 57 limit the application of a treaty explicitly to the metropolitan territory of the parties, since otherwise it could perpetuate a situation like that created in Africa by the General Act of the Conference of Berlin concerning the Congo, held in 1885, which placed the African continent under occupation by States situated in another continent. An exception could be made where a people which was not yet independent agreed, through a valid expression of opinion, to accept the treaty and its effects. If that was not done, such peoples would have no alternative, once they regained their sovereignty, but to denounce treaties in the conclusion of which they had had no part—treaties which often ran counter to their interests.

42. None of the representatives questioned the general rule limiting the effects of treaties to the parties (article 58). Some, however, said they favoured the inclusion in the general rule of a provision stating the absolute nullity of any obligation imposed on a third State by a treaty without its consent. They held that there must be no provision under international law for a treaty which sought to decide a people's future without its consent, even if the country in question was under colonial rule. Some representatives considered, in connexion with that provision, that it was essential for the draft articles to contain a precise definition of the term "contracting parties".

43. Some representatives expressed gratification that, in drafting the provisions relating to the *pacta tertiis* rule, the International Law Commission had been guided by the principle of the sovereign equality of States, so that no sanction was given to a situation of the kind created by colonialism. A number of representatives gave their express approval to the conditions specified in those provisions (articles 59, 60 and 61) so that a treaty could give rise

to rights or obligations for third States, i.e. (*a*) the parties to the treaty must intend to provide for rights or obligations for third States and (*b*) the third State in question must agree to acquire such rights or assume such obligations. Some representatives, however, felt that those provisions, as they stood, still contained some danger to third States in that they could be invoked in an attempt to impose obligations on those States; the provisions should therefore be made clearer. One representative, on the other hand, found the wording of articles 60 and 61 unsatisfactory on the ground that two or more States could, effectively and directly, create rights for a third State by means of a treaty if that was their intention and that the rights thus created could be abolished at some future time.

44. One representative felt that articles 59 (obligations for third States) and 60 (rights for third States) should provide that the question of when the third State was to indicate its assent should be decided in accordance with the circumstances of each particular case. Another took the view that articles 59 and 60 could have been worded in a more similar manner and combined in a separate paragraph of the general rule contained in article 58. He questioned the necessity of including those provisions in a draft convention on the law of treaties, since, if it was required as a condition for the establishment of rights and obligations for third States that those States should assent thereto, the agreement—collateral or otherwise—concluded between the original parties to the treaty and the third party would constitute an actual treaty. He added that, if those provisions of the draft were deleted, the rule stated in article 61 (revocation or amendment of provisions regarding obligations or rights of third States) would be rendered superfluous. Another representative thought that article 61 should be given further study, since it could have the effect of discouraging the inclusion in treaties of provisions which conferred benefits on a third State.

45. Some representatives referred to the difficulties or dangers inherent in the provision relating to "rules in a treaty becoming generally binding through international custom" (article 62). One representative considered that in order to avoid any misunderstanding the text of the article should include the idea expressed in paragraph (2) of the commentary on the article, that those rules were binding on third States only if those States recognized them as rules of customary law. Another representative considered that the article was unnecessary and that it did not settle the situation created when a number of States denounced a treaty concluded among them which, having been freely accepted by other States, had become a customary rule for the latter States. One representative considered it debatable whether the provision of article 62 should be included in a convention on the law of treaties, even though he recognized its usefulness in avoiding any conflict between draft articles 59, 60 and 61 and customary rules of international law originating from treaties. Another representative drew attention to the fact that, since regional international custom did not seem to be excluded from the phrase "customary rules" used in article 62, the rules laid down in a regional treaty might come to be tacitly binding on all the States in the region, whereas under article 59 the obligations arising from treaties could not bind third States unless they expressly agreed to be so bound. The decision to apply a particular rule would ultimately depend, according to that representative, on what customary law was taken to mean. Lastly, another representative maintained that there was nothing in the draft articles to preclude rules set forth in a treaty from being binding upon States not parties to that treaty if in the future those rules became generally accepted and recognized as customary rules of international law.

46. The rules relating to the application of treaties having incompatible provisions (article 63) were considered adequate and useful by the representatives who referred to them during the debate. One representative expressed his agreement with the International Law Commission's express recognition, in the text of the article, of the overriding character of obligations under the United Nations Charter, as laid down in Article 103 of the Charter. Another representative emphasized the close relationship between article 63 and the provisions of articles 58 to 60 (legal effects of treaties on third parties) and 65 to 68 (modification of treaties), and the need to avoid any duplication between article 63 and article 41 (termination

implied from entering into a subsequent treaty). Some representatives, referring to the test for incompatibility prescribed by the rules laid down in article 63, considered that that test, as in part I, article 18, lent itself to subjective interpretation and ought therefore to be made more objective, or that provision should be made for an independent settlement of the disputes to which it might give rise. Lastly, another representative said that article 63 showed the need for precise drafting of the provisions of multilateral treaties superseding or terminating previous treaties, and emphasized that paragraph 5 of the draft article was particularly important.

47. Some representatives expressed the opinion that, in codifying the law of treaties, the International Law Commission should have borne in mind the current development of contemporary international law and practice which recognized and regulated the rights and obligations of individuals, particularly with regard to human rights. Some representatives regretted that the International Law Commission had not retained in its draft articles a minimal provision such as that of article 66 (application of treaties to individuals) in the third report of Sir Humphrey Waldock, the Special Rapporteur for the subject (A/CN.4/167). One representative noted that some international instruments had laid down the principle of the most-favoured-nation clause in order not to restrict the rights accorded to individuals under other treaties. That principle of the most-favoured-nation clause would be closely related, in that representative's opinion, to the provision of draft article 63, paragraph 3, as well as to the principle of "acquired rights".

48. Regarding the effect of severance of diplomatic relations on the application of treaties (article 64), some representatives took the view that paragraphs 2 and 3, concerning the "disappearance of the means necessary for the application of the treaty" should be deleted or re-examined by the International Law Commission. According to those representatives, those provisions, in their present form, would give the impression that by severing diplomatic relations, or creating a situation which made it difficult or impossible to fulfil contractual obligations, States might evade the obligations arising from treaties. Some representatives said that it would be better for the International Law Commission to consider the question from a more general point of view rather than in relation to the article on the effect of severance of diplomatic relations. One representative pointed out that there were in reality very few treaties for which the disappearance of the means necessary for their application could provide a ground for suspending their operation and that, in every case where a protecting Power had been appointed, the idea of impossibility of performance by reason of the absence of diplomatic relations was inapplicable. Another representative said that it was necessary to avoid subjective interpretations and that, furthermore, the situation was adequately covered by articles 43 (supervening impossibility of performance) and 54 (legal consequences of the suspension of the operation of a treaty). Lastly, another representative noted that the severability of the provisions of treaties referred to in paragraph 3 of article 64, in paragraph 2 of article 45 (emergence of a new peremptory norm of general international law) and in article 46 (severability of treaty provisions for the purpose of the operation of the present articles) might create difficulties, since in practice most of the provisions of treaties were so interrelated that few of them were severable for purposes of application, from the rest of the treaty.

49. With regard to the provisions of the draft articles concerning the modification of treaties (articles 65 to 68), some representatives stressed that the basic principle to be observed was that laid down in the first sentence of article 65: namely, that the amendment of a treaty was a matter for agreement between the parties. Certain representatives thought that all reference to "the established rules of an international organization" should be deleted from article 65 and from article 66, paragraphs 1 and 2, as making an incompatible, or unacceptable, exception to the above-mentioned basic principle. One representative considered that article 65 was redundant, since an agreement which amended a treaty constituted another treaty. In that representative's view, the best course would be to include a provision to the

effect that consideration should be given to any proposal for the amendment of a treaty. Other representatives stressed the appropriateness of including in the draft articles the provisions relating to "Agreements to modify multilateral treaties between certain of the parties only" (article 67). According to those representatives, the provisions in question offered a useful procedure for parties contemplating the conclusion of a special agreement, and at the same time would enable the States affected to safeguard the rights centred on them by an existing treaty.

50. A number of representatives also commented on the provision concerning modification of a treaty by a subsequent treaty, by subsequent practice or by customary law (article 68). While some approved the clause relating to modification by a subsequent treaty (sub-paragraph (*a*)), others regarded it as an unnecessary repetition of the provision made in article 65. Modification by the subsequent emergence of a new rule of customary law (sub-paragraph (*c*)) was regarded by some representatives as an important and well-established rule, which would ensure that the changes which were gradually being introduced into general international law by the development of ideas could be reflected in treaties. Other representatives thought, on the contrary, that the sub-paragraph should be deleted, on the ground that it related to international law in general rather than to the law of treaties. Reference was also made to the difficulty of deciding objectively whether a customary rule was or was not compatible with treaty provisions. One of the representatives in favour of deleting the sub-paragraph held that, while in theory a custom could modify a treaty, in practice it was nothing more than an oral modification of the treaty. Lastly, other representatives drew attention to the connexion between that provision and the provision contained in draft article 45 concerning the emergence of a new peremptory norm of international law (*jus cogens*). With regard to the modification of a treaty by subsequent practice of the parties (article 68, sub-paragraph (*b*)), one representative pointed out that a contractual obligation could be modified only with the genuine consent of the parties, and that subsequent practice was not always the outcome of such consent. The same representative thought that it would be dangerous in international law to resort to assumptions, which were characteristic of specific legal systems, in order to determine the existence, nature, scope and degree of consent of the parties; he recalled that in the Temple of Preah Vihear case[7] the International Court of Justice, in explaining its decision, had found that the question at issue was the interpretation of a treaty, and had not mentioned modification of the treaty. Other representatives were in favour of including sub-paragraph (*b*) in the draft articles. One of them stated that the sub-paragraph would, in reality, be equivalent to an oral modification of the treaty. Some representatives pointed to the difficulty of distinguishing between subsequent practice as modifying an original agreement and subsequent practice as interpreting that agreement; they said that the International Law Commission should revise sub-paragraph (*b*) of article 68 in conjunction with paragraph 3 (*b*) of article 69, in order to eliminate certain discrepancies between the two provisions.

51. Most representatives who referred to the provisions concerning interpretation of treaties (articles 69 to 73) thought that they represented a reasonable compromise and in general reflected existing international law and practice. Attention was also drawn to the value of codifying the rules of interpretation, which would obviate disputes between States regarding the application of treaties. Some representatives said that the International Law Commission had been wise to adopt the text of the treaty as the essential basis for interpretation. Others felt that it was difficult to accept priorities as between the different means of interpreting treaties, and that the only basic rule should be to try to discover—by all possible means and in all possible forms—what the intention of the parties was. Lastly, other representatives maintained that the order in which the rules of interpretation were given in the draft articles had no bearing on the importance of the factors mentioned in

[7] See *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962 : I.C.J. Reports, 1962.*

those rules. The importance of each factor would depend solely on its substantive effect and on its influence on the true significance of the treaty.

52. While some representatives believed that the principle of useful effect was adequately expressed in the draft articles on interpretation, others considered that the text should contain an explicit reference to that principle or maxim. One representative thought that "subsequent practice" (article 69, para. 3 (*b*)) should be used only as an aid in interpreting ambiguous provisions, and not to distort the natural connotation of words or to extend the scope of the original terms of the treaty. Another representative observed that terms or words did not always have an "ordinary meaning" and that, furthermore, article 69, paragraph 1 (*b*) seemed to preclude any evolutionary interpretation. Another representative agreed with the provision that a treaty should be interpreted "in the light of the rules of general international law in force at the time of its conclusion". One representative explicitly approved the view adopted by the majority of the International Law Commission's members concerning the application to treaties of "inter-temporal" law (paragraph (11) of the commentary on article 69). Some representatives doubted whether it was appropriate or useful to refer in article 72, paragraph 2 (*b*) to "the established rules of an international organization", and recommended that the reference should be deleted. Lastly, one representative considered that, in view of the revision of part I of the draft articles, some of the rules of interpretation should be deleted from the final text.

(b) *Part I* (articles 0-29 *bis*) *of the draft articles on the law of treaties: Conclusion, entry into force and registration of treaties* (A/6009, chap. II)

53. Although some representatives refrained from commenting on this part of the report and drew attention to the written observations submitted by their Governments, others made preliminary observations on the revision carried out by the International Law Commission at its seventeenth session. Some representatives expressed satisfaction at the improvements which the revision had made on the original text by simplifying some provisions and eliminating others which were not essential. Other representatives indicated that the revised articles were open to further improvement.

54. The limitation of the draft articles to treaties concluded between States came in for criticism from some representatives, who expressed the view that the text should cover treaties arrived at between other subjects of international law, especially those concluded between intergovernmental organizations or between intergovernmental organizations and States. That would make it unnecessary for the future convention on the law of treaties to be supplemented later on by the conclusion of further conventions or protocols. Consequently some of those representatives found the definition of a "Treaty" (article 1, para. 1 (*a*)) unsatisfactory. Other representatives, however, approved the limitation of the text to treaties concluded between States and the postponement to a later stage of the codification of rules relating to the conclusion of treaties by intergovernmental organizations.

55. Some representatives, while aware that the International Law Commission had reserved its position on the terminology to be used in the final draft text, drew attention to certain terminological inconsistencies and cases of vague language. Mention was made, in particular, of the provision concerning a "Party" (article 1, para. 1 (*f*) (*bis*)) in relation to article 17, sub-paragraph (*b*), and of the use, in part I of the draft articles, of the expressions "enter into force" and "enter into operation". It was also pointed out that a precise definition of a "Contracting State" was needed. While one representative welcomed the fact that the International Law Commission had not distinguished between "formal treaties" and "treaties in simplified form", another representative expressed regret that the reference to "treaties in simplified form" had been taken out of the text. Lastly, one representative took the view that the inclusion of the phrase "It appears from the circumstances" (article 4, para. 1 (*b*); article 11, paras. 1 (*b*) and 2 (*a*); article 12, para. 1 (*b*)) should be reconsidered because it might lead to disagreement and dispute.

56. With reference to the capacity of States members of a federal union to conclude treaties (article 3, para. 2), one representative considered that the International Law Commission should make it clear in the commentary on the article whether the relevant provision of the federal constitution would be decisive or whether the treaty would be invalidated only by flagrant breaches of the provisions of the federal constitution.

57. A number of representatives referred in their statements to the International Law Commission's decision to adjourn the examination of the provisions of the draft articles relating to participation in a treaty (articles 8 and 9) and to the use of the term "general multilateral treaty" (article 1, para. 1 (*c*)). Some representatives expressed the hope that the International Law Commission might find in the written comments submitted by their respective Governments a solution to the problems involved in drafting those provisions, having regard to the criticism expressed on the first version prepared by the Commission. One representative welcomed the fact that the International Law Commission had postponed its final decision on the provisions in question, and asserted that the principle of universality was contrary to the very nature of treaties, which must be the outcome of the establishment of a consensual relationship. Drawing attention to the conditions laid down in Article 4 of the Charter of the United Nations for admission to membership in the Organization, and to the problems which the question of participation had created for international conferences and for the depositaries of treaties, that representative opposed the provision of paragraph 1 of the original text of article 8. In that representative's opinion, participation in a treaty should be left to those States which participated in the conference drawing up that treaty, and in the case of treaties concluded under the auspices of the United Nations the participation formula should continue to be that used in the codifying conventions concluded hitherto.

58. Other representatives found it unfortunate that the International Law Commission had not yet been able to reach a final agreement on the universality of general multilateral treaties. They expressed the hope that, when the provisions relating to participation in a treaty (articles 8 and 9) and to the definition of a "general multilateral treaty" came to be drafted in final form, the International Law Commission would take into consideration the need for general multilateral treaties to be open to all interested States. General multilateral treaties should be open to all States because they dealt with matters of interest to all States and because their purpose was to state or develop principles and rules of international law which were binding on all States. Limitation of participation in general multilateral treaties would violate the universality of contemporary international law, the principle of the sovereign equality of States and the nature of the law of treaties, and would at the same time have an adverse effect on peaceful coexistence and co-operation between States. Some of the same representatives stated that the problem of participation was not purely political but should also be considered in the light of the international community's legal needs. It was mentioned that the Treaty banning nuclear weapons tests in the atmosphere, in outer space and under water, signed at Moscow in 1963, was open to all States, and that that fact had not created difficulties for the depositaries or posed problems of recognition. Some representatives asserted that States were entitled to participate on a footing of equality in international relations and to be parties to general multilateral treaties whose objectives affected their existence. All those representatives opposing the perpetuation of what they considered discriminatory practices maintained that general multilateral treaties should be open to all States, irrespective of their political, economic and social systems.

59. One representative said that it would be desirable for the International Law Commission to adopt the most liberal possible solution regarding participation in general multilateral treaties, especially in those of such a nature as to make it repugnant that they should be open only to certain States, to the exclusion of others. In that representative's opinion it was essential to concede that at the very least in the absence of specific provision on the subject such treaties should be presumed to be open, in particular the treaties of codification. Lastly, another representative, referring to the difficulty of reaching agreement between those

who favoured universality of participation in general multilateral treaties and those who favoured the contractual principle of the autonomy of will in treaties, said that the International Law Commission should try again to find a way of reconciling the two positions.

60. With regard to consent to be bound by a treaty (articles 11 and 12), one representative said that, apart from the rule that the express or implied intention of the parties was decisive, the only rule really needed was a residual clause requiring merely a choice between signature, ratification, acceptance and approval. Another representative stated that the new provisions respecting ratification represented a certain deviation from the above principle that treaties should be ratified save in exceptional cases and that it would be interesting to see how the new provisions would be received in the comments submitted by Governments.

61. The provisions of the draft articles concerning reservations to multilateral treaties (articles 18 to 22) were also commented on during the debate. The representatives who referred to those provisions believed that, in general, the International Law Commission's review had improved the original text, and they expressed their appreciation for the Commission's effort to take account of comments on those provisions made in previous debates. Some representatives regretted, however, that the Commission had not fully distinguished in every case between the maximum and the minimum legal effects of objections raised against reservations to multilateral treaties. It was said by some that the clauses appearing in article 19, paragraph 4 (*b*) and article 21, paragraph 3 of the draft articles were too severe and did not facilitate the participation of the largest possible number of States in those treaties. In the view of those representatives, the maintenance in force, as between the State that made the reservation and the State that objected to the reservation, of those provisions of the treaty to which the reservation did not relate should not be subject to an express statement of acceptance by the State that had objected to the reservation. Some representatives believed that the presumption should be precisely that the treaty was in force as between the two States, save where the objecting State expressly declared that the treaty was not in force as between it and the reserving State.

62. One representative expressed the view that the International Law Commission should add to article 1 a new sub-paragraph which would distinguish between reservations and declarations, in order to cover the practice, frequent in some States, of including in the instruments of ratification of multilateral conventions declarations expressing objectives which the States wished to achieve and which did not constitute a reservation, as, for example, declarations expressing the need to put an end to situations of colonial dependence. Another representative, referring to the criterion of incompatibility of the reservation with the object and purpose of the treaty (article 18, sub-paragraph (*c*)), said he believed that the draft articles should include provisions for the independent settlement of disputes which might arise in connexion with the application of provisions of that type.

(c) *Preparation of a possible future diplomatic conference of plenipotentiaries on the law of treaties*

63. During the debate, a number of representatives referred to the possibility of convening in the near future a diplomatic conference of plenipotentiaries on the law of treaties. One representative said that before a decision was taken in the matter, it would have to be determined whether the advantages of a convention on the law of treaties outweighed its disadvantages. Other representatives, without prejudging the future recommendations that might be made by the International Law Commission in connexion with its final draft articles on the law of treaties or the General Assembly's final decision on the draft articles, made some positive suggestions concerning the preparation of a possible future conference of plenipotentiaries on the law of treaties.

64. One representative requested that, in order that the Sixth Committee's debates on the convening of a conference should not be too abstract, the Secretariat should prepare for submission to the General Assembly at its twenty-first session: (*a*) a study of the procedural

and organizational problems raised by the convening of a diplomatic conference to approve a multilateral convention on the law of treaties, and (*b*) a reference guide to the International Law Commission's draft articles on the law of treaties. The request was supported by other representatives. Another representative suggested that the Sixth Committee might, through its Chairman, request the International Law Commission to inform the General Assembly of its ideas concerning the procedural and organizational problems related to the preparation of a future diplomatic conference on the law of treaties.

65. At the 850th meeting the Secretary of the Committee said that, after informal consultations with the members of the International Law Commission, the Secretariat would, as requested, prepare for the General Assembly at its twenty-first session a study of the procedural and organizational problems involved in the future diplomatic conference. He also said that the Secretariat would prepare a reference guide to the draft articles on the law of treaties but could not be sure that the guide would be available by the twenty-first session of the General Assembly, since the International Law Commission would not adopt its final text until July 1966.

66. Lastly, another representative stated that the procedure hitherto followed in codification conferences was, in general, based on the rules of procedure of the General Assembly. He said that those rules, devised for political debates, were not well suited to legal discussions. Referring specifically to rules 91 and 92 of the rules of procedure of the General Assembly, he proposed certain remedies to alleviate the difficulties that might arise in plenary meetings of a codification conference as a result of resorting to provisions similar to those contained in the articles in question.

II. Special missions (A/5809, chap. III; A/6009, chap. III)

67. Most representatives who referred in their statements to the chapters of the International Law Commission's reports relating to special missions mentioned the importance, the utility and the necessity of codifying rules of international law governing special missions. It was stated that this would be a further step forward in the codification of modern diplomatic law initiated by the 1961 Vienna Convention on Diplomatic Relations[8] and the 1963 Vienna Convention on Consular Relations.[9]

68. Some representatives pointed out that special missions were an age-old feature of international affairs. Historically they antedated permanent diplomatic missions, and for a long time had been the only form of diplomatic relations known to and employed by sovereigns in their mutual relations. It was pointed out that, apart from their historic interest, special missions had taken on new importance in contemporary international affairs. The expansion of the sphere of State activities which was characteristic of the modern State, the need for increasingly close and varied relations between States, and the technical and complex nature of many subjects of negotiation had impelled States to have more frequent recourse than in the past to the sending of special missions.

69. The proliferation of special missions of every kind, resulting from the dynamism of the times, had given a new dimension to special missions as an institution and had made it more urgent to adopt a uniform and generally accepted system for their regulation. As some representatives pointed out, the fact that customary general international law contained few rules relating to special missions increased still further the need for the codification and progressive development of international law on the subject. A number of representatives, acknowledging the difficulty of the task, considered that the work done on the subject by the

[8] See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, *Annexes* (United Nations publication, Sales No.: 62.X.1).

[9] See United Nations Conference on Consular Relations, *Official Records*, vol. II, *Annexes* (United Nations publication, Sales No.: 64.X.1).

International Law Commission and the Special Rapporteur for the topic was very praiseworthy.

70. Other representatives stated that special missions were, by virtue of their functions and by their nature, an institution which was distinct from permanent diplomatic missions and to which the 1961 Vienna Convention on Diplomatic Relations could not be directly applied, but that that Convention should serve as an inspiration and guide for the codification of the law on special missions.

71. A number of representatives, while reserving the final positions of their respective Governments, stated that the draft articles on special missions prepared by the International Law Commission were a noteworthy contribution and a true pioneering effort towards the codification of the law on special missions, and that they represented a solid basis for its further codification in the future. The International Law Commission's general approach, and the emphasis it placed on the preparation of the draft articles on special missions, gained the approval of many representatives. Some of them, however, stated that on second reading the International Law Commission should condense and reduce the final text. In that connexion, some representatives stated that the smallest possible number of rules should be drawn up in the simplest and briefest form. Other representatives announced that their Governments were studying the draft articles and would in due course submit such written comments as they deemed relevant. One representative emphasized that the collaboration of Member States through the submission of comments in writing was of great importance to the proper drafting of final rules on so mutable a subject as special missions. Lastly, other representatives welcomed the International Law Commission's intention to finish the draft on special missions at its next session.

72. With regard to the scope of the draft articles, one representative took the view that the International Law Commission should consider including provisions relating to delegates to international congresses and conferences.

73. The value of provisions relating to so-called high-level special missions was emphasized by one representative; at the same time he mentioned the need to bear in mind that there was a class of persons (Vice-Presidents, Deputy Prime Ministers, Ministers of State) who were usually of higher rank than Ministers for Foreign Affairs and who were increasingly being entrusted with special missions. Another representative felt that high-level special missions could not be treated in the same way as those composed of ordinary representatives, and that they therefore warranted a special chapter in the text. Lastly, another representative did not consider that the text on special missions should deal with so-called high-level special missions.

74. As to the form in which the law on special missions should be codified, almost all representatives who spoke on this point were in favour of a convention. One representative pointed out in this connexion that in many countries the grant of privileges and immunities to additional classes of aliens could be effected only through a treaty subject to legislative approval. Another representative, however, while agreeing with the International Law Commission's decision to prepare a draft which could be used as the basis for a convention, said that he was not convinced that it would be feasible to complete the codification of the law on special missions at a plenipotentiary conference, and that other possibilities should be considered. These fears were not shared by another representative, in whose opinion the existence of a body of general principles deduced from the practical rules applied from day to day by the ministries concerned, and from a substantial legal literature, afforded sufficient grounds for hope that a plenipotentiary conference would be able to adopt a convention on special missions.

75. Some representatives raised the question whether the text prepared by the future plenipotentiary conference should be a protocol to the 1961 Vienna Convention on Diplomatic Relations or should be a separate convention. One representative stated that he had

not yet reached any conclusion on the question, but most of the representatives discussing the matter said that they were in favour of a separate convention on special missions even if it used the same terms as the 1961 Vienna Convention. According to one representative, the nature and functions of special missions were different from those of permanent diplomatic missions, and a formal merger of the legal rules applicable to the two institutions should therefore be avoided, for it might create needless difficulties in the future development of both institutions.

76. The term "special missions" was criticized by one representative, who wished to replace it by "temporary missions". This representative took the view that there were only two kinds of diplomatic missions—permanent and temporary. The term "temporary missions" would cover non-permanent missions of every kind, including "special missions".

77. A number of representatives considered that the terminology of the draft articles on special missions should so far as possible be reconciled with that used in the 1961 Vienna Convention on Diplomatic Relations or, where more appropriate, with that of the 1963 Vienna Convention on Consular Relations. Wherever different terms were used, the reason should be stated in the commentary on the draft articles on special missions. One representative pointed out that, whereas in the 1961 Vienna Convention on Diplomatic Relations the expression "members of the mission" included the head of the mission and the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission, in articles 3, 4 and 6 of the draft articles on special missions the same expression appeared to cover only the head of the mission and its principal members, to the exclusion of the administrative and technical staff and the service staff of the mission. This representative drew attention to the difficulties which such discrepancies in the terms used might cause to the legislative organs of contracting States when they came to translate the provisions of conventions, which up to a certain point were similar, into rules of domestic law for their respective countries.

78. Several representatives cautioned the International Law Commission against the tendency to widen the notion of the special mission. Many of the representatives who spoke on the subject stressed the need for a precise definition of special missions. The definition given in the commentary on draft article 1 (A/6009, chap. III) seemed to them so vague as to create a danger that the notion of special missions would automatically include the thousands of persons who went abroad on official business every year. One representative held that what mattered most was to define "temporary missions". In the view of others, a distinction should be drawn between different kinds of special missions, and chiefly between those of a highly political nature and those that were purely technical. One representative, however, took the view that there could be no distinction between political special missions and technical special missions, since political missions could have technical aspects and vice versa.

79. In the view of a number of representatives, a precise definition of special missions and a distinction between different kinds of such missions would be very useful in delimiting the sphere of application of the draft articles and particularly of the provisions on the facilities, privileges and immunities of special missions. Those representatives took the position that any exaggerated extension of the privileges and immunities of special missions should be avoided in order to avert unnecessary difficulties and awkward situations, since States were not in favour of increasing the number of persons enjoying privileges and immunities in their territory. Such privileges and immunities should be made as tolerable as possible. The point of departure should be the principle of functional necessity, having regard above all to the purely technical character of most special missions, and to their temporary nature. One representative expressed the view that, in the case of special missions, personal diplomatic status could not always be the deciding factor in the granting of privileges and immunities.

Another representative suggested that the level of representation of the members of a special mission could, if necessary, be taken into account in order to distinguish between persons who were entitled to privileges and immunities and persons who were not.

80. While some representatives gave the wording of the provisions on privileges and immunities in the draft articles on special missions their approval in so far as the text correctly reflected the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, others stressed the need to limit the scope of the privileges and immunities recognized in the draft articles. In their view the International Law Commission, after delimiting the notion of special missions, should draw up the provisions on the privileges and immunities of such missions, specifying which privileges and immunities applied to each kind of special mission or which were granted to each category of members of such missions.

81. With respect to part I of the draft articles (general rules), one representative considered that the provisions of that part would be more appropriate to a code than to a convention. Other representatives made preliminary comments on certain specific provisions of part I of the draft articles.

82. Thus, regarding the sending and receiving of special missions, one representative pointed out that the draft articles prescribed no specific formalities for that purpose. The commencement of the functions of a special mission did not require the presentation of credentials (article 11); the sending State had to notify the receiving State of the composition and the arrival of the special mission, but if it failed to do so the text did not provide for the loss of the privileges and immunities accorded (article 8). Moreover, the functions of the special mission commenced as soon as the mission entered into official contact with the appropriate organs of the receiving State, which could be, by agreement, those with which the special mission was to conduct its official business, and not necessarily the Ministry of Foreign Affairs of the receiving State. That representative considered that it should be stipulated that the appropriate organ of the receiving State—in most cases the protocol department of the Ministry of Foreign Affairs—should in all cases be notified of the special mission and of its composition. Another representative questioned the necessity of mentioning consular relations in article 1, paragraph 2.

83. Having regard to the temporary nature of special missions, one representative expressed doubts about the pertinence of the provisions on persons declared *non grata* or not acceptable (article 4), freedom of movement (article 21) and professional activity (article 42), which had been drawn up for application to permanent diplomatic missions in the 1961 Vienna Convention.

84. The deletion of the articles on the commencement (article 11) and the end (article12) of the functions of a special mission was suggested by one representative, who also considered that the words "normally" in article 7, paragraph 1, and "in principle" in article 14, paragraph 1, were inappropriate to a legal text. Another representative suggested that, if the provision concerning the right of special missions to use the flag and emblem of the sending State (article 15), was retained in part I of the draft articles, it should be stated that the exercise of that right was accompanied by the obligation to respect the laws and regulations of the receiving State, as prescribed in article 40 for persons enjoying diplomatic privileges and immunities. Lastly, one representative expressed the opinion that the provision relating to activities of special missions in the territory of a third State (article 16) should include the substance of paragraph (3) of the commentary on that article.

85. Referring to the future instrument codifying the law of special missions, one representative expressed the opinion that States would have the right to make exceptions to any of its clauses by express agreement among themselves, unless the text of the clause in question prohibited such action.

III. Other decisions and conclusions of the International Law Commission

(a) *Relations between States and intergovernmental organizations* (A/5809, paras. 41 and 42)

86. One representative said that he agreed that the International Law Commission should give priority to "diplomatic law" in its application to relations between States and intergovernmental organizations when work began on the codification of that topic.

(b) *Programme of work, dates and places of the next meetings of the International Law Commission* (A/6009, chap. IV and paras. 65 and 66)

87. All those who spoke in the discussion welcomed the International Law Commission's decision to complete the study of the law of treaties and of special missions before the end of 1966, and approved the Commission's programme of work for the coming year. Subject, in a few cases, to the reservation that a solution must be found for the administrative and financial problems involved, almost all the representatives who spoke also approved the Commission's proposals for the accomplishment of its aims: namely, that a four-week series of meetings should be held from 3 to 28 January 1966 and that the Commission should reserve the possibility of extending its summer session, scheduled to be held from 4 May to 8 July 1966, for an additional two weeks, i.e. to 22 July 1966. One representative, however, made reservations on these two proposals because of their financial implications and because of the administrative difficulties created by the proliferation of United Nations meetings and conferences. With regard to the invitation issued by the Government of the Principality of Monaco for the Commission to hold in Monaco the four-week session scheduled for January 1966, some representatives said that they had no objection to the acceptance of that invitation provided that it did not involve the United Nations in any expenses over and above the estimated cost of holding the session in question at the International Law Commission's Geneva headquarters.

(c) *Co-operation with other bodies* (A/5809, paras. 43-49; A/6009, paras. 57-63)

88. Many representatives noted with satisfaction that the International Law Commission was continuing its co-operation with the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee. Some referred in their statements to the possibility and desirability of carrying such co-operation further, in conformity with the relevant provisions of the International Law Commission's Statute, by extending it to other intergovernmental and private bodies throughout the world, whether regional or world-wide in scope, which were interested in the progress of international law. The Commission of Jurists of the Organization of African Unity was specifically mentioned by some representatives. One representative said that, in its relations with other bodies, the International Law Commission must always bear in mind that it differed from all the other agencies concerned with the codification and progressive development of international law in that it was an organ of the United Nations.

(d) *Exchange and distribution of documents of the International Law Commission* (A/6009, para. 64)

89. Some representatives said that the special attention given by the International Law Commission to the problem of the exchange and distribution of its documents was satisfactory to them because of the particular importance of those documents to jurists and international legal scholars in all countries; they considered that the Commission had reached the right conclusions on that subject.

(e) *Seminar on International Law* (A/6009, paras. 70-72)

90. All the representatives who spoke on this question congratulated the European Office of the United Nations on its initiative in holding, concurrently with the Commission's seventeenth session, a Seminar on International Law for advanced students of the subject

and young government officials responsible in their respective countries for dealing with questions of international law. They also approved the International Law Commission's recommendation that further seminars should be organized in conjunction with its future sessions. Many representatives expressed the hope that nationals of developing countries would be enabled to participate in those seminars in increasing numbers through the grant of fellowships to cover travel and subsistence expenses. One representative said that persons from Non-Self-Governing and Trust Territories should also take part in them. Some representatives emphasized that, by helping to disseminate knowledge of international law, those seminars served the cause of the progressive development of international law, one of the tasks conferred by the Charter on the General Assembly of the United Nations.

91. With regard to the future organization of the seminars, some representatives stressed that the high level of the discussions could be maintained only by keeping the total number of participants within reasonable bounds. Others expressed the view that the topics should be well chosen and that the lecturers should fairly represent the principal legal systems of the world. It was also stated that, in the future, seminars on international law might be held in other geographical areas, especially in Africa, Latin America and Asia, and that they could perhaps be organized on a regional basis in connexion with the future programme of technical assistance to promote the teaching, study, dissemination and wider appreciation of international law. One representative proposed that the proceedings of the seminars should be published for the benefit of persons other than the participants. Lastly, another representative suggested that next year the Secretariat should prepare a working paper on the seminars so that the Sixth Committee might have a clearer idea how they were organized and conducted.

92. The representative of Israel announced that his Government was prepared to defray the travel and subsistence expenses of a national of a developing country who desired to take part in the seminar and who was chosen by the Secretariat on the basis of such criteria as it might lay down for the purpose. The representative of Brazil said that his delegation would support any measure designed to encourage and develop such seminars. The representative of Costa Rica submitted an amendment (A/C.6/L.561) to the draft resolution (A/C.6/L.559) proposing the addition of a new operative paragraph requesting Member States, non-governmental organizations and foundations to grant fellowships so that nationals of developing countries might be able to participate in the seminars. Other representatives observed that it would facilitate the co-ordination of whatever measures were adopted if the question of fellowships for participation in the seminars was discussed under agenda item 89 "Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law". The representative of Costa Rica withdrew his amendment at the 852nd meeting, and the Sixth Committee adopted, as part of the draft resolution adopted, the amendment relating to seminars which was submitted by Ghana and Romania (A/C.6/L.560) and which is reproduced in paragraph 8 of this report concerning the proposals and amendments submitted.

VOTING

93. At its 852nd meeting, held on 14 October 1965, the Sixth Committee voted on the draft resolution submitted by Lebanon and Mexico (A/C.6/L.559) as modified by the amendment submitted by Ghana and Romania (A/C.6/L.560) and Tunisia (A/C.6/L.562), which had been accepted; the Committee adopted the draft resolution by 74 votes to none, with 2 abstentions.

Recommendation of the Sixth Committee

94. The Sixth Committee therefore recommends that the General Assembly adopt 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 1391st plenary meeting, on 8 December 1965, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 94 above). For the final text, see resolution 2045 (XX) below.

2045 (XX). Reports of the International Law Commission on the work of its sixteenth and seventeenth sessions

The General Assembly,

Having considered the reports of the International Law Commission on the work of its sixteenth and seventeenth session (A/5809, A/6009),

Recalling resolution 1902 (XVIII) of 18 November 1963 by which the General Assembly recommended that the International Law Commission should continue its work of codification and progressive development of the law of treaties and its work on State responsibility, succession of States and Governments, special missions and relations between States and intergovernmental organizations,

Emphasizing the need for 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 the work of codification of the topics of the law of treaties and of special missions has reached an advanced stage,

Noting with approval that the International Law Commission has proposed to hold a four-week series of meetings in January 1966 and has asked to reserve the possibility of a two-week extension of its summer session in 1966, in order to enable it to complete its draft articles on the law of treaties and on special missions before the end of the term of office of its present members,

Noting with appreciation that the European Office of the United Nations organized in May 1965, during the seventeenth session of the International Law Commission, a Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law,

Noting that the Seminar was well organized and functioned to the satisfaction of all,

1. *Takes note* of the reports of the International Law Commission on the work of its sixteenth and seventeenth sessions;

2. *Expresses appreciation* to the International Law Commission for the work it has accomplished;

3. *Recommends* that the International Law Commission should:

(*a*) Continue the work of codification and progressive development of the law of treaties and of special missions, taking into account the views expressed at the twentieth session of the General Assembly and the comments which may be submitted by Governments, with the object of presenting final drafts on those topics in the report on the work of its eighteenth session, to be held in 1966;

(*b*) Continue, when possible, its work on State responsibility, succession of States and Governments and relations between States and intergovernmental organizations, taking into account the views and considerations referred to in General Assembly resolution 1902 (XVIII);

4. *Expresses the wish* that in conjunction with future sessions of the International Law Commission other seminars be organized which should ensure the participation of a reasonable number of nationals from the developing countries;

5. *Requests* the Secretary-General:

(*a*) To forward to the International Law Commission the records of the discussions at the twentieth session of the General Assembly on the reports of the Commission;

(*b*) To transmit to Governments at least one month before the opening of the twenty-first session of the General Assembly the final drafts prepared by the International Law Commission up to that time, and in particular the draft articles on the law of treaties.

1391st plenary meeting
8 December 1965

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6. GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 88)

(*a*) Report of the Sixth Committee[10]

[*Original text: English and Spanish*]
[*2 November 1965*]

INTRODUCTION

1. At its eighteenth session the General Assembly, on 18 November 1963, adopted resolution 1903 (XVIII) concerning the problem of twenty-one general multilateral treaties of a technical and non-political character, concluded under the auspices of the League of Nations, which by their terms authorized the Council of the League to invite additional States to become parties, but to which new States, which had come into being since the Council of the League has ceased to exist, had been unable to become parties through lack of an invitation to accede. By that resolution the General Assembly decided that it was itself the appropriate organ of the United Nations to exercise the power conferred by the treaties on the Council of the League to invite States to accede to those treaties, and recorded that the Members of the United Nations parties to the treaties in question assented to the resolution and were resolved to use their good offices to secure the co-operation of the other parties so far as might be necessary. The operative part of resolution 1903 (XVIII) also contained the following provisions:

"*The General Assembly,*

"...

"3. *Requests* the Secretary-General:

"(*a*) As depositary of the treaties referred to above, to bring to the notice of any party which is not a Member of the United Nations the terms of the present resolution;

"(*b*) To transmit copies of the present resolution to States Members of the United Nations which are parties to those treaties;

"(*c*) To consult, where necessary, with the States referred to in sub-paragraphs (*a*) and (*b*) above and with the United Nations organs and the specialized agencies concerned as to whether any of the treaties in question have ceased to be in force, have been superseded by later treaties, have otherwise ceased to be of

[10] Document A/6088, reproduced from *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 88.

interest for accession by additional States, or require action to adapt them to contemporary conditions;

"(*d*) To report on these matters to the General Assembly at its nineteenth session;

"4. *Further requests* the Secretary-General to invite each State which is a Member of the United Nations or member of a specialized agency or a party to the Statute of the International Court of Justice, or has been designated for this purpose by the General Assembly, and which otherwise is not eligible to become a party to the treaties in question, to accede thereto by depositing an instrument of accession with the Secretary-General of the United Nations;

"5. *Decides* to place on the provisional agenda of its nineteenth session an item entitled 'General multilateral treaties concluded under the auspices of the League of Nations'."

2. Pursuant to operative paragraph 3 (*c*) quoted above, the Secretary-General, considering that the Economic and Social Council appeared to be the competent organ of the United Nations to be consulted in the matter, proposed the inclusion of an appropriate item in the provisional agenda of the thirty-seventh session of the Council. The Council, having considered the item at its 1342nd meeting, included a section on the matter in its report to the General Assembly at the nineteenth session.[11] The Secretary-General also consulted with States parties, with various specialized agencies, and with the Executive Secretaries of the regional economic commissions of the United Nations. Pursuant to operative paragraph 3 (*d*) of resolution 1903 (XVIII) he reported to the General Assembly on the results of those consultations (A/5759 and Add.1).

3. Since there was sufficient evidence that two of the treaties in question, namely, the International Convention for the Suppression of Counterfeiting Currency and the Optional Protocol thereto, both done at Geneva on 20 April 1929, were still in force and were of interest for accession by additional States, the Secretary-General issued invitations for accession thereto in accordance with operative paragraph 4 of resolution 1903 (XVIII).

4. The item entitled "General multilateral treaties concluded under the auspices of the League of Nations" was not considered by the General Assembly at its nineteenth session. In accordance with the statement made by the President of the General Assembly at that session,[12] it was placed by the Secretary-General on the provisional agenda of the twentieth session. At its 1336th meeting, on 24 September 1965, the General Assembly decided to include the item in the agenda of its twentieth session and to allocate it to the Sixth Committee.

5. The Sixth Committee considered the item at its 853rd to 857th meetings, held from 15 to 21 October 1965.

Proposals and amendments

6. Nigeria and Sweden, later joined by Denmark, submitted a draft resolution (A/C.6/L.563) under which the General Assembly would recognize that the nine treaties listed in the annex to the draft resolution might be of interest for accession by additional States within the terms of General Assembly resolution 1903 (XVIII) of 18 November 1963.

7. This draft resolution was later reworded (A/C.6/L.563/Rev.1) to recognize that, from among the nineteen treaties mentioned in the preamble (i.e., all of the twenty-one treaties in question except the International Convention for the Suppression of Counterfeiting Currency

[11] *Official Records of the General Assembly, Nineteenth Session, Supplement No. 3*, chapter X, section IX, paras. 530-533.

[12] *Ibid., Annexes*, annex No. 2, document A/5884, para. 6.

and the Optional Protocol thereto, mentioned in paragraph 3 above), those listed in the annex to the draft resolution might be of interest for accession by additional States within the terms of General Assembly resolution 1903 (XVIII).

8. Algeria, Guinea, Mali, Mauritania, Senegal and Upper Volta submitted an amendment (A/C.6/L.566) which would delete the last paragraph of the original preamble proposed by Denmark, Nigeria and Sweden (A/C.6/L.563), would replace in their operative paragraph the word "*Recognizes*" by "*Recognizing*" and hence turn their operative paragraph into the last paragraph of the preamble, and would add a new operative paragraph to take note of the desirability, expressed in the report of the Secretary-General, of adapting some of those treaties to contemporary conditions if States acceding to them should so request.

9. This amendment was later revised by its sponsors (A/C.6/L.566/Rev.1) to replace the last paragraph of the preamble in the revised draft resolution (A/C.6/L.563/Rev.1) by a new paragraph noting, in particular, the opinions stated in the report of the Secretary-General that some of the treaties might require to be adapted to contemporary conditions, and leaving the operative paragraph in that draft unchanged and adding a new operative paragraph 2 drawing the attention of the parties to the desirability of adapting some of those treaties to contemporary conditions, particularly in the event that new parties should so request. This amendment was accepted by Denmark, Nigeria and Sweden, and the resulting draft, which was identical with the draft resolution recommended by the Sixth Committee, was issued in document A/C.6/L.563/Rev.2.

Debate

10. A number of delegations considered that the main problems involved in the question under consideration had been the determination of the appropriate organ to exercise the power which had once belonged to the Council of the League of Nations, of inviting additional States to accede to the treaties in question, and the determination of what additional States should be invited; these problems had been settled in 1963 by General Assembly resolution 1903 (XVIII), and it remained only to take note of the report of the Secretary-General on the results of his consultations (A/5759 and Add.1) and to specify which were the treaties which were still of interest for accession by additional States. The decisions now to be taken were purely consequent upon those of the eighteenth session, and voting on them did not involve any compromising of positions taken in 1963. It was further stated that resolution 1903 (XVIII) requested the Secretary-General to issue invitations to, among others, each State "which has been designated for this purpose by the General Assembly", and that States which felt that the resolution was otherwise inadequate were free to propose the designation of additional States.

11. Other delegations, however, considered references to resolution 1903 (XVIII) unacceptable or undesirable because that resolution provided for the issuance of invitations only to certain classes of States, rather than to all States without exception. Extension of participation of States in treaties was, in their view, an important factor in promoting international co-operation, particularly under conditions of peaceful coexistence of States with different economic and social systems. Invitations to accede would serve their purpose only if they avoided discrimination against any State, and fully recognized the principles of universality and of the sovereign equality of States. The task of promoting universality could not be set aside for the time being, since any delay would strengthen discrimination against some States and raise further barriers to their accession. The General Assembly could not be prevented from improving a solution already adopted. General multilateral treaties, in the view of some delegations, regulated matters of universal interest and should be open to accession on a universal basis. Such treaties were concluded on behalf of, and belonged to, the international community as a whole, and could not be closed to States which were not members of the organization under whose auspices they had been concluded. The principle of universality was becoming increasingly recognized in treaties, for example the Treaty

banning nuclear weapons tests in the atmosphere, in outer space and under water, signed at Moscow in 1963. Moreover, the adoption of the "all States" formula would not create practical difficulties, since there was a fairly well established body of doctrine defining the concept of statehood.

12. On the other hand, one delegation maintained that the idea of universality was in contradiction with the very nature of treaties, which resulted from a consensual relationship. Another delegation stated that a treaty could be said to be a general multilateral treaty only when the original parties included a provision opening it to accession by all States; the treaties in question were only conditional general multilateral treaties, and new States had no unconditional right to become parties. In addition, others said that under the "all States" formula the Secretary-General would be burdened with the heavy responsibility of deciding which of various political entities whose legal status was disputed should receive invitations to accede; the Secretary-General should not have to bear such responsibility, since only the General Assembly had the power to decide the matter. It would therefore, in the view of those delegations, not be desirable to eliminate references to resolution 1903 (XVIII) from the draft resolution, since such elimination would leave the text at best unclear as to whether the Secretary-General had instructions to continue to issue invitations to accede to the treaties.

13. In reply to a question asked by a delegation, the Legal Counsel, representative of the Secretary-General, stated that in his opinion the deletion of the reference to resolution 1903 (XVIII) from the operative part would make that part less clear, but would not imply that resolution 1903 (XVIII) had been superseded and would not constitute a basis for carrying out the action envisaged in the draft resolution. He pointed out that it was the General Assembly, and not the Secretary-General, which had taken over the functions of the Council of the League of Nations. If resolution 1903 (XVIII) were to be expressly superseded by the "all States" formula, he recalled that at the eighteenth session the Secretary-General had stated[13] that he would be able to implement that formula only if the General Assembly provided him with a complete list of the States covered by that formula.

14. As for the question of which treaties should be opened for accession by additional States, many delegations felt that despite the limited number of replies to the Secretary-General's inquiries, the situation was fairly clear, and at least the nine treaties in the first three categories listed in the Secretary-General's report (A/5759, paras. 133-135) should be opened for accession by additional States, although the views of the parties to all the treaties in question should be carefully considered. The fact that some of the parties had not replied was in their view not very significant.

15. One delegation suggested that the lack of interest shown in some of the nine treaties listed in the first three categories in the report of the Secretary-General made it inaccurate to say that those treaties might be of interest for accession by additional States; it could only be suggested that consideration might be given to accession to them. Another delegation felt that it was unfortunate that a number of States parties which the Secretary-General had consulted had not responded, and suggested that those States should again be requested to state their views; unless a majority of parties had made affirmative replies, the resolution should not mention particular treaties, and States should be invited to accede to whichever of the nineteen treaties were of interest to them, without excluding any of the categories listed in the Secretary-General's report.

16. Two delegations considered that the Convention and Statute on Freedom of Transit, done at Barcelona on 20 April 1921, was of uncertain interest for new accessions, and one delegation stated that the Convention on the Régime of Navigable Waterways and Additional Protocol thereto was no longer of interest because of the drawing up of a new United Nations Convention on the Transit Trade of Land-locked States (TD/TRANSIT/9 and Corr.1). On the other hand, one delegation declared that though its Government considered that the

[13] *Ibid., Eighteenth Session, Plenary Meetings*, 1258th meeting, para. 101.

Convention and Statute on the International Régime of Railways, and Protocol of Signature, which were not included in the annex to the draft resolution, were still in force and did not require adaptation to contemporary conditions, it was prepared to agree to their omission from the list. Another delegation referred to the possible interest of the International Agreement relating to the Exportation of Hides and Skins, and Protocol, not mentioned in the annex, for States exporting those commodities.

17. Two delegations referred to the various treaties concluded under the auspices of the League of Nations, in particular those on uniform laws for bills of exchange, promissory notes and cheques, which by their terms were open to all States and hence did not require any action to permit new accessions; in their view, the draft resolution should not give the impression that apart from the treaties mentioned in the annex, no other League treaties were of interest for accession by new States.

18. The members of the Committee were aware that some of the treaties being opened for accession could benefit by being adapted to contemporary conditions. Many delegations felt, however, that that was no reason to delay issuing invitations to accede, as newly acceding States would by the fact of their accession gain the opportunity of participating in the process of revision. The revision of the treaties could best be left to the parties or, in the view of some delegations, to the appropriate technical international organization; in any event, the question could not be effectively discussed in the Sixth Committee.

19. Two delegations, however, considered that arrangements should at once be made for the adaptation of the treaties to contemporary conditions before additional States were asked to accede.

20. A number of delegations thought it desirable to make specific mention in the draft resolution of the possibility of revision of the treaties at the request of newly acceding parties, since they were more likely to raise the question of adaptation to contemporary conditions than the original parties, and the new parties should be preserved from any misunderstanding or imputation of bad faith if they acceded and then called for revision. They stated, however, that it was not their intention to make any suggestion of privilege of the new parties or of inequality of treatment, since any party, whether old or new, could raise the question of amendment, and they all had equal rights in that respect. Several other delegations stressed the equality of rights of all parties, whether old or new, in respect of revision of the treaties.

21. One delegation declared that, when consideration was given to changes in the treaties, the League treaties which were open to all States should be taken as a model. Another delegation mentioned the desirability of eliminating colonial clauses.

VOTING

22. At its 856th meeting, on 20 October 1965, the Sixth Committee adopted by 39 votes to 32, with 18 abstentions, a motion for the closure of the debate made by the representative of Senegal. The Committee then proceeded to vote on the draft resolution before it (A/C.6/L.563/Rev.2), on the various parts of which a roll-call vote had been requested. The results of the voting were as follows:

(*a*) The first preambular paragraph was adopted by a roll-call vote of 67 votes to 10, with 11 abstentions. The voting was as follows:

In favour: Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroon, Canada, Chad, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Denmark, Ecuador, Finland, France, Greece, Guatemala, Guinea, Haiti, Iceland, India, Iran, Ireland, Israel, Italy, Jamaica, Japan, Liberia, Luxembourg, Madagascar, Malaysia, Mali, Mauritania, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama Peru, Philippines, Senegal, Sierra Leone, South Africa, Spain, Sweden, Thailand, Togo, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and

Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Afghanistan, Burma, Ethiopia, Ghana, Iraq, Kuwait, Libya, Morocco, Romania, Syria, United Arab Republic.

(*b*) The words "since" and "the Secretary-General has already issued invitations for accession to those instruments" in the third preambular paragraph were adopted by a roll-call vote of 65 votes to 9, with 14 abstentions. The voting was as follows:

In favour: Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroon, Canada, Chad, Chile, China, Colombia, Congo (Democratric Republic of), Costa Rica, Cyprus, Dahomey, Denmark, Ecuador, Finland, France, Greece, Guatemala, Guinea, Haiti, Iceland, India, Iran, Ireland, Israel, Italy, Jamaica, Japan, Luxembourg, Madagascar, Malaysia, Mali, Mauritania, Mexico, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Peru, Philippines, Senegal, Sierra Leone, South Africa, Spain, Sweden, Thailand, Togo, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Afghanistan, Burma, Congo (Brazzaville), Ethiopia, Ghana, Iraq, Kuwait, Liberia, Libya, Morocco, Pakistan, Romania, Syria, United Arab Republic.

(*c*) The words "within the terms of General Assembly resolution 1903 (XVIII) of 18 November 1963" in paragraph 1 were adopted by a roll-call vote of 52 votes to 17, with 17 abstentions. The voting was as follows:

In favour: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroon, Canada, Chad, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Denmark, Ecuador, Finland, France, Greece, Guatemala, Haiti, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Luxembourg, Madagascar, Malaysia, Mali, Mauritania, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Peru, Philippines, Senegal, Sierra Leone, South Africa, Spain, Sweden, Thailand, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Venezuela.

Against: Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Hungary, India, Iraq, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.

Abstaining: Afghanistan, Congo (Brazzaville), Cyprus, Dahomey, Ethiopia, Ghana, Guinea, Iran, Kuwait, Liberia, Libya, Morocco, Pakistan, Tunisia, Turkey, United Republic of Tanzania, Zambia.

(*d*) The draft resolution as a whole was adopted by a vote of 69 votes to none, with 17 abstentions.

Recommendation of the Sixth Committee

23. 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 1367th plenary meeting, on 5 November 1965, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 23 above). For the final text, see resolution 2021 (XX) below.

2021 (XX). General multilateral treaties concluded under the auspices of the League of Nations

The General Assembly,

Recalling its resolution 1903 (XVIII) of 18 November 1963 on participation in general multilateral treaties concluded under the auspices of the League of Nations,

Having considered the report of the Secretary-General (A/5759 and Add.1) submitted in accordance with paragraph 3 (*d*) of that resolution,

Noting that, since there was sufficient evidence that the International Convention for the Suppression of Counterfeiting Currency and the Optional Protocol thereto, both done at Geneva on 20 April 1929, were still in force and were of interest for accession by additional States, the Secretary-General has already issued invitations for accession to those instruments,

Noting also the results of the Secretary-General's consultations in regard to the other nineteen treaties dealt with in the above-mentioned report,

Noting in particular the opinions, stated in the report of the Secretary-General, that some of these treaties may need to be adapted to contemporary conditions,

1. *Recognizes* that, from among the nineteen treaties mentioned above, those listed in the annex to the present resolution may be of interest for accession by additional States within the terms of General Assembly resolution 1903 (XVIII);

2. *Draws the attention* of the parties to the desirability of adapting some of these treaties to contemporary conditions, particularly in the event that new parties should so request.

1367th plenary meeting
5 November 1965

ANNEX

1. International Convention concerning the Use of Broadcasting in the Cause of Peace, Geneva, 23 September 1936.

2. Protocol relating to a Certain Case of Statelessness, The Hague, 12 April 1930.

3. Convention on Certain Questions relating to the Conflict of Nationality Laws, The Hague, 12 April 1930.

4. Protocol relating to Military Obligations in Certain Cases of Double Nationality, The Hague, 12 April 1930.

5. Convention and Statute on Freedom of Transit, Barcelona, 20 April 1921.

6. Convention and Statute on the Régime of Navigable Waterways of International Concern, Barcelona, 20 April 1921.

7. Additional Protocol to the Convention on the Régime of Navigable Waterways of International Concern, Barcelona, 20 April 1921.

8. Convention and Statute on the International Régime of Maritime Ports, and Protocol of Signature, Geneva, 9 December 1923.

9. International Convention relating to the Simplification of Customs Formalities, and Protocol, Geneva, 3 November 1923.

7. TECHNICAL ASSISTANCE TO PROMOTE THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW: REPORT OF THE SPECIAL COMMITTEE ON TECHNICAL ASSISTANCE TO PROMOTE THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW (AGENDA ITEM 89)

Resolution [2099 (XX)] adopted by the General Assembly

2099 (XX). Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law

The General Assembly,

Recalling its resolutions 1816 (XVII) of 18 December 1962 and 1968 (XVIII) of 16 December 1963,

Having considered the report of the Special Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law (A/5887),

Having also considered the relevant paragraphs of the report of the Technical Assistance Committee (A/5791; E/3933, paras. 54-60) and of the report of the Economic and Social Council (A/5803, para. 346), the reports of the Secretary-General (A/5585; A/5790), the communication by the United Nations Educational Scientific and Cultural Organization (A/C.6/L.565), as well as the replies received from Governments of Member States and from interested international organizations and institutions (A/5455 and Add.1-6, A/5744 and Add.1-4),

Recognizing the need for the strengthening of the role of international law in international relations,

Having noted the valuable work which is being undertaken by some institutions and other bodies in the promotion of the teaching, study, dissemination and wider appreciation of international law,

Considering nevertheless that much remains to be done in this field,

Noting that a large number of Member States have expressed the view that a programme of assistance and exchange should be established and administered by the United Nations and the United Nations Educational, Scientific and Cultural Organization for the purpose of furthering the objectives of the United Nations and of assisting Member States, in particular developing countries, in the training of specialists in the field of international law and in the promotion of the teaching, study, dissemination and wider appreciation of international law,

Bearing in mind the limited financial means available for this purpose and the desirability of avoiding any duplication of programmes established and carried out by States and by other international and national organizations,

Considering that even a limited programme will contribute towards meeting some of the most pressing needs for a better knowledge of international law as a means of strengthening international peace and security and of promoting friendly relations and co-operation among States,

1. *Expresses its appreciation* to the Special Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law and to the United Nations Educational, Scientific and Cultural Organization for the work accomplished in the preparation of the programme of assistance and exchange in the field of international law;

2. *Decides* to establish a programme of assistance and exchange in the field of international law consisting of:

(*a*) Steps to encourage and co-ordinate existing international law programmes carried out by States and by organizations and institutions, such as those proposed by the Special Committee in part I, section A, of its report to the General Assembly;

(*b*) Forms of direct assistance and exchange, such as seminars, training and refresher courses, fellowships, advisory services of experts, the provision of legal publications and libraries, and translations of major legal works;

3. *Authorizes* the Secretary-General to initiate the preparatory work for this programme in 1966 within the total level of appropriations approved for that year;

4. *Requests* the Secretary-General to publicize the above-mentioned programme and invites Member States, interested national and international institutions and organizations, and individuals to make voluntary contributions towards the financing of this programme or otherwise towards assisting in its implementation and possible expansion, in accordance with the report of the Special Committee;

5. *Requests* the Secretary-General, taking into consideration the voluntary contributions which may have been received in terms of paragraph 4 above and in consultation with the Advisory Committee on Administrative and Budgetary Questions, to make in the budget estimates for 1967 and 1968 such provisions as may be necessary to carry out the activities specified in the annex to the present resolution;

6. *Invites* the United Nations Educational, Scientific and Cultural Organization to participate in the implementation of the programme established in paragraph 2 above and requests the Secretary-General to reach agreement with the Director-General of that organization, subject to any necessary approval by the competent authorities of the two organizations, as to which parts of the programme are to be financed and administered by each organization;

7. *Requests* the Board of Trustees of the United Nations Institute for Training and Research to consider the ways in which international law is to be given its proper place among the activities of the Institute in the light of the report of the Special Committee and of the views expressed on the subject in the Sixth Committee;

8. *Decides* to establish an Advisory Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law—composed of ten Member States to be appointed every three years by the General Assembly—which shall meet at the request either of the Secretary-General or of a majority of its members, shall advise the Secretary-General on the substantive aspects of the programmes contained in the report of the Special Committee and on the implementation of the present resolution and shall report, as appropriate, to the General Assembly; a representative of the United Nations Educational, Scientific and Cultural Organization and a representative of the United Nations Institute for Training and Research shall be invited, whenever necessary, to the meetings of the Advisory Committee;

9. *Reiterates* the appeal to Member States, made in its resolution 1968 C (XVIII) of 16 December 1963, inviting them to offer foreign students fellowships in the field of international law at their universities and institutions of higher education and to consider the inclusion, in their programmes of cultural exchange, of provision for the exchange of teachers, students and experts, as well as books and other publications in that field;

10. *Calls the attention* of Member States to the existing arrangements whereby, apart from the programme mentioned in paragraph 2 above, requests may be made:

(*a*) Under part V of the regular budget for assistance with respect to any international legal aspects involved in development projects, and under the human rights advisory services programme for assistance relating to the field of international law;

(*b*) Under the Expanded Programme of Technical Assistance for assistance in specific fields of international law related to economic, social or administrative development, provided such requests are included in country programmes in accordance with the relevant rules and procedures;

11. *Requests* the Secretary-General to report on the implementation of the present resolution and decides to include in the provisional agenda of its twenty-first session an item entitled "Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law";

12. *Requests* the Secretary-General to explore the possibility of including the topic "The teaching, study, dissemination and wider appreciation of international law" among the subjects of technical assistance programmes and to report thereon to the General Assembly at its twenty-first session.

1404th plenary meeting
20 December 1965

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* *

At its 1404th plenary meeting, on 20 December 1965, the General Assembly appointed, on the proposal of the Sixth Committee (A/6136, para. 28) the members of the Advisory Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law, established under paragraph 8 of the above resolution.

The Advisory Committee will be composed of the following Member States: AFGHANISTAN, BELGIUM, ECUADOR, FRANCE, GHANA, HUNGARY, UNION OF SOVIET SOCIALIST REPUBLICS, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA *and* UNITED STATES OF AMERICA.

Annex

PROGRAMME FOR 1967

(*a*) A regional training and refresher course of four weeks' duration, which will be given in Africa and which will be the first of a series of such courses to be held every two years, in rotation, in Africa, Asia and Latin America;

(*b*) Award of ten fellowships at the request of Governments by developing countries;

(*c*) Advisory services of up to three experts, if requested by developing countries;

(*d*) Provision of a set of United Nations legal publications to up to fifteen institutions in developing countries;

(*e*) Preparation of a survey of certain of the principal examples of the codification and progressive development of international law within the framework of the United Nations.

PROGRAMME FOR 1968

(*a*) A regional seminar of three weeks' duration, which will be held in Latin America and which will be the first of a series of such seminars to be held every two years, in rotation, in Latin America, Africa and Asia;

(*b*) Award of fifteen fellowships at the request of Governments of developing countries;

(*c*) Advisory services of up to five experts, if requested by developing countries;

(*d*) Provision of a set of United Nations legal publications to up to twenty institutions in developing countries;

(*e*) Publication of a survey of certain of the principal examples of the codification and progressive development of international law within the framework of the United Nations.

8. CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS: (*a*) REPORT OF THE SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES; (*b*) STUDY OF THE PRINCIPLES ENUMERATED IN PARAGRAPH 5 OF GENERAL ASSEMBLY RESOLUTION 1966 (XVIII); (*c*) REPORT OF THE SECRETARY-GENERAL ON METHODS OF FACT-FINDING (AGENDA ITEM 90)

OBSERVANCE BY MEMBER STATES OF THE PRINCIPLES RELATING TO THE SOVEREIGNTY OF STATES, THEIR TERRITORIAL INTEGRITY, NON-INTERFERENCE IN THEIR DOMESTIC AFFAIRS, THE PEACEFUL SETTLEMENT OF DISPUTES AND THE CONDEMNATION OF SUBVERSIVE ACTIVITIES (AGENDA ITEM 94)

(*a*) Report of the Sixth Committee[14]

[*Original text: English and Spanish*]
[*18 December 1965*]

INTRODUCTION

1. Agenda item 90, entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", has its origin in General Assembly resolution 1815 (XVII) of 18 December 1962, which provided, *inter alia*, that the General Assembly,

"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;

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[14] Document A/6165, reproduced from *Official Records of the General Assembly, Twentieth session, Annexes*, Agenda items 90 and 94.

"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;"

2. At its eighteenth session the General Assembly adopted resolution 1966 (XVIII) of 16 December 1963, by which it decided to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. That Committee was requested to draw up and submit to the General Assembly at its nineteenth session a report "containing, for the purpose of the progressive development of the four principles" listed in operative paragraph 3 of General Assembly resolution 1815 (XVII), quoted above, "so as to secure their more effective application, the conclusions of its study and its recommendations...". The same resolution provided that the General Assembly,

"5. *Decides* to place 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' on the provisional agenda of its nineteenth session in order to consider the report of the Special Committee and to study, in accordance with operative paragraphs 2 and 3 (*d*) of resolution 1815 (XVII), the following principles:

"(*a*) The duty of States to co-operate with one another in accordance with the Charter;

"(*b*) The principle of equal rights and self-determination of peoples;

"(*c*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter;"

3. Also at its eighteenth session the General Assembly adopted resolution 1967 (XVIII) of 16 December 1963 on the question of methods of fact-finding, by which it invited the views of Member States, requested the Secretary-General to study the relevant aspects of the problem and to report on it to the General Assembly at its nineteenth session and to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States established under Assembly resolution 1966 (XVIII), and also requested the Special Committee to include the matter in its deliberations.

4. The Special Committee established under Assembly resolution 1966 (XVIII) met in Mexico City from 27 August to 1 October 1964 and adopted a report on its work (A/5746).

5. 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", which covered the report of the Special Committee (A/5746), the study of the principles enumerated in operative paragraph 5 of General Assembly resolution 1966 (XVIII) (see paragraph 2 above) and the report of the Secretary-General on methods of fact-finding (A/5694), was not considered by the General Assembly at its nineteenth session. In accord-

ance with a statement made by the President of the General Assembly at that session,[15] the item was placed by the Secretary-General on the provisional agenda of the twentieth session. At its 1336th meeting, on 24 September 1965, the General Assembly decided to include the item in the agenda of its twentieth session and to allocate it to the Sixth Committee.

6. Agenda item 94, entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities", was proposed by Madagascar,[16] for inclusion in the agenda of the nineteenth session of the General Assembly, but the Assembly took no decision on its inclusion. It was proposed again by Madagascar (A/5937) for inclusion in the agenda of the twentieth session. At its 1336th meeting, on 24 September 1965, the General Assembly decided to include the item in the agenda of its twentieth session and to allocate it to the Sixth Committee.

7. The Sixth Committee, at its 853rd meeting, on 15 October 1965, decided to consider items 90 and 94 together. It considered the two items at its 870th, 871st, 872nd, 874th and 893rd meetings and also at its 898th meeting, held from 5 November to 8 December and 17 December 1965.

8. In connexion with its consideration of agenda item 90, in addition to the reports o the Special Committee (A/5746) and of the Secretary-General (A/5694) mentioned above, the Committee had before it the comments received from Governments, in accordance with General Assembly resolution 1966 (XVIII), on the seven principles referred to in that resolution and on the question of methods of fact-finding (A/5725 and Add.1-7).

Proposals and amendments

9. Under agenda item 90, Australia, Canada and the United Kingdom of Great Britain and Northern Ireland, later joined by Denmark, New Zealand and the United States of America, submitted a draft resolution (A/C.6/L.575 and Add.1) providing that the General Assembly:

> "1. *Requests* the Special Committee [on Principles of International Law concerning Friendly Relations and Co-operation among States established by General Assembly resolution 1966 (XVIII)], having regard to the Special Committee's text on the principle of sovereign equality and the text on the prohibition of the threat or use of force in international relations, to study, at a second session, the remaining five principles enumerated in General Assembly resolution 1815 (XVII), and to submit to the twenty-first session of the General Assembly a report containing, for the purpose of the progressive development and codification of the seven principles enumerated in that resolution so as to secure their more effective application, the conclusions of its study and its recommendations, taking into account:
>
> "(*a*) The report of the first session of the Special Committee;
>
> "(*b*) The views expressed by Member States on the report and on the principles;
>
> "(*c*) The practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations;
>
> "2. *Requests* the Secretary-General to assist the Special Committee in its work, providing, in particular, such additional background documentation as he deems useful;
>
> "3. *Decides* to place an item entitled 'Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the

[15] *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 2, document A/5884, para. 6.

[16] *Ibid.*, document A/5757 and Add.1.

Charter of the United Nations' on the provisional agenda of its twenty-first session in order to consider the report of the second session of the Special Committee."

10. On the same item, Czechoslovakia submitted a draft resolution (A/C.6/L.576) which provided that the General Assembly:

"1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, with appreciation for the valuable work done by it;

"2. *Decides* to establish a Special Committee composed of ... in order to:

"(*a*) Complete the consideration, with a view to their progressive development and codification, of the four principles enumerated in paragraph 3 of resolution 1815 (XVII), taking into account, in particular, the desirability of achieving progress in the formulation of those principles or component parts of the principles on which no consensus was reached in the 1964 Special Committee; and

"(*b*) Consider, with a view to their progressive development and codification, the principles enumerated in paragraph 5 of resolution 1966 (XVIII);

"3. *Invites* the Special Committee to take into account, when it considers the principles referred to in paragraph 2 (*a*) and (*b*) above:

"(*a*) The practice of the United Nations and of States in the application of the principles established in the Charter of the United Nations;

"(*b*) The comments submitted by Governments on this subject in accordance with paragraph 4 of resolution 1815 (XVII) and paragraph 6 of resolution 1966 (XVIII); and

"(*c*) The views and suggestions advanced by the representatives of Member States during the seventeenth, eighteenth and twentieth session of the General Assembly;

"4. *Requests* the Special Committee to meet as soon as possible and to submit to the General Assembly at its twenty-first session a comprehensive report on the results of its study of the seven principles enumerated in resolution 1815 (XVII), including a draft declaration on these principles and other recommendations and conclusions concerning their progressive development and codification and more effective application;

"5. *Requests* the Secretary-General to co-operate with the Special Committee in its work, and to provide all the services and facilities necessary for its meetings, as well as any material he deems relevant to the work of the Special Committee;

"6. *Decides* to place an item entitled 'Consideration of the 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 twenty-first session in order to consider the report of the Special Committee and to adopt a Declaration on these principles."

11. On the same item, Algeria, Burma, Cameroon, Ceylon, Congo (Brazzaville), Cyprus, Cuba, Dahomey, Ethiopia, Ghana, Guinea, India, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Nepal, Nigeria, Rwanda, Saudi Arabia, Senegal, Sudan, Syria, Togo, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Yemen, Yugoslavia and Zambia, later joined by the Central African Republic and Ivory Coast, submitted a draft resolution (A/C.6/L.577), later revised by minor drafting changes (A/C.6/L.577/Rev.1), which in its revised form provided that the General Assembly:

"1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

"2. *Expresses* its appreciation to the Special Committee for the valuable work it performed in Mexico;

"3. *Decides* to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, having regard to the principle of equitable geographical distribution and the need to ensure that the principal legal systems and main forms of civilization in the world are represented and taking into account the new trends in the international community resulting from the accession to independence of several countries, in order:

"(*a*) To continue, in the light of the discussions which took place in the Sixth Committee, during the seventeenth, eighteenth and twentieth sessions of the General Assembly and of the report of the Special Committee established under resolution 1966 (XVIII), consideration of the principle that States shall refrain in their international relations from the threat or use of force, of the principle that States shall settle their international disputes by peaceful means and of the duty not to intervene in matters within the domestic jurisdiction of any State;

"(*b*) To take up the pending proposals and views already submitted to the Special Committee established under resolution 1966 (XVIII), relating to the principle of sovereign equality of States, with a view to reaching an exhaustive formulation on that principle in the light of the discussions in the Sixth Committee during the twentieth session of the General Assembly;

"(*c*) To consider the principle of the duty of States to co-operate with one another in accordance with the Charter, the principle of equal rights and self-determination of peoples and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter, which were considered by the Sixth Committee at the twentieth session of the General Assembly, taking into account in particular:

"(i) The practice of the United Nations and of States respecting the application of the principles laid down in the Charter of the United Nations;

"(ii) The comments submitted by Governments on this subject in accordance with paragraph 6 of resolution 1966 (XVIII);

"(iii) The views and suggestions advanced by the representatives of Member States during the seventeenth, eighteenth and twentieth sessions of the General Assembly;

"(*d*) To submit a comprehensive report on the results of its study of the seven principles enumerated in resolution 1815 (XVII) including its conclusions and recommendations, with a view to enabling the General Assembly to adopt a declaration which would constitute an important landmark in the progressive development of these principles and their codification;

"4. *Requests* the Special Committee to meet as soon as possible and to report to the General Assembly at its twenty-first session;

"5. *Requests* the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

"6. *Decides* to place an item entitled 'Consideration of the 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 twenty-first session."

12. Also on agenda item 90, Argentina, Bolivia, Costa Rica, Guatemala, Jamaica, Mexico, Nicaragua, Peru and Venezuela, later joined by Chile, submitted a draft resolution (A/C.6/L.578 and Add.1) providing that the General Assembly:

"1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (document A/5746);

"2. *Decides* to continue the Special Committee with its present membership as indicated in documents A/5689 of 17 February 1964 and A/5727 of 26 August 1964;

"3. *Requests* the Special Committee to continue its study of the four principles enumerated in paragraph 3 of resolution 1815 (XVII) and to submit to the General Assembly at its twenty-first session a second report with its conclusions and recommendations on the matter;

"4. *Also requests* the Special Committee to study the three principles enumerated in paragraph 5 of resolution 1966 (XVIII), for the purpose of the progressive development and codification of those principles and in order more effectively to ensure their application, and to submit to the General Assembly at its twenty-first session a report containing the conclusions of this study and its recommendations, taking into account in particular:

"(*a*) The practice of the United Nations and of States respecting the application of the said principles;

"(*b*) The comments submitted by Governments on this subject in accordance with paragraph 6 of resolution 1966 (XVIII);

"(*c*) The views and suggestions advanced by the representatives of Member States during the twentieth session of the General Assembly;

"5. *Requests* the Secretary-General to give the Special Committee all necessary assistance for the effective performance of its task;

"6. *Decides* to place 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' on the provisional agenda of its twenty-first session in order to consider the reports of the Special Committee."

13. On the question of methods of fact-finding, included in agenda item 90, the Netherlands submitted a draft resolution (A/C.6/L.580) providing that the General Assembly:

"1. *Requests* the Secretary-General to supplement his study on the relevant aspects of the problem so as to cover the main trends and characteristics of international inquiry as envisaged in some treaties as a means of ensuring their execution and to report to the General Assembly at its twenty-first session;

"2. *Invites* Member States to submit in writing to the Secretary-General, before July 1966, any views or further views they may have on this subject in the light of the reports of the Secretary-General and the relevant chapter of the report of the Special Committee established under General Assembly resolution 1966 (XVIII) and requests the Secretary-General to transmit these comments to Member States before the beginning of the twenty-first session of the General Assembly."

14. Under agenda item 94, Madagascar submitted a draft resolution [17] providing that the General Assembly:

"1. *Solemnly reiterates and reaffirms* the following principles:

"(*a*) The sovereign equality of all Member States;

"(*b*) Non-interference in matters within the domestic jurisdiction of a State;

"(*c*) Respect for the sovereignty and the territorial integrity of every State and for its inalienable right to an independent existence, and the unqualified condemnation of political and subversive activities engaged in by neighbouring States or by any other State which are likely to infringe thereon;

[17] *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 2, document A/5757 and Add.1.

"(*d*) The liberation of all territories which are not yet independent;

"(*e*) The peaceful settlement of disputes through negotiation, conciliation or arbitration;

"2. *Invites* Member States faithfully to observe the above-mentioned principles in the conduct of their international relations."

15. After the conclusion of the general debate, the sponsors of the various draft resolutions on item 90 designated from among themselves a group to prepare a draft resolution which would be generally acceptable to the Sixth Committee. The result of the deliberations of that group was a draft resolution (A/C.6/L.585 and Add.1) sponsored by Argentina, Chile, Costa Rica, Czechoslovakia, Ecuador, Guatemala, India, Iraq, Jamaica, Mexico, Poland, Romania and the United Kingdom of Great Britain and Northern Ireland, later joined by Australia, Ceylon, Hungary and Saudi Arabia, and by Madagascar. This draft resolution, which dealt with both agenda item 90 and agenda item 94, provided in its operative parts that the General Assembly:

"A.

"...

"1. *Takes note* of the report of the 1964 Special Committee (document A/5746);

"2. *Expresses* its appreciation to the 1964 Special Committee for the valuable work it performed in Mexico City;

"3. *Decides* to reconstitute the Special Committee, in order to complete the consideration and enunciation of the seven principles set forth in General Assembly resolution 1815 (XVII), with the following membership: ...

"4. *Requests* the Special Committee:

"(*a*) To continue, in the light of the debates which took place in the Sixth Committee during the seventeenth, eighteenth and twentieth sessions of the General Assembly and of the report of the 1964 Special Committee, the consideration of the four principles set forth in operative paragraph 3 of General Assembly resolution 1815 (XVII), having full regard to matters on which the 1964 Special Committee was unable to reach agreement and to the measure of progress achieved on particular matters;

"(*b*) To consider the three principles set forth in operative paragraph 5 of General Assembly resolution 1966 (XVIII), with particular regard to:

"(i) The practice of the United Nations and of States respecting the application of the principles laid down in the Charter of the United Nations;

"(ii) The comments submitted by Governments on this subject in accordance with paragraph 6 of resolution 1966 (XVIII);

"(iii) The views and suggestions advanced by the representatives of Member States during the seventeenth, eighteenth and twentieth sessions of the General Assembly;

"(*c*) To submit a comprehensive report on the results of its study of the seven principles set forth in resolution 1815 (XVII) including its conclusions and recommendations, with a view to enabling the General Assembly to adopt a declaration containing an enunciation of these principles;

"5. *Recommends* the Governments of the States designated members of the Special Committee, in view of the general importance and the technical aspect of the item, to appoint jurists as their representatives on the Special Committee;

"6. *Requests* the Special Committee to meet in ... as soon as possible and to report to the General Assembly at its twenty-first session;

"7. *Requests* the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work:

"8. *Decides* to place an item entitled 'Consideration of the 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 twenty-first session."

"B.

"...

"*Requests* the Special Committee, as provided for under part A of this resolution, to take into consideration, in the course of its work and in drafting its report, the documents (A/5757 and Add.1) submitted to the General Assembly and the discussions at the twentieth session on the item mentioned in the first preambular paragraph of part B of this resolution."

16. Ghana submitted an oral amendment to draft resolution A/C.6/L.585 and Add.1 in accordance with which operative paragraph 3 in part A should read as follows:

"3. *Decides* to constitute a Special Committee, composed of the members of the 1964 Special Committee as indicated in documents A/5689 of 17 February 1964 and A/5727 of 26 August 1964, to which the four following countries would be added:

"[Two countries from Africa, one from Latin America and one from Asia.]"

The representative of Ghana explained that if his amendment was adopted, the four additional members of the Special Committee would be nominated by the Chairman of the Sixth Committee, and the names of the new members of the Special Committee would be inserted in the draft resolution.

17. Ghana also submitted a second oral amendment to draft resolution A/C.6/L.585 and Add.1, to insert the word "Geneva" in the blank space in the sixth operative paragraph of part A. This amendment was withdrawn by its original sponsor, but was reintroduced by Poland and Czechoslovakia, with the addition of the words "unless an invitation acceptable to the Special Committee is received from a Member State". New Zealand submitted an oral amendment to insert in the same place the words "at the Headquarters of the United Nations".

Discussion

I. Consideration of the report of the Special Committee (A/5746)

A. *General considerations on the principles and aims of the work*

18. Many representatives stressed the importance of the work on the principles of international law and friendly relations among States as a vital necessity in a world where technical progress, in particular in nuclear weapons, had reached a point that offered a choice between friendly relations and co-operation among States, or the destruction of mankind. It was of supreme urgency to strengthen international law when doing so was an essential for the peaceful coexistence of different economic and social systems and for the economic, social and cultural development of all men. During the last generation the world had been changing rapidly; the nature of international relations had been altered by the attainment of independence by many new States, who were seeking norms to guide them in international life and to protect them from its dangers, and by the increasing gap between conditions of life in the rich and the poor States. The law, in the view of several representatives, must remain in contact with the reality of men and the material conditions of life, and so must remain flexible and subject to development. Some spoke of a problem of maintaining faith in international law as a force regulating a changing world and guaranteeing an orderly advance into

the future. Some representatives stated that in recent years the idea that might makes right had spread, evidenced, in their view, by numerous violations of the fundamental principles of the United Nations Charter, and that those principles should be clarified in order to avoid violations and distorted interpretations in the future.

19. It was agreed that the Charter should serve as the basis for this work. Some representatives said that the purpose was to state the legal implications of the Charter, without distorting it or covertly seeking to revise it; a distinction should be drawn between those principles that had legal force and those that had only moral value. In their view, the work was confined to *lex lata*, to the exclusion of *lex ferenda*. Others pointed out that the Charter was a living constitution which had gained meaning through the interpretation of its provisions over twenty years, and that the starting point was a full exposition of the present legal aspects of the application of its principles. Another view was that the task was not confined to *lex lata*, but that under General Assembly resolutions 1815 (XVII) and 1966 (XVIII) a creative attitude could be taken toward the progressive development of the law. Other representatives, however, urged an attitude of caution and restraint, and said that not every desirable proposition about the conduct of States would be appropriate for inclusion in statements of legal principle.

B. *General comments on the work of the Special Committee*

20. Gratitude was expressed to the Government of Mexico for the generous hospitality it had extended to the Special Committee. Many representatives said that since the Special Committee at its session in Mexico had been able to reach a consensus only on some aspects of the principle of sovereign equality of States and to formulate a draft, which did not there receive a consensus, on the principle of prohibition of the threat or use of force, its results might seem disappointing; but the session had been valuable in throwing light on the points of agreement and the points of difference, and thus offered a starting point for future work.

21. In explanation of the limited results of the Special Committee some delegations referred to the extreme complexity of the issues before it, which made hasty decisions impossible and undesirable. Others said that the issues affected the vital interests of States, and that sometimes their immediate political interests in regard to various principles had increased the difficulties of agreement. Still others referred to the method of consensus adopted in the Drafting Committee of the Special Committee, under which agreement among States with no political or geographic link was naturally difficult to attain. On the one hand, the view was expressed that consensus was the natural method of work on principles of international law, as formulations could become part of the international legal order only if they received universal approval; on the other hand, it was urged that consensus had a proper role only if an effort was made, without pedantry or narrow concern for national interests, to bring about agreement on the basis of the new realities of international life, and that otherwise that procedure simply led to a unanimity rule and a virtual right of veto, which was not in harmony with the rules of procedure of the General Assembly. Other representatives referred to the composition of the Special Committee which, in their view, did not reflect the feelings of the majority of the General Assembly, and to the shortness of the time allowed for its session as factors limiting its success.

C. *Comments on the topics examined by the Special Committee*

(1) *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*

22. The Special Committee had been unable to arrive at any consensus on this principle at its session in Mexico, although it had come close to doing so, and had formulated a draft text on the subject (A/5746, paper No. I, section I). In the course of the debates of the Sixth

Committee, the representative of the member of the Special Committee which in Mexico had declared itself unable to accept the draft which all others had accepted stated that, on further consideration, his Government could now accept it. In so doing he emphasized his Government's understanding that the term "to violate" in paragraph 2 (*d*) did not encompass the lawful use of force, and that the lawful use of force to cross a frontier was not a violation of that frontier. He also expressed the view that it would be desirable for the paragraph expressly to mention not only national frontiers but also certain lines of demarcation. Another representative stated that his Government, although it did not find paragraph 2 (*a*) of the draft, relating to wars of aggression, fully satisfactory, accepted the draft consensus as it had in Mexico.

23. Several representatives made suggestions as to how the formulation accepted by most members of the Special Committee in Mexico, and now by the remaining member, could fully be taken account of by the Sixth Committee. Others, however, considered that the Special Committee, having submitted its report to the General Assembly, had no further legal existence, and that consequently no account could legally be taken of a draft which was not agreed to during the life of the Special Committee.

24. No representative in the Sixth Committee expressed disagreement with any point of substance in the draft text formulated by the Special Committee, and several spoke in support of the inclusion of various points covered by that text. Numerous representatives, however, considered that various additional points should have been agreed on.

25. A number of representatives spoke in favour of including within the meaning of "force" economic, political and other forms of pressure (some referred to ideological, cultural and psychological pressure) directed against the territorial integrity or political independence of another State, as in the modern world such actions might be quite as dangerous as the use of armed force. On the other hand, some representatives took the view that the various forms of pressure should not be included, either because there was a risk of giving rise to a right to use force in self-defence against them, or because it seemed difficult to draft a statement regarding pressure sufficiently clearly to avoid giving rise to further controversies. Some representatives stated that it had not been the intention of the Special Committee, in the execution of its task of formulating areas of agreement, to enumerate all the lawful uses of force.

26. A few representatives spoke of the desirability of prohibiting the use of force in armed reprisals or in retaliation. Such action was said to be distinct from action in self-defence, under which measures must be immediate, and proportionate to the seriousness of the attack.

27. Other points mentioned as desirable for inclusion in a text prohibiting the threat or use of force were a prohibition of war propaganda or of the advocacy of the threat or use of force in international relations; the responsibility of States and the penal liability of individuals for the perpetration of crimes against peace; the duty of States to seek agreement on general and complete disarmament; the outlawing of foreign military bases if unacceptable to the inhabitants of the countries where they are situated; and the duty of States not to recognize, or to consider as legally null and void, situations brought about through the unlawful threat or use of force. In regard to the last-mentioned suggestion, however, it was stated that many disputes could arise from retroactive application of non-recognition to situations that had become legal.

28. Some representatives thought it desirable that any text should deal with the exceptions to the prohibition of the use of force by States. Some considered that, as far as the United Nations was concerned, force could be legally used only on the basis of a decision of the Security Council, others included decisions of the General Assembly, and others referred to decisions of "a competent organ of the United Nations".

29. Some representatives interpreted the Charter to mean that the use of force upon the decision of a regional agency was lawful only when the Security Council had decided to use such an agency for enforcement action under the auspices of the Council, pursuant to Article 53. Another view was that the use of force was not a separate form of action, but must either be pursuant to a decision of the Security Council under Article 53 or in exercise of collective self-defence under Article 51. Other representatives considered there was greater scope for lawful action by regional agencies.

30. Representatives who spoke on the subject recognized the legitimacy of the use of force in the exercise of the right of individual or collective self-defence. Some stressed that under Article 51 of the Charter the right existed only in response to armed attack, and only before the Security Council had taken the steps necessary to maintain international peace and security. Others did not define the circumstances justifying the use of force in exercise of the inherent right of self-defence.

31. A number of representatives stressed the view that the use of force against colonial domination and in exercise of the right of self-determination was lawful. On the other hand, it was urged that while the Charter had nothing to say against the struggle for independence or secession, armed assistance from outside States to such movements was not permissible.

(2) *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*

32. A number of representatives pointed out that this principle, stated in paragraph 3 of Article 2 of the Charter, was the corollary of the prohibition of the threat or use of force, as disputes could not be left unsettled without their becoming a danger to peace. Others noted a link with the principle of sovereign equality, which should be fully observed in using any method of settlement, and with the principle of non-intervention. The most important factor in peaceful settlement was, in the view of some representatives, the desire of the parties to reconcile their differences.

33. It was agreed by most speakers that no priority should be given to any particular method of settlement, but that a free choice should be left to the parties to disputes, in the light of the nature of each dispute and of the surrounding circumstances. Some stated that negotiation, mediation and conciliation were methods which could be used to alter an existing legal situation, while the methods of arbitration and judicial settlement applied the law as it stood. Other representatives referred to the distinction between legal and political disputes, which would have consequences in regard to the choice of methods of settlement, and should be clarified.

34. Some representatives stated that direct negotiation, if carried on in good faith, in the spirit of sovereign equality and without pressure, was the most frequent and practical method of settlement available at present.

35. Other representatives thought that an appeal should be made to States for wider use of judicial settlement, in particular for wider acceptance of the compulsory jurisdiction of the International Court of Justice as soon as possible and with as few reservations as possible, and for the inclusion of clauses on arbitration and judicial settlement in treaties. On the other hand, it was contended that it was useless or undesirable to make such an appeal at present. Some declared that any attempt to impose the compulsory jurisdiction of the Court would be contrary to State sovereignty. Others stated that new States were reluctant to proceed to judicial settlement because of uncertainty as to the rules of international law, which would be removed only by further codification and progressive development; because some rules might be considered anachronistic or unjust; because knowledge of existing international law was not yet sufficiently widespread, or because the composition of the Court was in their view not representative of the present international community.

36. Some representatives wished to see a reference to the functions of United Nations organs, in particular the Security Council and the General Assembly, in the settlement of disputes.

37. Other representatives thought that special attention should be given to the role of regional agencies and arrangements in regard to this principle, and mentioned the activities of the Organization of African Unity, the Organization of American States, the League of Arab States and the Council of Europe regarding peaceful settlement.

(3) *The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

38. Many representatives expressed regret that the Special Committee had been unable to reach an agreed formulation of this principle, which they considered an indispensable condition of friendly relations among States. In the view of several, violations of the principle by some States in recent years had made its formulation particularly urgent. A considerable number stressed the view that the principle was a logical inference from various provisions of the Charter, and was broader than the threat or use of force prohibited by Article 2, paragraph 4; among the other provisions mentioned as a basis for the principle were Article 1, paragraph 2; Article 2, paragraphs 1 and 7; and Article 78.

39. A number of representatives referred to article 15 of the Charter of the Organization of American States,[18] or to the declaration adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries (see A/5763), held in Cairo in October 1964, as models which should be followed in drafting a statement of the principle.

40. Several representatives thought it urgent to define intervention, and suggested various definitions. In the view of some, all forms of pressure, including economic, political and diplomatic pressure, were illegal; an example mentioned by a representative was a threat to break off diplomatic relations with another State if that State recognized a third State. Others, however, considered that actions short of the threat or use of force were illegal only if they amounted to coercive measures. One representative stated that difficulties in defining this expression were not a valid objection to its use, since the law used many terms which were not capable of exact definition. One delegation stressed the need of a careful separation between, on the one hand, the principle of non-intervention, and, on the other, the prohibition of the threat or use of force, whose violation gave rise to a right to use force in individual or collective self-defence. Other representatives, however, referred to uses of force as forms of intervention, or considered that the dividing line between the two principles was scarcely more than a matter of organization.

41. Some representatives thought that a distinction should be drawn between legal and illegal forms of intervention. As examples of legal forms, mention was made of intervention authorized by a decision of a competent organ of the United Nations; intervention to restore the dignity of the human person, when made necessary by the non-observance or violation of human rights, or aimed at freeing populations still under foreign domination; and intervention in exercise of a right conferred by a treaty or upon a formal request for intervention by the Government of the State concerned. The principle of non-intervention, it was said by some, could not be invoked to support the maintenance of colonial regimes or to prevent action against attacks on human rights.

42. Numerous representatives cited various types of acts which in their view constituted illegal intervention. On the other hand, one representative said that no attempt should be made to draw up an exhaustive list; another said that only the most notorious forms should be given as examples; and another said that enumeration would be useful only in the context of a parallel development of international machinery for the peaceful settlement of disputes.

[18] United Nations, *Treaty Series*, vol. 119 (1952), No. 1609, p. 56.

43. Numerous representatives declared that activities against the political, economic and social system of a State or against its sovereignty or territorial integrity, and attempts to impose on a State a specific form of organization or government, constituted illegal intervention. Some denied the right of any State to undertake individual or collective intervention in order to prevent the spread of a particular ideology or social and economic system. Many representatives also stressed that assisting subversive activities, terrorism or seditious groups or inciting rebellion in another State were contrary to international law, as was assistance to forces having the purpose of incursions into other States.

(4) *The principle of the sovereign equality of States*

44. The fact that the Special Committee had been able to reach an agreed text as regards this principle (A/5746, para. 339) was generally welcomed by representatives in the Sixth Committee, as the agreed points were generally acceptable, and as principle was felt to be a key one which was the only possible legal foundation for friendly relations and co-operation among States. Some delegations, however. regretted that it had not been possible to agree on other aspects of the principle which they considered important, and one representative was disturbed by reservations and interpretations made by some States when accepting the agreed formulation.

45. Some representatives believed that there were limitations of the principle which should have been recognized. One representative said that the idea of sovereignty should be tempered by a recognition that all States were subject to international law. Another observed that the application of the principle of territorial integrity should be subject to a principle of reasonable and equitable sharing of natural resources, e.g. waters, which crossed borders, and to an exception in regard to harmful activities having effects in the territories or territorial waters of neighbouring States.

46. Other representatives thought that the agreed formulation did not go far enough. Among the points which some desired to see included were a statement that reasons of a political, social, economic, geographical or other nature could restrict the capacity of a State; the right of all States to join international organizations and become parties to multilateral treaties affecting their interests; the right of States to dispose freely of their natural wealth and resources; the right of States to demand the liquidation of any privileged positions in their territories, including the right to demand the withdrawal of foreign troops and military bases; a statement that territories still under colonial domination could not be considered integral parts of the territory of the colonial Power; a prohibition of the imposition of treaties by colonial Powers on dependent territories as a condition of their access to full sovereignty; and the right of States to follow domestic and foreign policies of their own choice, without interference.

(5) *Question of the methods of fact-finding*

47. The Special Committee was unable, for lack of time, to formulate conclusions on the question of methods of fact-finding. In the Sixth Committee, a small number of representatives spoke in favour of the establishment within the framework of the United Nations of a special permanent body for fact-finding. The majority, however, while convinced of the importance of fact-finding in connexion with the peaceful settlement of international disputes, considered that caution and restraint were needed at present in regard to the creation of any new institution; the Secretary-General should supplement his study on the subject (A/5694), a further opportunity should be afforded for written comments of Governments, and the question should be discussed again at the twenty-first session of the General Assembly before any decision was taken in the matter. Other observed that for the present what was needed was more effective utilization of methods and facilities now available for fact-finding, and that any new institution should not prejudice present patterns and procedures or encourage their evasion.

48. A number of representatives drew attention to the connexion which existed between fact-finding and agenda item 99, entitled "Peaceful settlement of disputes", which was discussed by the Special Political Committee at the twentieth session of the General Assembly. There was a division of opinion as to whether it would be desirable to refer the question of methods of fact-finding to a Special Committee created to continue the study of the principles of friendly relations.

II. Study of the three further principles of international law concerning friendly relations and co-operation among States

49. The General Assembly, in its resolution 1966 (XVIII) of 16 December 1963, decided in operative paragraph 5, quoted in paragraph 2 of this report, to study three additional principles in accordance with operative paragraphs 2 and 3 (*d*) of its resolution 1815 (XVII). The discussion of these principles is summarized hereafter.

A. *The duty of States to co-operate with one another in accordance with the Charter*

50. The provisions of the Charter mentioned by various representatives in connexion with this duty were the Preamble; Article 1, paragraphs 2 and 3; Article 11, paragraph 1; Article 13; Article 55 and Article 66. Some representatives expressed the view that the Charter gave some fairly clear indications as to the scope of the duty; it was remarked, however, that, as it was less easy than in the case of some other principles to decide whether a State was fulfilling its obligations, good faith and a spirit of tolerance and understanding were particularly important.

51. Some representatives observed that the duty was constant and universal, and extended to the whole range of common world problems, or to all aspects of life. It was remarked by one representative that international co-operation was required for the solution of more and more problems, and soon little would be left which was not of international concern. Co-operation should be active, and not merely passive. The Charter demanded not merely avoiding impeding the efforts of others but rather the taking of joint action toward the broad ends stated in Article 55. The interests of the whole world community should be kept in view; but some representatives considered that special attention should be paid to the economic and social development of the less developed countries, and to liquidating the vestiges of colonialism.

52. Co-operation should take place, in the view of some delegations, on the basis of absolute equality of States, without any discrimination on the ground of differences in economic and social systems, without any political or other conditions being placed upon assistance, and without any barriers, especially economic barriers, being allowed to persist against co-operation with particular States.

53. In connexion with economic co-operation, attention was drawn to the general and special principles adopted by the United Nations Conference on Trade and Development, and to the need to narrow the gap between the developed and the developing countries. The economic field, it was said, was specially important, and was the easiest in which to find the general aims of the duty to co-operate.

54. One representative spoke of the need to abolish all barriers in cultural matters. Co-operation in the field of education was important, and it was said that modern achievements in science and technology should not be the private domain of any State or group of States. Still less, one representative observed, should those achievements be used by those responsible for them to impose their will on those who did not yet share them.

55. Some representatives observed that one aspect of the duty of co-operation was the right of all States to be admitted to participation in general multilateral treaties, to international discussions of questions affecting their interests, and to international organizations. One representative declared that participation in the specialized agencies of the United

Nations was one index of compliance by States with their obligation to co-operate under Articles 55 and 56 of the Charter.

B. *The principle of equal rights and self-determination of peoples*

56. A number of representatives stated that this principle, which was mentioned in paragraph 2 of Article 1 and in Article 55 of the Charter, was an indispensable element of friendly relations. Some representatives considered that the principle was closely related to that of sovereign equality laid down in paragraph 1 of Article 2. Two representatives stressed the view that the self-determination of peoples was not a matter falling within paragraph 7 of Article 2.

57. As to the nature of the principle, several representatives declared that it was a binding rule of international law, as had been recognized in the Charter and in various decisions of the General Assembly, especially resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples. One representative said that the question whether it was a legal or a moral principle should be studied in the course of further work on the principles of international law concerning friendly relations.

58. As to the scope of the principle, some representatives spoke of it in connexion with the elimination of colonialism, the right of colonial peoples to independence or to decide freely on their political status and institutions, their right to choose their own economic, social and cultural systems, and their right to dispose freely of their natural resources. One representative referred to his Government's view that administering Powers did not exercise full sovereignty over Non-Self-Governing Territories, but had a duty to help them to develop their own government. Others, while not disagreeing that the principle applied fully to Trust and Non-Self-Governing Territories within the scope of the Charter, stated that a colonial or administering Power could recognize a right of self-determination for the future. They also said that the principle had a broader application than such dependent territories, and did not end with the completion of decolonization and attainment of independence; only as a universal principle could its true meaning be established. Some representatives expressed the view that the principle protected newly independent States against interference in their internal affairs and protected their rights of sovereignty.

59. Several representatives felt that it would be difficult to define the "peoples" enjoying the right of self-determination; States in the international sense were clearly "peoples", but further study was required as to what other social groups should be included. It was replied that the problem had not given rise to difficulty or disorders in practice, and limitation of the principle would seriously diminish its content. One representative said that the future of a territory should be determined by majority decision of the people. Others, however, maintained that the principle offered no justification for neglect of the rights of minorities.

60. There was a difference of views as to whether the principle offered a basis for asserting a right of secession from a State. Several representatives said that was not the case, and one added that the principle could not apply to a territory which was the subject of a legal dispute between States. One representative suggested that where a State was composed of more than one community, actions by one of them might give rise, under new conditions, to a right of self-determination for the other.

61. A number of representatives maintained that peoples were entitled to use force in their assertion of the right to self-determination, in particular in self-defence against colonial repression or aggression. Others added that, on the other hand, colonial Powers had no right to use force against such movements, nor did other States have the right to come to the aid of colonial Powers.

C. *The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter*

62. Several representatives emphasized the cardinal importance of this principle under general international law, and also in connexion with the application of the United Nations

Charter, which laid down the principle in paragraph 2 of Article 2 and, in the opinion of some, in paragraph 3 of the Preamble.

63. Some representatives, in regard to the principle, stressed its importance as a necessary moral element in the conduct of peoples. Others spoke mainly of the legal obligations directly imposed by the Charter, and the obligations flowing from the operation of United Nations organs. Still others saw the principle as applying to treaty obligations in general, and the question was raised whether it also applied to obligations from rules of customary international law. Several delegations referred to the rule *pacta sunt servanda*, of which a restatement had been made by the International Law Commission in part III of its draft articles on the law of treaties.[19] One representative said that the principle required that States, in interpreting international instruments for themselves, should ascertain the common understanding and expectations of the parties. It was also said that the principle applied to moral obligations as well as legal ones, including the moral duty to assume legal obligations. One representative took the view that the implications of the principle were such that they could not be adequately clarified by general formulas.

64. Several representatives stressed that the only obligations covered by the principle were those which were freely entered into, and were compatible with the Charter and with general international law. The principle would not cover, for example, obligations sanctioning aggression, colonial domination or inequality among States, unequal treaties, treaties imposed by force or fraud, or treaties which had been lawfully terminated. One representative said that any termination of treaties on the basis of *rebus sic stantibus* could not be grounded on any change of circumstances which the government seeking to terminate had itself brought about.

65. One representative said that the codification and progressive development of this principle required a legal interpretation of Article 103 of the Charter.

III. Future work on the principles

66. There was general agreement that the work begun in Mexico and discussed by the Sixth Committee should be carried on by a Special Committee. Some representatives thought that the Special Committee established by General Assembly resolution 1966 (XVIII) should be asked to continue the work with its composition unchanged; a larger committee would, in their view, be cumbersome in its operations. A greater number of representatives, however, favoured an enlargement of the membership in order to correct what they felt was a lack of geographical balance, and an inadequate reflection of the trends prevailing in the General Assembly. Some thought that more newly independent States should be included in the Special Committee. Some representatives expressed the view that four States should be added to the membership of the 1964 Special Committee, and that two should be from Africa, one from Latin America and one from Asia. Others said that although they were reluctant to see any increase in the size of the Special Committee, they could in a spirit of compromise accept an increase of up to three members, but not of four.

67. It was generally agreed that the three principles in operative paragraph 5 of General Assembly resolution 1966 (XVIII) should be referred to the new Special Committee, and also the two principles relating to peaceful settlement of disputes and to non-intervention on which the 1964 Special Committee in Mexico had been unable even to approach an agreed formulation. Some representatives thought it undesirable to reopen discussion on the principle prohibiting the threat or use of force and the principle of sovereign equality, as in their view agreed texts on those principles already existed. Others, however, thought that work should continue on all seven principles, full regard being paid both to the matters on which the 1964 Special Committee had been unable to reach agreement and to the measure of progress achieved on particular matters.

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[19] *Official Records of the General Assembly, Nineteenth Session, Supplement No. 9*, chap. II.

68. Some representatives urged that the procedure followed by the 1964 Special Committee, under which the Drafting Committee operated on the basis of consensus, should be followed in the new Special Committee; in their view this procedure would lead to the formulation of texts which were acceptable to the overwhelming majority of Members of the United Nations, and thus could become evidence of the practice of States and thus a source of international law. Others, however, thought that although the achievement of general agreement was highly desirable, the consensus procedure might in certain circumstances lead to regrettable results, and should, if necessary, be replaced by voting procedures which would not give rise to a right of veto and the possibility of its abuse. It was agreed that the new Special Committee would be entirely free to adopt whatever procedures it deemed most appropriate in carrying out its mandate, without being bound to follow the practice of the 1964 Special Committee.

69. There was some discussion as to whether the new Special Committee should be requested to embody its results in a draft declaration for later consideration and adoption by the General Assembly. A number of representatives stressed the importance which such a declaration would have in promoting friendly relations and co-operation among States. Others, however, while generally not opposed in principle to a declaration, said that it was premature to decide on the form in which the results should be submitted.

70. As for the place of meeting of the new Special Committee, some representatives, in the absence of any invitation from a Government, favoured United Nations Headquarters in New York, while others favoured the European Office of the United Nations in Geneva. In accordance with rule 154 of the rules of procedure of the General Assembly, the representative of the Secretary-General stated the financial implications of the proposed decisions. He said that if the Special Committee met in New York at a period in 1966 when its meetings could be scheduled within the total programme of conferences approved for that year, taking into account the capacity of the existing conference staff, no additional expenditures would arise. If the meetings were held in Geneva during the period February-March for a duration of seven weeks, additional expenditures in an estimated amount of $117,000 would be incurred, while a seven-week session in Geneva during the period March-April would involve estimated additional costs of $137,000. Should the Special Committee be invited by a Government to meet elsewhere, additional expenditure would arise which could not at present be estimated by the Secretary-General, but which would have to be met directly by the host Government, in accordance with General Assembly resolution 1202 (XII) and with the precedent set in the case of the earlier Special Committee's session in Mexico in 1964.

IV. Consideration of the item entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities" (agenda item 94)

71. Some representatives supported the draft resolution submitted by Madagascar,[20] and considered that it should be adopted by the General Assembly at its current session. Other representatives said that the draft resolution should be examined in the context of the report of the Special Committee. Still others, however, took the view that the draft should be studied and taken into account by a Special Committee which would continue the work on the principles of friendly relations, rather than being decided on at the current session.

VOTING

72. At its 898th meeting on 17 December 1965, the Sixth Committee voted on the proposals and amendments before it. The results of the voting were as follows:

[20] *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 2, document A/5757 and Add.1.

(*a*) The Committee adopted, by 52 votes to 18, with 4 abstentions, the last part of the first oral amendment of Ghana to operative paragraph 3 of part A of draft resolution A/C.6/L.585 and Add.1, a part proposing the addition of four members (two from Africa, one from Latin America and one from Asia), to be nominated by the Chairman of the Sixth Committee, to the membership of the 1964 Special Committee.

(*b*) The Committee adopted, by 58 votes to none, with 16 abstentions, the first oral amendment of Ghana as a whole, which thus modified operative paragraph 3 of part A of draft resolution A/C.6/L.585 and Add.1 to provide that the new Special Committee should be composed of the members of the 1964 Special Committee with the addition of four members (two from Africa, one from Latin America and one from Asia) to be nominated by the Chairman of the Sixth Committee.

(*c*) The Committee rejected, by 31 votes to 16, with 24 abstentions, the second oral amendment of Ghana to operative paragraph 6 of part A of draft resolution A/C.6/L.585 and Add.1, as reintroduced and expanded by Czechoslovakia and Poland, which would have provided that the new Special Committee would meet "in Geneva unless an invitation acceptable to the Special Committee is received from a Member State."

(*d*) The Committee adopted without a vote the oral amendment of New Zealand to operative paragraph 6 of part A of draft resolution A/C.6/L.585 and Add.1, providing that the new Special Committee should meet "at the Headquarters of the United Nations."

(*e*) The Committee unanimously adopted draft resolution A/C.6/L.585 and Add.1, as amended, as a whole.

(*f*) The Committee adopted, by 59 votes to none, with 10 abstentions, draft resolution A/C.6/L.580 on the question of methods of fact-finding, as amended by the deletion of the fifth preambular paragraph, which had been withdrawn by the sponsor.

73. Following the decisions of the Committee, the Chairman, by communication to the Rapporteur, nominated Algeria, Chile, Kenya and Syria to the four additional seats on the Special Committee. In nominating the four countries, the Chairman felt bound to give effect to the leading candidacies which had emerged in the context of an expansion of the Special Committee by four members.

Recommendations of the Sixth Committee

74. 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

QUESTION OF METHODS OF FACT-FINDING

[*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 1404th plenary meeting, on 20 December 1965, the General Assembly adopted the draft resolutions submitted by the Sixth Committee (para. 74 above). For the final texts, see resolutions 2103 A and B (XX) and 2104 (XX) below.

2103 (XX). Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

A

The General Assembly,

Recalling its resolutions 1505 (XV) of 12 December 1960, 1686 (XVI) of 18 December 1961, 1815 (XVII) of 18 December 1962 and 1966 (XVIII) of 16 December 1963,

Recalling further that among the fundamental purposes of the United Nations are the maintenance of international peace and security and the development of friendly relations and co-operation among States,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations is of paramount importance for the maintenance of international peace and security and the improvement of the international situation,

Considering further that the progressive development and codification of these principles, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

Bearing in mind that the Second Conference of Heads of State or Government of Non-Aligned Countries, which met at Cairo in 1964, recommended to the General Assembly of the United Nations the adoption of a declaration on these principles as an important step towards their codification,

Being convinced of the significance of continuing the effort to achieve general agreement at every stage of the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), without prejudice to the applicability of the rules of procedure of the Assembly, and with a view to the early adoption of a declaration which would constitute a landmark in the progressive development and codification of these principles,

Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,[21] established by General Assembly resolution 1966 (XVIII), which met in Mexico City from 27 August to 2 October 1964,

Having also considered, pursuant to paragraph 5 of General Assembly resolution 1966 (XVIII), the principle of the duty of States to co-operate with one another in accordance with the Charter of the United Nations, the principle of equal rights and self-determination of peoples and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

2. *Expresses its appreciation* to the Special Committee for the valuable work it performed in Mexico City;

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[21] *Official Records of the General Assembly, Twentieth Session,* agenda items 90 and 94, document A/5746.

3. *Decides* to reconstitute the Special Committee, which will be composed of the members of the Committee established under General Assembly resolution (1966 XVIII)[22] and of Algeria, Chile, Kenya and Syria, in order to complete the consideration and elaboration of the seven principles set forth in Assembly resolution 1815 (XVII);

4. *Requests* the Special Committee:

(*a*) To continue, in the light of the debates which took place in the Sixth Committee during the seventeenth, eighteenth and twentieth sessions of the General Assembly and of the report of the previous Special Committee, the consideration of the four principles set forth in paragraph 3 of Assembly resolution 1815 (XVII), having full regard to matters on which the previous Special Committee was unable to reach agreement and to the measure of progress achieved on particular matters;

(*b*) To consider the three principles set forth in paragraph 5 of General Assembly resolution 1966 (XVIII), with particular regard to:

(i) The practice of the United Nations and of States respecting the application of the principles laid down in the Charter of the United Nations;

(ii) The comments submitted by Governments on this subject in accordance with paragraph 6 of resolution 1966 (XVIII);

(iii) The views and suggestions advanced by the representatives of Member States during the seventeenth, eighteenth and twentieth sessions of the General Assembly;

(*c*) To submit a comprehensive report on the results of its study of the seven principles set forth in resolution 1815 (XVII), including its conclusions and recommendations, with a view to enabling the General Assembly to adopt a declaration containing an enunciation of these principles;

5. *Recommends* the Governments of the States designated members of the Special Committee, in view of the general importance and the technical aspect of the item, to appoint jurists as their representatives on the Special Committee;

6. *Requests* the Special Committee to meet at United Nations Headquarters as soon as possible and to report to the General Assembly at its twenty-first session;

7. *Requests* the Secretary-General to co-operate with the Special Committee in its task and to provide all the services, documentation and other facilities necessary for its work;

8. *Decides* to include 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" in the provisional agenda of its twenty-first session.

1404th plenary meeting
20 December 1965

B

The General Assembly,

Having considered the item entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities",

Bearing in mind the close connexion between this item and 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",

Requests the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, reconstituted under paragraph 3 of resolution A

[22] See A/5689 and A/5727.

above, to take into consideration, in the course of its work and in drafting its report, the request for the inclusion in the agenda of the item mentioned in the first preambular paragraph above [23] and the discussion of that item at the twentieth session of the General Assembly.

1404th plenary meeting
20 December 1965

2104 (XX). Question of methods of fact-finding

The General Assembly,

Recalling its resolution 1967 (XVIII) of 16 December 1963 on methods of fact-finding,

Noting with appreciation the report of the Secretary-General on this question, [24]

Noting the comments submitted by Governments pursuant to paragraph 1 of resolution 1967 (XVIII) and the views expressed during its twentieth session,

Noting chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, [25] established under General Assembly resolution 1966 (XVIII) of 16 December 1963,

Believing that the question of methods of fact-finding requires further study and that the materials resulting from such further study would also be of value for any further consideration of the item entitled "Peaceful settlement of disputes",

1. *Requests* the Secretary-General to supplement his study on the relevant aspects of the problem so as to cover the main trends and characteristics of international inquiry, as envisaged in some treaties as a means of ensuring their execution, and to report to the General Assembly at its twenty-first session;

2. *Invites* Member States to submit in writing to the Secretary-General, before July 1966, any views or further views they may have on this subject in the light of the reports of the Secretary-General and the relevant chapter of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, and requests the Secretary-General to transmit these comments to Member States before the beginning of the twenty-first session of the General Assembly.

1404th plenary meeting
20 December 1965

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9. CONSIDERATION OF STEPS TO BE TAKEN FOR PROGRESSIVE DEVELOPMENT IN THE FIELD OF PRIVATE INTERNATIONAL LAW WITH A PARTICULAR VIEW TO PROMOTING INTERNATIONAL TRADE (AGENDA ITEM 92)

Resolution [2102 (XX)] adopted by the General Assembly

2102 (XX). Consideration of steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade

The General Assembly,

Recalling that it is one of the purposes of the United Nations to be a centre for harmonizing the actions of nations in the attainment of such common ends as the achievement of international co-operation in solving, *inter alia*, international economic problems,

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[23] *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 2, documents A/5757 and Add.1.

[24] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694.

[25] *Ibid.*, document A/5746.

Mindful of its responsibilities under Article 13 of the Charter of the United Nations,

Considering that conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute an obstacle to the development of world trade,

Believing that the interests of all peoples, and particularly those of developing countries, demand the betterment of conditions favouring the extensive development of international trade,

Recognizing the efforts made by the United Nations and the specialized agencies, and by inter-governmental a nd non-governmental organizations, towards the progressive unification and harmonization of the law of international trade by promoting the adoption of international trade by promoting the adoption of international conventions, uniform or model legislation, standard contract provisions, general conditions of sale, standard trade terms and other measures,

Convinced that it is desirable to further co-operation among the agencies active in this field and to explore the need for other measures for the progressive unification and harmonization of the law of international trade,

Taking note of the preliminary study prepared by the Secretariat on this subject (A/C.6/L.572),

1. *Requests* the Secretary-General to submit to the General Assembly at its twenty-first session a comprehensive report including:

(*a*) A survey of the work in the field of unification and harmonization of the law of international trade;

(*b*) An analysis of the methods and approaches suitable for the unification and harmonization of the various topics, including the question whether particular topics are suitable for regional, inter-regional or world-wide action;

(*c*) Consideration of the United Nations organs and other agencies which might be given responsibilities with a view to furthering co-operation in the development of the law of international trade and to promoting its progressive unification and harmonization;

2. *Decides* to include in the provisional agenda of its twenty-first session an item entitled "Progressive development of the law of international trade".

1404th plenary meeting
20 December 1965

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10. AMENDMENTS TO THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY CONSEQUENT UPON THE ENTRY INTO FORCE OF THE AMENDMENTS TO ARTICLES 23, 27 AND 61 OF THE CHARTER OF THE UNITED NATIONS (AGENDA ITEM 103)

(*a*) Report of the Sixth Committee[26]

[*Original text: English and Spanish*]
[*3 December 1965*]

INTRODUCTION

1. On 14 September 1965, the Secretary-General requested, under rule 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the twentieth session of

[26] Document A/6132, reproduced from *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 103.

an item entitled "Amendments to the rules of procedure of the General Assembly consequent upon the entry into force of the amendments to Articles 23, 27 and 61 of the Charter of the United Nations" (A/5973).

2. In the explanatory memorandum accompanying the foregoing request, the Secretary-General referred to resolutions 1991 A and B (XVIII) of 17 December 1963, whereby the Assembly had decided, in accordance with Article 108 of the Charter of the United Nations, to adopt and to submit for ratification by the States Members of the United Nations amendments to Articles 23, 27 and 61 of the Charter. He also recalled that these amendments had come into effect on 31 August 1965.

3. The Secretary-General pointed out that, as the amended text of Article 23 of the Charter increased from six to ten the number of non-permanent members of the Security Council, rule 143 of the rules of procedure of the General Assembly should be amended to provide that the Assembly should each year, in the course of its regular session, elect five non-permanent members of the Security Council for a term of two years. As a consequence of the increase in membership provided for in the amendment to Article 23 of the Charter, the amended text of Article 27, relating to voting in the Security Council, provided for the substitution of the word "nine" for the word "seven" in that Article. Rule 8 (*b*) of the rules of procedure of the General Assembly should therefore be amended to substitute the word "nine" for the word "seven".

4. The Secretary-General's explanatory memorandum also indicated that, as the amended text of Article 61 of the Charter increased from eighteen to twenty-seven the members of the Economic and Social Council, rule 146 of the rules of procedure should be amended to provide that the Assembly should each year, in the course of its regular session, elect nine members of the Economic and Social Council for a term of three years.

5. Finally, the Secretary-General suggested that the foregoing amendments should take effect as from 1 January 1966, the date on which the terms of office of the members of the enlarged Councils elected during the twentieth session would begin, in accordance with rule 140 of the General Assembly's rules of procedure.

6. At its 1336th plenary meeting, on 24 September 1965, the General Assembly decided to include the item in its agenda, and allocated it to the Sixth Committee. The Sixth Committee considered the item at its 873rd meeting, on 10 November, and at its 878th and 879th meetings, on 18 and 19 November.

PROPOSALS

7. The Secretary-General's note and explanatory memorandum requesting the inclusion of the item on the agenda was accompanied, in accordance with rule 20 of the rules of procedure, by a draft resolution. By the operative paragraph of this draft resolution, the General Assembly would decide, with effect from 1 January 1966, to amend rules 8 (*b*), 143 and 146 of its rules of procedure as follows: (*a*) in rule 8 (*b*) the word "seven" would be replaced by the word "nine"; (*b*) in rule 143 the word "three" would be replaced by the word "five"; and (*c*) in rule 146 the word "six" would be replaced by the word "nine".

8. At the 878th meeting of the Sixth Committee, on 18 November 1965 the representative of Peru presented the draft resolution, in the name of his delegation, in the form of three separate draft resolutions, draft resolution A dealing with rule 8 (*b*), draft resolution B with rule 143 and draft resolution C with rule 146. The text of these three draft resolutions (A/C.6/L.573) was introduced in the Sixth Committee at its 879th meeting, on 19 November, and is identical with the recommendations of the Sixth Committee contained in paragraph 21 of the present report.

9. A number of delegations were of the view that the item under discussion should not give rise to a protracted debate. The proposed amendments to the rules of procedure were a direct consequence of the entry into force of the amendments to Articles 23, 27 and 61 of the Charter. These amendments were contained in a prior decision of the General Assembly set out in resolutions 1991 A and B (XVIII) of 17 December 1963 with which the Committee had to comply. The Committee was bound to give effect to the Charter amendments. If the rules of procedure were not amended, they would be at variance with the Charter and the latter would prevail.

10. Apart from general remarks of the foregoing character, discussion on the substance of the item centred around the effective date for the entry into force of the proposed amendments to the rules of procedure, and the substantive provisions of rule 8 (*b*) which relate to the convening of emergency special sessions of the General Assembly under the procedure laid down in General Assembly resolution 377 (V) of 3 November 1950 entitled "Uniting for peace".

Effective date of the amendments to the rules of procedure

11. One delegation requested a clarification as to why the Secretary-General had proposed that the amendments to the rules of procedure should become effective only on 1 January 1966, and not immediately upon the adoption of the resolution amending the rules, particularly as far as rules 143 and 146 were concerned, since elections of members of the Security Council and of the Economic and Social Council would be held at the current session of the Assembly.

12. The representative of the Secretary-General explained that, in this respect, a distinction could be made between rule 8 (*b*) and rules 143 and 146. The enlarged Security Council would begin to function from 1 January 1966, and the change in the majority required in the Council for the adoption of decisions would therefore be applied only as from that date. If rule 8 (*b*) were amended immediately, there would be a discrepancy between that rule, as amended, and the practice which would be followed in the Council up to 1 January 1966 with respect to the majority required to adopt decisions. It had, therefore, been proposed that the amendment to rule 8 (*b*) should become effective on that date and not before. As regards rules 143 and 146, they would not be applied in practice until elections to the Security Council and to the Economic and Social Council were held in 1966 at the twenty-first session of the General Assembly. The present year was a transitional one, when the Charter amendments were first given effect. Both the seats of retiring members and all the new seats on these Councils would be filled at one and the same time, and it would thus be necessary in 1965 to elect more than five members of the Security Council and more than nine members of the Economic and Social Council. The elections at the twentieth session would therefore proceed directly on the basis of the Charter, as amended, and not of the rules of procedure.

13. A few delegations expressed the view that it might be desirable to adopt provisional rules of procedure to cover the situation arising at the twentieth session with respect to the elections to the Security Council and to the Economic and Social Council. One delegation observed that the elections at the twentieth session would proceed, so far as the filling of seats of retiring members was concerned, on the basis of rules 143 and 146 in their present form, and so far as filling new seats were concerned, directly on the basis of the Charter as amended, there being a vacuum in the rules in this latter respect.

14. A number of other delegations thought that it was unnecessary to adopt provisional rules for the elections at the twentieth session. Those elections would proceed directly on the basis of the Charter, as amended, which prevailed over provisions in the rules of procedure in the event of conflict. It was undesirable to adopt rules which were not of a permanent nature or to legislate for a situation which was already covered in General Assembly

resolutions 1991 A and B (XVIII) and the text of the Charter, as amended. It would be sufficient if it were recorded in the report of the Sixth Committee or in a preambular paragraph to the resolution that it was generally agreed that the elections should proceed on the basis of the Charter, as amended.

15. The representative of Peru, in introducing the text of the three revised draft resolutions (A/C.6/L.573) at the 879th meeting, stated that, although he did not consider this necessary, he had added a new preambular paragraph to draft resolutions B and C to accommodate the views expressed in the Committee with respect to the elections at the twentieth session to the Security Council and to the Economic and Social Council.

Rule 8 (b) *of the rules of procedure of the General Assembly*

16. In explanation of vote, some delegations, while expressing their support for draft resolutions B and C, said they would vote, or had voted, against draft resolution A for reasons of principle, since the amendment it proposed related to rule 8 (*b*) of the rules of procedure. That rule was based on General Assembly resolution 377 (V) which, in their opinion, was unconstitutional and illegal. Resolution 377 (V) had sought to undermine the very foundations of the United Nations by bypassing the Security Council and by conferring on the Assembly powers reserved by the Charter for the Security Council, which was the sole organ authorized to take measures for the maintenance and restoration of international peace and security. Resolution 377 (V) was contrary to Articles 24, 39 and 51 of the Charter.

17. One delegation announced that it would abstain in the vote on draft resolution A. While only a minor procedural change was proposed in that draft resolution, the rule involved, namely rule 8 (*b*), defined the procedure for convening emergency special sessions of the General Assembly pursuant to resolution 377 (V). That resolution, in the opinion of this delegation, had the effect of introducing modifications into the provisions of the Charter concerning the division of functions between the General Assembly and the Security Council. Such modifications could only be made by the amendment procedures specified in the Charter itself.

18. A number of other delegations stated that, since the substance of rule 8 (*b*) had been raised, they were obliged to put on record their own views regarding the constitutionality of resolution 377 (V) and its continued applicability. Resolution 377 (V) provided that if the Security Council, because of lack of unanimity of the permanent members, failed to exercise its primary responsibility for the maintenance of international peace and security in any case when there appeared to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly should consider the matter immediately with a view to making appropriate recommendations to Member States for collective measures. On the one hand, no one denied that only the Security Council could adopt enforcement measures binding on Member States. On the other hand, there were few Member States which considered that, when the Security Council failed to perform its functions, the Organization was thereby relieved of its responsibilities for the maintenance of international peace and security. It had been precisely to help the United Nations perform its duties that the procedure provided for in resolution 377 (V) had been instituted. That procedure had received substantial support in the Special Committee on Peace-keeping Operations. In its Advisory Opinion on certain expenses of the United Nations,[27] the International Court of Justice had recognized that the General Assembly had the power to recommend, but not to impose, certain peace-keeping measures. The constitutionality of resolution 377 (V) was therefore indisputable.

19. It was also said that to deprive the General Assembly of its peace-keeping responsibilities, as those States opposed to resolution 377 (V) sought to do, would be unconstitutional. The maintenance of peace was not the exclusive prerogative of the great Powers

[27] *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962 : I.C.J. Reports 1962, p. 151.*

seated in the Security Council and the Charter could not be interpreted in that sense without doing violence to it. Maintenance of the exclusive competence of the Security Council in the field of peace and security was contrary to the sovereign equality of all States Members of the Organization. In any event, the issue before the Committee was a minor procedural change in rule 8 (*b*) and not the substance of that rule. As to substance, the rule remained valid until it was expressly declared by the General Assembly to be null and void. As to its procedural aspects, the rule must be brought into line with the text of the Charter, as amended.

VOTING

20. At its 879th meeting, on 19 November 1965, the Sixth Committe voted on the draft resolutions submitted by Peru (A/C.6/L.573).

Draft resolution A was adopted by 68 votes to 8, with 2 abstentions.

Draft resolutions B and C were adopted unanimously.

Recommendations of the Sixth Committee

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

[*Texts adopted by the General Assembly without change. See "Resolutions adopted by the General Assembly" below.*]

(*b*) Resolutions adopted by the General Assembly

At its 1391st plenary meeting, on 8 December 1965, the General Assembly adopted draft resolutions A, B and C submitted by the Sixth Committee (para. 21 above). For the final texts, see resolutions 2046 A, B and C (XX) below.

2046 (XX). Amendments to the rules of procedure of the General Assembly consequent upon the entry into force of the amendments to Articles 23, 27 and 61 of the Charter of the United Nations

A

The General Assembly,

Noting that the amendments to Article 27 of the Charter of the United Nations, adopted by the General Assembly in its resolution 1991 A (XVIII) of 17 December 1963, came into force on 31 August 1965,

Bearing in mind that, in accordance with rule 140 of the General Assembly's rules of procedure, the terms of office of the non-permanent members of the Security Council elected during the twentieth session, including all the additional members, will begin on 1 January 1966,

Decides, with effect from 1 January 1966, to amend rule 8 (*b*) of its rules of procedure by replacing the word "seven" by the word "nine".

1391st plenary meeting
8 December 1965

B

The General Assembly,

Noting that the amendments to Article 23 of the Charter of the United Nations, adopted by the General Assembly in its resolutions 1991 A (XVIII) of 17 December 1963, came into force on 31 August 1965,

Bearing in mind that in the election of non-permanent members of the Security Council at the twentieth session of the General Assembly effect must be given to the increase in the membership of the Council and to the transitional provisions regarding terms of office provided in Article 23 of the Charter as amended, and that rule 143 of the rules of procedure of the Assembly, as amended by the present resolution, will apply for the first time at the election to be held at the twenty-first session,

Decides, with effect from 1 January 1966, to amend rule 143 of its rules of procedure by replacing the word "three" by the word "five".

1391st plenary meeting
8 December 1965

C

The General Assembly,

Noting that the amendments to Article 61 of the Charter of the United Nations, adopted by the General Assembly in its resolution 1991 B (XVIII) of 17 December 1963, came into force on 31 August 1965,

Bearing in mind that in the election of members of the Economic and Social Council at the twentieth session of the General Assembly effect must be given to the increase in the membership of the Council and to the transitional provisions regarding terms of office provided in Article 61 of the Charter as amended, and that rule 146 of the rules of procedure of the Assembly, as amended by the present resolution, will apply for the first time at the election to be held at the twenty-first session,

Decides, with effect from 1 January 1966, to amend rule 146 of its rules of procedure by replacing the word "six" by the word "nine".

1391st plenary meeting
8 December 1965

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11. AMENDMENT TO ARTICLE 109 OF THE CHARTER OF THE UNITED NATIONS (AGENDA ITEM 104)

(*a*) Report of the Sixth Committee[28]

[*Original text: English and Spanish*]
[*17 December 1965*]

INTRODUCTION

1. On 16 September 1965, the Secretary-General requested, under rule 15 of the rules of procedure of the General Assembly, the inclusion in the agenda of the twentieth session of an item entitled "Amendment to Article 109 of the Charter of the United Nations" (A/5974).

2. In the explanatory memorandum accompanying the foregoing request, the Secretary-General referred to resolution 1991 A (XVIII) of 17 December 1963, whereby the Assembly adopted amendments to Articles 23 and 27 of the Charter, increasing the number of members of the Security Council from eleven to fifteen and changing the majority votes required for decisions of the Security Council from seven to nine. He also recalled that these amendments had come into effect on 31 August 1965.

[28] Document A/6180, reproduced from *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 104.

3. The Secretary-General then drew attention to the existing text of Article 109 of the Charter, paragraphs 1 and 3 of which read as follows:

"1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the Members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote on the conference.

"...

"3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the Members of the General Assembly and by a vote of any seven members of the Security Council."

4. The Secretary-General pointed out that a discrepancy exists between the amended text of Articles 23 and 27 of the Charter and the present text of Article 109. An amendment to the latter was called for, consequential to amendments already approved, in that the word "nine" should be substituted for the word "seven" in paragraph 1 of Article 109, with reference to the required majority in the Security Council.

5. As regards paragraph 3 of Article 109, the Secretary-General recalled that its provisions had already been complied with. The proposal to call a conference for the purpose of reviewing the Charter had been placed on the agenda of the tenth regular session of the General Assembly and resolution 992 (X) was adopted on 3 November 1955, a decision in which the Security Council concurred on 16 December 1955.[29] The Secretary-General suggested that paragraph 3 of Article 109 could therefore be considered as obsolete and might be deleted. The alternative solution to replace, by an amendment to the Charter, the word "seven" by the word "nine" in the existing paragraph 3 of Article 109 would serve no practical purpose and its technical and legal correctness could be questioned.

6. The General Committee proposed (A/5988) that the item be included in the agenda, and be allocated to the plenary. This recommendation was considered by the General Assembly at its 1336th plenary meeting, on 24 September 1965. At that meeting, one representative suggested that it would be desirable to request the Sixth Committee of the Assembly, whose assistance had been invoked in the past in the solution of constitutional and other legal questions, to review the legal situation with respect to Article 109 of the Charter and to advise the Assembly on the steps to be taken. He therefore proposed that the item be allocated to the Sixth Committee, and the General Assembly so decided.

7. The Sixth Committee considered the item at its 897th meeting, on 14 December 1965.

Proposals

8. The Secretary-General's note and explanatory memorandum requesting the inclusion of the item on the agenda was accompanied, in accordance with rule 20 of the rules of procedure, by a draft resolution, the operative paragraphs of which stated that the General Assembly:

"1. *Decides* to adopt, in accordance with Article 108 of the Charter of the United Nations, the following amendments to the Charter and to submit them for ratification by the States Members of the United Nations;

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[29] *Official Records of the Security Council, Tenth Year*, 707th meeting, para. 171.

"(*a*) In article 109, paragraph 1, the word 'seven' in the first sentence shall be replaced by the word 'nine';

"(*b*) Paragraph 3 of Article 109 shall be deleted;

"2. *Calls upon* all Member States to ratify the above amendments, in accordance with their respective constitutional processes by...".

9. At the 897th meeting of the Sixth Committee, on 14 December, the representative of the Secretary-General stated that, since the above draft resolution had been put forward, the Secretary-General had formed the conclusion that, for historical reasons at least, paragraph 3 of Article 109 should not be deleted, and, therefore, reference to such deletion should be omitted from the draft.

10. Also at the 897th meeting, the representative of Greece presented the draft resolution, in the name of his delegation, omitting reference to the deletion of paragraph 3 of Article 109, making the consequential editorial changes and completing operative paragraph 2 to call upon Member States to ratify the amendment to paragraph 1 of Article 109 "at the earliest possible date". The text of this draft resolution (A/C.6/L.584) is identical with the recommendations of the Sixth Committee contained in paragraph 15 of the present report.

Debate

11. There was general agreement in the Sixth Committee regarding the need to amend paragraph 1 of Article 109, to conform with the amended texts of Articles 23 and 27 of the Charter. Some observations were made regarding paragraph 3 of Article 109. The representatives who spoke on that point expressed the view that paragraph 3 of Article 109 had already been acted upon at the tenth session of the General Assembly and was, in that sense, no longer operative. One representative stated that, apart from historical reasons, a practical purpose might be served by retaining paragraph 3 in its present form, as the decision to convene a conference for the purpose of reviewing the Charter at the tenth session had not yet been fully implemented. To delete paragraph 3 might give rise to the question whether that decision remained in effect. Some delegations expressed the view that any conference convened to review the Charter in the future should be convened only under paragraph 1 of Article 109.

12. The representative of the Secretary-General, in proposing, as explained in paragraph 9 above, that paragraph 3 be maintained for historical reasons, suggested that the Secretary-General should be authorized, in future editions of the text of the Charter, to include an editorial preface which would set out the history of the Charter amendments, and which would explain the apparent anomaly that would exist between paragraph 1 of Article 109, as amended, and paragraph 3 of Article 109, as unamended, by reference to the decision taken at the tenth session of the General Assembly under paragraph 3 of Article 109 (see paragraph 5 above). The Committee accepted that suggestion on the understanding that such a preface would be of a purely editorial nature and would not be presented in a manner implying that it formed a part of the text of the Charter.

13. The representatives of Czechoslovakia and the Union of Soviet Socialist Republics referred to the ratification of any amendment which might be adopted to Article 109 of the Charter. They expressed the view that, under Article 108 of the Charter, it would be necessary, for the amendment to enter into force, for it to be ratified by two-thirds of the Members of the United Nations including the five permanent members of the Security Council, among whom they mentioned the People's Republic of China. The representative of China recalled, in that connexion, that amendments to Articles 23, 27 and 61 of the Charter had already, as recognized by all Members of the United Nations, entered into force, in accordance with Article 108, without any purported ratification by the régime mentioned by certain other delegations. He stated that Article 108 included, among the necessary requirements, rati-

fication of any amendment by the five permanent members of the Security Council, among whom was included the Republic of China.

VOTING

14. At its 897th meeting, on 14 December, the Sixth Committee adopted unanimously the draft resolution submitted by Greece (A/C.6/L.584).

Recommendation of the Sixth Committee

15. 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 1404th meeting, on 20 December 1965, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 15 above). For the final text, see resolution 2101 (XX) below.

2101 (XX). Amendment to Article 109 of the Charter of the United Nations

The General Assembly,

Considering that the Charter of the United Nations has been amended to provide that the membership of the Security Council, as provided in Article 23, should be increased from eleven to fifteen and that decisions of the Security Council should be taken, as provided in Article 27, by an affirmative vote of nine members instead of seven,

Considering that these amendments make it necessary also to amend Article 109 of the Charter,

1. *Decides* to adopt, in accordance with Article 108 of the Charter of the United Nations the following amendment to the Charter and to submit it for ratification by the States Members of the United Nations:

"In Article 109, paragraph 1, the word 'seven' in the first sentence shall be replaced by the word 'nine' ";

2. *Calls upon* all Member States to ratify the above amendment, in accordance with their respective constitutional processes, at the earliest possible date.

1404th plenary meeting
20 December 1965

12. THE INADMISSIBILITY OF INTERVENTION IN THE DOMESTIC AFFAIRS OF STATES AND THE PROTECTION OF THEIR INDEPENDENCE AND SOVEREIGNTY (AGENDA ITEM 107)

Resolution [2131 (XX)] adopted by the General Assembly

2131 (XX). Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty

The General Assembly,

Deeply concerned at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

Considering that the United Nations, in accordance with their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State,

Recognizing that, in fulfilment of the principle of self-determination, the General Assembly, in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development,

Recalling that in the Universal Declaration of Human Rights the General Assembly proclaimed that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, without distinction of any kind,

Reaffirming the principle of non-intervention, proclaimed in the charters of the Organization of American States, the League of Arab States and the Organization of African Unity and affirmed at the conferences held at Montevideo, Buenos Aires, Chapultepec and Bogotá, as well as in the decisions of the Asian-African Conference at Bandung, the First Conference of Heads of State or Government of Non-Aligned Countries at Belgrade, in the Programme for Peace and International Co-operation adopted at the end of the Second Conference of Heads of State or Government of Non-Aligned Countries at Cairo, and in the declaration on subversion adopted at Accra by the Heads of State and Government of the African States,

Recognizing that full observance of the principle of the non-intervention of States in the internal and external affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations,

Considering that armed intervention is synonymous with aggression and, as such, is contrary to the basic principles on which peaceful international co-operation between States should be built,

Considering further that direct intervention, subversion and all forms of indirect intervention are contrary to these principles and, consequently, constitute a violation of the Charter of the United Nations,

Mindful that violation of the principle of non-intervention poses a threat to the independence, freedom and normal political, economic, social and cultural development of countries particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

Fully aware of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions,

In the light of the foregoing considerations, solemnly declares:

1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise

of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.

5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

7. For the purpose of the present Declaration, the term "State" covers both individual States and groups of States.

8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII.

1408th plenary meeting
21 December 1965

B. Decisions, recommendations and reports of a legal character by inter-governmental organizations related to the United Nations

1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

MEMORANDUM CONCERNING THE OBLIGATION TO SUBMIT CONVENTIONS AND RECOMMENDATIONS ADOPTED BY THE GENERAL CONFERENCE TO THE "COMPETENT AUTHORITIES" AND THE SUBMISSION OF INITIAL SPECIAL REPORTS ON THE ACTION TAKEN UPON THESE CONVENTIONS AND RECOMMENDATIONS

Introduction

1. Articles IV.4 and VIII of the UNESCO Constitution stipulate that:

"4. The General Conference shall, in adopting proposals for submission to the Member States, distinguish between recommendations and international conventions submitted for their approval. In the former case a majority shall suffice; in the latter case a two-thirds majority shall be required. 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."

...

"Each Member State shall report periodically to the Organization, in a manner to be determined by the General Conference, on its laws, regulations and statistics relating to educational, scientific and cultural life and institutions, and on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4."

2. Paragraphs 1 and 2 of Article 16 of the "Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution" provide as follows:

> "1. In addition to the general annual reports, Member States shall submit to the General Conference special reports on the action they have taken to give effect to conventions or recommendations adopted by the General Conference.
>
> 2. Initial reports relating to any convention or recommendation adopted shall be transmitted not less than two months prior to the opening of the first ordinary session of the General Conference following that at which such recommendation or convention was adopted."
>
> ...

3. In order to make it easier for Member States to prepare these initial special reports, the General Conference decided, at its thirteenth session, to instruct the Director-General to prepare a document for the benefit of the Governments of Member States containing "the various provisions of the Constitution and the regulations applicable, together with the other suggestion that the General Conference itself has found it necessary to formulate, at its earlier sessions, concerning the submission of conventions and recommendations to the competent authorities".[30] The present Memorandum was drawn up pursuant to this decision.

I. *Importance of the provisions of the Constitution*

4. "The General Conference thinks it desirable, in the first place, to emphasize the high importance it attaches to the twofold duty laid on Member States by the Constitution with regard to conventions and recommendations adopted by the General Conference: first, the obligation incumbent on each Member State to submit such conventions and recommendations to 'its competent authorities' within a period of one year from the close of the session of the General Conference at which the instruments were adopted; and, second, the obligation to report periodically on the action taken by it to give effect to such conventions and recommendations. Essentially indeed it is the operation of these two provisions of the Constitution which, on the one hand, ensures the widest possible implementation and application of the instruments adopted and, on the other hand, enables the General Conference—and hence Member States themselves—to assess the effectiveness of the Organization's regulatory action in the past and to determine the direction of its future regulatory action."[31]

II. *Nature of the "competent authorities"*

5. "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."[32]

6. "...A distinction should, in this context, be drawn between the authorities which are competent to 'enact' laws or 'issue' regulations, on the one hand, and the government depart-

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[30] *General Conference*, thirteenth session: "General report on the initial special reports of Member States on action taken by them upon the Protocol and Recommendations adopted by the General Conference of UNESCO at its twelfth session", para. 19.

[31] *General Conference*, eleventh session: "General report on the initial special reports of Member States on action taken by them upon the Conventions and Recommendations adopted by the General Conference of UNESCO at its ninth and tenth sessions", para. 10.

[32] 12 C/Resolutions, Annex III, Fourth Report of the Legal Committee, para. 53.

ments responsible for studying or preparing the laws or regulations which may be enacted or issued by those authorities and for submitting appropriate proposals to them, on the other. The definition adopted by the General Conference at its previous session shows clearly that the constitutional obligation laid down in Article IV, paragraph 4, relates to the former and not to the latter." [33]

III. *Extent of the obligation to submit conventions and recommendations to the "competent authorities" and time-limits*

7. "The General Conference... feels bound to draw attention... to the distinction to be drawn between the obligation to submit an instrument to the competent authorities, on the one hand, and the ratification of a convention or the acceptance of a recommendation, on the other. Their submission to the competent authorities does not imply that conventions should necessarily be ratified or that recommendations should be accepted in their entirety. On the other hand, it is incumbent on Member States to submit *all* recommendations and conventions *without exception* to the competent authorities, even if measures of ratification or acceptance are not contemplated in a particular case." [34]

8. "... The General Conference wishes to point out that, while States are under a strict obligation to submit conventions and recommendations to the competent authorities, that is, to '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', within a specified time-limit, the competent authorities, on the other hand, are under no obligation to enact such laws or issue such regulations, which may be enacted or issued without any time-limit." [35]

IV. *Contents of the initial special reports*

9. "The General Conference

...

Invites Member States, when submitting initial special reports relating to conventions or recommendations adopted by the General Conference, to include in these reports, as far as possible, information on the following:

(*a*) Whether the convention or recommendation has been submitted to the competent national authority or authorities in accordance with Article IV, paragraph 4 of the Constitution and Article I of the Rules of Procedure concerning Recommendations to Member States and International Conventions;

(*b*) The name of the competent authority or authorities in the reporting State;

(*c*) Whether such authority or authorities have taken any steps to give effect to the convention or recommendation;

(*d*) The nature of such steps." [36]

10. "The General Conference feels it advisable to stress... the importance attaching to the replies to these questions, even when a convention has been ratified, as was the case for

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[33] *General Conference*, thirteenth session: "General report on the initial special reports of Member States on action taken by them upon the Protocol and Recommendations adopted by the General Conference of UNESCO at its twelfth session", para. 18.

[34] *General Conference*, twelfth session: "General report on the initial special reports of Member States on action taken by them upon the Convention and Recommendations adopted by the General Conference at its eleventh session", para 18.

[35] *General Conference*, thirteenth session: "General report on the initial special reports of Member States on action taken by them upon the Protocol and Recommendations adopted by the General Conference of UNESCO at its twelfth session", para. 17.

[36] 10 C/Resolution 50.

certain States, before the preparation of the report. Indeed, it is very useful to be acquainted with the procedure followed for obtaining this ratification and, in particular, to know whether the convention was ratified after consultation with the legislative authority or on its authorization."[37]

11. "Some Member States, though not specifically replying to the questions set out in this resolution, included in their reports detailed accounts of the situation in their countries with regard to the subject of the convention or recommendation. While acknowledging the usefulness of these accounts, the General Conference hopes that, in future, all Member States will be able to give precise information, in their initial special reports, on the points mentioned in resolution 50."[38]

2. INTERNATIONAL TELECOMMUNICATION UNION

Resolutions of a legal character adopted by the Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965)

(a) Resolution No. 23—Possible Revision of Article IV, Section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

in view of

Resolution No. 28 of the Plenipotentiary Conference of Buenos Aires (1952), and Resolution No. 31 of the Plenipotentiary Conference of Geneva (1959);

bearing in mind

Resolution No. 33 of the Plenipotentiary Conference (Geneva, 1959);

considering

(*a*) the seeming conflict between the definition of Government Telegrams and Government Telephone Calls contained in Annex 2 of the International Telecommunication Convention of Atlantic City (1947) and the provisions of Article IV, Section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies;

(*b*) that the Convention on the Privileges and Immunities of the Specialized Agencies has not been amended in the manner requested by the Plenipotentiary Conferences of Buenos Aires (1952) and Geneva (1959);

having examined

proposals, including a request by the Secretary-General of the United Nations to extend government telecommunication privileges to the Heads of the specialized agencies;

decides

to confirm the decisions of the Plenipotentiary Conferences of Buenos Aires (1952) and Geneva (1959) not to include, in Annex 2 to the Convention, the Heads of the specialized agencies among the authorities entitled to send government telegrams or to request government telephone calls;

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[37] *General Conference*, twelfth session: "General report on the initial special reports of Member States on action taken by them upon the Convention and Recommendations adopted by the General Conference at its eleventh session", para. 17.

[38] *General Conference*, thirteenth session: "General report on the initial special reports of Member States on action taken by them upon the Protocol and Recommendations adopted by the General Conference of UNESCO at its twelfth session", para. 15.

expresses the hope

that the United Nations will agree to reconsider the matter and, bearing in mind the above decision, will make the necessary amendment to Article IV, Section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies;

instructs the Administrative Council

to take the necessary steps with the appropriate organs of the United Nations with a view to reaching a satisfactory solution.

(b) Resolution No. 24—Telecommunication and the Peaceful Uses of Outer Space

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

mindful

of the problems which arise in the international field from the use of outer space for peaceful purposes;

considering

the importance of the role that telecommunications, and in consequence the Union, necessarily play in this sphere;

recalling

(*a*) the principle set forth in Resolution No. 1721 (XVI) of the United Nations General Assembly that telecommunications by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis;

(*b*) the declaration of legal principles governing the activities of States in the exploration and use of outer space set forth in Resolution No. 1962 (XVIII) of the United Nations General Assembly;

notes with satisfaction

(*a*) the measures taken by the various organs of the Union in order to allow telecommunications to serve the various peaceful uses of outer space in the best manner possible;

(*b*) the progress made by various countries in the technology and use of telecommunication satellites;

instructs the Administrative Council and the Secretary-General

to take the necessary steps in order to:

1. continue to inform the United Nations and its interested specialized agencies of the progress made in space telecommunication;

2. offer the co-operation of the Union, within its field of competence, to the United Nations and those specialized agencies interested in space telecommunication and in particular to the United Nations Committee on the Peaceful Uses of Outer Space;

considering further

that, from the economic as well as the technical point of view, it is highly desirable that, for the full satisfaction of their needs, all countries should have equal opportunity to use space telecommunication facilities;

calls upon

all the Members of the Union to join their efforts in this connection, guided by the United Nations Resolutions mentioned above.

(c) Resolution No. 35—Preparation of a Draft Constitutional Charter

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

instructs the Administrative Council:

1. to set up as soon as possible a study group of not more than ten experts (two from each Region) with the following terms of reference:

—to prepare a draft Constitutional Charter and General Regulations for the International Telecommunication Union, based upon the decisions taken by, and the discussions which took place at the Plenipotentiary Conference (Montreux, 1965), the Convention and the experience of the Union, the Constitutions and the experience of other specialized agencies of the United Nations, and the comments, suggestions and proposals submitted by Member countries;

—to prepare this draft in sufficient time to enable it to be distributed to Members of the Union at least one year before the next Plenipotentiary Conference;

2. to make the necessary administrative arrangements to enable the study group to carry out its work;

3. to invite Members of the Union to submit to the study group, through the Secretary-General, comments, suggestions and proposals in regard to the draft Constitutional Charter and General Regulations;

4. to direct the Secretary-General to transmit the draft prepared by the study group to the Administrative Council for information and to the Members of the Union for their study and later consideration at the next Plenipotentiary Conference;

5. to meet the travel and subsistence expenses of the experts from the budget of the Union.

(d) Resolution No. 41—Juridical Status

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

considering

(*a*) that the Agreement on the Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary-General of the United Nations on 19 April 1946, which applies by analogy to the Union as from 1 January 1948, does not meet the present requirements of the Union and is not suited to its future development;

(*b*) that the decision of this Conference to acquire the building now occupied by the Union (Resolution No. 38) makes more evident the need for concluding a legal instrument which will put an end to this provisional state of affairs and guarantee the harmonious and stable development of the Union;

instructs the Secretary-General

1. to negotiate on behalf of the Union, with the competent authorities of the Swiss Confederation, an agreement establishing the privileges and immunities of the International Telecommunication Union in Switzerland;

2. to report to the Administrative Council at its next session on the results of such negotiations;

instructs the Administrative Council

to study and, if satisfied, approve the agreement negotiated by the Secretary-General.

(e) Resolution No. 43—Requests to the International Court of Justice for Advisory Opinions

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

in view of

(*a*) Article VII of the Agreement between the United Nations and the International Telecommunication Union which provides that requests for advisory opinions may be addressed to the International Court of Justice by the Plenipotentiary Conference, or by the Administrative Council acting in pursuance of an authorization by the Plenipotentiary Conference;

(*b*) the decision of the Administrative Council "to affiliate the Union to the Administrative Tribunal of the International Labour Organisation", and the declaration recognizing the jurisdiction of the Tribunal which was made by the Secretary-General pursuant to that decision;

(*c*) the provisions in the Annex to the Statute of the Administrative Tribunal of the International Labour Organisation under which that Statute applies in its entirety to any international governmental organization which has recognized the jurisdiction of the Tribunal in accordance with paragraph 5 of Article II of the Statute of the Tribunal;

(*d*) Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation under which, in consequence of the above-mentioned declaration, the Administrative Council of the International Telecommunication Union may submit to the International Court of Justice the question of the validity of a decision given by the Tribunal;

notes

that the Administrative Council is authorized to request advisory opinions from the International Court of Justice as provided under Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation.

(f) Resolution No. 44—Participation of the Republic of South Africa in Regional Conferences for Africa

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

considering

(*a*) the impossibility of holding African regional conferences or meetings called by the Union, or under its auspices, owing to the presence of representatives of the Government of the Republic of South Africa;

(*b*) the financial implications entailed if conferences or meetings should waste time in discussing the presence of representatives of the Government of the Republic of South Africa;

recalling

(*a*) Resolution No. 45 of the Plenipotentiary Conference (Montreux, 1965);

(*b*) Resolution No. 974 (XXXVI), Part IV, adopted by the United Nations Economic and Social Council on 30 July 1963;

instructs the Secretary-General

to take the necessary steps so that the Republic of South Africa shall not be invited to take part in the work of any regional conference or meeting for Africa called by the Union, or under its auspices, until the Administrative Council, taking into account the decisions taken by the United Nations and after consulting the Members and Associate Members of the Union, shall find that the conditions for constructive co-operation have been restored by the abandonment of the present policy of racial discrimination exercised by the Government of the Republic of South Africa.

(g) Resolution No. 45—Exclusion of the Government of the Republic of South Africa from the Plenipotentiary Conference

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

considering

that the racial policy in South Africa perpetuating or accentuating discrimination constitutes a flagrant violation of the United Nations Charter and the Declaration of Human Rights;

noting

that the Government of the Republic of South Africa has paid no attention to the repeated requests and demands of the United Nations, the specialized agencies and worldwide public opinion and has not accordingly reconsidered or revised its racial policy;

deploring

the fact that the Government of the Republic of South Africa thus continues to pay no attention to these requests and, furthermore, deliberately aggravates the racial question by more discriminatory measures and by their application accompanied by violence and bloodshed;

recalling

the fact that a number of subsidiary organs of the United Nations and the specialized agencies have excluded the Government of the Republic of South Africa from their work until such time as it should give up its apartheid policy;

resolves

that the Government of the Republic of South Africa shall be excluded from the Plenipotentiary Conference.

(h) Resolution No. 46—Territories under Portuguese Administration

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965),

considering

that the situation in the African territories under Portuguese administration is a serious danger to peace and security in Africa;

recalling

the declaration of the United Nations General Assembly on 14 December 1960 on the granting of independence to colonial countries and peoples, which states: "subjecting peoples to foreign subjugation, domination and exploitation constitutes a denial of the fundamental human rights, is contrary to the United Nations Charter and jeopardizes the cause of peace and world co-operation";

condemns

without appeal the colonial policy of the retrograde Government of Portugal;

asks Portugal,

in accordance with the very terms of a resolution adopted by the United Nations General Assembly at its XVIIIth Session, to apply the following measures:

(*a*) immediate recognition of the right of the peoples in the territories under its domination to self-determination and independence;

(*b*) immediate cessation of all acts of repression and withdrawal of all military forces and others at present used for this purpose;

(*c*) promulgation of an unconditional political amnesty and establishment of conditions allowing the free functioning of political parties;

(*d*) negotiation on the basis of recognition of the right to self-determination with the real representatives of the nationalist fighting forces of these territories, so as to transfer power to freely elected political institutions representative of the peoples of these territories.

3. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) The Agency's Safeguards System (1965)[39]

[*Original text: English*]
[*3 December 1965*]

I. GENERAL CONSIDERATIONS

A. *The purpose of this document*

1. Pursuant to Article II of its Statute the Agency has the task of seeking "to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world". Inasmuch as the technology of nuclear energy for peaceful purposes is closely coupled with that for the production of materials for nuclear weapons, the same Article of the Statute provides that the Agency "shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose".

2. The principal purpose of the present document is to establish a system of controls to enable the Agency to comply with this statutory obligation with respect to the activities of Member States in the field of the peaceful uses of nuclear energy, as provided in the Statute. The authority to establish such a system is provided by Article III.A.5 of the Statute, which authorizes the Agency to "establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose". This Article further authorizes the Agency to "apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State's activities in the field of atomic energy". Article XII.A sets forth the rights and responsibilities that the Agency is to have, to the extent relevant, with respect to any project or arrangement which it is to safeguard.

3. The principles set forth in this document and the procedures for which it provides are established for the information of Member States, to enable them to determine in advance the circumstances and manner in which the Agency would administer safeguards, and for the guidance of the organs of the Agency itself, to enable the Board and the Director General to determine readily what provisions should be included in agreements relating to safeguards and how to interpret such provisions.

4. Provisions of this document that are relevant to a particular project, arrangement or activity in the field of nuclear energy will only become legally binding upon the entry into force of a *safeguards agreement*[40] and to the extent that they are incorporated therein. Such incorporation may be made by reference.

5. Appropriate provisions of this document may also be incorporated in bilateral or multilateral arrangements between Member States, including all those that provide for the transfer to the Agency of responsibility for administering safeguards. The Agency will not assume such responsibility unless the principles of the safeguards and the procedures to be used are essentially consistent with those set forth in this document.

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[39] Document INFCIRC/66. On 28 September 1965 the Board of Governors approved the Agency's revised safeguards system which is set forth in this document for the information of all Members. For ease of reference the revised system may be cited as "The Agency's Safeguards System (1965)" to distinguish it from the original system—"The Agency's Safeguards System (1961)" —and from the original system as extended to large reactor facilities—"The Agency's Safeguards System (1961), as Extended in 1964".

[40] The use of italics indicates that a term has a specialized meaning in this document and is defined in Part. IV.

6. Agreements incorporating provisions from the earlier version of the Agency's safeguards system[41] will continue to be administered in accordance with such provisions, unless all States parties thereto request the Agency to substitute the provisions of the present document.

7. Provisions relating to types of *principal nuclear facilities*, other than *reactors*, which may produce, process or use safeguarded *nuclear material* will be developed as necessary.

8. The principles and procedures set forth in this document shall be subject to periodic review in the light of the further experience gained by the Agency as well as of technological developments.

B. *General principles of the Agency's safeguards*

The Agency's obligations

9. Bearing in mind Article II of the Statute, the Agency shall implement safeguards in a manner designed to avoid hampering a State's economic or technological development.

10. The safeguards procedures set forth in this document shall be implemented in a manner designed to be consistent with prudent management practices required for the economic and safe conduct of nuclear activities.

11. In no case shall the Agency request a State to stop the construction or operation of any *principal nuclear facility* to which the Agency's safeguards procedures extend, except by explicit decision of the Board.

12. The State or States concerned and the Director General shall hold consultations regarding the application of the provisions of the present document.

13. In implementing safeguards, the Agency shall take every precaution to protect commercial and industrial secrets. No member of the Agency's staff shall disclose, except to the Director General and to such other members of the staff as the Director General may authorize to have such information by reason of their official duties in connection with safeguards, any commercial or industrial secret or any other confidential information coming to his knowledge by reason of the implementation of safeguards by the Agency.

14. The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of safeguards, except that:

(*a*) Specific information relating to such implementation in a State may be given to the Board and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its safeguards responsibilities;

(*b*) Summarized lists of items being safeguarded by the Agency may be published upon decision of the Board; and

(*c*) Additional information may be published upon decision of the Board and if all States directly concerned agree.

Principles of implementation

15. The Agency shall implement safeguards in a State if:

(*a*) The Agency has concluded with the State a *project agreement* under which materials, services, equipment, facilities or information are supplied, and such agreement provides for the application of safeguards; or

(*b*) The State is a party to a bilateral or multilateral arrangement under which materials, services, equipment, facilities or information are supplied or otherwise transferred, and:

[41] Set forth in documents INFCIRC/26 and Add.1.

(i) All the parties to the arrangement have requested the Agency to administer safeguards; and

(ii) The Agency has concluded the necessary *safeguards agreement* with the State; or

(*c*) The Agency has been requested by the State to safeguard certain nuclear activities under the latter's jurisdiction, and the Agency has concluded the necessary *safeguards agreement* with the State.

16. In the light of Article XII.A.5 of the Statute, it is desirable that *safeguards agreements* should provide for the continuation of safeguards, subject to the provisions of this document, with respect to produced special fissionable material and to any materials substituted therefor.

17. The principal factors to be considered by the Board in determining the relevance of particular provisions of this document to various types of materials and facilities shall be the form, scope and amount of the assistance supplied, the character of each individual project and the degree to which such assistance could further any military purpose. The related *safeguards agreement* shall take account of all pertinent circumstances at the time of its conclusion.

18. In the event of any non-compliance by a State with a *safeguards agreement*, the Agency may take the measures set forth in Articles XII.A.7 and XII.C of the Statute.

II. Circumstances requiring safeguards

A. *Nuclear materials subject to safeguards*

19. Except as provided in paragraphs 21-28, *nuclear material* shall be subject to the Agency's safeguards if it is being or has been:

(*a*) Supplied under a *project agreement;* or

(*b*) Submitted to safeguards under a *safeguards agreement* by the parties to a bilateral or multilateral arrangement; or

(*c*) *Unilaterally submitted* to safeguards under a *safeguards agreement;* or

(*d*) Produced, processed or used in a *principal nuclear facility* which has been:

(i) Supplied wholly or substantially under a *project agreement;* or

(ii) Submitted to safeguards under a *safeguards agreement* by the parties to a bilateral or multilateral arrangement; or

(iii) *Unilaterally submitted* to safeguards under a *safeguards agreement;* or

(*e*) Produced in or by the use of safeguarded *nuclear material;* or

(*f*) Substituted, pursuant to paragraph 26(*d*), for safeguarded *nuclear material.*

20. A *principal nuclear facility* shall be considered as substantially supplied under a *project agreement* if the Board has so determined.

B. *Exemptions from safeguards*

General exemptions

21. *Nuclear material* that would otherwise be subject to safeguards shall be exempted from safeguards at the request of the State concerned, provided that the material so exempted in that State may not at any time exceed:

(*a*) 1 kilogram in total of special fissionable material, which may consist of one or more of the following:

(i) Plutonium;

(ii) Uranium with an *enrichment* of 0.2 (20%) and above, taken account of by multiplying its weight by its *enrichment;*

(iii) Uranium with an *enrichment* below 0.2 (20%) and above that of natural uranium, taken account of by multiplying its weight by five times the square of its *enrichment;*

(*b*) 10 metric tons in total of natural uranium and depleted uranium with an *enrichment* above 0.005 (0.5%);

(*c*) 20 metric tons of depleted uranium with an *enrichment* of 0.005 (0.5%) or below; and

(*d*) 20 metric tons of thorium.

Exemptions related to reactors

22. Produced or used *nuclear material* that would otherwise be subject to safeguards pursuant to paragraph 19(*d*) or (*e*) shall be exempted from safeguards if:

(*a*) It is plutonium produced in the fuel of a *reactor* whose rate of production does not exceed 100 grams of plutonium per year; or

(*b*) It is produced in a *reactor* determined by the Agency to have a maximum calculated power for continuous operation of less than 3 thermal megawatts, or is used in such a *reactor* and would not be subject to safeguards except for such use, provided that the total power of the *reactors* with respect to which these exemptions apply in any State may not exceed 6 thermal megawatts.

23. Produced special fissionable material that would otherwise be subject to safeguards pursuant only to paragraph 19(*e*) shall in part be exempted from safeguards if it is produced in a *reactor* in which the ratio of fissionable isotopes within safeguarded *nuclear material* to all fissionable isotopes is less than 0.3 (calculated each time any change is made in the loading of the *reactor* and assumed to be maintained until the next such change). Such fraction of the produced material as corresponds to the calculated ratio shall be subject to safeguards.

C. *Suspension of safeguards*

24. Safeguards with respect to *nuclear material* may be suspended while the material is transferred, under an arrangement or agreement approved by the Agency, for the purpose of processing, reprocessing, testing, research or development, within the State concerned or to any other Member State or to an international organization, provided that the quantities of *nuclear material* with respect to which safeguards are thus suspended in a State may not at any time exceed:

(*a*) 1 *effective kilogram* of special fissionable material;

(*b*) 10 metric tons in total of natural uranium and depleted uranium with an *enrichment* above 0.005 (0.5%);

(*c*) 20 metric tons of depleted uranium with an *enrichment* of 0.005 (0.5%) or below; and

(*d*) 20 metric tons of thorium.

25. Safeguards with respect to *nuclear material* in irradiated fuel which is transferred for the purpose of reprocessing may also be suspended if the State or States concerned have, with the agreement of the Agency, placed under safeguards substitute *nuclear material* in accordance with paragraph 26(*d*) for the period of suspension. In addition, safeguards with respect to plutonium contained in irradiated fuel which is transferred for the purpose of reprocessing may be suspended for a period not to exceed six months if the State or States concerned have, with the agreement of the Agency, placed under safeguards a quantity of uranium whose *enrichment* in the isotope uranium-235 is not less than 0.9 (90%) and the uranium-235 content of which is equal in weight to such plutonium. Upon expiration of the said six months or the completion of reprocessing, whichever is earlier, safeguards shall, with the agreement of the Agency, be applied to such plutonium and shall cease to apply to the uranium substituted therefor.

D. *Termination of safeguards*

26. *Nuclear material* shall no longer be subject to safeguards after:

(*a*) It has been returned to the State that originally supplied it (whether directly or through the Agency), if it was subject to safeguards only by reason of such supply and if:

(i) It was not *improved* while under safeguards; or

(ii) Any special fissionable material that was produced in it under safeguards has been separated out, or safeguards with respect to such produced material have been terminated; or

(*b*) The Agency has determined that:

(i) It was subject to safeguards only by reason of its use in a *principal nuclear facility* specified in paragraph 19(*d*);

(ii) It has been removed from such facility; and

(iii) Any special fissionable material that was produced in it under safeguards has been separated out, or safeguards with respect to such produced material have been terminated; or

(*c*) The Agency has determined that it has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable; or

(*d*) The State or States concerned have, with the agreement of the Agency, placed under safeguards, as a substitute, such amount of the same element, not otherwise subject to safeguards, as the Agency has determined contains fissionable isotopes:

(i) Whose weight (with due allowance for processing losses) is equal to or greater than the weight of the fissionable isotopes of the material with respect to which safeguards are to terminate; and

(ii) Whose ratio by weight to the total substituted element is similar to or greater than the ratio by weight of the fissionable isotopes of the material with respect to which safeguards are to terminate to the total weight of such material;

provided that the Agency may agree to the substitution of plutonium for uranium-235 contained in uranium whose *enrichment* is not greater than 0.05 (5.0%); or

(*e*) It has been transferred out of the State under paragraph 28(*d*), provided that such material shall again be subject to safeguards if it is returned to the State in which the Agency had safeguarded it; or

(*f*) The conditions specified in the *safeguards agreement*, pursuant to which it was subject to Agency safeguards, no longer apply, by expiration of the agreement or otherwise.

27. If a State wishes to use safeguarded source material for non-nuclear purposes, such as the production of alloys or ceramics, it shall agree with the Agency on the circumstances under which the safeguards on such material may be terminated.

E. *Transfer of safeguarded nuclear material out of the State*

28. No safeguarded *nuclear material* shall be transferred outside the jurisdiction of the State in which it is being safeguarded until the Agency has satisfied itself that one or more of the following conditions apply:

(*a*) The material is being returned, under the conditions specified in paragraph 26(*a*), to the State that originally supplied it; or

(*b*) The material is being transferred subject to the provisions of paragraph 24 or 25; or

(*c*) Arrangements have been made by the Agency to safeguard the material in accordance with this document in the State to which it is being transferred; or

(*d*) The material was not subject to safeguards pursuant to a *project agreement* and will be subject, in the State to which it is being transferred, to safeguards other than those of the Agency but generally consistent with such safeguards and accepted by the Agency.

III. SAFEGUARDS PROCEDURES

A. *General procedures*

Introduction

29. The safeguards procedures set forth below shall be followed, as far as relevant, with respect to safeguarded *nuclear materials*, whether they are being produced, processed or used in any *principal nuclear facility* or are outside any such facility. These procedures also extend to facilities containing or to contain such materials, including *principal nuclear facilities* to which the criteria in paragraph 19(*d*) apply.

Design review

30. The Agency shall review the design of *principal nuclear facilities*, for the sole purpose of satisfying itself that a facility will permit the effective application of safeguards.

31. The design review of a *principal nuclear facility* shall take place at as early a stage as possible. In particular, such review shall be carried out in the case of:

(*a*) An Agency project, before the project is approved;

(*b*) A bilateral or multilateral arrangement under which the responsibility for administering safeguards is to be transferred to the Agency, or an activity *unilaterally submitted* by a State, before the Agency assumes safeguards responsibilities with respect to the facility;

(*c*) A transfer of safeguarded *nuclear material* to a *principal nuclear facility* whose design has not previously been reviewed, before such transfer takes places; and

(*d*) A significant modification of a *principal nuclear facility* whose design has previously been reviewed, before such modification is undertaken.

32. To enable the Agency to perform the required design review, the State shall submit to it relevant design information sufficient for the purpose, including information on such basic characteristics of the *principal nuclear facility* as may bear on the Agency's safeguards procedures. The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibility under this section. It shall complete the review promptly after the submission of this information by the State and shall notify the latter of its conclusions without delay.

Records

33. The State shall arrange for the keeping of records with respect to *principal nuclear facilities* and also with respect to all safeguarded *nuclear material* outside such facilities. For this purpose the State and the Agency shall agree on a system of records with respect to each facility and also with respect to such material, on the basis of proposals to be submitted by the State in sufficient time to allow the Agency to review them before the records need to be kept.

34. If the records are not kept in one of the working languages of the Board, the State shall make arrangements to facilitate their examination by inspectors.

35. The records shall consist, as appropriate, of:

(*a*) Accounting records of all safeguarded *nuclear material;* and

(*b*) Operating records for *principal nuclear facilities.*

36. All records shall be retained for at least two years.

Reports

General requirements

37. The State shall submit to the Agency reports with respect to the production, processing and use of safeguarded *nuclear material* in or outside *principal nuclear facilities.* For this purpose the State and the Agency shall agree on a system of reports with respect to each facility and also with respect to safeguarded *nuclear material* outside such facilities, on the basis of proposals to be submitted by the State in sufficient time to allow the Agency to review them before the reports need to be submitted. The reports need include only such information as is relevant for the purpose of safeguards.

38. Unless otherwise provided in the applicable *safeguards agreement*, reports shall be submitted in one of the working languages of the Board.

Routine reports

39. Routine reports shall be based on the records compiled in accordance with paragraphs 33-36 and shall consist, as appropriate, of:

(*a*) Accounting reports showing the receipt, transfer out, inventory and use of all safeguarded *nuclear material.* The inventory shall indicate the nuclear and chemical composition and physical form of all material and its location on the date of the report; and

(*b*) Operating reports showing the use that has been made of each *principal nuclear facility* since the last report and, as far as possible, the programme of future work in the period until the next routine report is expected to reach the Agency.

40. The first routine report shall be submitted as soon as:

(*a*) There is any safeguarded *nuclear material* to be accounted for; or

(*b*) The *principal nuclear facility* to which it relates is in a condition to operate.

Progress in construction

41. The Agency may, if so provided in a *safeguards agreement*, request information as to when particular stages in the construction of a *principal nuclear facility* have been or are to be reached.

Special reports

42. The State shall report to the Agency without delay:

(*a*) If any unusual incident occurs involving actual or potential loss or destruction of, or damage to, any safeguarded *nuclear material* or *principal nuclear facility;* or

(*b*) If there is good reason to believe that safeguarded *nuclear material* is lost or unaccounted for in quantities that exceed the normal operating and handling losses that have been accepted by the Agency as characteristic of the facility.

43. The State shall report to the Agency, as soon as possible, and in any case within two weeks, any transfer not requiring advance notification that will result in a significant change (to be defined by the Agency in agreement with the State) in the quantity of safeguarded *nuclear material* in a facility, or in a complex of facilities considered as a unit for this purpose by agreement with the Agency. Such report shall indicate the amount and nature of the material and its intended use.

Amplification of reports

44. At the Agency's request the State shall submit amplifications or clarifications of any report, in so far as relevant for the purpose of safeguards.

Inspections

General procedures

45. The Agency may inspect safeguarded *nuclear materials* and *principal nuclear facilities.*

46. The purpose of safeguards inspections shall be to verify compliance with *safeguards agreements* and to assist States in complying with such agreements and in resolving any questions arising out of the implementation of safeguards.

47. The number, duration and intensity of inspections actually carried out shall be kept to the minimum consistent with the effective implementation of safeguards, and if the Agency considers that the authorized inspections are not all required, fewer shall be carried out.

48. Inspectors shall neither operate any facility themselves nor direct the staff of a facility to carry out any particular operation.

Routine inspections

49. Routine inspections may include, as appropriate:

(*a*) Audit of records and reports;

(*b*) Verification of the amount of safeguarded *nuclear material* by physical inspection, measurement and sampling;

(*c*) Examination of *principal nuclear facilities*, including a check of their measuring instruments and operating characteristics; and

(*d*) Check of the operations carried out at *principal nuclear facilities* and at *research and development facilities* containing safeguarded *nuclear material.*

50. Whenever the Agency has the right of access to a *principal nuclear facility* at all times,[42] it may perform inspections of which notice as required by paragraph 4 of the *Inspectors Document* need not be given, in so far as this is necessary for the effective application of safeguards. The actual procedures to implement these provisions shall be agreed upon between the parties concerned in the *safeguards agreement.*

Initial inspections of principal nuclear facilities

51. To verify that the construction of a *principal nuclear facility* is in accordance with the design reviewed by the Agency, an initial inspection or inspections of the facility may be carried out, if so provided in a *safeguards agreement:*

(*a*) As soon as possible after the facility has come under Agency safeguards, in the case of a facility already in operation; or

(*b*) Before the facility starts to operate, in other cases.

52. The measuring instruments and operating characteristics of the facility shall be reviewed to the extent necessary for the purpose of implementing safeguards. Instruments that will be used to obtain data on the *nuclear materials* in the facility may be tested to determine their satisfactory functioning. Such testing may include the observation by inspectors of commissioning or routine tests by the staff of the facility, but shall not hamper or delay the construction, commissioning or normal operation of the facility.

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[42] See para. 57.

Special inspections

53. The Agency may carry out special inspections if:

(*a*) The study of a report indicates that such an inspection is desirable; or

(*b*) Any unforeseen circumstance requires immediate action.

The Board shall subsequently be informed of the reasons for and the results of each such inspection.

54. The Agency may also carry out special inspections of substantial amounts of safeguarded *nuclear material* that are to be transferred outside the jurisdiction of the State in which it is being safeguarded, for which purpose the State shall give the Agency sufficient advance notice of any such proposed transfer.

B. *Special procedures for reactors*

Reports

55. The frequency of submission of routine reports shall be agreed between the Agency and the State, taking into account the frequency established for routine inspections. However, at least two such reports shall be submitted each year and in no case shall more than 12 such reports be required in any year.

Inspections

56. One of the initial inspections of a *reactor* shall if possible be made just before the reactor first reaches criticality.

57. The maximum frequency of routine inspections of a *reactor* and of the safeguarded *nuclear material* in it shall be determined from the following table:

Whichever is the largest of: (*a*) Facility inventory (including loading); (*b*) Annual *throughput;* (*c*) Maximum potential annual production of special fissionable material (*Effective kilograms of nuclear material*)	*Maximum number of routine inspections annually*
Up to 1	0
More than 1 and up to 5	1
More than 5 and up to 10	2
More than 10 and up to 15	3
More than 15 and up to 20	4
More than 20 and up to 25	5
More than 25 and up to 30	6
More than 30 and up to 35	7
More than 35 and up to 40	8
More than 40 and up to 45	9
More than 45 and up to 50	10
More than 50 and up to 55	11
More than 55 and up to 60	12
More than 60	Right of access at all times

58. The actual frequency of inspection of a *reactor* shall take account of:

(*a*) Whether the State possesses irradiated-fuel reprocessing facilities;

(*b*) The nature of the *reactor;* and

(*c*) The nature and amount of the *nuclear material* produced or used in the *reactor*.

C. *Special procedures relating to safeguarded nuclear material outside principal nuclear facilities*

Nuclear material in research and development facilities

Routine reports

59. Only accounting reports need be submitted in respect of *nuclear material* in *research and development facilities*. The frequency of submission of such routine reports shall be agreed between the Agency and the State, taking into account the frequency established for routine inspections; however, at least one such report shall be submitted each year and in no case shall more than 12 such reports be required in any year.

Routine inspections

60. The maximum frequency of routine inspections of safeguarded *nuclear material* in a *research and development facility* shall be that specified in the table in paragraph 57 for the total amount of material in the facility.

Source material in sealed storage

61. The following simplified procedures for safeguarded stockpiled source material shall be applied if a State undertakes to store such material in a sealed storage facility and not to remove it therefrom without previously informing the Agency.

Design of storage facilities

62. The State shall submit to the Agency information on the design of each sealed storage facility and agree with the Agency on the method and procedure for sealing it.

Routine reports

63. Two routine accounting reports in respect of source material in sealed storage shall be submitted each year.

Routine inspections

64. The Agency may perform one routine inspection of each sealed storage facility annually.

Removal of material

65. The State may remove safeguarded source material from a sealed storage facility after informing the Agency of the amount, type and intended use of the material to be removed, and providing sufficient other data in time to enable the Agency to continue safeguarding the material after it has been removed.

Nuclear material in other locations

66. Except to the extent that safeguarded *nuclear material* outside of *principal nuclear facilities* is covered by any of the provisions set forth in paragraphs 59-65, the following procedures shall be applied with respect to such material (for example, source material stored elsewhere than in a sealed storage facility, or special fissionable material used in a sealed neutron source in the field).

Routine reports

67. Routine accounting reports in respect of all safeguarded *nuclear material* in this category shall be submitted periodically. The frequency of submission of such reports

shall be agreed between the Agency and the State, taking into account the frequency established for routine inspections; however, at least one such report shall be submitted each year and in no case shall more than 12 such reports be required in any year.

Routine inspections

68. The maximum frequency of routine inspections of safeguarded *nuclear material* in this category shall be one inspection annually if the total amount of such material does not exceed five *effective kilograms*, and shall be determined from the table in paragraph 57 if the amount is greater.

IV. Definitions

69. "Agency" means the International Atomic Energy Agency.

70. "Board" means the Board of Governors of the Agency.

71. "Director General" means the Director General of the Agency.

72. "Effective kilograms" means:

(*a*) In the case of plutonium, its weight in kilograms;

(*b*) In the case of uranium with an *enrichment* of 0.01 (1%) and above, its weight in kilograms multiplied by the square of its *enrichment*;

(*c*) In the case of uranium with an *enrichment* below 0.01 (1%) and above 0.005 (0.5%), its weight in kilograms multiplied by 0.0001; and

(*d*) In the case of depleted uranium with an *enrichment* of 0.005 (0.5%) or below, and in the case of thorium, its weight in kilograms multiplied by 0.00005.

73. "Enrichment" means the ratio of the combined weight of the isotopes uranium-233 and uranium-235 to that of the total uranium in question.

74. "Improved" means, with respect to *nuclear material*, that either:

(*a*) The concentration of fissionable isotopes in it has been increased; or

(*b*) The amount of chemically separable fissionable isotopes in it has been increased; or

(*c*) Its chemical or physical form has been changed so as to facilitate further use or processing.

75. "Inspector" means an Agency official designated in accordance with the *Inspectors Document*.

76. "Inspectors Document" means the Annex to the Agency's document GC(V)/INF/39.

77. "Nuclear material" means any source or special fissionable material as defined in Article XX of the Statute.

78. "Principal nuclear facility" means a *reactor*, a plant for processing *nuclear material* irradiated in a *reactor*, a plant for separating the isotopes of a *nuclear material*, a plant for processing or fabricating *nuclear material* (excepting a mine or ore-processing plant) or a facility or plant of such other type as may be designated by the Board from time to time, including associated storage facilities.

79. "Project agreement" means a *safeguards agreement* relating to an Agency project and containing provisions as foreseen in Article XI.F.4.(*b*) of the Statute.

80. "Reactor" means any device in which a controlled, self-sustaining fission chain-reaction can be maintained.

81. "Research and development facility" means a facility, other than a *principal nuclear facility*, used for research or development in the field of nuclear energy.

82. "Safeguards agreement" means an agreement between the Agency and one or more Member States which contains an undertaking by one or more of those States not to use certain items in such a way as to further any military purpose and which gives the Agency the right to observe compliance with such undertaking. Such an agreement may concern:

(*a*) An Agency project;

(*b*) A bilateral or multilateral arrangement in the field of nuclear energy under which the Agency may be asked to administer safeguards; or

(*c*) Any of a State's nuclear activities *unilaterally submitted* to Agency safeguards.

83. "Statute" means the Statute of the Agency.

84. "Throughput" means the rate at which *nuclear material* is introduced into a facility operating at full capacity.

85. "Unilaterally submitted" means submitted by a State to Agency safeguards, pursuant to a *safeguards agreement.*

(*b*) Amendment of Article VI, A. 2 of the Statute: Proposal by the Democratic Republic of the Congo—Note by the Director General[43]

[*Original text: English and French*]
[*20 July 1965*]

1. On 18 June 1965 the Director General received a letter from the Governor from the Democratic Republic of the Congo, the text of which is as follows:

"17 June 1965

"In conformity with the provisions of Article XVIII. A of the Agency's Statute, I have the honour to communicate to you herewith an amendment to the Statute which I request you to submit for consideration by the General Conference at its next session.

"The amendment proposed is the deletion of the words 'Belgium, Czechoslovakia, Poland and Portugal' from Article VI. A. 2 and, as a consequence, of the words 'the following' in the preceding line.

"The Agency should respect scientific truth and established fact. Since one country may, with the passage of time, cease to hold the status of a producer of uranium and another country may acquire such status, only countries which are real producers of uranium should be designated for membership on the Board under the provisions of this paragraph. This amendment is designed merely to adapt the text of the Statute to meet the true situation. With this amendment, the Board will be called upon each year to designate two countries, taking into account possible changes in the field of source material production."

2. In compliance with Article XVIII. A of the Statute, the Director General communicated to all Members on 23 June certified copies of the text of the amendment to the Statute thus proposed.

(*c*) Emergency assistance in the event of radiation accidents—Memorandum by the Director General[44]

[*Original text: English*]
[*6 September 1965*]

INTRODUCTION

1. On 18 September 1964 the General Conference requested the Board of Governors "to take the necessary steps to stimulate the conclusion of emergency assistance agreements

[43] Document GC (IX)/305.

[44] Document GC (IX)/INF/83.

between two or more Member States and the Agency as a means of ensuring more effective international mutual emergency assistance".[45] In so doing the Conference recalled the provisions of Articles II, III and VIII of the Statute, stressed the important role the Agency could play in facilitating and co-ordinating the provisions of assistance in serious nuclear accidents, and noted with satisfaction that the Agency had become party to an emergency assistance agreement with the four Nordic States.[46]

ACTION TAKEN BY THE BOARD AND THE DIRECTOR GENERAL

2. In February 1965 the Board discussed the subject on the basis of a memorandum by the Director General to which a draft agreement was annexed. The memorandum summarized action taken earlier and the existing arrangements for the provision of emergency assistance by the Agency, as well as the purpose, contents and possible form of an agreement. The Director General had reached the conclusion that a single, open agreement to which all Member States could become party would, for a number of reasons, be preferable to a series of bilateral or regional agreements, but that such an agreement could also serve as a model for bilateral or regional agreements in those cases where that was preferred.

3. Pursuant to a decision of the Board, the Director General on 25 March requested all Member States to comment on a set of revised draft articles prepared in the light of observations received from Members serving on the Board. By 8 June comments had been received from 15 Members, and these were communicated to all Member States in a Board document and two addenda thereto in late May and early June. Comments by a further six Members were reproduced in a third addendum which was circulated at the end of August.

4. All Members serving on the Board were invited to participate in an informal Working Group for the purpose of analysing the comments and of advising the Director General with regard to the substance and form of the revised draft articles and on future steps to be taken. Nineteen Members accepted the invitation and the Working Group met on 11 June. In addition to the revised draft articles and the comments, the Working Group had before it some amendments proposed by the Secretariat on the basis of the comments and a paper dealing with the financial and liability aspects of the Agency's role in the provision of assistance. The Working Group discussed most of the draft articles; as to Article XIII—Signature covering the matter of what States should be invited to become party to the proposed agreement, this was considered to be a question for the Board to decide. The Group also discussed the type of instrument by which the articles should be brought into effect.

5. The Board discussed the subject again in June when, on the recommendation of the Director General made on the basis of views expressed in the Working Group, it requested the Chairman, in consultation with him, to convene a committee of experts to prepare for its consideration a draft multilateral agreement and an additional paper indicating how the provisions in the draft could be used for other types of instrument. The Board further requested the Director General to include an item on the subject of emergency assistance in the provisional agenda for the ninth regular session of the General Conference,[47] to provide for the eventuality that the committee of experts, and subsequently the Board, would have completed the preparatory work in time to enable the Conference to discuss the subject at that session; and, if such progress was not made, to issue an information paper to notify the Conference of the action taken in relation to Resolution GC(VIII)/RES/177.

6. Not all Members consulted as potential members of the committee of experts were ready to meet early enough to enable any draft agreement elaborated by the committee to be circulated to Governors in time for its substantive consideration by the Board before the

[45] GC(VIII)/RES/177.

[46] INFCIRC/49.

[47] See document GC(IX)/295, item 19.

Conference met. Under these circumstances it was considered preferable for the committee to meet after the session, and it is foreseen that it could meet towards the end of the year.

Summary of positions taken by Member States

7. At the Director General's request,[48] Member States have commented on the following issues:

(*a*) The provisions of the revised draft articles;

(*b*) The type of instrument by which the articles should be brought into effect; and

(*c*) The Agency's role in the provision of assistance.

8. The comments on the first issue indicate that the main differences of opinion relate to the provisions on liability (Article VI) and on privileges and immunities (Article VII). As for insurance, the Secretariat is seeking the advice of experts on the subject.

9. On the question of the type of instrument, 15 Members have expressed themselves, either in written comments or in statements in the informal Working Group, in favour of a multilateral (global) agreement, partly because they believe that this would be the most practical solution and the one which best meets the needs, and partly because such an agreement could also be used as a model for bilateral or regional agreements to be concluded before or after an accident had occurred, whereas bilateral or regional agreements alone would preclude a number of States from taking part in the provision of assistance. On the other hand six Members have expressed themselves in favour of some other form of instrument, such as bilateral or regional agreements, regulations, rules or a code. Most of the Members that have commented on the question of what States should be entitled to become party to any multilateral agreement have supported the proposal in draft Article XIII that it should be open to all Members. However, some Members have expressed themselves in favour of opening the agreement to signature also by non-Member States. Of the latter, two Members have proposed to invite all States to become party, and one Member has proposed to invite States Members of the United Nations or its specialized agencies. One Member could not agree to the proposal in draft Article XIII that the Agency should be a party to the agreement on the same footing as Member States, since in its view an international organization cannot be a subject of international law to the same extent as a State. Another Member has expressed similar doubts.

10. The majority of the Members commenting upon the Agency's role in the provision of assistance have pronounced themselves in favour of an active role for the Agency. However, one Member has proposed that the Agency should not act as an intermediary, co-ordinator or observer but confine itself to rendering assistance in the same manner as any other Assisting Party.

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[48] See paragraph 3 above.