*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

## 1967

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

### 1. EXTRACT FROM A REPORT OF THE SECRETARY-GENERAL ON THE WITHDRAWAL OF THE UNITED NATIONS EMERGENCY FORCE[1]

*[Original text: English]*
*[26 June 1967]*

INTRODUCTION

1. This report on the withdrawal of the United Nations Emergency Force (UNEF) is submitted because, as indicated in my statement on 20 June 1967 to the fifth emergency special session of the General Assembly [1527th plenary meeting], important questions have been raised concerning the actions taken on the withdrawal of UNEF. These questions merit careful consideration and comment. It is in the interest of the United Nations, I believe, that this report should be full and frank, in view of the questions involved and the numerous statements that have been made, both public and private, which continue to be very damaging to the United Nations and to its peace-keeping role in particular. Despite the explanations already given in the several reports on the subject which have been submitted to the General Assembly and to the Security Council, misunderstandings and what, I fear, are misrepresentations, persist, in official as well as unofficial circles, publicly and behind the scenes.

2. A report of this kind is not the place to try to explain why there has been so much and such persistent and grossly mistaken judgement about the withdrawal of UNEF. It suffices to say here that the shattering crisis in the Near East inevitably caused intense shock in many capitals and countries of the world, together with deep frustration over the inability to cope with it. It is, of course, not unusual in such situations to seek easy explanations and excuses. When, however, this tactic involves imputing responsibility for the unleashing of major hostilities, it is, and must be, a cause for sober concern. The objective of this report is to establish an authentic, factual record of actions and their causes.

3. The emphasis here, therefore, will be upon facts. The report is intended to be neither a polemic nor an apologia. Its sole purpose is to present a factually accurate picture of what happened and why. It will serve well the interests of the United Nations, as well as of historical integrity, if this presentation of facts can help to dissipate some of the distortions of the record which, in some places, apparently have emanated from panic, emotion and political bias.

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[1] Document A/6730/Add. 3, reproduced from *Official Records of the General Assembly, Fifth Emergency Special Session, Annexes*, agenda item 5.

4. Not only events but dates, and even the time of day, have an important bearing on this exposition. The significant events and actions and their dates and times are therefore set forth below.

*16 May 1967*

5. *2000 hours GMT (2200 hours, Gaza local time).* A message from General Fawzy, Chief of Staff of the United Arab Republic Armed Forces, was received by the Commander of UNEF, Major-General Rikhye, requesting withdrawal of "all UN troops which install observation posts along our borders" (A/6730, para. 6, sub-para. 3 (*a*)). Brigadier Mokhtar, who handed General Fawzy's letter to the Commander of UNEF, told General Rikhye at the time that he must order the immediate withdrawal of United Nations troops from El Sabha and Sharm el Sheikh on the night of 16 May since United Arab Republic armed forces must gain control of these two places that very night. The UNEF Commander correctly replied that he did not have authority to withdraw his troops from these positions on such an order and could do so only on instructions from the Secretary-General; therefore, he must continue with UNEF operations in Sinai as hitherto. Brigadier Mokhtar told the Commander of UNEF that this might lead to conflict on that night (16 May) between United Arab Republic and UNEF troops, and insisted that the Commander issue orders to UNEF troops to remain confined to their camps at El Sabha and Sharm el Sheikh. General Rikhye replied that he could not comply with this request. He did, of course, inform the contingent commanders concerned of these developments. He also informed United Nations Headquarters that he proposed to continue with UNEF activities as established until he received fresh instructions from the Secretary-General.

6. *2130 hours GMT (1730 hours, New York time).* The Secretary-General received at this time the UNEF Commander's cable informing him of the above-mentioned message from General Fawzy. The UNEF Commander was immediately instructed to await further instructions from the Secretary-General and, pending this later word from him, to "be firm in maintaining UNEF position while being as understanding and as diplomatic as possible in your relations with local United Arab Republic officials".

7. *2245 hours GMT (1845 hours, New York time).* The Permanent Representative of the United Arab Republic visited the Secretary-General at this time at the latter's urgent request. The Secretary-General requested the Permanent Representative to communicate with his Government with the utmost urgency and to transmit to it his views (A/6730, para. 6, sub-para. 3 (*c*)). In particular, the Secretary-General requested the Permanent Representative to obtain his Government's clarification of the situation, pointing out that any request for the withdrawal of UNEF must come directly to the Secretary-General from the Government of the United Arab Republic.

8. *2344 hours GMT.* The UNEF Commander further reported at this time that considerable military activity had been observed in the El Arish area since the afternoon of 16 May 1967.

*17 May 1967*

9. *0800 hours GMT (0400 hours New York time).* The Commander of UNEF reported then that on the morning of 17 May, thirty soldiers of the Army of the United Arab Republic had occupied El Sabha in Sinai and that United Arab Republic troops were deployed in the immediate vicinity of the UNEF observation post there. Three armoured

cars of the United Arab Republic were located near the Yugoslav UNEF camp at El Sabha and detachments of fifteen soldiers each had taken up positions north and south of the Yugoslav contingent's camp at El Amr. All UNEF observation posts along the armistice demarcation line and the international frontier were manned as usual, but in some places United Arab Republic troops were also at the Line.

10. *1030 hours GMT (0630 hours, New York time).* The Commander of UNEF reported then that troops of the United Arab Republic had occupied the UNEF observation post at El Sabha and that the Yugoslav UNEF camps at El Qusaima and El Sabha were now behind the positions of the army of the United Arab Republic. The Commander of UNEF informed the Chief of the United Arab Republic Liaison Staff of these developments, expressing his serious concern at them. The Chief of the United Arab Republic Liaison Staff agreed to request the immediate evacuation of the observation post at El Sabha by United Arab Republic troops and shortly thereafter reported that orders to this effect had been given by the United Arab Republic military authorities. He requested, however, that to avoid any future misunderstandings, the Yugoslav observation post at El Sabha should be withdrawn immediately to El Qusaima camp. The Commander replied that any such withdrawal would require the authorization of the Secretary-General.

11. *1200 hours GMT (0800 hours, New York time).* The Chief of the United Arab Republic Liaison Staff at this time conveyed to the Commander of UNEF a request from General Mohamed Fawzy, Chief of Staff of the Armed Forces of the United Arab Republic, for the withdrawal of the Yugoslav detachments of UNEF in the Sinai within twenty-four hours. He added that the UNEF Commander might take "forty-eight hours or so" to withdraw the UNEF detachment from Sharm el Sheikh. The Commander of UNEF replied that any such move required instructions from the Secretary-General.

12. *1330 hours GMT.* The Commander of UNEF then reported that a sizable detachment of troops of the United Arab Republic was moving into the UNEF area at El Kuntilla.

13. *2000 hours GMT (1600 hours, New York time).* The Secretary-General at this date held an informal meeting in his office with the representatives of countries providing contingents to UNEF to inform them of the situation as then known. There was an exchange of views. The Secretary-General gave his opinion on how he should and how he intended to proceed, observing that if a formal request for the withdrawal of UNEF were to be made by the Government of the United Arab Republic, the Secretary-General, in his view, would have to comply with it, since the Force was on United Arab Republic territory only with the consent of the Government and could not remain there without it. Two representatives expressed serious doubts about the consequences of agreeing to a peremptory request for the withdrawal of UNEF and raised the questions of consideration of such a request by the General Assembly and an appeal to the United Arab Republic not to request the withdrawal of UNEF. Two other representatives stated the view that the United Arab Republic was entitled to request the removal of UNEF at any moment and that that request would have to be respected regardless of what the General Assembly might have to say in the matter, since the agreement for UNEF's presence had been concluded between the then Secretary-General and the Government of Egypt. A clarification of the situation from the United Arab Republic should therefore be awaited.

14. *2150 hours GMT (1750 hours, New York time).* The Secretary-General at this time saw the Permanent Representative of the United Arab Republic and handed to him an aide-mémoire, the text of which is contained in paragraph 6 of document A/6730. The Secretary-General also gave to the Permanent Representative of the United Arab Republic an aide-mémoire calling to the attention of his Government the "good faith" accord, the text of which is contained in paragraph 7 of document A/6730.

*18 May 1967*

15. *1321 hours GMT (0921 hours, New York time).* The Commander of UNEF reported at this time that his Liaison Officer in Cairo had been informed by an ambassador of one of the countries providing contingents to UNEF that the Foreign Minister of the United Arab Republic had summoned the representatives of nations with troops in UNEF to the Ministry for Foreign Affairs and informed them that UNEF had terminated its tasks in the United Arab Republic and in the Gaza Strip and must depart from the above territory forthwith. This information was confirmed by representatives of some of these countries at the United Nations.

16. Early on 18 May the UNEF sentries proceeding to man the normal observation post at El Sabha in Sinai were prevented from entering the post and from remaining in the area by United Arab Republic soldiers. The sentries were then forced to withdraw. They did not resist by use of force since they had no mandate to do so.

17. *1100 hours GMT.* United Arab Republic soldiers at this time forced Yugoslav UNEF sentries out of their observation post on the international frontier in front of El Kuntilla Camp. One hour later, United Arab Republic officers arrived at the water point and asked UNEF soldiers to withdraw the guard.

18. *1220 hours GMT.* At this hour, United Arab Republic soldiers entered the UNEF observation post on the international frontier in front of El Amr Camp and forced the Yugoslav soldiers to withdraw. Later, two United Arab Republic officers visited El Amr Camp and asked the UNEF platoon to withdraw within fifteen minutes.

19. *1210 hours GMT.* United Arab Republic officers then visited the Yugoslav camp at Sharm el Sheikh and informed the Commanding Officer that they had come to take over the camp and the UNEF observation post at Ras Nasrani, demanding a reply within fifteen minutes. The contingent commander replied that he had no instructions to hand over the positions.

20. *1430 hours GMT.* The UNEF Yugoslav detachment at El Qusaima camp reported that two artillery shells, apparently ranging rounds from the United Arab Republic artillery, had burst between the UNEF Yugoslav camps at El Qusaima and El Sabha.

21. *1030 hours New York time.* The Secretary-General met at this time with the Permanent Representative of Israel who gave his Government's views on the situation, emphasizing that the UNEF withdrawal should not be achieved by a unilateral United Arab Republic request alone and asserting Israel's right to a voice in the matter. The question of stationing UNEF on the Israel side of the Line was raised by the Secretary-General and this was declared by the Permanent Representative of Israel to be entirely unacceptable to his Government.

22. *1600 hours GMT (12 noon New York time).* At this hour the Secretary-General received through the Permanent Representative of the United Arab Republic the following message from Mr. Mahmoud Riad, Minister of Foreign Affairs of the United Arab Republic:

> "The Government of the United Arab Republic has the honour to inform Your Excellency that it has decided to terminate the presence of the United Nations Emergency Force from the territory of the United Arab Republic and Gaza Strip.
>
> "Therefore, I request that the necessary steps be taken for the withdrawal of the Force as soon as possible.
>
> "I avail myself of this opportunity to express to Your Excellency my gratitude and warm regards."

At the same meeting the Permanent Representative of the United Arab Republic informed the Secretary-General of the strong feeling of resentment in Cairo at what was there considered to be attempts to exert pressure and to make UNEF an "occupation force". The Secretary-General expressed deep misgivings about the likely disastrous consequences of the withdrawal of UNEF and indicated his intention to appeal urgently to President Nasser to reconsider the decision. Later in the day, the representative of the United Arab Republic informed the Secretary-General that the Foreign Minister had asked the Permanent Representative by telephone from Cairo to convey to the Secretary-General his urgent advice that the Secretary-General should not make an appeal to President Nasser to reconsider the request for withdrawal of UNEF and that, if he did so, such a request would be sternly rebuffed. The Secretary-General raised the question of a possible visit by him to Cairo and was shortly thereafter informed that such a visit as soon as possible would be welcomed by the Government of the United Arab Republic.

23. *1700 hours New York time.* The Secretary-General met with the UNEF Advisory Committee, set up under the terms of paragraphs 6, 8 and 9 of resolution 1001 (ES-I) of 7 November 1956, and the representatives of three countries not members of the Advisory Committee but providing contingents to UNEF, to inform them of developments and particularly the United Arab Republic's request for UNEF's withdrawal, and to consult them for their views on the situation. At this meeting, one of the views expressed was that the United Arab Republic's demand for the immediate withdrawal of UNEF from United Arab Republic territory was not acceptable and that the ultimate responsibility for the decision to withdraw rested with the United Nations acting through the Security Council or the General Assembly. The holders of this view therefore urged further discussion with the Government of the United Arab Republic as well as with other Governments involved. Another position was that the Secretary-General had no choice but to comply with the request of the Government of the United Arab Republic, one representative stating that the moment the request for the withdrawal of UNEF was known his Government would comply with it and withdraw its contingent. A similar position had been taken in Cairo by another Government providing a contingent. No proposal was made that the Advisory Committee should exercise the right vested in it by General Assembly resolution 1001 (ES-I) to request the convening of the General Assembly to take up the situation arising from the United Arab Republic communication. At the conclusion of the meeting, it was understood that the Secretary-General had no alternative other than to comply with the United Arab Republic's demand, although some representatives felt the Secretary-General should previously clarify with that Government the meaning in its request that withdrawal should take place "as soon as possible". The Secretary-General informed the Advisory Committee that he intended to reply promptly to the United Arab Republic, and to report to the General Assembly and to the Security Council on the action he had taken. It was for the Member States to decide whether the competent organs should or could take up the matter and to pursue it accordingly.

24. After the meeting of the Advisory Committee, at approximately 1900 hours, New York time, on 18 May, the Secretary-General replied to the message from the Minister for Foreign Affairs of the United Arab Republic through that Government's Permanent Representative as follows:

> "I have the honour to acknowledge your letter to me of 18 May conveying the message from the Minister for Foreign Affairs of the United Arab Republic concerning the United Nations Emergency Force. Please be so kind as to transmit to the Foreign Minister the following message in reply:
>
> " 'Your message informing me that your Government no longer consents to the presence of the United Nations Emergency Force on the territory of the United Arab

Republic, that is to say in Sinai, and in the Gaza Strip, and requesting that the necessary steps be taken for its withdrawal as soon as possible, was delivered to me by the Permanent Representative of the United Arab Republic at noon on 18 May.

" 'As I have indicated to your Permanent Representative on 16 May, the United Nations Emergency Force entered Egyptian territory with the consent of your Government and in fact can remain there only so long as that consent continues. In view of the message now received from you, therefore, your Government's request will be complied with and I am proceeding to issue instructions for the necessary arrangements to be put in train without delay for the orderly withdrawal of the Force, its vehicles and equipment and for the disposal of all properties pertaining to it. I am, of course, also bringing this development and my actions and intentions to the attention of the UNEF Advisory Committee and to all Governments providing contingents for the Force. A full report covering this development will be submitted promptly by me to the General Assembly, and I consider it necessary to report also to the Security Council about some aspects of the current situation in the area.

" 'Irrespective of the reasons for the action you have taken, in all frankness, may I advise you that I have serious misgivings about it for, as I have said each year in my annual reports to the General Assembly on UNEF, I believe that this Force has been an important factor in maintaining relative quiet in the area of its deployment during the past ten years and that its withdrawal may have grave implications for peace.

" 'U THANT' "

It is to be noted that the decision notified to the Government of the United Arab Republic in this letter was in compliance with the request to withdraw the Force. It did not, however, signify the actual withdrawal of the Force which, in fact, was to remain in the area for several more weeks.

25. Formal instructions relating to the withdrawal of UNEF were sent to the UNEF Commander by the Secretary-General on the night of 18 May (see annex).

26. Also on the evening of 18 May the Secretary-General submitted his special report to the General Assembly (A/6730).

27. On 19 May the Secretary-General issued his report to the Security Council on recent developments in the Near East (S/7896).

*19 May 1967*

28. *1130 hours New York time.* The Secretary-General again received the Permanent Representative of Israel who gave him a statement from his Government concerning the withdrawal of UNEF, strongly urging the Secretary-General to avoid condoning any changes in the *status quo* pending the fullest and broadest international consultation.

29. On the afternoon of 22 May, the Secretary-General departed from New York, arriving in Cairo on the afternoon of 23 May. He left Cairo on the afternoon of 25 May, arriving back in New York on 26 May. While *en route* to Cairo during a stop in Paris, the Secretary-General learned that on this day President Nasser had announced his intention to reinstitute the blockade against Israel in the Strait of Tiran.

*17 June 1967*

30. The withdrawal of UNEF was completed. Details of the actual withdrawal and evacuation of UNEF are given in document A/6730/Add.2.

## MAIN POINTS AT ISSUE

31. Comment is called for on some of the main points at issue even prior to the consideration of the background and basis for the stationing of UNEF on United Arab Republic territory.

### *The causes of the present crisis*

32. It has been said rather often in one way or another that the withdrawal of UNEF is a primary cause of the present crisis in the Near East. This is, of course, a superficial and over-simplified approach. As the Secretary-General pointed out in his report of 26 May 1967 to the Security Council, this view "ignores the fact that the underlying basis for this and other crisis situations in the Near East is the continuing Arab-Israel conflict which has been present all along, and of which the crisis situation created by the unexpected request for the withdrawal of the Emergency Force is the latest expression" (S/7906, para. 2).[2] The Secretary-General's report to the Security Council of 19 May 1967 (S/7896) described the various elements of the increasingly dangerous situation in the Near East prior to the decision of the Government of the United Arab Republic to terminate its consent for the presence of UNEF on its territory.

33. The United Nations Emergency Force served for more than ten years as a highly valuable instrument in helping to maintain quiet along the line between Israel and the United Arab Republic. Its withdrawal revealed in all its depth and danger the undiminishing conflict between Israel and her Arab neighbours. The withdrawal also made immediately acute the problem of access for Israel to the Gulf of Aqaba through the Strait of Tiran—a problem which had been dormant for over ten years only because of the presence of UNEF. But the presence of UNEF did not touch the basic problem of the Arab-Israel conflict—it merely isolated, immobilized and covered up certain aspects of that conflict. At any time in the last ten years either of the parties could have reactivated the conflict and if they had been determined to do so UNEF's effectiveness would automatically have disappeared. When, in the context of the whole relationship of Israel with her Arab neighbours, the direct confrontation between Israel and the United Arab Republic was revived after a decade by the decision of the United Arab Republic to move its forces up to the Line, UNEF at once lost all usefulness. In fact, its effectiveness as a buffer and as a presence had already vanished, as can be seen from the chronology given above, even before the request for its withdrawal had been received by the Secretary-General from the Government of the United Arab Republic. In recognizing the extreme seriousness of the situation thus created, its true cause, the continuing Arab-Israel conflict, must also be recognized. It is entirely unrealistic to maintain that that conflict could have been solved, or its consequences prevented, if a greater effort had been made to maintain UNEF's presence in the area against the will of the Government of the United Arab Republic.

### *The decision on UNEF's withdrawal*

34. The decision to withdraw UNEF has been frequently characterized in various quarters as "hasty", "precipitous", and the like, even, indeed, to the extent of suggesting that it took President Nasser by surprise. The question of the withdrawal of UNEF is by no means a new one. In fact, it was the negotiations on this very question with the Government of Egypt which, after the establishment of UNEF by the General Assembly, delayed its arrival while it waited in a staging area at Capodichino airbase, Naples, Italy, for several days in November 1956. The Government of Egypt, understandably, did not

[2] See *Official Records of the Security Council, Twenty-second Year, Supplement for April, May and June 1967.*

wish to give permission for the arrival on its soil of an international force, unless it was assured that its sovereignty would be respected and a request for withdrawal of the Force would be honoured. Over the years, in discussions with representatives of the United Arab Republic, the subject of the continued presence of UNEF has occasionally come up, and it was invariably taken for granted by United Arab Republic representatives that if their Government officially requested the withdrawal of UNEF the request would be honoured by the Secretary-General. There is no record to indicate that this assumption was ever questioned. Thus, although the request for the withdrawal of UNEF came as a surprise, there was nothing new about the question of principle nor about the procedure to be followed by the Secretary-General. It follows that the decision taken by him on 18 May 1967 to comply with the request for the withdrawal of the Force was seen by him as the only reasonable and sound action that could be taken. The actual withdrawal itself, it should be recalled, was to be carried out in an orderly, dignified, deliberate and not precipitate manner over a period of several weeks. The first troops in fact left the area only on 29 May.

*The possibility of delay*

35. Opinions have also been frequently expressed that the decision to withdraw UNEF should have been delayed pending consultations of various kinds, or that efforts should have been made to resist the United Arab Republic's request for UNEF's withdrawal, or to bring pressure to bear on the Government of the United Arab Republic to reconsider its decision in this matter. In fact, as the chronology given above makes clear, the effectiveness of UNEF, in the light of the movement of United Arab Republic troops up to the Line and into Sharm el Sheikh, had already vanished before the request for withdrawal was received. Furthermore, the Government of the United Arab Republic had made it entirely clear to the Secretary-General that an appeal for reconsideration of the withdrawal decision would encounter a firm rebuff and would be considered as an attempt to impose UNEF as an "army of occupation". Such a reaction, combined with the fact that UNEF positions on the Line had already been effectively taken over by United Arab Republic troops in pursuit of their full right to move up to the Line in their own territory, and a deep anxiety for the security of UNEF personnel should an effort be made to keep UNEF in position after its withdrawal had been requested, were powerful arguments in favour of complying with the United Arab Republic request, even supposing there had not been other overriding reasons for accepting it.

36. It has been said that the decision to withdraw UNEF precipitated other consequences such as the reinstitution of the blockade against Israel in the Strait of Tiran. As can be seen from the chronology, the UNEF positions at Sharm el Sheikh on the Strait of Tiran (manned by thirty-two men in all) were in fact rendered ineffective by United Arab Republic troops before the request for withdrawal was received. It is also pertinent to note that in response to a query from the Secretary-General as to why the United Arab Republic had announced its reinstitution of the blockade in the Strait of Tiran while the Secretary-General was actually *en route* to Cairo on 22 May, President Nasser explained that his Government's decision to resume the blockade had been taken some time before U Thant's departure and it was considered preferable to make the announcement before rather than after the Secretary-General's visit to Cairo.

*The question of consultations*

37. It has been said also that there was not adequate consultation with the organs of the United Nations concerned or with the Members before the decision was taken to withdraw the Force. The Secretary-General was, and is, firmly of the opinion that the

decision for withdrawal of the Force, on the request of the host Government, rested with the Secretary-General after consultation with the Advisory Committee on UNEF, which is the organ established by the General Assembly for consultation regarding such matters. This was made clear by Secretary-General Hammarskjöld, who took the following position on 25 February 1957 in reply to a question about the withdrawal of the Force from Sharm el Sheikh:

> "An indicated procedure would be for the Secretary-General to inform the Advisory Committee on the United Nations Emergency Force, which would determine whether the matter should be brought to the attention of the Assembly." [3]

The Secretary-General consulted the Advisory Committee before replying to the letter of 18 May 1967 from the United Arab Republic requesting withdrawal. This consultation took place within a few hours after receipt of the United Arab Republic request, and the Advisory Committee was thus quickly informed of the decision which the Secretary-General had in mind to convey in his reply to the Foreign Minister of the United Arab Republic. As indicated in the report to the Security Council of 26 May 1967:

> "The Committee did not move, as it was its right to do under the terms of paragraph 9 of General Assembly resolution 1001 (ES-I), of 7 November 1956, to request the convening of the General Assembly on the situation which had arisen." (S/7906, para. 4).

38. Before consulting the Advisory Committee on UNEF, the Secretary-General had also consulted the Permanent Representatives of the seven countries providing the contingents of UNEF and informed them of his intentions. This, in fact, was more than was formally required of the Secretary-General in the way of consultation.

39. Obviously, many Governments were concerned about the presence and functioning of UNEF and about the general situation in the area, but it would have been physically impossible to consult all of the interested representatives within any reasonable time. This was an emergency situation requiring urgent action. Moreover, it was perfectly clear that such consultations were sure to produce sharply divided counsel, even if they were limited to the permanent members of the Security Council. Such sharply divided advice would have complicated and exacerbated the situation, and, far from relieving the Secretary-General of the responsibility for the decision to be taken, would have made the decision much more difficult to take.

40. It has been said that the final decision on the withdrawal of UNEF should have been taken only after consideration by the General Assembly. This position is not only incorrect but also unrealistic. In resolution 1000 (ES-I), the General Assembly established a United Nations Command for an emergency international force. On the basis of that resolution the Force was quickly recruited and its forward elements flown to the staging area at Naples. Thus, though established, it had to await the permission of the Government of Egypt to enter Egyptian territory. That permission was subsequently given by the Government of Egypt as a result of direct discussions between Secretary-General Hammarskjöld and President Nasser of Egypt. There is no official United Nations document on the basis of which any case could be made that there was any limitation on the authority of the Government of Egypt to rescind that consent at its pleasure, or which would indicate that the United Arab Republic had in any way surrendered its right to ask for and obtain at any time the removal of UNEF from its territory. This point is elaborated later in this report (see paras. 71-80 below).

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[3] *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 66, document A/3563, annex I, B, 2.

41. As a practical matter, there would be little point in any case in taking such an issue to the General Assembly unless there would be reasonable certainty that that body could be expected expeditiously to reach a substantive decision. In the prevailing circumstances, the question could have been validly raised as to what decision other than the withdrawal of UNEF could have been reached by the Assembly once United Arab Republic consent for the continued presence of UNEF was withdrawn.

42. As regards the practical possibility of the Assembly considering the request for UNEF's withdrawal, it is relevant to observe that the next regular session of the General Assembly was some four months off at the time the withdrawal request was made. The special session of the General Assembly which was meeting at the time could have considered the question, according to rule 19 of the Assembly's rules of procedure, only if two thirds or eighty-two members voted for the inclusion of the item in the agenda. It is questionable, to say the least, whether the necessary support could have been mustered for such a controversial item. There could have been no emergency special session since the issue was not then before the Security Council, and therefore the condition of lack of unanimity did not exist.

43. As far as consultation with or action by the Security Council was concerned, the Secretary-General reported to the Council on the situation leading up to and created by the withdrawal of UNEF on 19 May 1967 (S/7896). In that report he characterized the situation in the Near East as "extremely menacing". The Council met for the first time after this report on 24 May 1967, but took no action.

44. As had already been stated, the Advisory Committee did not make any move to bring the matter before the General Assembly, and no representative of any Member Government requested a meeting of either the Security Council or the General Assembly immediately following the Secretary-General's two reports (A/6730 and S/7896). In this situation, the Secretary-General himself did not believe that any useful purpose would be served by his seeking a meeting of either organ, nor did he consider that there was any basis for him to do so at that time. Furthermore, the information available to the Secretary-General did not lead him to believe that either the General Assembly or the Security Council would have decided that UNEF should remain on United Arab Republic territory, by force if necessary, despite the request of the Government of the United Arab Republic that it should leave.

*Practical factors influencing the decision*

45. Since it is still contended in some quarters that the UNEF operation should somehow have continued after the consent of the Government of the United Arab Republic to its presence was withdrawn, it is necessary to consider the factors, quite apart from constitutional and legal considerations, which would have made such a course of action entirely impracticable.

46. The consent and active co-operation of the host country is essential to the effective operation and, indeed, to the very existence, of any United Nations peace-keeping operation of the nature of UNEF. The fact is that UNEF had been deployed on Egyptian and Egyptian-controlled territory for over ten and a half years with the consent and co-operation of the Government of the United Arab Republic. Although it was envisaged in pursuance of General Assembly resolution 1125 (XI) of 2 February 1957 that the Force would be stationed on both sides of the Line, Israel exercised its sovereign right to refuse the stationing of UNEF on its side, and the Force throughout its existence was stationed on the United Arab Republic side of the Line only.

47. In these circumstances, the true basis for UNEF's effectiveness as a buffer and deterrent to infiltration was, throughout its existence, a voluntary undertaking by local United Arab Republic authorities with UNEF, that United Arab Republic troops would respect a defined buffer zone along the entire length of the Line in which only UNEF would operate and from which United Arab Republic troops would be excluded. This undertaking was honoured for more than a decade, and this Egyptian co-operation extended also to Sharm el Sheikh, Ras Nasrani and the Strait of Tiran. This undertaking was honoured although UNEF had no authority to challenge the right of United Arab Republic troops to be present anywhere on their own territory.

48. It may be pointed out in passing that over the years UNEF dealt with numerous infiltrators coming from the Israel as well as from the United Arab Republic side of the Line. It would hardly be logical to take the position that because UNEF has successfully maintained quiet along the Line for more than ten years, owing in large measure to the co-operation of the United Arab Republic authorities, that Government should then be told that it could not unilaterally seek the removal of the Force and thus in effect be penalized for the long co-operation with the international community it had extended in the interest of peace.

49. There are other practical factors relating to the above-mentioned arrangement which are highly relevant to the withdrawal of UNEF. First, once the United Arab Republic troops moved up to the Line to place themselves in direct confrontation with the military forces of Israel, UNEF had, in fact, no further useful function. Secondly, if the Force was no longer welcome, it could not as a practical matter remain in the United Arab Republic, since the friction which would almost inevitably have arisen with that Government, its armed forces and with the local population would have made the situation of the Force both humilitating and untenable. It would even have been impossible to supply it. UNEF clearly had no mandate to try to stop United Arab Republic troops from moving freely about on their own territory. This was a peace-keeping force, not an enforcement action. Its effectiveness was based entirely on voluntary co-operation.

50. Quite apart from its position in the United Arab Republic, the request of that Government for UNEF's withdrawal automatically set off a disintegration of the Force, since two of the Governments providing contingents quickly let the Secretary-General know that their contingents would be withdrawn, and there can be little doubt that other such notifications would not have been slow in coming if friction had been generated through an unwillingness to comply with the request for withdrawal.

51. For all the foregoing reasons, the operation, and even the continued existence of UNEF on United Arab Republic territory, after the withdrawal of United Arab Republic consent, would have been impossible, and any attempt to maintain the Force there would without question have had disastrous consequences.

### Legal and constitutional considerations and the question of consent for the stationing of UNEF on United Arab Republic territory

52. Legal and constitutional considerations were, of course, of great importance in determining the Secretary-General's actions in relation to the request of the Government of the United Arab Republic for the withdrawal of UNEF. Here again, a chronology of the relevant actions in 1956 and 1957 may be helpful.

53. *4 November 1956.* The General Assembly, at its first emergency special session, in resolution 998 (ES-I), requested "the Secretary-General to submit to it within forty-eight hours a plan for the setting up, with the consent of the nations concerned, of an emergency international United Nations Force to secure and supervise the cessation of hostilities . . .".

54. *5 November 1956.* The General Assembly, in its resolution 1000 (ES-I), established a United Nations Command for an emergency international Force, and, *inter alia*, invited the Secretary-General "to take such administrative measures as may be necessary for the prompt execution of the actions envisaged in the present resolution".

55. *7 November 1956.* The General Assembly, by its resolution 1001 (ES-I), *inter alia*, approved the guiding principles for the organization and functioning of the emergency international United Nations Force and authorized the Secretary-General "to take all other necessary administrative and executive action".

56. *10 November 1956.* Arrival of advance elements of UNEF at staging area in Naples.

57. *8-12 November 1956.* Negotiations between Secretary-General Hammarskjöld and the Government of Egypt on entry of UNEF into Egypt.

58. *12 November 1956.* Agreement on UNEF entry into Egypt announced and then postponed, pending clarification, until 14 November.

59. *15 November 1956.* Arrival of advance elements of UNEF in Abu Suweir, Egypt.

60. *16-18 November 1956.* Negotiations between Secretary-General Hammarskjöld and President Nasser in Cairo on the presence and functioning of UNEF in Egypt and co-operation with Egyptian authorities, and conclusion of an "aide-mémoire on the basis for the presence and functioning of the United Nations Emergency Force in Egypt" (the so-called "good faith accord"). [4]

61. *24 January 1957.* The Secretary-General, in a report to the General Assembly, [5] suggested that the Force should have units stationed on both sides of the armistice demarcation line and that certain measures should be taken in relation to Sharm el Sheikh. On *2 February 1957*, the General Assembly, by its resolution 1125 (XI), noted with appreciation the Secretary-General's report and considered that

> "after full withdrawal of Israel from the Sharm el Sheikh and Gaza areas, the scrupulous maintenance of the Armistice Agreement requires the placing of the United Nations Emergency Force on the Egyptian-Israel armistice demarcation line and the implementation of other measures as proposed in the Secretary-General's report, with due regard to the considerations set out therein with a view to assist in achieving situations conducive to the maintenance of peaceful conditions in the area".

62. *7 March 1957.* Arrival of UNEF in Gaza.

63. *8 March 1957.* Arrival of UNEF elements at Sharm el Sheikh.

64. In general terms the consent of the host country to the presence and operation of the United Nations peace-keeping machinery is a basic prerequisite of all United Nations peace-keeping operations. The question has been raised whether the United Arab Republic had the right to request unilaterally the withdrawal "as soon as possible" of UNEF from its territory or whether there were limitations on its rights in this respect. An examination of the records of the first emergency special session and the eleventh session of the General Assembly is relevant to this question.

65. It is clear that the General Assembly and the Secretary-General from the very beginning recognized, and in fact emphasized, the need for Egyptian consent in order that UNEF be stationed or operate on Egyptian territory. Thus, the initial resolution 998

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[4] *Ibid.*, document A/3375, annex.

[5] *Ibid.*, document A/3512.

(ES-I) of 4 November 1956 requested the Secretary-General to submit a plan for the setting up of an emergency force, "with the consent of the nations concerned". The "nations concerned" obviously included Egypt (now the United Arab Republic), the three countries (France, Israel and the United Kingdom) whose armies were on Egyptian soil and the States contributing contingents to the Force.

66. The Secretary-General, in his report to the General Assembly of 6 November 1956, stated, *inter alia*:

> "Functioning, as it would, on the basis of a decision reached under the terms of resolution 337 (V), 'Uniting for peace', the Force, if established, would be limited in its operations to the extent that consent of the parties concerned is required under generally recognized international law. While the General Assembly is enabled to *establish* the Force with the consent of those parties which contribute units to the Force, it could not request the Force to be *stationed* or *operate* on the territory of a given country without the consent of the Government of that country." [6]

67. He noted that the foregoing did not exclude the possibility that the Security Council could use such a Force within the wider margins provided under Chapter VII of the United Nations Charter. He pointed out, however, that it would not be necessary to elaborate this point further, since no use of the Force under Chapter VII, with the rights in relation to Member States that this would entail, had been envisaged.

68. The General Assembly, in its resolution 1001 (ES-I) of 7 November 1956, expressed its approval of the guiding principles for the organization and functioning of the emergency international United Nations Force as expounded in paragraphs 6 to 9 of the Secretary-General's report. This included the principle of consent embodied in paragraph 9.

69. The need for Egypt's consent was also stated as a condition or "understanding" by some of the States offering to contribute contingents to the Force.

70. It was thus a basic legal principle arising from the nature of the Force, and clearly understood by all concerned, that the consent of Egypt was a prerequisite to the stationing of UNEF on Egyptian territory, and it was a practical necessity as well in acquiring contingents for the Force.

### *The "good faith" aide-mémoire of 20 November 1956*

71. There remains to be examined whether any commitments were made by Egypt which would limit its pre-existing right to withdraw its consent at any time that it chose to do so. The only basis for asserting such limitation could be the so-called "good faith" aide-mémoire which was set out as an annex to a report of the Secretary-General submitted to the General Assembly on 20 November 1956. [7]

72. The Secretary-General himself did not offer any interpretation of the "good faith" aide-mémoire to the General Assembly or make any statement questioning the remarks made by the Foreign Minister of Egypt in the General Assembly the following week (see para. 74 below). It would appear, however, that in an exchange of cables he had sought to obtain the express acknowledgement from Egypt that its consent to the presence of the Force would not be withdrawn before the Force had completed its task. Egypt did not accept this interpretation but held to the view that if its consent was no longer maintained the Force should be withdrawn. Subsequent discussions between Mr. Hammarskjöld and President Nasser resulted in the "good faith" aide-mémoire.

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[6] *Ibid., First Emergency Special Session, Annexes*, agenda item 5, document A/3302, para. 9.

[7] *Ibid., Eleventh Session, Annexes*, agenda item 66, document A/3375, annex.

73. An interpretative account of these negotiations made by Mr. Hammarskjöld in a personal and private paper entitled "aide-mémoire", dated 5 August 1957, some eight and a half months after the discussions, has recently been made public by a private person who has a copy. It is understood that Mr. Hammarskjöld often prepared private notes concerning significant events under the heading "aide-mémoire". This memorandum is not in any official record of the United Nations nor is it in any of the official files. The General Assembly, the Advisory Committee on UNEF and the Government of Egypt were not informed of its contents or existence. It is not an official paper and has no standing beyond being a purely private memorandum of unknown purpose or value, in which Secretary-General Hammarskjöld seems to record his own impressions and interpretations of his discussions with President Nasser. This paper, therefore, cannot affect in any way the basis for the presence of UNEF on the soil of the United Arab Republic as set out in the official documents, much less supersede those documents.

*Position of Egypt*

74. It seems clear that Egypt did not understand the "good faith" aide-mémoire to involve any limitation on its right to withdraw its consent to the continued stationing and operation of UNEF on its territory. The Foreign Minister of Egypt, speaking in the General Assembly on 27 November 1956, one week after the publication of the "good faith" aide-mémoire and three days following its approval by the General Assembly, said:

> "We still believe that the General Assembly resolution of 7 November 1956 still stands, together with its endorsement of the principle that the General Assembly could not request the United Nations Emergency Force to be stationed or to operate on the territory of a given country without the consent of the Government of the country. This is the proper basis on which we believe, together with the overwhelming majority of this Assembly, that the United Nations Emergency Force could be stationed or could operate in Egypt. It is the only basis on which Egypt has given its consent in this respect." [8]

He then added:

> ". . . as must be abundantly clear, this Force has gone to Egypt to help Egypt, with Egypt's consent; and no one here or elsewhere can reasonably or fairly say that a fire brigade, after putting out a fire, would be entitled or expected to claim the right of deciding not to leave the house". [9]

*Analysis of the "task" of the Force*

75. In the "good faith" aide-mémoire the Government of Egypt declared that, "when exercising its sovereign rights on any matter concerning the presence and functioning of UNEF, it will be guided, in good faith, by its acceptance of General Assembly resolution 1000 (ES-I) of 5 November 1956".

76. The United Nations in turn declared "that the activities of UNEF will be guided, in good faith, by the task established for the Force in the aforementioned resolutions [1000 (ES-I) and 997 (ES-I)]; in particular, the United Nations, understanding this to correspond to the wishes of the Government of Egypt, reaffirms its willingness to maintain UNEF until its task is completed".

77. It must be noted that, while Egypt undertook to be guided in good faith by its acceptance of General Assembly resolution 1000 (ES-I), the United Nations also undertook

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[8] *Ibid., Plenary Meetings*, 597th meeting, para. 48.

[9] *Ibid.*, para. 50.

to be guided in good faith by the task established for the Force in resolutions 1000 (ES-I) and 997 (ES-I). Resolution 1000 (ES-I), to which the declaration of Egypt referred, established a United Nations Command for the Force "to secure and supervise the cessation of hostilities in accordance with all the terms" of resolution 997 (ES-I). It must be recalled that at this time Israel forces had penetrated deeply into Egyptian territory and that forces of France and the United Kingdom were conducting military operations on Egyptian territory. Resolution 997 (ES-I) urged as a matter of priority that all parties agree to an immediate cease-fire, and halt the movement of military forces and arms into the area. It also urged the parties to the Armistice Agreements promptly to withdraw all forces behind the armistice lines, to desist from raids across the armistice lines, and to observe scupulously the provisions of the Armistice Agreements. It further urged that, upon the cease-fire being effective, steps be taken to reopen the Suez Canal and restore secure freedom of navigation.

78. While the terms of resolution 997 (ES-I) cover a considerable area, the emphasis in resolution 1000 (ES-I) is on securing and supervising the cessation of hostilities. Moreover, on 6 November 1956 the Secretary-General, in his second and final report on the plan for an emergency international United Nations Force, noted that "the Assembly intends that the Force should be of a temporary nature, the length of its assignment being determined by the needs arising out of the present conflict". [10] Noting further the terms of resolution 997 (ES-I) he added that "the functions of the United Nations Force would be, when a cease-fire is being established, to enter Egyptian territory with the consent of the Egyptian Government, in order to help maintain quiet during and after the withdrawal of non-Egyptian troops, and to secure compliance with the other terms established in the resolution of 2 November 1956".

79. In a cable delivered to Foreign Minister Fawzi on 9 or 10 November 1956, in reply to a request for clarification as to how long it was contemplated that the Force should stay in the demarcation line area, the Secretary-General stated: "A definite reply is at present impossible but the emergency character of the Force links it to the immediate crisis envisaged in resolution 2 November [997 (ES-I)] and its liquidation." This point was confirmed in a further exchange of cables between the Secretary-General and Mr. Fawzi on 14 November 1956.

80. The Foreign Minister of Egypt, Mr. Fawzi, gave his understanding of the task of the Force in a statement to the General Assembly on 27 November 1956:

> "Our clear understanding—and I am sure it is the clear understanding of the Assembly—is that this Force is in Egypt only in relation to the present attack against Egypt by the United Kingdom, France and Israel, and for the purposes directly connected with the incursion of the invading forces into Egyptian territory. The United Nations Emergency Force is in Egypt, not as an occupation force, not as a replacement for the invaders, not to clear the Canal of obstructions, not to resolve any question or settle any problem, be it in relation to the Suez Canal, to Palestine or to any other matter; it is not there to infringe upon Egyptian sovereignty in any fashion or to any extent, but, on the contrary, to give expression to the determination of the United Nations to put an end to the aggression committed against Egypt and to the presence of the invading forces in Egyptian territory." [11]

81. In letters dated 3 November 1956 addressed to the Secretary-General, the representatives of both France and the United Kingdom had proposed very broad functions for

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[10] *Ibid., First Emergency Special Session, Annexes*, agenda item 5, document A/3302, para. 8.

[11] *Ibid., Eleventh Session, Plenary Meetings*, 597th meeting, para. 49.

UNEF, stating on behalf of their Governments that military action could be stopped if the following conditions were met:

"(*a*) Both the Egyptian and Israel Governments agree to accept a United Nations Force to keep the peace.

"(*b*) The United Nations decides to constitute and maintain such a Force until an Arab-Israel peace settlement is reached and until satisfactory arrangements have been agreed in regard to the Suez Canal, both agreements to be guaranteed by the United Nations.

"(*c*) In the meantime, until the United Nations Force is constituted, both combatants agree to accept forthwith limited detachments of Anglo-French troops to be stationed between the combatants." [12]

These broad functions for the Force were not acceptable to the General Assembly, however, as was pointed out in telegrams dated 4 November 1956 from Secretary-General Dag Hammarskjöld to the Minister for Foreign Affairs of France and the Secretary of State for Foreign Affairs of the United Kingdom. [13]

82. Finally, it is obvious that the task referred to in the "good faith" aide-mémoire could only be the task of the Force as it had been defined in November 1956 when the understanding was concluded. The "good faith" undertaking by the United Nations would preclude it from claiming that the Egyptian agreement was relevant or applicable to functions which the Force was given at a much later date. The stationing of the Force on the armistice demarcation line and at Sharm el Sheikh was only determined in pursuance of General Assembly resolution 1125 (XI) of 2 February 1957. The Secretary-General, in his reports relating to this decision, made it clear that the further consent of Egypt was essential with respect to these new functions. [14] Consequently, the understanding recorded in the "good faith" aide-mémoire of 20 November 1956 could not have been, itself, a commitment with respect to functions only determined in February and March 1957. It is only these later tasks that the Force had been performing during the last ten years—tasks of serving as a buffer and deterring infiltrators which went considerably beyond those of securing and supervising the cessation of hostilities provided in the General Assembly resolutions and referred to in the "good faith" aide-mémoire.

### *The stationing of UNEF on the armistice demarcation line and at Sharm el Sheikh*

83. There remains to examine whether Egypt made further commitments with respect to the stationing of the Force on the armistice demarcation line and at Sharm el Sheikh. Israel, of course, sought to obtain such commitments, particularly with respect to the area around Sharm el Sheikh.

84. For example, in an aide-mémoire of 4 February 1957, [15] the Government of Israel sought clarification as to whether units of the United Nations Emergency Force would be stationed along the western shore of the Gulf of Aqaba in order to act as a restraint against hostile acts, and would remain so deployed until another effective means was agreed upon between the parties concerned for ensuring permanent freedom of navigation and the

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[12] *Ibid.*, *First Emergency Special Session*, *Annexes*, agenda item 5, documents A/3268 and A/3269.

[13] *Ibid.*, document A/3287, annexes 2 and 4.

[14] *Ibid.*, *Eleventh Session*, *Annexes*, agenda item 66, documents A/3512, para. 20, and A/3527, para. 5.

[15] *Ibid.*, document A/3527, annex I.

absence of belligerent acts in the Strait of Tiran and the Gulf of Aqaba. The Secretary-General pointed out that such "clarification" would require "Egyptian consent". He stated:

> "The second of the points in the Israel aide-mémoire requests a 'clarification' which, in view of the position of the General Assembly, could go beyond what was stated in the last report only after negotiation with Egypt. This follows from the statements in the debate in the General Assembly, and the report on which it was based, which make it clear that the stationing of the Force at Sharm el Sheikh, under such terms as those mentioned in the question posed by Israel, would require Egyptian consent." [16]

85. It is clear from the record that Egypt did not give its consent to Israel's proposition. The Secretary-General's report of 8 March 1957 recorded "arrangements for the complete and unconditional withdrawal of Israel in accordance with the decision of the General Assembly." [17] There is no agreement on the part of Egypt to forgo its rights with respect to the granting or withdrawing of its consent to the continued stationing of the Force on its territory. On the contrary, at the 667th plenary meeting of the General Assembly on 4 March 1957, the Foreign Minister of Egypt stated:

> "At our previous meeting I stated that the Assembly was unanimous in expecting full and honest implementation of its resolutions calling for immediate and unconditional withdrawal by Israel. I continue to submit to the Assembly that this position —which is the only position the Assembly can possibly take—remains intact and entire. Nothing said by anyone here or elsewhere could shake this fact or detract from its reality and its validity, nor could it affect the fullness and the lawfulness of Egypt's rights and those of the Arab people of the Gaza Strip." [18]

86. The Foreign Minister of Israel, in her statement at the 666th meeting of the General Assembly, on 1 March 1957, asserted that an assurance had been given that any proposal for the withdrawal of UNEF from the Gulf of Aqaba area would come first to the Advisory Committee on UNEF (see paragraphs 95-98 below).

### *Question of the stationing of UNEF on both sides of the armistice demarcation line*

87. Another point having significance with respect to the undertakings of Egypt is the question of the stationing of UNEF on both sides of the armistice demarcation line. The Secretary-General, in his report of 24 January 1957 to the General Assembly, [19] suggested that the Force should have units stationed also on the Israel side of the armistice demarcation line. In particular, he suggested that units of the Force should at least be stationed in the El Auja demilitarized zone [20] which had been occupied by the armed forces of Israel. He indicated that if El Auja were demilitarized in accordance with the Armistice Agreement and units of UNEF were stationed there, a condition of reciprocity would be the Egyptian assurance that Egyptian forces would not take up positions in the area in contraven-

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[16] *Ibid.*, document A/3527, para. 5.

[17] *Ibid.*, document A/3568, para. 2.

[18] *Ibid., Eleventh Session, Plenary Meetings*, 667th meeting, para. 240.

[19] *Ibid., Annexes*, agenda item 66, document A/3512.

[20] Article VIII of the Egyptian-Israel General Armistice Agreement provides, *inter alia*, that an area comprising the village of El Auja and vicinity, as defined in the article, shall be demilitarized and that both Egyptian and Israel armed forces shall be totally excluded therefrom. The article further provides that on the Egyptian side of the frontier, facing the El Auja area no Egyptian defensive positions shall be closer to El Auja than El Qusaima and Abu Aweigila.

tion of the Armistice Agreement.[21] However, Israel forces were never withdrawn from El Auja and UNEF was not accepted at any point on the Israel side of the Line.

88. Following the Secretary-General's report, the General Assembly on 2 February 1957 adopted resolution 1125 (XI), in which it noted the report with appreciation and considered:

> ". . . that, after full withdrawal of Israel from the Sharm el Sheikh and Gaza areas, the scrupulous maintenance of the Armistice Agreement requires the placing of the United Nations Emergency Force on the Egyptian-Israel armistice demarcation line and the implementation of other measures as proposed in the Secretary-General's report, with due regard to the considerations set out therein with a view to assist in achieving situations conducive to the maintenance of peaceful conditions in the area;".

89. On 11 February 1957, the Secretary-General stated in a report to the General Assembly that, in the light of the implication of Israel's question concerning the stationing of UNEF at Sharm el Sheikh (see para. 84 above), he "considered it important . . . to learn whether Israel itself, in principle, consents to a stationing of UNEF units on its territory in implementation of the functions established for the Force in the basic decisions and noted in resolution 1125 (XI) where it was indicated that the Force should be placed 'on the Egyptian-Israel armistice demarcation line' ".[22] No affirmative response was ever received from Israel. In fact, already on 7 November 1956 the Prime Minister of Israel, Mr. Ben-Gurion, in a speech to the Knesset, stated, *inter alia*, "On no account will Israel agree to the stationing of a foreign force, no matter how called, in her territory or in any of the territories occupied by her." In a note to correspondents of 12 April 1957 a "United Nations spokesman" stated:

> "Final arrangements for the United Nations Emergency Force will have to wait for the response of the Government of Israel to the request by the General Assembly that the Force be deployed also on the Israel side of the armistice demarcation line."

90. In a report dated 9 October 1957 to the twelfth session of the General Assembly, the Secretary-General stated:

> "Resolution 1125 (XI) calls for placing the Force 'on the Egyptian-Israel armistice demarcation line', but no stationing of UNEF on the Israel side has occurred to date through lack of consent by Israel."[23]

91. In the light of Israel's persistent refusal to consent to the stationing and operation of UNEF on its side of the Line in spite of General Assembly resolution 1125 (XI) of 2 February 1957 and the efforts of the Secretary-General, it is even less possible to consider that Egypt's "good faith" declaration made in November 1956 could constitute a limitation of its rights with respect to the continued stationing and operation of UNEF on Egyptian territory in accordance with the resolution of 2 February 1957.

92. The representative of Israel stated in the General Assembly, on 23 November 1956:

> "If we were to accept one of the proposals made here—namely, that the Force should separate Egyptian and Israel troops for as long as Egypt thought it convenient and should then be withdrawn on Egypt's unilateral request—we would reach a reduction to absurdity. Egypt would then be in a position to build up, behind the screen of this Force, its full military preparations and, when it felt that those military preparations had reached their desired climax, to dismiss the United Nations Emergency

[21] *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 66, document A/3512, paras. 15-22.

[22] *Ibid.*, document A/3527, para. 5.

[23] *Ibid., Twelfth Session, Annexes*, agenda item 65, document A/3694, para. 15.

Force and to stand again in close contact and proximity with the territory of Israel. This reduction to absurdity proves how impossible it is to accept in any matter affecting the composition or the functions of the Force the policies of the Egyptian Government as the sole or even the decisive criterion." [24]

93. The answer to this problem which is to be found in resolution 1125 (XI) is not in the form of a binding commitment by Egypt which the record shows was never given, but in the proposal that the Force should be stationed on both sides of the armistice demarcation line. Israel, in the exercise of its sovereign right, did not give its consent to the stationing of UNEF on its territory and Egypt did not forgo its sovereign right to withdraw its consent at any time.

*Role of the UNEF Advisory Committee*

94. General Assembly resolution 1001 (ES-I) of 7 November 1956, by which the Assembly approved the guiding principles for the organization and functioning of UNEF, established an Advisory Committee on UNEF under the chairmanship of the Secretary-General. The Assembly decided that the Advisory Committee, in the performance of its duties, should be empowered to request, through the usual procedures, the convening of the General Assembly and to report to the Assembly whenever matters arose which, in its opinion, were of such urgency and importance as to require consideration by the General Assembly itself.

95. The memorandum of important points in the discussion between the representative of Israel and the Secretary-General on 25 February 1957 recorded the following question raised by the representative of Israel:

"In connexion with the duration of UNEF's deployment in the Sharm El Sheikh area, would the Secretary-General give notice to the General Assembly of the United Nations before UNEF would be withdrawn from the area, with or without Egyptian insistence, or before the Secretary-General would agree to its withdrawal?" [25]

96. The response of the Secretary-General was recorded as follows:

"On the question of notification to the General Assembly, the Secretary-General wanted to state his view at a later meeting. An indicated procedure would be for the Secretary-General to inform the Advisory Committee on the United Nations Emergency Force, which would determine whether the matter should be brought to the attention of the Assembly." [26]

97. On 1 March 1957 the Foreign Minister of Israel stated at the 666th plenary meeting of the General Assembly:

"My Government has noted the assurance embodied in the Secretary-General's note of 26 February 1957 [A/3563, annex], that any proposal for the withdrawal of the United Nations Emergency Force from the Gulf of Aqaba area would first come to the Advisory Committee on the United Nations Emergency Force, which represents the General Assembly in the implementation of its resolution 997 (ES-I) of 2 November 1956. This procedure will give the General Assembly an opportunity to ensure that no precipitate changes are made which would have the effect of increasing the possibility of belligerent acts." [27]

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[24] *Ibid., Eleventh Session, Plenary Meetings*, 592nd meeting, para. 131.

[25] *Ibid., Annexes*, agenda item 66, document A/3563, annex I, A, 2.

[26] *Ibid.*, annex I, B, 2.

[27] *Ibid., Plenary Meetings*, 666th meeting, para. 8.

98. In fact, the 25 February 1957 memorandum does not go as far as the interpretation given by the Foreign Minister of Israel. In any event, however, it gives no indication of any commitment by Egypt, and so far as the Secretary General is concerned it only indicates that a procedure would be for the Secretary-General to inform the Advisory Committee which would determine whether the matter should be brought to the attention of the General Assembly. This was also the procedure provided in General Assembly resolution 1001 (ES-I). It was, furthermore, the procedure followed by the Secretary-General on the withdrawal of UNEF.

## Observations

99. A partial explanation of the misunderstanding about the withdrawal of UNEF is an evident failure to appreciate the essentially fragile nature of the basis for UNEF's operation throughout its existence. UNEF in functioning depended completely on the voluntary co-operation of the host Government. Its basis of existence was the willingness of Governments to provide contingents to serve under an international command and at a minimum of cost to the United Nations. It was a symbolic force, small in size, with only 3,400 men, of whom 1,800 were available to police a line of 295 miles at the time of its withdrawal. It was equipped with light weapons only. It had no mandate of any kind to open fire except in the last resort in self-defence. It had no formal mandate to exercise any authority in the area in which its was stationed. In recent years it experienced an increasingly uncertain basis of financial support, which in turn gave rise to strong annual pressures for reduction in its strength. Its remarkable success for more than a decade, despite these practical weaknesses, may have led to wrong conclusions about its nature, but it has also pointed the way to a unique means of contributing significantly to international peace-keeping.

## Annex

### Cable containing instructions for the withdrawal of UNEF sent by the Secretary-General to the Commander of UNEF on 18 May 1967 at 2230 hours, New York time

The following instructions are to be put in effect by you as of date and time of their receipt and shall remain operative until and unless new instructions are sent by me.

1. UNEF is being withdrawn because the consent of the Government of the United Arab Republic for its continued deployment on United Arab Republic territory and United Arab Republic-controlled territory has been rescinded.

2. Date of the commencement of the withdrawal of UNEF will be 19 May when the Secretary-General's response to the request for withdrawal will be reveiced in Cairo by the Government of the United Arab Republic, when also the General Assembly will be informed of the action taken and the action will become public knowledge.

3. The withdrawal of UNEF is to be orderly and must be carried out with dignity befitting a Force which has contributed greatly to the maintenance of quiet and peace in the area of its deployment and has earned widespread admiration.

4. The Force does not cease to exist or to lose its status or any of its entitlements, privileges and immunities until all of its elements have departed from the area of its operation.

5. It will be a practical fact that must be reckoned with by the Commander that as of the date of the announcement of its withdrawal the Force will no longer be able to carry out its established functions as a buffer and as a deterrent to infiltration. Its duties, therefore, after 19 May and until all elements have been withdrawn, will be entirely nominal and concerned primarily with devising arrangements and implementation of arrangements for withdrawal and the morale of the personnel.

6. The Force, of course, will remain under the exclusive command of its United Nations Commander and is to take no ordrers from any other source, whether United Arab Republic or national.

7. The Commander, his headquarters staff and the contingent commanders shall take every reasonable precaution to ensure the continuance of good relations with the local authorities and the local population.

8. In this regard, it should be made entirely clear by the Commander to the officers and other ranks in the Force that there is no discredit of the Force in this withdrawal and no humiliation involved for the reason that the Force has operated very successfully and with, on the whole, co-operation from the Government on the territory of an independent sovereign State for over ten years, which is a very long time; and, moreover, the reasons for the termination of the operation are of an overriding political nature, having no relation whatsoever to the performance of the Force in the discharge of its duties.

9. The Commander and subordinate officers must do their utmost to avoid any resort to the use of arms and any clash with the forces of the United Arab Republic or with the local civilian population.

10. A small working team will be sent from Headquarters by the Secretary-General to assist in the arrangements for, and effectuation of, the withdrawal.

11. The Commander shall take all necessary steps to protect United Nations installations, properties and stores during the period of withdrawal.

12. If necessary, a small detail of personnel of the Force or preferably of United Nations security officers will be maintained as long as necessary for the protection of United Nations properties pending their ultimate disposition.

13. UNEF aircraft will continue flights as necessary in connexion with the withdrawal arrangements but observation flights will be discontinued immediately.

14. Elements of the Force now deployed along the Line will be first removed from the Line, the international frontier and the armistice demarcation line, including Sharm el Sheikh to their camps and progressively to central staging.

15. The pace of the withdrawal will of course depend upon the availability of transport by air, sea and ground to Port Said. The priority in withdrawal should of course be personnel and their personal arms and equipment first, followed by contingent stores and equipment.

16. We must proceed on the assumption that UNEF will have the full co-operation of United Arab Republic authorities on all aspects of evacuation, and to this end a request will be made by me to the United Arab Republic Government through their Mission here.

17. As early as possible the Commander of UNEF should prepare and transmit to the Secretary-General a plan and schedule for the evacuation of troops and their equipment.

18. Preparation of the draft of the sections of the annual report by the Secretary-General to the General Assembly should be undertaken and, to the extent possible, completed during the period of the withdrawal.

19. In the interests of the Force itself and the United Nations, every possible measure should be taken to ensure against public comments or comments likely to become public on the withdrawal, the reasons for it and reactions to it.

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## 2. CONSULTATION WITH THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT: REPORT OF THE SECRETARY-GENERAL [28]

*[Original text: English]*
*[15 September 1967]*

1. In its resolution 2184 (XXI) of 12 December 1966 entitled "Question of Territories under Portuguese administration", the General Assembly requested the Secretary-General "to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution".

2. In its resolution 2202 (XXI) of 16 December 1966 entitled "The policies of *apartheid* of the Government of the Republic of South Africa", the General Assembly requested the Secretary-General "to consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with those of the present resolution, and to report to the General Assembly at its twenty-second session".

3. On 15 December 1966 the Secretary-General addressed a letter to the President of the Bank transmitting a copy of Assembly resolution 2184 (XXI) and requesting his views regarding the timing and modalities for the carrying out of the consultations. A copy of Assembly resolution 2202 (XXI) was also transmitted to the Bank by a letter dated 29 December.

4. At a meeting held on 20 December between the Secretary-General and the President of the Bank and after discussions between officials of the Secretariat of the United Nations and the Bank, it was decided that a written exchange of views should take place.

5. By a letter dated 6 March 1967, the Legal Counsel of the United Nations forwarded to the General Counsel of the Bank a memorandum entitled "The International Bank for Reconstruction and Development and implementation of United Nations General Assembly resolutions to withhold assistance of any kind to the Governments of Portugal and South Africa" prepared by the United Nations Secretariat. This memorandum is reproduced as annex I to the present report.

6. By a letter dated 5 May, the General Counsel of the Bank transmitted to the United Nations Secretariat a paper containing comments of the Legal Department of the Bank on the Secretariat memorandum. A relevant extract from the letter of transmittal together with the paper from the Bank is reproduced as annex II to the present report.

7. In a letter dated 20 July to the General Counsel of the Bank, the Legal Counsel of the United Nations replied to the General Counsel's letter of transmittal dated 5 May. The letter from the Legal Counsel of the United Nations is reproduced as annex III.

8. On 18 August 1967 the President of the Bank addressed a letter to the Secretary-General on the matter to which the Secretary-General replied by a letter dated 23 August. These two letters are reproduced as annexes IV and V, respectively, to the present report.

9. The Secretary-General feels that the discussion with the Bank has clarified the respective legal positions of the United Nations and the Bank, and he hopes that the exchange of letters referred to in paragraph 8 above between the President and himself will contribute to closer mutual understanding and co-operation.

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[28] Document A/6825, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 66.

# Annexes

## Annex I

**The International Bank for Reconstruction and Development and implementation of United Nations General Assembly resolutions to withhold assistance of any kind to the Governments of Portugal and South Africa: memorandum by the Secretariat dated 3 March 1967**

### I. Introduction

1. On 20 December 1966, the President of the International Bank for Reconstruction and Development (IBRD) conferred with the Secretary-General of the United Nations, and they agreed that early consultations should be held between the two organizations regarding the question of the implementation of resolutions of the General Assembly of the United Nations which call for the withholding of assistance of any kind to the Governments of Portugal and South Africa. Subsequently, two meetings were held at which representatives of the Secretary-General and representatives of the President of the Bank agreed on an exchange of written views relating to the powers of and duties of the Bank to give due regard and effect to General Assembly resolutions requesting the Bank to refrain from granting assistance to the Governments of Portugal and South Africa.

2. The present memorandum sets forth the views of the United Nations Secretariat pursuant to the above-mentioned decision. The memorandum commences with a recapitulation of the relevant United Nations resolutions, the steps taken by the United Nations to obtain compliance with them, and the response of the Bank. Thereafter it examines the present position of the Bank in the light of what the United Nations Secretariat considers to be the correct legal interpretation of the relevant instruments.

### II. Background to the question

#### A. *Establishment of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolutions 1514 (XV) of 14 December 1960 and 1654 (XVI) of 27 November 1961)*

3. On 14 December 1960 the General Assembly adopted resolution 1514 (XV) entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 1). This resolution declares, *inter alia*, "colonialism" to be contrary to the United Nations Charter and requires that immediate steps be taken to transfer power to the people in all Trust and Non-Self-Governing Territories. In implementation of this resolution at its next session the General Assembly, on 27 November 1961, adopted resolution 1654 (XVI) entitled "The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples". This resolution established a Special Committee "to examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration, and to report to the General Assembly at its seventeenth session".

In operative paragraph 8 of the same resolution the Assembly requested the "specialized agencies concerned to assist the Special Committee in its work within their respective fields".

#### B. *Initial contacts with a view to obtaining the assistance of the Bank in the work of the Special Committee*

4. On 15 March 1962 the United Nations Secretariat wrote to the President of IBRD enclosing a copy of General Assembly resolution 1654 (XVI) and drawing the President's attention especially to operative paragraph 8. The Bank acknowledged receipt of this letter "regarding operative paragraph 8 of General Assembly resolution 1654 (XVI)" on 19 March 1962.

5. At the 277th meeting of the Special Committee, on 3 July 1964, the representative of Syria asked the Secretary-General to obtain information on loans made by the Bank to Portugal and in particular "whether or not a representative of the Bank could be invited to enlighten the Committee on this question". On 16 July 1964 the United Nations Secretariat wrote to the President of the Bank and, after referring to what had occurred in the Special Committee, requested the Bank

for its observations on the points raised and inquired as to "the possibility of a representative of the Bank appearing before the Committee in order to provide clarification".

6. The United Nations Secretariat wrote a further letter to the President of the Bank on 17 July 1964, informing him of a decision taken by the Special Committee on 3 July to study the "activities of foreign economic and other interests, which are impeding the implementation of the Declaration on the granting of independence in the Territories under Portuguese administration," and inviting the President of the Bank to comment "as to what assistance you might be able to provide in connexion with this preliminary work". On 28 July 1964 the Bank furnished the information sought by the Special Committee on loans to Portugal and, in response to the United Nations letter of 17 July 1964, stated that it had no information which would be of assistance in the study referred to.

7. On 10 August 1964, as the Bank had not commented on the invitation extended in the United Nations letter of 16 July 1964 to send a representative to appear before the Special Committee, the United Nations Secretariat addressed a further letter to the Bank informing it of the date on which the Special Committee would resume consideration of the Territories under Portuguese administration and asking the Bank to comment on the invitation extended to it. The Bank replied, on 14 August 1964, stating that it had not planned to send a representative to appear before the Special Committee, but added, "if there are any development which call for further information or clarification on the report of the Bank, please let us know, and we shall be pleased to co-operate with the Committee in any way that we can".

8. On 10 June 1965 the Special Committee adopted a resolution containing an appeal addressed to the specialized agencies, including IBRD. In this resolution, entitled "Territories under Portuguese administration" (A/AC.109/124 and Corr.1), [29] the Committee, after condemning the colonial policy of Portugal and its refusal to carry out the resolutions of the General Assembly, the Security Council and the Special Committee,

> "6. *Appeals* to all the specialized agencies of the United Nations and in particular the International Bank for Reconstruction and Development and the International Monetary Fund, and requests them to refrain from granting Portugal any financial, economic or technical assistance so long as the Portuguese Government fails to renounce its colonial policy, which constitues a flagrant violation of the provisions of the Charter of the United Nations".

The text of this resolution was forwarded to the Bank on 17 June 1965 by the United Nations Secretariat, the Bank's attention being drawn in particular to operative paragraph 6. The Bank acknowledged receipt on 30 June 1965.

### C. *General Assembly resolutions 2054 A (XX), 2105 (XX) and 2107 (XX) of 15, 20 and 21 December 1965*

9. On 15 December 1965 the General Assembly adopted resolution 2054 A (XX) entitled "The policies of *apartheid* of the Government of the Republic of South Africa" (appendix 2). [30] This resolution, after expressing concern at the continued implementation of *apartheid* by the Government of South Africa in violation of its obligations under the Charter and in defiance of resolutions of the Security Council and the General Assembly and after drawing the attention of the Security Council to the situation in South Africa as being a threat to international peace and security,

> "*Invites* the specialized agencies:
>
> "(*a*) To take the necessary steps to deny technical and economic assistance to the Government of South Africa . . .".

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[29] For the printed text of this document, see *Official Records of the General Assembly, Twentieth Session, Annexes*, addendum to agenda item 23, document A/6000/Rev.1, chap. V, para. 430.

[30] Previously, on the same subject, the General Assembly had, *inter alia*, established a Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa (resolution 1761 (XVII) of 6 November 1962) to keep the racial policies of that Government under review when the Assembly was not in session and to report to the General Assembly and the Security Council, as may be appropriate, from time to time. By its resolution 1978 A (XVIII) of 16 December 1963, the Assembly invited "the specialized agencies and all Member States to give to the Special Committee their assistance and co-operation in the fulfilment of its mandate".

10. On 20 December 1965 the General Assembly adopted resolution 2105 (XX) entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 3). This resolution, after referring to the continuation of colonial rule and the practice of *apartheid* as threatening "international peace and security" and constituting "a crime against humanity",

> "*Requests* all States and international institutions, including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination".

11. On 21 December 1965 the General Assembly adopted resolution 2107 (XX) entitled "Question of Territories under Portuguese administration" (appendix 4). This resolution, after condemning the colonial policy of Portugal and its refusal to carry out the resolutions of the General Assembly and the Security Council,

> "*Appeals* to all specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)".

### D. *Further contacts with a view to obtaining the assistance of the Bank in the work of the Special Committee*

12. On 10 January 1966 the Secretary-General transmitted the text of General Assembly resolution 2054 (XX) to the President of the Bank and on 27 and 31 January 1966, respectively, the United Nations Secretariat forwarded to the Bank the texts of General Assembly resolutions 2105 (XX) and 2107 (XX). The Bank replied in all these cases that it had taken note of their contents.

13. It its 415th meeting on 18 May 1966, the Special Committee requested the Secretarys General to communicate with the specialized agencies in order to ascertain whether the requests and appeals addressed to them by the General Assembly and the Special Committee had been brought before their respective organs for decisions, and what action had been taken or was contemplated with respect to such requests and appeals. Pursuant to the Special Committee's request the United Nations Secretariat, on 6 June 1966, wrote to the President of the Bank and after advising him of the information sought by the Special Committee and referring to the material General Assembly and Special Committee resolutions, requested the President to furnish the Secretary-General with any information relevant to the Special Committee's inquiries.

14. On 14 June 1966 the Bank entered into two agreements granting loans to Portuguese companies, one with the Hidro-Electrica do Douro S.A.R.L. (Loan No. 452 P.O.) lending $US20 million, the other with the Empresa Termoelectrica Portuguesa S.A.R.L. (Loan No. 453 P.O.) lending $US10 million, and on the same date the Portuguese Republic entered into two agreements with the Bank guaranteeing the above two loans. On 8 September 1966, pursuant to an announcement made in July 1966, the Bank entered into an agreement with the South African Electricity Supply Commission granting a loan in the amount of $US20 million, and on the same date the Republic of South Africa entered into an agreement with the Bank guaranteeing this loan.

15. On 5 July 1966 the General Counsel of the Bank, in a written reply to the United Nation-Secretariat's letter of 6 June 1966, stated that copies of General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) had been circulated on 21 March 1966 to the Bank's Executive Directors. He did not indicate whether the Special Committee's resolution (A/AC.109/124 and Corr.1), forwarded to the Bank on 17 June 1965, had also been similary circulated (see para. 8 above).

### E. *Statements made on behalf of the Bank at the twenty-first session of the General Assembly*

16. On 28 November 1966, in response to an invitation, the General Counsel of the Bank attended a meeting of the Fourth Committee of the General Assembly, which was considering the question of Territories under Portuguese administration and a report of the Special Committee established under General Assembly resolution 1654 (XVI). At this meeting the General Counsel explained the lending policies pursued by the Bank vis-à-vis Portugal. He stated *inter alia* that:

"Early in 1966 the Bank had been informed of the adoption by the General Assembly of resolutions 2105 (XX) and 2107 (XX), appealing to specialized agencies to withhold assistance from Portugal and South Africa. It was a matter of public record that the Bank had made loans for two projects in metropolitan Portugal and one project in South Africa after those resolutions had been adopted and brought to the Bank's attention." [31]

He also explained that copies of General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) had been circulated to the Bank's Executive Directors on 21 March 1966. On 29 March 1966 the President of the Bank, having referred the Directors to these resolutions and having informed them that the Bank was currently studying loan applications for projects in Portugal and South Africa, had made the following statement:

"The Bank's Articles provide that the Bank and its officers shall not interfere in the political affairs of any member and that they shall not be influenced in their decisions by the political character of the member or members concerned. Only economic considerations are to be relevant to their decisions. Therefore, I propose to continue to treat requests for loans from these countries in the same manner as applications from other members." [32]

The General Counsel further quoted the President as also having said on the same occasion:

"I am aware that the situation in Africa could affect the economic development, foreign trade and finances of Portugal and South Africa. It will therefore be necessary, in reviewing the economic position and prospects of these countries, to take account of the situation as it develops." [33]

17. The General Counsel then informed the Committee that some months later when the economic and project studies had been concluded, the President of the Bank had presented loan proposals to the Executive Directors for the two projects in Portugal and one in South Africa, and that these loans were approved by the Executive Directors. The General Counsel also explained that the Bank had felt free to grant the loans to Portugal and South Africa in 1966 without formal "consideration" of the recommendations contained in General Assembly resolutions 2054 (XX), 2105 (XX) and 2107 (XX) on the ground that, because of lack of prior consultations, the Bank had not regarded such resolutions as being "formal recommendations" within the meaning of article IV, paragraph 2, of the Agreement between the United Nations and the International Bank for Reconstruction and Development which governs the relationship of the two bodies. In reply to questions, the General Counsel further explained that the Bank had not informed the Secretary-General of the United Nations of the reasons why it could not act on the General Assembly resolutions because these resolutions had not seemed to the Bank to be "formal recommendations" within the meaning of this article. He also said that even if these resolutions had been regarded as formal recommendations, the Bank, would have still considered itself precluded from taking such recommendations into account in reaching a decision whether or not to grant loans to Portugal or South Africa because of the provisions of section 10 of article IV of the Bank's own Articles of Agreement which deal with political activity by the Bank and its officers.

18. On 8 December 1966 the General Counsel wrote to the Chairman of the Special Political Committee of the General Assembly (A/SPC/115 dated 10 December 1966) (appendix 5) which was considering the policies of *apartheid* of the Government of South Africa. After referring to General Assembly resolution 2054 A (XX), he stated that his remarks in the Fourth Committee as to the Bank's position in regard to loans to Portugal were of equal application in regard to loans by the Bank to South Africa as the issues raised were identical in both cases.

### F. *General Assembly resolutions 2184 (XXI), 2189 (XXI) and 2202 (XXI) of 12, 13 and 16 December 1966 and steps taken to implement them*

19. On 12 December 1966 the General Assembly adopted resolution 2184 (XXI) entitled "Question of Territories under Portuguese administration" (appendix 6). This resolution, in paragraph 9,

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[31] *Official Records of the General Assembly, Twenty-first Session, Fourth Committee,* 1645th meeting para. 39.

[32] *Ibid.*, para. 42.

[33] *Ibid.*

"*Appeals once again* to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance as long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)";

and further in paragraph 10,

"*Requests* the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution".

20. The Secretary-General of the United Nations wrote on 15 December 1966 to the President of the Bank (appendix 7), enclosing a copy of General Assembly resolution 2184 (XXI), drawing attention in particular to paragraphs 9 and 10 thereof, requesting the President's views regarding the timing and modalities for carrying out of the consultations referred to, expressing the view that such consultations fell within article IV, paragraph 2, of the Relationship Agreement and suggesting that the consultations should be held without delay.

21. On 13 December 1966 the General Assembly adopted resolution 2189 (XXI) entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (appendix 8). This resolution, in paragraph 6,

"*Declares* that the continuation of colonial rule threatens international peace and security and that the practice of *apartheid*, as also all forms of racial discrimination, constitutes a crime against humanity";

and in paragraph 9,

"*Requests* all States, directly and through action in the international institutions of which they are members, including the specialized agencies, to withhold assistance of any kind to the Governments of Portugal and South Africa . . .".

22. On 16 December 1966 the General Assembly adopted resolution 2202 A (XXI) entitled "The policies of *apartheid* of the Government of the Republic of South Africa" (appendix 9). This resolution, in paragraph 1.

"*Condemns* the policies of *apartheid* practised by the Government of South Africa as a crime against humanity";

and in paragraph 6,

"*Requests* the Secretary-General:

". . .

"(*d*) To consult with the International Bank for Reconstruction and Development in order to obtain its compliance with the provisions of General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with those of the present resolution, and to report to the General Assembly at its twenty-second session".

The Secretary-General wrote on 29 December 1966 to the President of the Bank enclosing a copy of resolution 2202 (XXI) and drawing attention *inter alia* to paragraph 6 (*d*) thereof.

23. It is against this background that the Secretary-General and the President of the Bank met on 20 December 1966 and agreed upon the consultations from which it was decided that the present written exchange of views should take place.

## III. Examination of the position adopted by the Bank

24. From the statements of the General Counsel of the Bank to the Fourth Committee (see paras. 16-18 above), there appear to be two principal reasons advanced by the Bank for its failure to give effect to the relevant recommendations of the General Assembly. The first of these reasons relates to the requirement of "prior consultation" before either organization makes formal recommendations to the other, under article IV of the Agreement bringing the Bank into relationship with the United Nations,[34] which was concluded pursuant to Article 57 and 63 of the Charter

[34] United Nations, *Treaty Series*, vol. 16 (1948), No. 109, p. 346.

of the United Nations, and which came into force on 15 November 1947. The second reason is based upon the Bank's interpretation of its own Articles of Agreement,[35] which came into force on 27 December 1945, in particular section 10 of article IV thereof which prohibits political activities by the Bank and its officers. These two reasons are examined separately below.

### A. *The question of "reasonable prior consultation" under article IV of the Relationship Agreement*

25. In regard to loans made by the Bank to Portugal during 1966, after the text of General Assembly resolutions 2105 (XX) and 2107 (XX) had been communicated to it, the Bank's position appears to be that as, in its view, there had been no consultation with the Bank prior to the adoption of these two resolutions by the General Assembly, the subsequent communication of the text of the resolutions did not have the effect of converting them into "formal recommendations" within the meaning of article IV, paragraph 2, of the Agreement between the United Nations and IBRD. In these circumstances the Bank did not feel obliged or free to give such resolutions the "consideration" required by paragraph 2 of article IV of the said Agreement.

26. Article IV of the Relationship Agreement reads as follows:

"*Consultation and recommendations*

"1. The United Nations and the Bank shall consult together and exchange views on matters of mutual interest.

"2. Neither organization, nor any of their subsidiary bodies, will present any formal recommandations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.

"3. The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgement in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms or conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects."

27. From the text of the above article, and the records of the discussion preceding its adoption, it is clear that the "reasonable prior consultation" is not a mere formality, but is required before formal recommendations are made by one organization to the other, so as to permit the latter to submit any views it may have on why such recommendations should not be made. However, there is nothing in the records or in the Agreement itself which assists in an interpretation as to what form, kind or extent of "reasonable prior consultation" is necessary in order to comply with the requirements of paragraph 2 of article IV.

28. As the records do not disclose what constitutes "reasonable prior consultation", this point is open to interpretation. In the light of the continued efforts of the Special Committee and the United Nations Secretariat from 15 March 1962, through transmission of resolutions, requests for information and invitations for the Bank to appear before the Committee, it may well be argued that reasonable consultation had taken place before Assembly resolutions 2105 (XX) and 2107 (XX) were adopted. Furthermore, the Bank had full knowledge of the type of recommendation contained in these resolutions prior to their adoption, as the United Nations Secretariat had previously transmitted to the Bank the resolution of 10 June 1965 (A/AC.109/124 and Corr.1) whereby the Special Committee appealed to and requested it to refrain from granting Portugal any financial assistance. However, the Bank failed to take advantage of the opportunity provided by the transmission of this resolution to indicate that it had reservations regarding the possibility of its giving effect to a resolution of this nature. It may therefore be maintained with some cogency that the Bank was under an obligation to treat resolutions 2105 (XX) and 2107 (XX)

[35] *Ibid.*, vol. 2 (1947), No 20 (*b*), p. 134.

as "formal recommendations" to be considered as soon as possible by the appropriate organs of the Bank. Even if the argument is not accepted, the wording of paragraph 2 of article IV of the Relationship Agreement does not preclude the Bank from considering and giving effect to recommendations which are not "formal recommendations", particularly in the circumstances here involved where the Bank was fully aware throughout of the developments taking place in the United Nations regarding Portugal and South Africa.

29. While it may be necessary to define what constitutes "reasonable prior consultation" for the future, it is no longer at issue in the existing situation. The present position appears to be that the discussion at the 1645th meeting of the Fourth Committee, in which the General Counsel participated as representative of the Bank, must be regarded as constituting the prior consultation required by paragraph 2 of article IV of the Relationship Agreement, at least in respect of General Assembly resolution 2184 (XXI). Similarly, adequate prior consultation has taken place regarding General Assembly resolution 2202 (XXI), the General Counsel of the Bank having communicated in writing (appendix 5) with the Special Political Committee of the Assembly when that Committee was considering the adoption of that resolution. Resolutions 2184 (XXI) and 2202 (XXI) both request the Secretary-General to obtain the Bank's compliance with the earlier General Assembly resolutions 2105 (XX) and 2107 (XX). Accordingly, it would seem that, as of the present time, objection by the Bank as to lack of prior consultation cannot be maintained and the Bank should properly under article IV, paragraph 2, of the Relationship Agreement consider giving effect to the resolutions in question.

### B. *The question of the prohibition of political activities under section 10 of article IV of the Bank's Articles of Agreement*

30. The question remaining to be examined is the second aspect of the Bank's present position, namely, that in any event, its compliance with the relevant resolutions of the General Assembly to refrain from granting loans to Portugal and South Africa would be a breach of its own constitution and in particular an infringement of the requirements of section 10 of article IV of the Bank's Articles of Agreement. It is clear from the terms of this section that it applies to the President and other senior members of the staff, and also to the Bank as an institution together with its organs, the Board of Governors and the Executive Directors. However, the scope attributed by the Bank to the words "political affairs", "political character of the member" and "economic considerations", all of which appear in that section, does not appear to be justified by the history, wording or context of section 10.

31. In stating its position the Bank appears to claim, firstly, that the conduct of the Governments of Portugal and South Africa in failing to observe their international obligations under the United Nations Charter to give effect to Security Council and General Assembly resolutions relating to the maintenance of peace and security is a "political affair" or a reflection of the "political character" of those countries and, secondly, that the last sentence of section 10 of article IV requires the Bank to exclude from its consideration of loan applications all matters other than economic considerations and this provision in itself precludes the Bank from taking account of the relevant resolutions.

32. Section 10 of article IV of the Bank's Articles of Agreement reads as follows:

> "Section 10. *Political activity prohibited*
>
> "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I."

It is submitted that, contrary to the position presently adopted by the Bank, the sole purpose of section 10 is to prohibit interference in the internal political affairs of a Member State and discrimination against any member country because of the political character of its government. This is probably one of the reasons why the section goes on to provide, in contradistinction, that only "economic considerations" shall be relevant to the decisions of the Bank and its officers. This latter provision, therefore, merely serves to elaborate and emphasize those factors which must be excluded from consideration (internal political affairs) by making express reference to

certain factors (economic considerations) which obviously must be taken into consideration. Thus the last sentence of the section should not be regarded in isolation from the first sentence and interpreted as expressly confining the Bank to a consideration of nothing but the economic facts relevant to a particular loan and obliging it to disregard other material factors such as the international conduct of a member country and its repercussions upon international peace and security. That the Bank does not disregard other material factors is clear from the resolution it adopted regarding General Assembly resolution 377 (V), entitled "Uniting for peace", which is referred to in greater detail in paragraph 38 below.

33. In support of this interpretation of section 10 of article IV of the Articles of Agreement, it is of interest to consider the legislative history of this section. The original draft, submitted as section 11 to the United Nations Monetary and Financial Conference held at Bretton Woods in July 1944, reads as follows:

> "Section 11. *Political Activity Prohibited.*
>
> "The Bank and its officers shall scrupulously avoid interference in the political affairs of any member. This provision shall not limit the right of an officer of the Bank to participate in the political life of his own country.
>
> "The Bank shall not be influenced in its decisions with respect to applications for loans by the political character of the government of the member concerned with the loan. Only economic considerations shall be relevant to the Bank's decisions.
>
> "The Bank, acting with the strictest impartiality, shall pay particular regard, both in selecting the place of its borrowing and of its lending to maintaining the equilibrium of the international balance of payments of members." [36]

During the Conference, for reasons which the available records do not disclose, the passage relating to officers of the Bank being permitted to engage in the political affairs of the officer's country and the words "of the government" after the words "political character" were omitted. None the less, their inclusion in the original draft supports the view that the primary intention of this section of article IV is to prohibit actions by the Bank or its officers which involve participation or interference in the internal political life of a member country and also to ensure that the type or nature of the government within a member country is of no consequence to the Bank or its officers.

34. The relevant General Assembly resolutions deal, however, not with internal political affairs but with situations threatening international peace and security arising from the failure of Portugal and South Africa to observe their obligations under the Charter and international law. For example, General Assembly resolution 2105 (XX) in its preamble deplores "the negative attitude of certain colonial Powers, and in particular the unacceptable attitude of the Governments of Portugal and South Africa, which refuse to recognize the right of colonial peoples to independence",

> and later specifically stresses that "the continuation of colonial rule and the practice of *apartheid* as well as all forms of racial discrimination threaten international peace and security and constitute a crime against humanity".

General Assembly resolution 2107 (XX), also in its preamble, recites the General Assembly's conviction that "the attitude of Portugal towards the African population of its colonies and of the neighbouring States constitutes a threat to international peace and security",

> and goes on to condemn "the colonial policy of Portugal and its persistent refusal to carry out the resolutions of the General Assembly and the Security Council."

Finally, General Assembly resolution 2184 (XXI) expresses deep concern "at the critical and explosive situation which is threatening peace and security owing to the intensification of the measures of repression and military operation against the people of the Territories under Portuguese administration".

35. Security Council resolutions 180 (1963) of 31 July 1963 (appendix 10), 181 (1963) of 7 August 1963, 182 (1963) of 4 December 1963, 191 (1964) of 18 June 1964 and 218 (1965) of 23 November 1965 (appendix 11) also recognize the situation in South Africa and the situation

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[36] *Proceedings and Documents of the United Nations Monetary and Financial Conference*, vol. I (1948), p. 202.

resulting from the policies of Portugal as seriously disturbing international peace and security, and in resolution 218 (1965) the Security Council expressed its conviction that the implementation of its pertinent resolutions and those of the General Assembly was the only means to achieve a peaceful solution of the question of Portuguese Territories.

36. Neither the prohibition on political activity nor the enjoinder to have regard to economic considerations only, contained in section 10 of article IV of the Bank's Articles of Agreement, preclude a consideration by the Bank of the international conduct of a member country condemned in relevant General Assembly resolutions as being in violation of that country's fundamental Charter obligations and as threatening international peace and security. Therefore section 10 is not a sufficient legal justification for the Bank's failure to comply with General Assembly resolutions adopted in discharge of the Assembly's function in connexion with the maintenance of international peace and security and the observance of international law.

37. Acceptance of an interpretation of section 10 of article IV of the Articles of Agreement which does not preclude the Bank from taking into account conduct of a member country in the international field which is in breach of that State's obligations under the Charter relating to the maintenance of peace and security is consistent with the acceptance by the Bank representatives and the adoption by the Board of Governors of article VI of the Relationship Agreement, paragraph 1 of which provides as follows:

> "The Bank takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also Members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

38. It is clear that under this article the Bank, in addition to taking note of the separate obligations of its members under the Charter, itself assumed an obligation to have due regard, in the conduct of its activities, for the decisions of the Security Council relating to matters of peace and security. Is this "due regard" confined to decisions of the Security Council under Articles 41 and 42 of the United Nations Charter? Considerations of principle and of practice indicate that this question should be answered in the negative. As a matter of principle, article IV of the Relationship Agreement provides for the consideration of recommendations by the United Nations other than decisions of the Security Council under Articles 41 and 42 of the Charter. As a matter of practice, it is highly material to note that on 13 September 1951, without any relevant amendment of its Articles of Agreement, the Bank considered itself empowered to pass a resolution to the effect that "the Bank, in the conduct of its activities, shall have due regard for recommendations of the General Assembly made pursuant" to General Assembly resolution 377 (V), the "Uniting for peace" resolution. This action by the Board of Governors, the organ of the Bank expressly charged under article IX of the Bank's Articles of Agreement with authority to interpret those articles, is the strongest possible evidence that there is no constitutional objection to the Bank, in its "consideration" of General Assembly resolutions relating to Portugal and South Africa, having due regard for and complying with the recommendations contained in such resolutions.

39. By agreeing to the inclusion of article VI in the Relationship Agreement, the Bank accepted in principle that in the case of Security Council decisions relating to the maintenance of peace and security, section 10 of article IV of its Articles of Agreement did not preclude the Bank from having regard to the international conduct of a Member State. Likewise, by its resolution of 13 September 1951, the Bank recognized in principle that section 10 did not prevent it from having due regard to recommendations of the General Assembly relating to international peace and security. It is therefore inconsistent for the Bank now to insist that having regard to General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI), which relate to the international conduct of Portugal and South Africa and the threat which such conduct poses to international peace and security, would be a breach of its obligations under section 10 of article IV of its Articles of Agreement. If it is not a breach in the case of Security Council decisions, how can it in principle be a breach in the case of General Assembly resolutions relating to the same matters, namely maintenance of international peace and security, particularly as the Bank has

already recognized that it is not a breach in relation to another General Assembly resolution relating to international peace and security?

40. From the foregoing examination of the Bank's present position it appears that the interpretation of section 10 of article IV presently adopted by the Bank extends the scope of that section unnecessarily. Furthermore, such an interpretation is not consistent with the principle accepted by the Bank and adopted in article VI of the Relationship Agreement and evidenced by the resolution passed by the Bank on 13 September 1951. On the other hand, a more reasonable interpretation properly can be given to section 10 of article IV of the Articles of Agreement, which would reflect the principle underlying article VI of the Relationship Agreement, be in accord with the Board of Governor's decision of 13 September 1951, and at the same time permit the Bank to have regard for and comply with the relevant General Assembly resolutions requesting it to refrain from granting any form of of economic assistance to Portugal and South Africa.

41. Against the above legal background, it may also be useful to take account of the Bank's position as a member of the United Nations family of institutions. It seems hardly likely that the Bank would wish to ignore entirely the virtually unanimous condemnation by the international community, expressed through the United Nations as the organ having primary responsibility in this field, of the international conduct of Portugal and South Africa. The international institutions created the Second World War were intended to work in harmony in the maintenance of international peace and security and not in conflict. In the circumstances, it seems incongruous that, on the one hand, the General Assembly of the United Nations has found that the policies of certain States threaten international peace and security and that they are guilty of practices constituting "a crime against humanity", and on the other, the Bank feels bound to grant loans to those States on the basis solely of the economic considerations that the projects involved are sound and that repayment is guaranteed.

## Appendix 1

GENERAL ASSEMBLY RESOLUTION 1514 (XV) ENTITLED "DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES"

[*For the text of the resolution, see* Official Records of the General Assembly, Fifteenth Session, Supplement No. 16.]

## Appendix 2

GENERAL ASSEMBLY RESOLUTION 2054 A (XX) ENTITLED "THE POLICIES OF *apartheid* OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA"

[*For the text of the resolution, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14.]

## Appendix 3

GENERAL ASSEMBLY RESOLUTION 2105 (XX) ENTITLED "IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES"

[*For the text of the resolution, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14.]

## Appendix 4

GENERAL ASSEMBLY RESOLUTION 2107 (XX) ENTITLED "QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION"

[*For the text of the resolution, see* Official Records of the General Assembly, Twentieth Session, Supplement No. 14.]

## Appendix 5

LETTER DATED 8 DECEMBER 1966 FROM THE GENERAL COUNSEL OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT TO THE CHAIRMAN OF THE SPECIAL POLITICAL COMMITTEE *

Our representative at the United Nations, Mr. Federico Consolo, has reported that he has learned that the Special Political Committee of the General Assembly has commenced consideration of the question of *apartheid* in South Africa. From our reading of the annual report to the General Assembly of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa (United Nations document S/7565, [37] 25 October 1966), it would appear that members of the Special Political Committee may well refer to the loan operations in South Africa of the International Bank for Reconstruction and Development in the context of General Assembly resolution 2054 A (XX).

On 28 November 1966, on the invitation of the Chairman of the Fourth Committee, I made a statement on behalf of the International Bank for Reconstruction and Development to the Committee during its considerations of the question of the Portuguese Territories in Africa. The record of this statement and of the subsequent questions of delegates and of my answers is to be found in United Nations document A/C.4/SR.1645, 1 December 1966. My statement also covered the question of the Bank's loan operations in South Africa. The question of the Bank's position with respect to General Assembly resolutions 2105 (XX) and 2107 (XX) was subsequently also discussed at some length at the 1653rd meeting of the Fourth Committee on 3 December 1966, at which meeting Mr. Constantin A. Stavropoulos, Legal Counsel of the United Nations, participated. The summary record of this meeting has not yet been received by us. You will also see that this question is reflected in the draft report of the Fourth Committee to the General Assembly (United Nations document A/C.4/L.846, [38] 5 December 1966), and in the draft resolution on this item, as adopted by the Fourth Committee (United Nations document A/C.4/L.842/Rev.1, [39] 5 December 1966).

The issues raised with respect to the Bank's loan operations in metropolitan Portugal are identical to those regarding loan operations in South Africa. I therefore thought it proper to bring the foregoing to your attention and I would be grateful if this letter could be circulated as a Committee document.

*(Signed)* A. BROCHES
*General Counsel*

## Appendix 6

GENERAL ASSEMBLY RESOLUTION 2184 (XXI) ENTITLED "QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION"

[*For the text of the resolution, see* Official Records of the General Assembly, Twenty-first Session, Supplement No. 16.]

## Appendix 7

LETTER DATED 15 DECEMBER 1966 FROM THE SECRETARY-GENERAL TO THE PRESIDENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

I have the honour to transmit herewith a copy of resolution 2184 (XXI) on the question of Territories under Portuguese administration adopted by the General Assembly at its 1490th plenary meeting, on 12 December 1966.

In forwarding this resolution, I wish to draw your attention, in particular, to operative paragraphs 9 and 10. In the former, the General Assembly appeals once again to all the specialized agencies, and the International Bank for Reconstruction and Development and the International

* Previously issued under the symbol A/SPC/115.

[37] For the text of this document, see *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 34, document A/6486.

[38] *Idem*, agenda item 67, document A/6554.

[39] *Idem, Twenty-first Session, Supplement No. 16*, resolution 2184 (XXI).

Monetary Fund, to refrain from granting any financial, economic or technical assistance to Portugal so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV).

In operative paragraph 10 of resolution 2184 (XXI), the General Assembly "requests the Secretary-General to enter into consultation with the International Bank for Reconstruction and Development in order to secure its compliance with General Assembly resolutions 2105 (XX) of 20 December 1965 and 2107 (XX) of 21 December 1965 and with the present resolution". The relevant operative paragraphs of General Assembly resolutions 2105 (XX) and 2107 (XX) read as follows:

[Resolution 2105 (XX)]

"11. *Requests* all States and international institutions, including the specialized agencies of the United Nations, to withhold assistance of any kind to the Governments of Portugal and South Africa until they renounce their policy of colonial domination and racial discrimination";

[Resolution 2107 (XX)]

"9. *Appeals* to all the specialized agencies, in particular to the International Bank for Reconstruction and Development and the International Monetary Fund, to refrain from granting Portugal any financial, economic or technical assistance so long as the Government of Portugal fails to implement General Assembly resolution 1514 (XV)".

As you know, the present resolution was adopted after the Fourth Committee of the General Assembly had invited and had consulted with a representative of the International Bank in accordance with Article II, paragraph 3, and Article IV, paragraph 2, of the Agreement of 15 November 1947. Copies of the records of the debate and other relevant documents are being sent to you under separate cover.

In accordance with the request addressed to the Secretary-General in operative paragraph 10 of resolution 2184 (XXI), I have the honour to solicit your views regarding the timing and modalities for the carrying out of the consultations referred to. Such consultations would, in my opinion, fall within the framework of Article IV, paragraph 2, of the Agreement of November 1947, which provides that any formal recommendations made by either organization after consultation will be considered as soon as possible by the appropriate organ of the other.

Since General Assembly resolution 2184 (XXI) will be discussed by the Committee of Twenty-Four during its session commencing on 20 February 1967, and since the Rapporteur of the Fourth Committee expressed the hope of many delegations at the 1490th plenary meeting of the General Assembly that the results of the proposed consultations would be reported to the Special Committee of Twenty-Four as a matter of urgency, I consider that it would be desirable for the consultations to begin without delay.

*(Signed)* U THANT
*Secretary-General*

## Appendix 8

GENERAL ASSEMBLY RESOLUTION 2189 (XXI) ENTITLED "IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES"

[*For the text of the resolution, see* Official Records of the General Assembly, Twenty-first Session, Supplement No. 16.]

## Appendix 9

GENERAL ASSEMBLY RESOLUTION 2202 (XXI) ENTITLED "THE POLICIES OF *apartheid* OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA"

[*For the text of the resolution, see* Official Records of the General Assembly, Twenty-first Session, Supplement No. 16.]

## Appendix 10

SECURITY COUNCIL RESOLUTION 180 (1963) OF 31 JULY 1963

[*For the text of the resolution, see* Official Records of the Security Council, Eighteenth Year, Resolutions and Decisions of the Security Council, 1963.]

## Appendix 11

SECURITY COUNCIL RESOLUTION 218 (1965) OF 23 NOVEMBER 1965

[*For the text of the resolution, see* Official Records of the Security Council, Twentieth Year, Resolutions and Decisions of the Security Council, 1965.]

## Annex II

**Extract from a letter dated 5 May 1967 from the General Counsel of the International Bank for Reconstruction and Development to the United Nations Secretariat transmitting a paper containing comments of the Legal Department of the Bank on the memorandum prepared by the Secretariat**

". . .

"I attach six copies of a memorandum of the Legal Department of the Bank containing detailed comments on the arguments set forth in the Secretariat memorandum; these comments, I believe, conclusively show that the prohibition contained in section 10 of article IV of the Articles of Agreement is clear and unequivocal.

"I should like to add that, in my opinion, the prohibition contained in express terms in section 10 of article IV of the Articles of Agreement of the Bank is no more than a reflection of the technical and functional character of the Bank as it is established under its Articles of Agreement.

"The purposes of the Bank set forth in article I of the Articles of Agreement are limited and the Bank must be guided in the exercise of its functions by those purposes alone. The member governments of the Bank have not deemed it appropriate to grant the Bank a larger function in the international community, and the characterization of the Bank as a financial and economic agency and not a political one was explicitly recognized by the United Nations in its Relationship Agreement with the Bank.

"The recommendations contained in the resolutions under consideration raise an important question of interpretation and application of the Bank's Articles of Agreement which, in my opinion, would have to be resolved before any decision on the merits of the recommendations themselves could be taken. As you know, question of interpretation of the Bank's Articles are to be decided by the Executive Directors in accordance with the provision of the Articles. In order to enable the Executive Directors to become familiar with the legal problems involved, I believe that it would be useful if I could distribute to them, with your permission, copies of the Secretariat memorandum of 3 March 1967 along with the comments of the Legal Department of the Bank." [40]

". . .

### I

The confidential memorandum (hereinafter the "Secretariat memorandum") dated 3 March 1967, prepared by the United Nations Secretariat, is divided into three parts. The short introduction (Part I) notes that, pursuant to operative paragraph 10 of General Assembly resolution 2184 (XXI) and operative paragraph 6 (*d*) of General Assembly resolution 2202 (XXI), the Secretary-General of the United Nations and the President of the International Bank for Reconstruction and Development agreed that as soon as possible consultations would be held between the two organizations regarding questions arising in connexion with the General Assembly resolutions calling on the Bank to withhold assistance to Portugal and South Africa. The memorandum also notes that in the course of meetings between representatives of the two organizations it was agreed

[40] The Legal Counsel of the United Nations agreed to the distribution of the Secretariat memorandum as proposed by the General Counsel of the Bank.

that there should be a written exchange of views on the issues raised by these resolutions by virtue of the respective constitutional instruments of the two organizations and by virtue of the terms of the Relationship Agreement between them.

The memorandum goes on to state that in setting forth the views of the United Nations Secretariat it would:

(*a*) Recapitulate the relevant United Nations resolutions and "the steps taken by the United Nations to obtain compliance with them, and the response of the Bank" (Part II);

(*b*) Examine the position taken by the Bank on the issues raised by these resolutions "in the light of what the United Nations Secretariat considers to be the correct legal interpretation of the relevant instruments" (Part III).

Part II of the Secretariat memorandum thus provides a recapitulation of the history of the resolutions adopted by various United Nations organs on the question of South Africa and Portuguese Territories in Africa and in particular of those resolutions which requested the withholding of all assistance from South Africa and Portugal.

Part III of the memorandum then goes on to state the Secretariat's views on the Bank's position with respect to the relevant paragraphs of General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) as represented by the Bank's General Counsel in the course of his participation in the discussions of the Fourth Committee on the General Assembly. In these words of the memorandum:

"From the statements of the General Counsel of the Bank to the Fourth Committee . . ., there appear to be two principal reasons advanced by the Bank for its failure to give effect to the relevant recommendations of the General Assembly." (Annex I, para. 24.)

The memorandum indentifies the two principal issues as relating to:

(*a*) Wheter these resolutions had been preceded by "prior consultation" as required by article IV of the Relationship Agreement of 15 November 1947 between the United Nations and the Bank; [41]

(*b*) The proper interpretation of article IV, section 10, of the Articles of Agreement of the Bank, which came into force on 27 December 1945. [42]

While the views expressed in the Secretariat memorandum on the nature and timing of the consultation which must precede formal recommendations addressed by one organization to the other cannot be accepted without a number of reservations, the issue does not appear to have practical importance at this juncture. The Secretary-General of the United Nations and the President of the Bank having agreed to enter into consultation on the substance of the resolutions, this memorandum will deal only with the second principal issue discussed in the Secretariat memorandum which relates to the interpretation of article IV, section 10, of the Bank's Articles of Agreement.

## II

Section 10 of article IV reads as follows:

"Section 10. *Political activity prohibited*

"The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations *shall be relevant to their decisions, and these considerations* shall be weighed impartially in order to achieve the purposes stated in Article I." [43]

Article I of the Articles of Agreement of the Bank provides:

"The purposes of the Bank are:

"(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration

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[41] United Nations, *Treaty Series*, vol. 16 (1948), No. 109, p. 346.

[42] *Ibid.*, vol. 2 (1947), No. 20 (*b*), p. 134.

[43] The original Secretariat memorandum (para. 32), in reproducing section 10, inadvertently omitted the italicized language. [That language has been inserted in the present printed version.]

of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

"(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

"(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.

"(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

"(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate post-war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

"The Bank shall be guided in all its decisions by the purposes set forth above."

The Secretariat memorandum states that the Bank's position is that:

" . . . its compliance with the relevant resolutions of the General Assembly to refrain from granting loans to Portugal and South Africa would be a breach of its own constitution and in particular an infringement of the requirements of section 10 of article IV of the Bank's Articles of Agreement." (Annex I, para. 30.)

This view of article IV, section 10, is dependent upon an interpretation of the words "political affairs", "political character of the member" and "economic considerations" which, according to the Secretariat memorandum, "does not appear to be justified by the history, wording or context of section 10" (annex I, para. 30). The Secretariat memorandum relies, for its view that section 10 does not preclude the Bank from complying with the relevant General Assembly resolutions, upon:

(*a*) the actual wording of the section;

(*b*) the drafting history of the section;

(*c*) the subsequent conduct of the parties—that is to say, of the members of the Bank acting through their representatives on the Board of Governors and the Board of Executive Directors.

This memorandum will in turn comment upon these arguments in the order followed in the Secretariat memorandum.

### (a) *Actual wording of the section*

In examining the wording of section 10, the Secretariat memorandum asserts that the Bank wrongly classifies the General Assembly resolutions as "political" and therefore as falling within the prohibition set out in section 10. The memorandum argues that the real intent and meaning of the term "political", as it is used in the context of section 10 ("the political affairs of any member" and "the political character of the member or members concerned"), ". . . is to prohibit interference in the *internal* political affairs of a Member State and discrimination against any member country because of the political character of its government." (Annex I, para. 32; emphasis added.)

There is no justification for imparting to the term "political", as the Secretariat memorandum does, the qualification "internal". The prohibition against interference "in the political affairs of any member" is not limited to interference in a member's *internal* political affairs but extends as well to the relations of a member with other States, i.e. its *external* political affairs. Just as the Bank is precluded in making decisions on loans or guarantees from interfering in the domestic political activities of a member Government, so it is precluded from interfering or attempting to

interfere with the foreign policy of that Government. The adjective "political", as used in section 10, refers not only to those matters which relate to "politics" in the narrow (and sometimes derogatory) meaning of the word, but to all matters which pertain to the constitution of an organized society and the manner in which it manages its affairs. In this sense the relevant resolutions of the General Assembly do indeed deal with the political affairs of the Governments of Portugal and South Africa, and the conduct of the Portuguese and South African Governments condemned in those resolutions was in fact their political conduct. The policies and the conduct which are being condemned by the General Assembly constitue an essential element of the "political character" of those States. [44]

The Bank may and does take into consideration, and is influenced in its lending decisions by, the economic effects which stem from the political character of a member and from the censures and condemnations of that member by United Nations organs. [45] However, by virtue of article IV, section 10, of its Articles of Agreement, the Bank, in exercising its judgement, must consider such economic effects together with all other relevant economic factors, in the light of the purposes of the Organization. What it is precluded from considering is the political character of a member as an independent criterion for decision.

The Secretariat memorandum states (annex I, para. 32) that one of the reasons why the second sentence of section 10 provides that only economic considerations shall be relevant to the Bank's decisions and that such considerations should be weighed impartially, is simply: ". . . to elaborate and emphasize those factors which must be excluded from consideration (internal political affairs) by making express reference to certain factors (economic considerations) which obviously must be taken into considerations".

In this argument the word "internal" is interposed for the purpose of explaining the meaning of the adjective "political". There is no basis for such interposition, for the meaning of the adjective "political", which may not by itself be precise, becomes clear in the context of section 10 which, after expressing the negative injunction against interfering with *political* affairs or being influenced by the *political* character of a member, sets forth the positive injunction that only *economic considerations* are relevant to the Bank's decisions. The contrast is between "political" and "economic" judgements and not between "internal" and "external" affairs. Section 10 thus confirms the non-political, technical and functional nature of the Bank.

(b) *Drafting history of the section*

In support of its reading of section 10 the Secretariat memorandum relies in part upon a particular facet of the legislative history of section 10, namely, the language of the first two paragraphs of section 11 of the preliminary draft of the Articles of Agreement for the Bank, as presented to the United Nations Monetary and Financial Conference at Bretton Woods in July 1944. These paragraphs read:

> Section 11. *Political Activity Prohibited.*
>
> "The Bank and its officers shall scrupulously avoid interference in the political affairs of any member. This provision shall not limit the right of an officer of the Bank to participate in the political life of his own country.
>
> "The Bank shall not be influenced in its decisions with respect to applications for loans by the political character of the government of the member concerned with the loan. Only economic considerations shall be relevant to the Bank's decisions." [46]

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[44] The practice of United Nations organs with respect to Article 2, paragraph 7, of the Charter serves to confirm the difficulty of delimiting a country's domestic affairs from its international and foreign affairs. See *Repertory of Practice of United Nations Organs*, vol. I (1955), pp. 55-159, and Supplement No. 1, vol. I (1958), pp. 25-71.

[45] In particular the Bank has agreed that in the conduct of its activities it will have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter and has undertaken to have due regard for the recommendations of the General Assembly made pursuant to the "Uniting for peace" resolution for the maintenance of international peace and security (see *infra*).

[46] The full drafting history of article IV, section 10, is to be found in *Proceedings and Documents of the United Nations Monetary and Financial Conference*, vol. I (1948), p. 202 (section 11 of the preliminary draft), and pp. 386, 496, 567, 569, 596, 613, 724, 848, 1027 and 1061.

On this point it must be noted that the above comments on the meaning of the terms "political affairs" and "political character" are equally applicable to the language of section 11 of the preliminary draft. The draft section 11 does not utilize the term "internal" and it clearly distinguishes between the respective requirements of: scrupulous non-interference in the political affairs of a member country; avoidance of discrimination based upon the political character of the member concerned; and, that ". . . Only economic considerations" should be relevant to the Bank's decisions.

These two paragraphs of section 11 followed an earlier draft prepared by the United States Treasury Department after discussion with the United Kingdom authorities. Their purpose is explained in a commentary paper prepared by the United States Treasury and entitled *Questions and Answers on the Bank for Reconstruction and Development* (June 10, 1944). On page 74 of this paper it is stated:

> ". . . The Bank is designed to be an international economic agency to facilitate productive international investment without regard to political considerations. In deciding on loan applications, the Bank is not to be influenced by the political character of the country requesting the credits. This provision is part of the general requirements that the Bank shall scrupulously avoid interference in the political affairs of members countries (IV-19)."

The same passage goes on to stress (p. 74) that only economic considerations should be taken into account in deciding whether or not to make a loan. It provides two important reasons why the Bank would be able to avoid political considerations in framing its loan policy:

> "The character of the Bank's operations should give further assurance that political considerations will not affect the decisions of the Bank. The greater part of the Bank's operations will be directed toward encouraging and facilitating international lending by private investors. . . It is reasonable to assume that private investment institutions would not give weight to political factors except as the stability of the government of the borrowing country affects the risk element in all foreign loans.
>
> "The international character of the Bank is also a protection against loans made for political purposes as previously discussed. . .[47] The Bank itself can have no policy outside the purely financial sphere. So far as concerns individual member countries, they do undoubtedly have important *international political interests.* However, it would be quite difficult for any member to utilize the Bank for furthering its political intrests." (p. 75; emphasis added.)

The interposition of the term "internal" into the clear language of section 10 and the reading of the second sentence in such a way as to justify this interposition finds no valid basis, therefore, in the legislative history of article IV, section 10. On the contrary, the intentions of those who prepared the original draft would appear to have been to ensure that the Bank did not become a forum for the settlement of political disputes or its loans and guarantees instruments of political negotiation and pressure.

### (c) *Subsequent conduct of the parties*

The Secretariat memorandum cites certain subsequently adopted decisions of the Bank as further support for the Secretariat's interpretation of section 10 (see annex I, para. 37). The memorandum states that acceptance of the view that section 10 does not preclude the Bank from

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[47] At this point the United States Treasury paper refers to a prior passage in which there is a discussion of the question "why is an international agency necessary to encourage and facilitate the provision of long-term credits for international investment" (pp. 48-50). In that passage it is explained that an impartial international financial agency would encourage and facilitate the efficient use of international investment capital, in part because:

> "If national agencies should be established generally for the purpose of encouraging international investment, it is doubtful whether countries could altogether escape the use of their lending agencies for the purpose of furthering national political interests. The extension of credit to a particular country becomes a politicial matter to be settled by negotiation between the borrowing country and the lending country. Even if such political considerations could be kept to a minimum, it is doubtful whether national agencies would be as helpful as an international agency in developing international trade and removing the restrictive bilateralism that grew up in the decades before the war."

taking into account the international conduct of a State[48] would be "consistent with the acceptance by the Bank representatives and the adoption by the Board of Governors of article VI of the Relationship Agreement". The memorandum then goes on to quote from this particular provision of the Agreement between the Bank and the United Nations.

Article VI, paragraph 1, of the Relationship Agreement provides:

> "The Bank takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also Members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

In considering the relevance of article VI of the Relationship Agreement to any interpretation of article IV, section 10, of the Articles of Agreement based on a theory of interpretation such as that of the subsequent conduct of the parties, it is also necessary to consider certain other provisions of the Relationship Agreement, namely article I, paragraph 2, and article IV, paragraphs 2 and 3.

> "*Article I*
>
> "GENERAL
>
> ". . .
>
> "2. The Bank is a specialized agency established by agreement among its member Governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. By reason of the nature of its international responsibilities *and the terms of its Articles of Agreement, the Bank is, and is required to function as, an independent international organization.*" (emphasis added)

> "*Article IV*
>
> "CONSULTATION AND RECOMMENDATIONS
>
> ". . .
>
> "2. Neither organization, nor any of their subsidiary bodies, will present any formal recommendations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.
>
> "3. The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined *by the independent exercise of the Bank's own judgement in accordance with the Bank's Articles of Agreement.* The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms and conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction and development plans, programmes or projects." (Emphasis added.)

The Secretariat memorandum maintains that the terms of article VI of the Relationship Agreement confirm the validity of its interpretation of article IV, section 10, of the Articles of Agreement and constitute:

> ". . . the strongest possible evidence that there is no constitutional objection to the Bank, in its 'consideration' of General Assembly resolutions relating to Portugal and South Africa, having due regard for *and complying with* the recommendations contained in such resolutions." (Annex I, para. 38; emphasis added.)

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[48] It should be kept in mind that General Assembly resolutions 2105 (XX), 2107 (XX), 2184 (XXI) and 2202 (XXI) do something more than call into account "the international conduct" of certain States. They also seek to prescribe the Bank's loan policy towards these States. Thus resolutions 2184 (XXI) and 2202 (XXI) call for consultations between the United Nations and the Bank in order "to secure" the Bank's "compliance with" General Assembly resolutions.

On the contrary, article VI of the Relationship Agreement when considered (i) in the light of the legislative history of the Relationship Agreement and of article VI in particular; (ii) in the light of the language employed in article VI; and (iii) in the light of the functional needs of the Bank, negates the Secretariat's interpretation of section 10.

(i) *Legislative history of the Relationship Agreement.* The legislative history of the Relationship Agreement and of article VI in particular confirms the interpretation of article IV, section 10, of the Bank's Articles of Agreement given by the General Counsel of the Bank to the Fourth Committee.

The Bank entered into the Relationship Agreement on the basis of the express and carefully limited authority set out in article V, section 8 (*a*), of its Articles of Agreement, which provides:

> "The Bank, *within the terms of this Agreement*, shall co-operate with any general international organization and with public international organizations having specialized responsibilities in related fields." (Emphasis added.)

The importance which the signatories of the Articles of Agreement attached to this limitation is underscored by the provision in the same section that "any arrangements for such co-operation *which would involve a modification of any provision of this Agreement* may be effected only after amendment to this Agreement under Article VIII" (emphasis added). Under article VIII, a majority of three fifths of the members having four fifths of the total voting power is required for such amendment. It may also be recalled that, under article V, section 2 (*b*) (v), power to make formal arrangements to co-operate with other international organizations is reserved to the Board of Governors and cannot be delegated to the Executive Directors.

After several months of discussions, final negotiation of the Relationship Agreement took place on 15 August 1947, between delegations representing the Bank and the International Monetary Fund and the Economic and Social Council Committee on Negotiations with Specialized Agencies.[49] The negotiators had before them two documents, a joint draft prepared after earlier discussions between the Bank and the Fund[50] and a counter-draft prepared by the United Nations.

The joint draft prepared by the Fund and the Bank contained a provision on the Security Council which reflected both organizations' unwillingness to accept the version of this section suggested by the United Nations Secretariat during the preliminary discussions. The 13 June 1947 United Nations draft of the Relationship Agreement[51] had provided:

"*Article V*

"ASSISTANCE TO THE SECURITY COUNCIL

> "The Bank agrees to co-operate to the greatest extent possible within the terms of its Articles of Agreement in rendering such assistance to the Security Council as that Council may request, including assistance in carrying out decisions of the Security Council for the maintenance of international peace and security."

As can be seen from the language of the joint draft submitted by the Bank and the Fund for discussion during the formal negotiations, this latter provision had not proved acceptable to the Bank and the Fund. Article V of the Bank's version of the joint Bank and Fund draft provided:

"*Article V*

"SECURITY COUNCIL

> "1. In determining whether or not any particular loan application falls within the purposes of the Bank, as set forth in its Articles of Agreement, and satisfies the conditions

[49] The history of the negotiations can be found in the minutes of the Committee on Negotiations with Specialized Agencies (United Nations documents E/C.1/SR.40, 41, 46, 54, 55, 56, 57 and 58).

[50] The Bank's version of the joint draft differed from that of the Fund in certain minor respects and by the inclusion of an additional paragraph in article IV, which became article IV, paragraph 3, of the final Relationship Agreement between the Bank and the United Nations.

[51] The text of this United Nations draft was attached to the letter dated 13 June 1947, from Mr. David Weintraub acting on behalf of the Assistant Secretary-General of the United Nations in charge of Economic Affairs (United Nations Ref. No. 463-5-3 GEY).

which such Articles of Agreement require to be met before the Bank may guarantee, participate in or make any loan, the Bank will pay due regard to any relevant measures being taken pursuant to decision of the Security Council for the maintenance or restoration of international peace and security under Article 41 or 42 of the United Nations Charter." [52]

It is significant to note that, in contrast, the provision on the Security Council in the United Nations counter-draft, also presented for discussion at the formal negotiations, provided:

"*Article VI*

"SECURITY COUNCIL

"1. In determining whether any particular loan application falls within the purposes of the Bank, as set forth in its Articles of Agreement, and satisfies the conditions which such Articles of Agreement require to be met when the Bank guarantees, participates in or makes any loan, the Bank will recognize the obligations which are imposed upon members of the United Nations by Article 48 of the Charter to carry out decisions of the Security Council, for the maintenance of international peace and security, both directly and through their action in the appropriate international agencies of which they are members." [53]

From the outset, the Bank's representative stressed the independent character of the Bank which resulted from its basic document, the time and conditions in which it was set up and its special, unique and delicate tasks and responsibilities. [54]

He explained that:

"The Bank was dependent upon its good relations with the investing public and upon the assurance of the latter that the Bank would only make productive loans on a business basis without regard to political considerations. Any suggestion which would have the effect of bringing the Bank's independence into question would jeopardize the Bank's ability to market its securities."

The foregoing serves to indicate that, whereas the Bank entered into negotiations with the United Nations with the aim of ensuring the greatest possible degree of co-operation between the two organizations, it had no intention, in negotiating the terms of the Relationship Agreement, of disregarding the letter and spirit of its Articles of Agreement. In stressing its non-political nature and independence, the Bank was simply seeking to ensure non-involvement in *international political affairs*, which were recognized as the essential function of the United Nations but which, by virtue of the Bank's Articles of Agreement, the Bank was precluded from taking into consideration.

The Bank's inability to agree to any commitment which ran counter to the letter and spirit of its Articles of Agreement explains the position taken by the Bank's representative on the subject of the article relating to the Security Council. [55] At the afternoon negotiation meeting, the United Nations introduced a new version of article VI (Security Council). Commenting on this new version of article VI, the Bank's representative felt that "the suggested wording, however, carried the indication that the Bank recognized as its own obligation the obligation of the Members under the Charter of the United Nations." He therefore proposed the wording which was ultimately accepted:

"1. The Bank takes note of the obligation assumed under paragraph 2 of Article 48 of the United Nations Charter by such of its members as are also Members of the United Nations to carry out the decisions of the Security Council through their action in the appropriate

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[52] This text was submitted by the President of the Bank to the United Nations by letter dated 21 July 1947 (United Nations document E/C.1/20, 22 July 1947).

[53] United Nations document E/C.1/35, 14 August 1947.

[54] The representative of the Fund at this point stressed that the Fund had similar institutional characteristics which had an important bearing on the extent and form of its co-operation with the United Nations and added that "the two institutions were established simultaneously at Bretton Woods, and as independent economic organizations *motivated solely by economic considerations*. The nature of the institutions as then defined could not now be contravened." (Emphasis added.)

[55] During the item-by-item discussion of the proposed Relationship Agreement the Bank consistently maintained the position that it was required to exercise its judgement solely on the basis of its Articles of Agreement.

specialized agencies of which they are members, and will in the conduct of its activities have due regard for the decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

In reply to a question from the representative of the Committee on Negotiations with Specialized Agencies as to the relevance of the reference to Article 42 of the Charter, the Bank's representative "explained that if the measures provided for in Article 41 proved inadequate, the Security Council might take military action *and this military action might have some economic effects*" (emphasis added). The matter of article VI was thereoupon postponed until the evening session of the negotiations, at which time it was "announced that the Negotiating Committee would accept the draft of this article, including the reference to Article 42 of the Charter." It was explained, however, that in the opinion of the Committee on Negotiations the first line should read: "The Bank recognizes the obligations assumed by the Member States of the United Nations". In response, the Bank's representative indicated a preference for the word "notes" to the word "recognizes" on the ground that word "recognizes" has "a technical connotation in law of the assumption of obligation". The representative of the Committee on Negotiations "assured the representative of the Bank that no such connotation existed in this case, and accepted the words 'takes note' ". The final text as adopted, therefore, remained that of the above-quoted Bank proposal.

The legislative history of the Relationship Agreement and of article VI in particular thus shows that the representatives of both sides recognized that article VI would not impose a duty on the Bank in any way in conflict with the letter and spirit of article IV, section 10, of the Bank's Articles of Agreement.

(ii) *Language of article VI of the Relationship Agreement.* These conclusions drawn from the legislative history of the Relationship Agreement are also confirmed by the subsequent discussions in the United Nations prior to the ratification of the Agreement by the General Assembly. The debate in both the Economic and Social Council and in the Joint Committee of the Second and Third Committees of the General Assembly [56] shows that many delegations were conscious of the differences between the Agreements negotiated with the Fund and the Bank and those negotiated with other specialized agencies. [57]

The report by the Economic and Social Council to the General Assembly at its second session, in recommending approval of the draft agreements with the Bank and the Fund, recognized the differences between these agreements and those negotiated with other specialized agencies and stressed that the differences stemmed from the constitutional requirements of the two organizations. [58] In its reports to the General Assembly, [59] the Joint Second and Third Committee of the Assembly also referred to the unique characteristics of the Agreements negotiated with the Bank and Fund.

The texts of the provisions relating to the Security Council in the various relationship agreements between the United Nations and other specialized agencies are particularly significant in this connexion, in that they reveal a sharp distinction between the language used in article VI of the Bank and Fund Agreements and that used in the equivalent provisions of the other

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[56] See especially United Nations, *Official Records of the General Assembly, Second Session, Joint Committee of the Second and Third Committees, Summary Record of Meetings*, 8 October-5 November 1947.

[57] This view is also supported by most commentaries on the Charter: Alf Ross, *Constitution of the United Nations* (New York, Rinehart & Company, 1950), pp. 52 and 53; Eduardo Jiménez de Aréchaga, *Derecho Constitucional de las Naciones Unidas* (Madrid, Escuela de Funcionarios Internacionales, 1958), p. 430; Ruth B. Russell and Jeannette E. Muther, *A History of the United Nations Charter* (Washington, D.C., The Brookings Institution, 1958), pp. 797 and 802; Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations* (Boston, World Peace Foundation, 1949), p. 351; and see especially C. Wilfred Jenks, "Co-ordination: A New Problem of International Organization", Académie de Droit nternational de La Haye, *Recueil des Cours* (1950-II), vol. 77, pp. 157-301, particulary pp. 187, 217 and 218.

[58] See especially paragraph 162 of the report (*Official Records of the General Assembly, Second Session, Supplement No. 3*):

"As regards the draft agreements with the Bank and with the Fund, the Committee on Negotiations with Specialized Agencies had regard to the responsibilities placed upon the two organizations *by their articles of association* with respect to the nature and method of their operations ..." (Emphasis added.)

[59] United Nations document A/449, 7 November 1947 (*Official Records of the General Assembly, Second Session, Plenary Meetings*, vol. II, annex 22).

agreements. Thus for example the ILO, FAO, UNESCO and ICAO Agreements contain an undertaking whereby the agency:

> ". . . agrees to co-operate with the Economic and Social Council in furnishing such information *and rendering such assistance to the Security Council as that Council may request, including assistance in carrying out decisions of the Security Council* for the maintenance or restoration of international peace and security." [60] (Emphasis added.)

The wording of article VI of the Bank's Relationship Agreement with the United Nations is in contrast with the foregoing. [61] It states that the Bank "takes note" of the obligation of Members of the United Nations in accordance with Article 48, paragraph 2, of the Charter and that it will have "due regard" in the conduct of its activities for decisions of the Security Council under Articles 41 and 42 of the Charter. The Bank is thus credited with the knowledge that certain of its members, also members of the United Nations, have certain specific obligations which by virtue of Article 48, paragraph 2, of the Charter might result in a conflict with their obligations under its Articles of Agreement. [62] The record of the negotiations shows clearly that the words "takes note" were specifically intended to avoid any possible suggestion that there was any obligation between the two organizations.

The fact that article VI of the Relationship Agreement was not meant to derogate from article IV, section 10, of the Articles of Agreement of the Bank was subsequently confirmed by the United Nations General Assembly's Collective Measures Committee. In its report to the General Assembly and the Security Council, this Committee referred specifically to the phrase "due regard" in the Bank and Fund Relationship Agreements and noted that:

> "151. Both the Bank and the Fund have included in their special agreements with the United Nations a provision that their operations would be carried on with 'due regard' to decisions of the Security Council, *retaining the right of final decision for themselves*, even though their member nations would be bound by such decisions." [63] (Emphasis added.)

The Secretariat memorandum also cites the fact that by a resolution of the Bank's Board of Governors dated 13 September 1951, the Bank unilaterally undertook in the conduct of its activities to have due regard for recommendations of the General Assembly made pursuant to Assembly resolution 377 (V) (for the "Uniting for peace" resolution). The Secretariat memorandum cites this resolution of the Bank's Board of Governors as "the strongest possible evidence that there is no constitutional objection to the Bank, in its 'consideration' of General Assembly resolutions relating to Portugal and South Africa, *having due regard for and complying with* the recommendations contained in such resolutions". (Annex I, para. 38; emphasis added.)

The willingness to have "due regard" for "Uniting for peace" recommendations has the same meaning and effect as the acceptance of the "due regard" provision in article VI of the Relationship Agreement. Since the Bank had agreed to have "due regard" for Security Council actions under Articles 41 and 42, it was logical that it should also note that developments in the structure and operations of the United Nations in the period between 1947 and 1951 had made it more likely that the United Nations would in the future take measures of the type envisaged under Articles 41 and 42 by recommendations of the General Assembly under the "Uniting for peace" resolution.

The Secretariat memorandum suggested, in this connexion, that the inclusion of article VI in the Relationship Agreement and the Board of Governors' resolution on the "Uniting for peace" resolution indicate that the Bank itself feels that there is no constitutional bar to the Bank's

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[60] The WHO and IMCO Agreements contain simpler language to the same effect.

[61] This is also the view of Goodrich and Hambro (*op. cit. supra*, pp. 346 and 352) who view article VI of both the Fund and Bank Relationship Agreements as among their distinctive features.

[62] Article 48, paragraph 2, of the Charter does not impose any obligation on the specialized agencies, but creates an obligation for Members of the United Nations. This was clearly recognized at San Francisco; see *Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State*, June 26, 1945 (Department of State Publication 2349, Conference Series 71), p. 99. See also Jenks, *op. cit. supra*, p. 185; Aréchaga, *op. cit. supra*, p. 329; Hans Kelsen, *The Law of the United Nations* (London, Stevens & Sons Limited, 1950), p. 745. Since the Secretariat memorandum did not go into the matter, this memorandum does not cover the question of the possibility of a conflict of obligations for Members of the United Nations also members of the Bank.

[63] *Official Records of the General Assembly, Sixth Session, Supplement No. 13* (A/1891), p. 19.

"*complying*" with the recommendations contained in General Assembly resolutions. It should be noted, however, that no suggestion of an undertaking to "comply with" in the sense of carrying out and giving effect to decisions and recommendations can be read into the words "have due regard". Such an interpretation, which would run counter to the provisions of the Articles of Agreement, the legislative history of the Relationship Agreement and the practice of the Bank, is not supported by the plain and ordinary meaning of the actual language of the provisions in question.

(iii) *Functional considerations.* The Bank, in entering into a Relationship Agreement with the United Nations within the terms of its Articles of Agreement, did not and could not modify its character as a technical and financial organization which was specifically enjoined by its member Governments from playing any political role. In imposing such a restriction on the Bank, the signatory Governments had a twofold purpose in mind.

First, in creating an organization to which member Governments with different political characters and aims or interests were about to furnish sizable but limited resources to be used for economic reconstruction and development, it was thought necessary to prevent the use of the leverage that would be provided by the granting or withholding of financial assistance to a particular member for the furtherance of the political aims of any member or any group of members, no matter how worthwhile such aims might appear to be.

Secondly, it was thought to be essential for the ability of the Bank to raise large amounts of capital from the savings of the investing public to assure that public that economic and not political considerations would influence and determine the Bank's financial decisions.

It should be noted in this connexion that the Relationship Agreement between the United Nations and the Bank was intended to described the *legal* rights and obligations of the two organizations arising from the relationship and therefore tends to emphasize the outside limits of their co-operation rather than the actual contents thereof. In fact, this co-operation has been intensive, has covered a wide range of matters of common concern and, in the Bank's opinion at least, has been highly beneficial for the countries which are members of the two organizations.

In practice, cases in which the Bank cannot respond affirmatively to a request or appeal of a United Nations organ are rare; the case of the resolutions of the General Assembly now under consideration is one of them, for the General Assembly's request is concerned with matters which have been deliberately kept outside the scope of the Bank's function and responsibilities by the signatories of its Articles of Agreement.

## Annex III

### Letter dated 20 July 1967 from the Legal Counsel of the United Nations to the General Counsel of the International Bank for Reconstruction and Development

I refer to your letter of 5 May 1967 and to our subsequent telegrams regarding the opportunity for further observations.

It is a matter for regret that the respective views on this important issue remain so far apart as to afford little prospect of their being reconciled by further legal argument.

It appears that your position rests on the acceptance of an interpretation of the Bank's Constitution and the Relationship Agreement which accords to the Bank, in the conduct of its activities, a positive independence of the need to have regard to any considerations other than economic considerations. In this connexion, the only observation I wish to make at this time is that such a measure of independence would, in my opinion, not only exceed that enjoyed by any national banking institution, but would seem difficult to reconcile with the common dedication of members of the United Nations system to the fulfilment of the purposes of the United Nations Charter.

## Annex IV

### Letter dated 18 August 1967 from the President of the International Bank for Reconstruction and Development to the Secretary-General of the United Nations

The Legal Counsel of the United Nations has, as you know, sent us a paper containing a closely reasoned legal argument why the World Bank should take certain actions under the General

Assembly's requests for the withholding of economic assistance to Portugal and South Africa. The Bank's General Counsel has replied with legal arguments to show that, under the terms of its Agreement with the United Nations, the Bank is not obligated to comply with such requests and, indeed, under the terms of its own Articles of Agreement, is not free to do so. The Legal Counsel of the United Nations has since written that he continues to adhere to his original views, to which the United Nations organs concerned will doubtless give great weight. However, the Executive Directors of the Bank who, as you know, are responsible for interpreting the Articles of Agreement, having carefully considered all the arguments advanced, have, although with some dissents, endorsed the position taken by the Bank's General Counsel. It seems to me unlikely that additional legal argumentation would change the situation.

In the circumstances, I should like at this point to leave legal argumentation aside and to assure you—and through you the various United Nations organs concerned—that the World Bank is keenly aware and proud of being part of the United Nations family. Its earnest desire is to co-operate with the United Nations by all legitimate means and, to the extent consistent with its Articles of Agreement, to avoid any action that might run counter to the fulfilment of the great purposes of the United Nations. I give you this assurance in the hope that it may be helpful in dissipating any misunderstanding of the Bank's attitude.

### Annex V

**Letter dated 23 August 1967 from the Secretary-General of the United Nations to the President of the International Bank for Reconstruction and Development**

Thank you for your letter of 18 August, which I am transmitting to the members of the Committee of Twenty-Four and to the General Assembly for their information.

I welcome the assurance you have been good enough to convey to me and through me to the United Nations organs concerned, of the Bank's desire to co-operate with the United Nations by all legitimate means and, to the extent consistent with its Articles of Agreement, to avoid any action that might run counter to the fulfilment of the great purposes of the United Nations.

In view of the differences which exist regarding the interpretation of the basic legal texts, I share your feeling that additional legal argumentation would not be productive at the present stage, although this is an aspect on which I naturally cannot prejudge the views of the competent United Nations organs concerned. In welcoming your desire to clarify the attitude of the Bank, I need hardly stress how heavily the United Nations relies on the co-operation and support of all organizations which are members of the United Nations family.

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## 3. (A) UNITED NATIONS GENERAL ASSEMBLY—FIFTH SPECIAL SESSION QUESTION OF SOUTH WEST AFRICA (AGENDA ITEM 7)

### Resolution [2248 (S-V)] adopted by the General Assembly

**2248 (S-V). Question of South West Africa**

*The General Assembly,*

*Having considered* the report of the *Ad Hoc* Committee for South West Africa, [64]

*Reaffirming* its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

*Reaffirming* its resolution 2145 (XXI) of 27 October 1966, by which it terminated the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Govern-

[64] *Ibid., Fifth Special Session, Annexes*, agenda item 7, document A/6640.

ment of the Union of South Africa and decided that South Africa had no other right to administer the Territory of South West Africa,

*Having assumed* direct responsibility for the Territory of South West Africa in accordance with resolution 2145 (XXI),

*Recognizing* that it has thereupon become incumbent upon the United Nations to give effect to its obligations by taking practical steps to transfer power to the people of South West Africa,

I

*Reaffirms* the territorial integrity of South West Africa and the inalienable right of its people to freedom and independence, in accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) and all other resolutions concerning South West Africa;

II

1. *Decides* to establish a United Nations Council for South West Africa (hereinafter referred to as the Council) comprising eleven Member States to be elected during the present session and to entrust to it the following powers and functions, to be discharged in the Territory:

(*a*) To administer South West Africa until independence, with the maximum possible participation of the people of the Territory;

(*b*) To promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage;

(*c*) To take as an immediate task all the necessary measures, in consultation with the people of the Territory, for the establishment of a constituent assembly to draw up a constitution on the basis of which elections will be held for the establishment of a legislative assembly and a responsible government;

(*d*) To take all the necessary measures for the maintenance of law and order in the Territory;

(*e*) To transfer all powers to the people of the Territory upon the declaration of independence;

2. *Decides* that in the exercise of its powers and in the discharge of its functions the Council shall be responsible to the General Assembly;

3. *Decides* that the Council shall entrust such executive and administrative tasks as it deems necessary to a United Nations Commissioner for South West Africa (hereinafter referred to as the Commissioner), who shall be appointed during the present session by the General Assembly on the nomination of the Secretary-General;

4. *Decides* that in the performance of his tasks the Commissioner shall be responsible to the Council;

III

1. *Decides* that:

(*a*) The administration of South West Africa under the United Nations shall be financed from the revenues collected in the Territory;

(*b*) Expenses directly related to the operation of the Council and the Office of the Commissioner—the travel and subsistence expenses of members of the Council,

the remuneration of the Commissioner and his staff and the cost of ancillary facilities—shall be met from the regular budget of the United Nations;

2. *Requests* the specialized agencies and the appropriate organs of the United Nations to render to South West Africa technical and financial assistance through a co-ordinated emergency programme to meet the exigencies of the situation;

IV

1. *Decides* that the Council shall be based in South West Africa;

2. *Requests* the Council to enter immediately into contact with the authorities of South Africa in order to lay down procedures, in accordance with General Assembly resolution 2145 (XXI) and the present resolution, for the transfer of the administration of the Territory with the least possible upheaval;

3. *Further requests* the Council to proceed to South West Africa with a view to:

(*a*) Taking over the administration of the Territory;

(*b*) Ensuring the withdrawal of South African police and military forces;

(*c*) Ensuring the withdrawal of South African personnel and their replacement by personnel operating under the authority of the Council;

(*d*) Ensuring that in the utilization and recruitment of personnel preference be given to the indigenous people;

4. *Calls upon* the Government of South Africa to comply without delay with the terms of resolution 2145 (XXI) and the present resolution and to facilitate the transfer of the administration of the Territory of South West Africa to the Council;

5. *Requests* the Security Council to take all appropriate measures to enable the United Nations Council for South West Africa to discharge the functions and responsibilities entrusted to it by the General Assembly;

6. *Requests* all States to extend their whole-hearted co-operation and to render assistance to the Council in the implementation of its task;

V

*Requests* the Council to report to the General Assembly at intervals not exceeding three months on its administration of the Territory, and to submit a special report to the Assembly at its twenty-second session concerning the implementation of the present resolution;

VI

*Decides* that South West Africa shall become independent on a date to be fixed in accordance with the wishes of the people and that the Council shall do all in its power to enable independence to be attained by June 1968.

*1518th plenary meeting,*
*19 May 1967.*

* * *

*At its 1524th plenary meeting, on 13 June 1967, the General Assembly, in pursuance of section II, paragraph 1, of the above resolution, elected the members of the United Nations Council for South West Africa.*

*The Council will be composed of the following Member States:* CHILE, COLOMBIA, GUYANA, INDIA, INDONESIA, NIGERIA, PAKISTAN, TURKEY, UNITED ARAB REPUBLIC, YUGOSLAVIA *and* ZAMBIA.

*At the same meeting, in pursuance of section II, paragraph 3, of the above resolution, the General Assembly considered the question of the appointment of the United Nations High Commissioner for South West Africa. On the proposal of the Secretary-General,*[65] *the Assembly appointed* Mr. Constantin A. STAVROPOULOS, *Legal Counsel of the United Nations, as Acting United Nations High Commissioner for South West Africa.*

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## 3. (B) UNITED NATIONS GENERAL ASSEMBLY— TWENTY-SECOND SESSION (19 SEPTEMBER-19 DECEMBER 1967)

### (1) INSTALLATION OF MECHANICAL MEANS OF VOTING: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 25)

### (*a*) Report of the Sixth Committee[66]

[*Original text : English and Spanish*]
[*9 December 1967*]

*Introduction*

1. At its 1009th and 1010th meetings, on 28 and 29 November 1967, the Sixth Committee considered a proposal by Mexico (A/6862) to make certain changes to rules 89 and 128 of the rules of procedure in connexion with agenda item 25 entitled "Installation of mechanical means of voting". The President of the General Assembly had brought this question to the attention of the Sixth Committee by a letter dated 23 October 1967 (A/C.6/380), in which he stated that, since amendments to the rules of procedure were being suggested, he was referring the matter to the Sixth Committee in accordance with rule 164 and in conformity with the principle set forth in paragraph 1 (*c*) of annex II to the rules of procedure.

*Consideration by the Sixth Committee of additions to the rules of procedure of the General Assembly*

2. Rule 89 of the rules of procedure is concerned with voting by the General Assembly and rule 128 with voting by committees of the Assembly. In their present form these rules make no explicit provision for the use of mechanical means of voting. However, such means of voting are now available in the General Assembly Hall, and the Sixth Committee noted that this equipment is used not only by the Assembly itself but also on occasion by Main Committees. The Sixth Committee therefore considered that it was necessary to make provision both in rule 89 and in rule 128 for the use of mechanical means of voting by the Assembly and by committees, irrespective of the question of the further installation of such means in conference rooms at Headquarters. This latter question was not before the Sixth Committee in the present context and will be decided in due course by the General Assembly itself.

3. The Sixth Committee noted that, since the installation of mechanical means of voting in the General Assembly, the terms "recorded vote" and "non-recorded vote" have come into general usage. The Sixth Committee understands these terms as follows. When mechanical means of voting are employed, a "non-recorded vote" replaces a vote by show of hands or by standing in that no record is made on the corresponding voting sheet of the

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[65] *Ibid., document* A/6656, para. 3.

[66] Extract from document A/6960, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 25.

manner in which each delegation voted, the voting equipment and subsequently the relevant summary or verbatim records of the meetings indicating only the numerical results of the voting. Similarly, when mechanical means of voting are used, a "recorded vote" replaces a roll-call vote in that a record is made by the equipment of the way in which each delegation cast its vote, such a record subsequently being inserted in the relevant summary or verbatim records of the meeting together with the numerical results of the vote.

*Decision of the Committee*

4. At the 1009th meeting of the Sixth Committee on 28 November, a draft resolution was introduced on behalf of Czechoslovakia, Kenya, Mexico, New Zealand, Norway, Senegal, Thailand and the United Arab Republic (A/C.6/L.632/Rev.1), the text of which is as follows:

"*The General Assembly*,

"*Noting* that the introduction of voting by mechanical means makes desirable certain amendments to its rules of procedure,

"*Decides*, with effect from 1 January 1968, but without prejudging the question of the installation of mechanical means of voting in the committee rooms, to amend rules 89 and 128 of its rules of procedure as follows:

"(*a*) In rule 89:

"(i) Designate the existing text as paragraph (*a*);

"(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as a roll-call vote.

"(*b*) In rule 128:

"(i) Designate the existing text as paragraph (*a*);

"(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as a roll-call vote."

This draft resolution was unanimously adopted at the 1010th meeting of the Committee. on 29 November 1967.

**Recommendation of the Sixth Committee**

5. 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 1635th plenary meeting, on 16 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 5 above). For the final text, see resolution 2323 (XXII) below.

### 2323 (XXII). Installation of mechanical means of voting: amendments to rules 89 and 128 of the rules of procedure of the General Assembly

*The General Assembly,*

*Noting* that the introduction of voting by mechanical means makes desirable certain amendments to its rules of procedure,

*Decides*, with effect from 1 January 1968, but without prejudging the question of the installation of mechanical means of voting in the committee rooms, to amend rules 89 and 128 of its rules of procedure as follows:

(*a*) In rule 89:

(i) Designate the existing text as paragraph (*a*);

(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the Members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote."

(*b*) In rule 128:

(i) Designate the existing text as paragraph (*a*);

(ii) Add a new paragraph (*b*) as follows:

"(*b*) When the committee votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the committee shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote."

*1635th plenary meeting*
*16 December 1967*

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

Resolution [2343 (XXII)] adopted by the General Assembly

**2343 (XXII). Urgent need for suspension of nuclear and thermonuclear tests**

*The General Assembly,*

*Having considered* the question of the urgent need for suspension of nuclear and thermonuclear tests and the interim report of the Conference of the Eighteen-Nation Committee on Disarmament, [67]

*Recalling* its resolutions 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965 and 2163 (XXI) of 5 December 1966,

*Noting with regret* the fact that all States have not yet adhered to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, signed in Moscow on 5 August 1963, [68]

*Noting with increasing concern* that nuclear weapon tests in the atmosphere and underground are continuing,

*Taking into account* the existing possibilities of establishing, through international co-operation, an exchange of seismic data, so as to create a better scientific basis for national evaluation of seismic events,

*Recognizing* the importance of seismology in the verification of the observance of a treaty banning underground nuclear weapon tests,

*Realizing* that such a treaty would also constitute an effective measure to prevent the proliferation of nuclear weapons,

1. *Urges* all States which have not done so to adhere without further delay to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;

2. *Calls upon* all nuclear-weapon States to suspend nuclear weapon tests in all environments;

3. *Expresses the hope* that States will contribute to an effective international exchange of seismic data;

4. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to take up as a matter of urgency the elaboration of a treaty banning underground nuclear weapon tests and to report to the General Assembly on this matter at its twenty-third session.

*1640th plenary meeting*
*19 December 1967*

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[67] *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda items 29, 30 and 31, document A/6951.

[68] United Nations, *Treaty Series*, vol. 480 (1963), No. 6964.

(3) INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (AGENDA ITEM 32)

Resolution [2345 (XXII)] adopted by the General Assembly

**2345 (XXII). Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space [69]**

*The General Assembly*,

*Bearing in mind* its resolution 2260 (XXII) of 3 November 1967, which calls upon the Committe on the Peaceful Uses of Outer Space to continue with a sense of urgency its work on the elaboration of an agreement on liability for damage caused by the launching of objects into outer space and an agreement on assistance to and return of astronauts and space vehicles,

*Referring* to the addendum to the report of the Committee on the Peaceful Uses of Outer Space, [70]

*Desiring* to give further concrete expression to the rights and obligations contained in the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, [71]

1. *Commends* the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, the text of which is annexed to the present resolution;

2. *Requests* the Depositary Governments to open the Agreement for signature and ratification at the earliest possible date;

3. *Expresses its hope* for the widest possible adherence to this Agreement;

4. *Calls upon* the Committee on the Peaceful Uses of Outer Space to complete urgently the preparation of the draft agreement on liability for damage caused by the launching of objects into outer space and, in any event, not later than the beginning of the twenty-third session of the General Assembly, and to submit it to the Assembly at that session.

*1640th plenary meeting*
*19 December 1967*

**Annex**

**Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space**

[Text reproduced in this *Yearbook*, p. 269]

[69] In accordance with a decision taken by the General Assembly at its 1640th plenary meeting, on 19 December 1967, the question dealt with in the addendum to the report of the Committee, on the Peaceful Uses of Outer Space was examined directly in plenary meeting, and the present resolution was adopted without reference to the First Committee. See also, with reference to item 32, resolutions 2260 (XXII) and 2261 (XXII).

[70] *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 32, document A/6804/Add.1.

[71] General Assembly resolution 2222 (XXI), annex.

## (4) Draft Declaration on the Elimination of Discrimination against Women (agenda item 53)

### Resolution [2263 (XXII)] adopted by the General Assembly

**2263 (XXII). Declaration on the Elimination of Discrimination against Women**

*The General Assembly,*

*Considering* that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Considering* that the Universal Declaration on Human Rights asserts the principle of non-discrimination and 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 forth therein, without distinction of any kind, including any distinction as to sex,

*Taking into account* the resolutions, declarations, conventions and recommendations of the United Nations and the specialized agencies designed to eliminate all forms of discrimination and to promote equal rights for men and women,

*Concerned* that, despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women,

*Considering* that discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity,

*Bearing in mind* the great contribution made by women to social, political, economic and cultural life and the part they play in the family and particularly in the rearing of children,

*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women as well as men in all fields,

*Considering* that it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women,

*Solemnly proclaims* this Declaration:

*Article 1*

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

*Article 2*

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(*a*) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

(*b*) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

*Article 3*

All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

*Article 4*

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

(*a*) The right to vote in all elections and be eligible for election to all publicly elected bodies;

(*b*) The right to vote in all public referenda;

(*c*) The right to hold public office and to exercise all public functions.

Such rights shall be guaranteed by legislation.

*Article 5*

Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.

*Article 6*

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:

(*a*) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;

(*b*) The right to equality in legal capacity and the exercise thereof;

(*c*) The same rights as men with regard to the law on the movement of persons.

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:

(*a*) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

(*b*) Women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;

(*c*) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

*Article 7*

All provisions of penal codes which constitute discrimination against women shall be repealed.

*Article 8*

All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

*Article 9*

All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

(*a*) Equal conditions of access to, and study in, educational institutions of all types, including universities and vocational, technical and professional schools;

(*b*) The same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;

(*c*) Equal opportunities to benefit from scholarships and other study grants;

(*d*) Equal opportunities for access to programmes of continuing education, including adult literacy programmes;

(*e*) Access to educational information to help in ensuring the health and well-being of families.

*Article 10*

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(*a*) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(*b*) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

(*c*) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;

(*d*) The right to receive family allowances on equal terms with men.

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including childcare facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

*Article 11*

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

*1597th plenary meeting*
*7 November 1967*

(5) ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (*a*) IMPLEMENTATION OF THE UNITED NATIONS DECLARATION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (*b*) STATUS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (*c*) MEASURES TO BE TAKEN AGAINST NAZISM AND RACIAL INTOLERANCE (*d*) MEASURES FOR THE SPEEDY IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS AGAINST RACIAL DISCRIMINATION (AGENDA ITEM 55)

Resolution [2332 (XXII)] adopted by the General Assembly

**2332 (XXII). Measures for the speedy implementation of international instruments against racial discrimination**

*The General Assembly*,

*Recalling* its resolutions 1905 (XVIII) of 20 November 1963, 2017 (XX) of 1 November 1965 and 2142 (XXI) of 26 October 1966,

*Expressing its profound concern* that many Governments continue to violate fundamental human rights and the principles of the Charter of the United Nations through policies of *apartheid*, segregation and other forms of racial discrimination,

*Concerned also* that the principles of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination are being grossly violated in some parts of the world, particularly in South Africa, in the rebellious colony of Southern Rhodesia and in the Territory of South West Africa, which is under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa,

*Noting* that many States have not yet signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination,

1. *Urges* all eligible Governments which have not yet done so to sign, ratify and implement without delay the International Convention on the Elimination of All Forms of Racial Discrimination and the other conventions directed against discrimination in employment and occupation and against discrimination in education;

2. *Requests* the Secretary-General to make available to the Commission on Human Rights at its regular sessions the information submitted by Governments of Member States on measures taken for the speedy implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination;

3. *Requests* the Secretary-General, the specialized agencies and all organizations concerned to continue to take measures to propagate, through appropriate channels, the principles and norms set forth in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and in the International Convention on the Elimination of All Forms of Racial Discrimination;

4. *Requests* the International Conference on Human Rights to consider the question of giving effect to the provisions of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination and the question of the implementation of the conventions directed against discrimination in employment and occupation and against discrimination in education in so far as they relate to racial discrimination, especially in South Africa, in the rebellious colony of Southern Rhodesia and in the Territory of South West Africa, which is under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa;

5. *Recommends* that the Commission on Human Rights continue to give consideration, as a matter of priority, to measures for the speedy implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and that it report, through the Economic and Social Council, to the General Assembly at its twenty-third session;

6. *Condemns* the Government of South Africa and the illegal régime in Southern Rhodesia for their open and nefarious practices of racial discrimination and intolerance against the African and other non-white peoples in the Republic of South Africa, in the Territory of South West Africa, which is under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa, and in the rebellious colony of Southern Rhodesia;

7. *Calls upon* the Government of South Africa to desist from all such nefarious practices;

8. *Decides* to consider at its twenty-third session the question of the elimination of all forms of racial discrimination.

*1638th plenary meeting*
*18 December 1967*

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## (6) Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights: report of the Secretary-General (agenda item 57)

### Resolution [2337 (XXII)] adopted by the General Assembly

**2337 (XXII). Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights**

*The General Assembly,*

*Recalling* that in its resolution 2200 A (XXI) of 16 December 1966 it expressed the hope that the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights would be signed and ratified or acceded to without delay and come into force at an early date,

*Noting* that according to the report of the Secretary-General, submitted in pursuance of resolution 2200 A (XXI) on the status of ratifications of the Covenants and of the Optional Protocol, there have been no ratifications of or accessions to any of these instruments and that there have been only nineteen signatures to the International Covenant on Economic, Social and Cultural Rights, eighteen to the International Covenant on Civil and Political Rights, and eleven to the Optional Protocol,

*Desiring* to accelerate the ratifications of and accessions to the Covenants and the Optional Protocol,

*Convinced* that the purposes and principles of the Charter of the United Nations would be greatly enhanced by the coming into force of the Covenants and the Optional Protocol,

1. *Invites* States which are eligible to become parties to the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights to hasten their ratifications of or accessions to these instruments;

2. *Requests* the Secretary-General to submit a report on the status of the Covenants and the Optional Protocol to the International Conference on Human Rights to be held at Teheran in 1968 and to the General Assembly at its twenty-third session;

3. *Decides* to include this item in the provisional agenda of its twenty-third session.

*1638th plenary meeting*
*18 December 1967*

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## (7) QUESTION OF SOUTH WEST AFRICA (*a*) REPORT OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES (*b*) REPORT OF THE UNITED NATIONS COUNCIL FOR SOUTH WEST AFRICA (*c*) APPOINTMENT OF THE UNITED NATIONS COMMISSIONER FOR SOUTH WEST AFRICA (AGENDA ITEM 64)

Resolutions [2324 (XXII) and 2325 (XXII)] adopted by the General Assembly

### 2324 (XXII). Question of South West Africa

*The General Assembly*,

*Recalling* its resolution 2145 (XXI) of 27 October 1966, by which it terminated the Mandate for South West Africa and decided, *inter alia*, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations,

*Gravely concerned* about the arrest, deportation and trial at Pretoria of thirty-seven South West Africans by the South African authorities in flagrant violation of their rights and of the aforementioned resolution,

*Recalling further* the resolution adopted on 12 September 1967 by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples [72] and also the consensus adopted by the United Nations Council for South West Africa on 27 November 1967, [73]

*Conscious* of the special responsibilities of the United Nations towards the people and Territory of South West Africa,

1. *Condemns* the illegal arrest, deportation and trial at Pretoria of the thirty-seven South West Africans as a flagrant violation by the Government of South Africa of their rights, of the international status of the Territory and of General Assembly resolution 2145 (XXI);

2. *Calls upon* the Government of South Africa to discontinue forthwith this illegal trial and to release and repatriate the South West Africans concerned;

3. *Appeals* to all States and international organizations to use their influence with the Government of South Africa in order to obtain its compliance with the provisions of paragraph 2 above;

4. *Draws the attention* of the Security Council to the present resolution;

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[72] *Official Records of the General Assembly, Twenty-second Session, Annexes*, addendum to agenda item 23 (A/6700/Rev.1), chapter IV, para. 232.

[73] *Ibid.*, agenda item 64, document A/6919.

5. *Requests* the Secretary-General to report as soon as possible to the Security Council, the General Assembly, the United Nations Council for South West Africa and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on the implementation of the present resolution.

*1635th plenary meeting*
*16 December 1967*

### 2325 (XXII). Question of South West Africa

*The General Assembly,*

*Having considered* the report of the United Nations Council for South West Africa,[74]

*Reaffirming* the inalienable right of the people of South West Africa to freedom and independence in accordance with the Charter of the United Nations and with General Assembly resolution 1514 (XV) of 14 December 1960, which contains the Declaration on the Granting of Independence to Colonial Countries and Peoples,

*Reaffirming* its resolution 2145 (XXI) of 27 October 1966, by which it terminated the Mandate for South West Africa and decided, *inter alia*, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations,

*Reaffirming also* its resolution 2248 (S-V) of 19 May 1967, and particularly paragraph 5 of section IV thereof,

*Taking note* of the refusal of the Government of South Africa to co-operate with the United Nations in the implementation of resolutions 2145 (XXI) and 2248 (S-V), as indicated in its communication of 26 September 1967 addressed to the Secretary-General,[75]

1. *Notes with appreciation* the report of the United Nations Council for South West Africa and the Council's efforts to discharge the responsibilities and functions entrusted to it;

2. *Requests* the United Nations Council for South West Africa to fulfill by every available means the mandate entrusted to it by the General Assembly;

3. *Condemns* the refusal of the Government of South Africa to comply with General Assembly resolutions 2145 (XXI) and 2248 (S-V), which provide for granting the people of South West Africa an opportunity to exercise their inalienable right to freedom and independence;

4. *Declares* that the continued presence of South African authorities in South West Africa is a flagrant violation of its territorial integrity and international status as determined by General Assembly resolution 2145 (XXI), as well as of the terms of General Assembly resolution 2248 (S-V);

5. *Calls upon* the Government of South Africa to withdraw from the Territory of South West Africa, unconditionally and without delay, all its military and police forces and its administration, to release all political prisoners and to allow all political refugees who are natives of the Territory to return to it;

6. *Urgently appeals* to all Member States, particularly the main trading partners of South Africa and those which have economic and other interests in South Africa and South West Africa, to take effective economic and other measures designed to ensure the immediate

[74] *Ibid.*, document A/6897.

[75] *Ibid.*, document A/6822.

withdrawal of the South African administration from the Territory of South West Africa, thereby clearing the way for the implementation of General Assembly resolutions 2145 (XXI) and 2248 (S-V);

7. *Requests* the Security Council to take effective steps to enable the United Nations to fulfil the responsibilities it has assumed with respect to South West Africa;

8. *Further requests* the Security Council to take all appropriate measures to enable the United Nations Council for South West Africa to discharge fully the functions and responsibilities entrusted to it by the General Assembly;

9. *Decides* to maintain this item on its agenda.

*1635th plenary meeting*
*16 December 1967*

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## (8) Report of the International Law Commission on the work of its nineteenth session (agenda item 85)

### (*a*) Report of the Sixth Committee[76]

[*Original text: English and Spanish*]
[*17 November 1967*]

### I. Introduction

1. At its 1564th plenary meeting, on 23 September 1967, the General Assembly decided to include the item entitled "Report of the International Law Commission on the work of its nineteenth session" in the agenda of its twenty-second session and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this item at its 957th to 968th meetings, from 26 September to 11 October 1967, and at its 970th to 974th meetings, from 12 to 18 October 1967.

3. At the 957th meeting, on 26 September 1967, at the invitation of the Chairman of the Sixth Committee, Sir Humphrey Waldock, Chairman of the International Law Commission at its nineteenth session, introduced the Commission's report on the work of that session (A/6709/Rev.1 and Corr.1). At the 968th meeting, on 11 October 1967, he commented on the observations which had been made during the debate on the report.

4. The report of the International Law Commission on the work of its nineteenth session, held at Geneva from 8 May to 14 July 1967, consisted of the following three chapters: I. Organization of the session; II. Special missions; III. Other decisions and conclusions of the Commission. Chapter II of the report contained the final text of the draft articles on special missions adopted by the Commission in 1967. An annex to the report reproduced the comments of Governments on the provisional draft articles on special missions adopted by the Commission in 1965.

### II. Proposals and amendments

5. During the consideration of this item by the Sixth Committee, two draft resolutions were submitted, one taking note of the report of the International Law Commission and dealing with the Commission's future work and other matters mentioned in the report, and

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[76] Document A/6898, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 85.

the other dealing exclusively with the topic of special missions. The two draft resolutions and the revisions, proposals or amendments thereto are reproduced in paragraphs 6 to 13.

### A. Report of the International Law Commission

6. At the 964th meeting on 6 October 1967, Colombia, Ecuador and Guatemala submitted a draft resolution (A/C.6/L.617), which was introduced by Guatemala with the explanation that Nigeria had requested that it be included as a sponsor, although its name did not appear on the document. The draft resolution read as follows:

"*The General Assembly*,

"*Having considered* the report of the International Law Commission on the work of its nineteenth session,

"*Recalling* its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of State responsibility, succession of States and Governments and relations between States and inter-governmental organizations.

"*Emphasizing* the need for the further codification and progressive development of international law in order to make 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 and to give increased importance to its role in relations among nations.

"*Noting with satisfaction* that at its nineteenth session the International Law Commission adopted the final text of its draft articles on special missions,

"*Noting further with appreciation* that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the Seminar was made possible by the generous collaboration of members of the Commission, that five Governments offered scholarships for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions,

"1. *Takes note* of chapters I and III of the report of the International Law Commission on the work of its nineteenth session;

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

"3. *Notes with approval* the programme of work for 1968 proposed by the International Law Commission in chapter III of its report;

"4. *Recommends* that the International Law Commission should:

(*a*) Continue its work on succession of States and Governments and relations between States and inter-governmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

(*b*) Study the topic of most-favoured-nation clauses in the law of treaties;

(*c*) Carry out a review of its programme and methods of work;

(*d*) Expedite the study of the topic of State responsibility and take it up at the earliest opportunity;

"5. *Expresses the wish* that, in conjunction with future sessions of the International Law Commission, other seminars might be organized which should continue to ensure the participation of a reasonable number of nationals of developing countries;

"6. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-second session of the General Assembly on the report of the Commission."

7. Bulgaria, Colombia, Ecuador, Guatemala and Nigeria submitted a first revision of the draft resolution (A/C.6/L.617/Rev.1), circulated on 9 October 1967, in which the order of sub-paragraphs (*c*) and (*d*) of operative paragraph 4 of the original draft was reversed.

8. The sponsors of the revised draft resolution at the 967th meeting on 11 October 1967 submitted a second revision (A/C.6/L.617/Rev.2), introducing the following changes:

(*a*) The second preambular paragraph was redrafted to read:

"*Recalling* its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and inter-governmental organizations and State responsibility."

(*b*) The fifth preambular paragraph was changed to read:

"*Noting further with appreciation* that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the Seminar was made possible by the generous collaboration of members of the Commission, that more scholarships were made available for participants from developing countries, and that the Commission recommended that further seminars should be held in conjunction with its sessions."

(*c*) In operative paragraph 4 the words "and take it up at the earliest opportunity" were deleted from sub-paragraph (*c*) (sub-paragraph (*d*) of the original draft).

## B. Special missions

9. At the 968th meeting on 9 October 1967, Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria submitted a draft resolution (A/C.6/L.618), which read as follows:

"*The General Assembly*,

"*Having considered* chapter II of the report of the International Law Commission on the work of its nineteenth session, which contains final draft articles and commentaries on special missions,

"*Recalling* that in its resolutions 1687 (XVI) of 18 December 1961, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development of the topic of special missions, taking into account the views expressed in the General Assembly and the comments submitted by Governments, and that in its resolution 2167 (XXI) of 5 December 1966 it recommended that a final draft on special missions should be submitted to the Assembly by the Commission in its report on the work of its nineteenth session,

"*Noting further* that at its eighteenth and nineteenth sessions, in 1966 and 1967, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on special missions prepared at its sixteenth and seventeenth sessions and that at its nineteenth session the Commission finally adopted the draft articles,

"*Recalling* that, as stated in paragraph 33 of the report of the International Law Commission on the work of its nineteenth session, the Commission decided to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions,

"*Mindful* of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

"*Believing* that the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and the privileges and immunities of such missions,

"1. *Expresses its appreciation* to the International Law Commission for its valuable work on special missions and to the Special Rapporteur for his contribution to this work;

"2. *Invites* Member States to submit, not later than 1 July 1968, their written comments and observations on the final draft articles on special missions prepared by the International Law Commission;

"3. *Requests* the Secretary-General to circulate the comments submitted by Member States on the subject, so as to facilitate its consideration by the General Assembly at its twenty-third session, in the light of those comments;

"4. *Decides* to include an item entitled, 'Special Missions' in the provisional agenda of its twenty-third session."

10. At the 970th meeting on 12 October 1967, Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, the United Republic of Tanzania and Zambia submitted an amendment (A/C.6/L.620) to the draft resolution proposing that operative paragraph 4 be replaced by the following text:

"4. *Decides* to include an item entitled 'Draft Convention on Special Missions' in the provisional agenda of its twenty-third session, with a view to the adoption of such a convention by the General Assembly."

Subsequently, Somalia added its name to the list of sponsors of the amendment (A/C.6/L.620/Add.1).

11. At the 973rd meeting on 17 October 1967, Iraq introduced an amendment (A/C.6/L.622) adding operative paragraphs 5 and 6 to the draft resolution (A/C.6/L.618) reading as follows:

"5. *Requests* the Secretary-General to arrange for the presence of the Special Rapporteur on special missions as an expert during the debates on the topic at the twenty-third session, and to submit at that session all relevant documentation;

"6. *Invites* Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered."

12. At the same meeting the representative of Nigeria proposed orally that operative paragraph 4, as worded in document A/C.6/L.620, should be made operative paragraph 6 of the draft resolution and that operative paragraphs 5 and 6, as worded in document A/C.6/L.622, should become operative paragraphs 4 and 5 respectively. However, at the same meeting, the representative of Ecuador, supported by Guatemala, proposed orally that the order of operative paragraphs 4, 5 and 6, appearing in documents A/C.6/L.620 and A/C.6/L.622, should be kept.

13. Also at the 973rd meeting, the representative of the Secretary-General made a statement relating to the financial implications of paragraph 5 of the amendment proposed by Iraq in document A/C.6/L.622. He explained that since under that paragraph the Secretary-General would be requested to arrange for the presence of an expert at the twenty-third session of the General Assembly, the person referred to in the paragraph would be entitled to receive a fee and travel and subsistence expenses. The expenditure involved was tentatively estimated at $5,000.

## III. Debate

14. Before turning to the matters dealt with in the report of the International Law Commission, many representatives congratulated the Commission on its work and emphasized the importance of the codification and progressive development of international law for the stability of international relations and the security of mankind. Far from being routine, the examination of the reports of the Commission was one of the most important tasks of the Sixth Committee. It was also a guarantee that the Commission's work would be directed towards furthering the interest of the international community.

15. The main aspects of the discussion of the Commission's report (A/6709/Rev.1 and Corr.1) are summarized below in two sections. The first section (paras. 16 to 78) is devoted to the discussion of the draft articles on special missions as set out in chapter II of the report (*ibid.*). The second section (paras. 79 to 96) is devoted to the discussion of the other decisions and conclusions of the Commission which form the subject matter of chapter III of the report (*ibid*).

### A. Draft articles on special missions

16. Many representatives paid a warm tribute to the International Law Commission and its Special Rapporteur, Mr. Milan Bartoš, for the successful conclusion of the work on special missions by the adoption and submission to the General Assembly of fifty draft articles on the topic. The draft articles represented a valuable addition to the Commission's work on diplomatic and consular relations. Some representatives stressed the importance of the codification of the law on special missions for the stability of relations between States and the strengthening of friendship between nations. Others congratulated the Commission on having overcome the difficulties arising from the fact that there was not the same degree of uniformity in the practice of States in the case of special missions as in the case of permanent diplomatic or consular missions. The Commission had at times incorporated into the draft articles elements of *lex ferenda*, but it had on the whole maintained a proper balance between progressive development and codification of international law.

17. The debate on the draft articles on special missions is reviewed below under four headings. The first is devoted to observations of a general nature, the second to observations relating to specific provisions, the third to suggestions for the addition of new articles and the fourth to the discussion of the measures to be taken for the conclusion of a convention on special missions.

### 1. *General observations on the draft articles*

18. In their general observations on the draft articles, representatives referred mainly to the four questions which are dealt with below in subsections (*a*) to (*d*).

#### (a) *The effects of the requirement that a special mission must have a representative character*

19. A number of representatives recalled that the Chairman of the International Law Commission had pointed out that the hallmark of a special mission was its representative character, that is, its position as an organ representing the sending State. The Commission had introduced this element in the definition of special missions at its nineteenth session (sub-paragraph (*a*) of article 1). It had thus limited the scope of the draft articles by drawing a line between those missions which should attract the operation of the draft articles, including the provisions on privileges and immunities, and those which, because they did not represent the sending State, should be considered merely as visits under official auspices.

20. Several representatives pointed out that by limiting the scope of the draft articles to special missions of a representative character, the Commission had rendered unnecessary any distinction between various types of special missions, and in particular between low-level, standard and high-level missions. Low-level missions, usually of a technical nature, did not have a representative character and fell outside the scope of the draft articles. High-level missions were accorded the same status as standard missions but, as expressly stated in article 21, their members retained all the additional facilities, privileges and immunities accorded to them by international law.

#### (b) *The requirement of mutual consent and the right to derogate from the draft articles*

21. Several representatives noted with approval that the draft articles required the mutual consent of the sending and the receiving States for the establishment of a special mission. This consensual element, which was a corollary of the principle of the sovereign equality of States, gave a considerable degree of flexibility to the draft articles. Indeed, nothing in the draft articles prevented the sending and receiving States from agreeing to give a particular mission a status either smaller or greater than the one laid down as the general standard for special missions.

#### (c) *The extent of the facilities, privileges and immunities to be granted under the draft articles*

22. Many representatives noted that, as expressly stated by the Commission in its commentaries, the draft articles on special missions were based on the 1961 Vienna Convention on Diplomatic Relations. [77] Most of the provisions relating to facilities, privileges and immunities reproduced with minor changes the terms of the corresponding provisions of that Convention.

23. A number of representatives expressed the view that the assimilation in this respect of special missions to permanent diplomatic missions would lead to an unnecessary multiplication of facilities, privileges and immunities. They held that special missions and their members should enjoy only those facilities, privileges and immunities which were strictly necessary for the performance of their tasks. One representative doubted whether a simple transposition of diplomatic law, as expressed in the Vienna Convention on Diplomatic Relations, was really feasible. One of the main elements on which diplomatic privileges

[77] Vienna Convention on Diplomatic Relations, *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publication, Sales No. : 62.X.1) p. 82.

and immunities were based was the stability of the missions and the responsibility of the head of the mission for the conduct of his staff; yet special missions were by their very nature highly unstable. Another representative suggested that the draft articles should be modelled on the 1963 Vienna Convention on Consular Relations [78] rather than on the Convention on Diplomatic Relations.

24. Other representatives held, on the contrary, that the Commission had been justified in taking as a basis the Convention on Diplomatic Relations. In order to perform their task satisfactorily, special missions and their members required most of the facilities, privileges and immunities enjoyed by diplomatic missions and their members. Moreover, the limitation of the scope of the draft articles to special missions of a representative character and the possibility given to States to derogate by common agreement from the draft articles removed any danger of an undue extension of facilities, privileges and immunities.

(d) *Terminology*

25. Some representatives stated that the terminology employed in the draft articles lacked uniformity and that an attempt should be made to remedy the situation, with particular attention to the terms used in the Vienna Conventions. As an example of inconsistent terminology, one representative cited the expression "required for the performance of its functions" in article 22 and the expression "necessary for the performance of the functions of the special mission" in article 27. His delegation preferred the term "necessary". A representative pointed out that, in the French text, the Convention on Diplomatic Relations used the terms "*Etat accréditant*" and "*Etat accréditaire*" and the Convention on Consular Relations used the terms "*Etat d'envio*" and "*Etat de résidence*". In the draft articles on special missions, the latter term was replaced by "*Etat de réception*". He suggested that the terms "*Etat d'origine*", on the one hand, and "*Etat de résidence*" or "*Etat d'accueil*", on the other, should be adopted. Another representative expressed the view that the Spanish text of the draft articles could be slightly improved by deleting in several places, where the context was sufficiently clear, the expression "*que envía*" which followed the word "*Estado*".

### 2. *Observations on specific provisions*

26. In addition to their general observations, representatives made numerous references to the preamble and to specific provisions of the draft articles on special missions.

*Preamble*

27. A representative noted with approval that the preamble submitted by the Commission (see A/6709/Rev.1 and Corr.1, chap. II, annex) was similar to the preamble of the Vienna Conventions of 1961 and 1963. Another representative suggested that the preamble should include a statement of the principle that special missions were a form of diplomatic activity designed to promote the interests of international peace and security and to contribute to co-operation among States based on the principles of sovereignty and independence, equality of rights, non-interference in the domestic affairs of States and mutual advantage.

*Article 1 (Use of terms)*

28. Several representatives expressed satisfaction with the definition of a special mission contained in paragraph (*a*) of article 1, which brought out the three main criteria of such a mission, namely, its representative character, its temporary duration and the

[78] Vienna Convention on Consular Relations, *United Nations Conference on Consular Relations, Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

specific nature of its task. Some representatives, however, considered that the definition should have also included a reference to the requirement of mutual consent. It was pointed out that in the absence of such a reference the concept of special missions could be established only by a close reading of three separate provisions, namely, articles 1, 2 and 3.

29. It was suggested that the first criterion of the definition meant that the special mission must be invested with representative power by the sending State; in other words, that it must have the legal capacity to express the will of that State within the framework of its specified task. It was also maintained that the word "representative" should be interpreted in its broadest possible sense. The use of the word, however, did not imply that a special mission must be generally representative of the sending State. Actually, in most cases the task of a special mission would be limited to a particular aspect of the functions of its Government.

30. One member criticized the expression "representative character" as an anachronism from the days when diplomats had been regarded as representing the person of their sovereign and sharing his attributes. Other members held that the expression was ambiguous and that an attempt should be made to formulate an exact definition of its meaning. It was suggested that a representative mission should be defined as a mission sent by a State, constituted objectively according to the criteria of international law, or as a mission sent by any authority regarded by the receiving State as comparable to a subject of international law. It was also suggested that the question whether a particular special mission had a representative character was a matter to be determined by the sending State.

31. Referring to paragraph (*b*) of article 1, a representative noted that this paragraph contained a description of the term "permanent diplomatic mission", although that term was not defined in the 1961 Vienna Convention. He expressed the view that this was hardly a desirable step, since it might introduce new elements into international diplomatic law. Another representative suggested that paragraphs (*b*) and (*c*) of article 1 should be deleted, since they presupposed that the parties to the Convention on special missions would also be parties to the Vienna Conventions.

32. As regards paragraph (*h*), a representative said that although it could be assumed that the "members of the diplomatic staff" referred to in that provision were regular members of the diplomatic corps in the receiving State, it would be preferable to state so expressly in the text of the article or in the commentary. Another representative contended that the definitions in paragraphs (*h*) and (*i*) were tautological.

33. Referring to the Commission's commentary on article 1, a representative expressed the view that States as such were not the only recognized subjects of international law; nations struggling for their liberation and sometimes actually controlling a particular territory also had to be taken into account. He suggested that the right of those nations to send special missions should be recognized in a clear provision to that effect.

*Article 2 (Sending of special missions)*

34. A representative observed that the principle that international law was based on the will and agreement of States—a principle which had been strongly affirmed in article 2 of both the Convention on Diplomatic Relations and the Convention on Consular Relations—was expressed less forcefully in article 2 of the draft on special missions. The fact that the reference to the consent of the receiving State appeared only at the end of that provision seemed to detract from the importance of such consent. He therefore suggested that article 2 should be redrafted in order to lay more emphasis on the requirement of the consent of the receiving State.

*Article 4 (Sending of the same special mission to two or more States)*

35. Doubts were expressed about the advisability of retaining article 4 on the ground that it was based solely on political considerations. The situation referred to in the article was regulated, from the legal point of view, by the provisions of article 2, which made consent an indispensable condition for the sending of a special mission.

*Article 7 (Non-existence of diplomatic or consular relations and non-recognition)*

36. Article 7 was commended by several representatives, who pointed out that experience showed that special missions had played a particularly useful role when there were no diplomatic relations or recognition. Other representatives, however, expressed reservations about the article.

37. Several representatives shared the view expressed by the Commission in its commentary on article 7 that the question whether the sending or reception of special missions prejudged the problem of recognition lay outside the scope of the draft articles. Others held, on the contrary, that the question could not be ignored. One representative proposed the addition to article 7 of a third paragraph reading:

> "The sending or receiving of a special mission, as contemplated in paragraph 2 hereof, shall not of itself be construed as constituting an act of recognition of the receiving State by the sending State."

*Article 9 (Composition of the special mission)*

38. A representative welcomed the fact that the Commission had decided not to include in article 9 any provision similar to that of article 11 of the Convention on Diplomatic Relations, which authorized the receiving State to limit the size of a diplomatic mission.

*Article 12 (Persons declared* non grata *or not acceptable)*

39. It was suggested that the distinction made in article 12 between persons declared "*non grata*" and persons declared "not acceptable" was unnecessary.

*Article 14 (Authority to act on behalf of the special mission)*

40. Referring to the provision of paragraph 1 which authorized the head of a special mission to address communications to the receiving State, some representatives observed that the normal channel for such communications should be the permanent diplomatic mission of the sending State in the receiving State.

*Article 16 (Rules concerning precedence)*

41. Several representatives criticized the provision in paragraph 1 that precedence among special missions should be determined by the alphabetical order of the names of the States. One representative suggested that the alphabetical order should be supplemented by the principle of rotation. Another raised the problem of countries whose language did not have an alphabet. Some representatives held that the State on whose territory special missions were meeting should be free to apply in the matter the rules of its own protocol.

42. Recalling that the Commission had decided to make no distinction between special missions of various types, a representative suggested the deletion of paragraph 2 of article 16.

*Article 17 (Seat of the special mission)*

43. Some representatives doubted whether it was necessary to devote a provision of the draft articles to the seat of special missions since the latter were, by definition, of a temporary character.

*Article 18 (Activities of special missions on the territory of a third State)*

44. Some representatives noted with approval that paragraph 1 of article 18 expressly stated that the third State retained the right to withdraw its consent to the meeting of special missions on its territory.

*Article 24 (Exemption of the premises of the special mission from taxation)*

45. Doubts were expressed about the possibility of applying in practice the exemption from taxation provided for in article 24.

*Article 25 (Inviolability of the premises)*

46. It was suggested that a clause should be inserted in paragraph 1 to make it clear that when the special mission concerned was of a high level the head of the permanent diplomatic mission could not authorize the agents of the receiving State to enter the premises of the special mission without the consent of the head of the mission.

47. The last sentence of paragraph 1 was criticized on the ground that it might lead to dangerous abuses. Several representatives suggested that the paragraph should be redrafted so as to make it clear that entry into the premises of a special mission should never be allowed without the consent of a representative of the sending State. It was observed that the functions of special missions were similar to those of diplomatic missions whose premises could not be entered under any circumstances in accordance with the terms of the Vienna Convention of 1961. The following text was suggested:

> "The premises of the special mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the special mission."

Other representatives, however, recalled that the last sentence of paragraph 1 was modelled on a provision of article 31 of the Convention on Consular Relations. Since that provision had proved acceptable in the case of a consular office, there was no reason to fear its abuse with regard to a special mission, which was temporary in character and was likely to share buildings with other occupants by short-term lease or otherwise: this made it all the more imperative to retain the draft of the International Law Commission.

*Article 28 (Freedom of communication)*

48. It was suggested that in the second sentence of article 28, the words "in the receiving State" should be added after "wherever situated".

*Article 29 (Personal inviolability)*

49. It was suggested that the personal inviolability accorded to members of special missions should be strictly limited to the performance of their functions.

*Article 30 (Inviolability of the private accommodation)*

50. Some representatives criticized article 30 on the ground that it provided for excessive privileges and immunities. It was contended in support of that position that the receiving State could not be required to provide special protection for the private accommodation of members of special missions, which were usually hotel rooms.

*Article 31 (Immunity from jurisdiction)*

51. A representative expressed the view that article 31 sought to grant special missions greater privileges and immunities than were really necessary. Another suggested that it would be preferable to adopt for the drafting of the article the conservative approach reflected in article 22, under which the receiving State need accord only such facilities as

were required for the performance of the special mission's functions "having regard to [its] nature and task".

*Article 33 (Exemption from dues and taxes)*

52. A representative doubted that the exemptions granted under article 33 were justified. Another representative expressed the view that these exemptions were likely to give rise to serious difficulties in practice.

*Article 35 (Exemption from customs duties and inspection)*

53. As in the case of article 33, a representative doubted that the exemptions granted under article 35 were justified. Another representative expressed the view that it would be too much to expect developing countries to afford all temporary missions the same customs exemptions as were accorded to permanent missions. The extent of the privileges to be granted to temporary missions should be determined by the economic possibilities of the receiving State and should be viewed as a courtesy rather than an obligation.

*Article 36 (Administrative and technical staff)*

*Article 37 (Members of the service staff)*

*Article 38 (Private staff)*

54. Articles 36, 37 and 38 were criticized on the ground that they provided for excessive privileges and immunities.

*Article 39 (Members of the family)*

55. Referring to paragraph 2, one representative expressed the view that it was debatable whether certain privileges and immunities should be granted to members of the administrative and technical staff of the special mission and it was even more debatable whether such privileges and immunities should be extended to their families.

*Article 42 (Settlement of civil claims)*

56. Several representatives noted with satisfaction that the Commission had included in the draft articles this provision on the settlement of civil claims, which was based on the functional theory of diplomatic immunities.

*Article 43 (Transit through the territory of a third State)*

57. Some representatives expressed the view that article 43 was an improvement on article 40 of the Convention on Diplomatic Relations since it provided in paragraph 4 that the third State must be informed in advance of the transit of the members of the special mission. One representative, however, criticized the paragraph for treating a request for a visa as equivalent to a notification of intended transit. That might create considerable, and at times unnecessary, work for the third State concerned.

*Article 49 (Professional activity)*

58. One representative expressed the view that the use of the expression "*en vue d'un gain personnel*" in the French text of the article suggested that the persons concerned were permitted to practise professional or commercial activities for the benefit of other persons. He proposed that the expression should be replaced by the words "*dans un but de lucre*".

*Article 50 (Non-discrimination)*

59. A representative expressed the view that the inclusion in the draft articles of a provision on non-discrimination could not be justified by the precedent of the Vienna

Conventions. He pointed out that, while there was a diplomatic corps and a consular corps, there could be no corps of special missions, for the two notions were incompatible. The Commission might conceivably have adopted an article prohibiting discrimination between special missions sent by two or more States to deal with a question of common interest, which was the hypothesis of article 6, but the blanket provision in article 50 was inconsistent with the consensual element which was fundamental to special missions.

60. Another representative also questioned whether the principle of non-discrimination, as laid down in article 50, was valid in the case of special missions since the variety of purposes for which they were constituted might well justify differences in the treatment accorded them.

### 3. *Suggestions for the addition of new articles*

61. It was suggested that the term "representative. . . character" (see article 1, subparagraph (*a*)) should be clarified through the addition of an article specifying the method of accreditation by the sending State. The article should formulate the rules to govern the appointment of the principal members of special missions, as was done, for example, in article 6 of the draft articles on the law of treaties in respect of plenipotentiaries sent to negotiate and conclude treaties.

62. Some representatives suggested that a new article should be added to the draft expressly affirming the right of States to derogate by common agreement from the provisions relating to facilities, privileges and immunities. Others held, however, that this would not be necessary since the right in question was already recognized in paragraph 2 of article 50.

63. A representative asked whether it would not be possible, by analogy with the two Vienna Conventions, to draft some provisions regarding the functions of special missions. Another representative expressed the wish that an effort should be made to demarcate as precisely as possible the competence of a special mission in relation to the permanent mission, in order to avoid duplication and conflict in the advantages accorded; that might be done by specifying that the division of powers and functions could, in individual cases, be the subject of an agreement between the parties concerned.

64. On the question of high-level missions, it was observed that when a Head of State who had been on an official visit stayed on in the receiving State as a private visitor, he continued to enjoy, according to established practices, all the courtesies extended to him as an official visitor. Article 21, however, seemed to imply that the official visit terminated when the special mission was concluded. It might therefore be advisable to include a new article stating that the privileges and immunities to which a Head of State was entitled under international law could not be reduced and were additional to those accorded to him as a member of a special mission.

65. A representative noted with regret that, contrary to the expectations raised by the report of the Commission on the work of its eighteenth session, the draft articles did not contain any provisions similar to those contained in article 73 of the 1963 Vienna Convention concerning the relationship between the Convention and other international agreements.

### 4. *Discussion of the measures to be taken for the conclusion of a convention on special missions*

66. As regards the measures to be taken for the conclusion of a convention on special missions, the Committee had before it the following recommendation contained in paragraph 33 of the report of the International Law Commission (A/6709/Rev.1 and Corr.1):

"At the 941st meeting on 14 July 1967, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions."

67. In introducing the report at the 957th meeting of the Committee, the Chairman of the Commission noted that that recommendation was worded differently from the recommendation submitted in 1966 with respect to the draft articles on the law of treaties. In 1966 the Commission had recommended specifically the convening of an international conference for the purpose of concluding a convention on the law of treaties. He explained that the Commission wished to make it clear that the different form of recommendation submitted in 1967 in no way implied that it did not favour the convening of an international conference in the present instance. The Commission had framed its recommendation in that more general form only because it was aware of the crowded conference programme of the United Nations. It had had in mind that, if there was a risk of a long delay in completing the codification of the law of special missions, the General Assembly might wish to consider the possibility of using some other procedure for concluding a convention, such as having it drawn up by the Sixth Committee itself.

68. The Committee first held a general discussion on the questions raised by the Commission's recommendation and then examined the proposals and amendments which had been submitted in relation to it.

(a) *General discussion*

69. While some doubts were expressed about the feasibility of codifying the rules relating to special missions, in the form of a convention, most of the representatives who intervened in the debate took the position that it was possible and desirable to conclude a convention on the matter. Three main points of view emerged from the discussion in the Committee.

70. A number of representatives favoured the preparation of a convention on special missions by the Sixth Committee at a regular session of the General Assembly and the adoption of the convention by the Assembly at a plenary meeting. It was argued in support of that solution, which was eventually adopted by the Committee in draft resolution II (see para. 99 below), that it would avoid the considerable expense of convening an international conference. It would also accelerate the conclusion of the convention, since no conference could be convened before 1970 because of the crowded calendar of the Organization. Finally, the preparation of an international convention would enhance the role and the prestige of the Sixth Committee. The Committee's task would be facilitated by the fact that the draft articles on special missions covered familiar ground since they were based on the Convention on Diplomatic Relations. In the past the Committee—and other Main Committees of the General Assembly—had successfully prepared conventions which had been adopted by the Assembly. Some representatives suggested that in order to facilitate the task of the Sixth Committee a working group should meet before the next regular session of the Assembly to review the draft articles prepared by the International Law Commission and to consider any amendments or comments submitted by Governments in the interval.

71. Other representatives held, on the contrary, that the Sixth Committee was not the appropriate forum for the preparation of a convention on special missions. The delegations to the General Assembly lacked the necessary experts for the study of this very technical subject and, in particular, specialists in taxation and customs. Because of its other duties, the Committee would be able to devote only a limited number of meetings at each regular session to the preparation of the convention. No time or money would be saved in the long run. Moreover, in a plenipotentiary conference the discussion would

be in two stages, namely, the committee stage and the plenary stage, and the latter might take up a substantial part of the whole period of the conference. By contrast, if the matter were taken up by the Sixth Committee, it would be impossible for the General Assembly in plenary meeting to devote to the drafting of such an important convention the time and attention it deserved.

72. There were also representatives who considered that no decision on the matter should be taken at the present session. The procedure for the preparation of a convention could be chosen only after ripe reflection and the receipt of comments from Governments on the final version of the draft articles prepared by the International Law Commission. It was clear from the debate in the Committee that the draft articles still presented some serious problems in connexion with such points as the characteristics and purposes common to special missions, the privileges and immunities they should enjoy, the question of the recognition of States, and the relationship between the proposed convention and previous agreements.

(b) *Discussion of proposals and amendments*

73. As was indicated above in paragraphs 9 to 13, the Committee had before it a joint draft resolution and two amendments in documents A/C.6/L.618, A/C.6/L.620 and Add.1 and A/C.6/L.622. During the discussion of those documents the positions summarized in paragraphs 70, 71 and 72 above were restated and the following additional comments were made.

Joint draft resolution A/C.6/L.618

74. Some representatives pointed out in support of the joint draft resolution that its adoption would avoid the taking of any decision on the question of procedure at the present session and that it would allow Member States time to consider the most effective method of preparing an international convention which would command wide support. Other representatives, however, criticized the resolution on the ground that it failed to indicate how and when the convention should be prepared.

Amendment A/C.6/L.620 and Add.1

75. One of the sponsors of the amendment explained that, in providing for the consideration of the subject at the next session of the General Assembly, the sponsors had indicated their intention that the Sixth Committee should begin its work at the twenty-third session; if it had not concluded the work by the end of that session, it could of course continue it at the twenty-fourth session, or even at the twenty-fifth session. Another sponsor pointed out that the amendment set no time-limit for the preparation of the convention.

76. Some representatives criticized the amendment on the grounds that it would not allow sufficient time for the preparation of the substantive discussion of the draft articles on special missions. Moreover, the phrase "with a view to the adoption of such a convention by the General Assembly" prejudged the question of the methods by which a convention on special missions should be drafted.

Amendment A/C.6/L.622

77. In introducing the amendment, its sponsor pointed out that it was based on similar provisions appearing in previous General Assembly resolutions on codification conferences. He also recalled that the Special Rapporteur had devoted several years to the question of special missions and was one of the foremost experts on the matter. His

assistance to the Sixth Committee in the preparation of a convention on special missions would be most valuable.

78. Some representatives criticized the second paragraph of the amendment on the ground that it imposed an undue obligation on Member States. Other representatives, however, contended that the paragraph in no way infringed the sovereignty of Member States, since the invitation addressed to them included the words "as far as possible" and they had a perfect right to decline it.

## B. Other decisions and conclusions of the International Law Commission

### 1. *Organization of work*

79. The observations made in the Sixth Committee on the items of the programme of work of the International Law Commission as set out in chapter III of its report may be summarized as follows:

(a) *Succession of States and Governments*

80. Several representatives noted with approval the Commission's efforts to expedite the consideration of this topic. It was observed that the matter was all the more urgent since a large body of rules of international law which had come into existence before the emergence of the less developed countries as independent States was still regarded in certain quarters as automatically binding on the new States. In addition, the majority of the so-called customary rules of international law governing the succession of States and Governments were both inequitable and inadequate.

81. A number of representatives expressed approval of the Commission's decision to assign more than one Special Rapporteur to the topic and to divide it into three main headings: (1) Succession in respect of treaties; (2) Succession in respect of rights and duties resulting from sources other than treaties; and (3) Succession in respect of membership of international organizations. One representative, however, observed that the division of the topic into three headings assigned to different special rapporteurs might adversely affect the unity of treatment of the topic and the uniformity of the terminology employed.

82. As regards the first heading—succession in respect of treaties—several representatives welcomed the Commission's decision to advance the work on the subject as rapidly as possible at its twentieth session. Hope was expressed that the second session of the conference on the law of treaties would be able to take into account the Commission's work on the matter. One representative did not think that it was absolutely necessary for the Commission to concentrate its attention exclusively on the production of draft articles, since article 69 of the draft articles on the law of treaties (see A/6309/Rev.1, part II, chap. II) already dealt with the question of State succession in the form of a general reservation. In his view, the Commission should rather confine itself to submitting a report on the implications of that reservation for the law of treaties as a whole.

83. It was suggested that the third heading—succession in respect of membership of international organizations—should be deleted and that the subject should be considered as a part of the topic on relations between States and inter-governmental organizations. That would enable the Commission to expedite its work on the essential aspects of succession of States and Governments which were of considerable importance to developing States.

(b) *State responsibility*

84. Some representatives expressed the hope that the Commissionwould be able to expedite the consideration of this topic, which had been on the agenda for many years.

One representative stated that he supported the Commission's decision that only basic and general rules should be laid down on the topic and that this should be done as succintly as possible. Other representatives considered that the Commission should study the responsibility of States for the violation of generally recognized principles of international law.

85. One representative observed that the number of foreign personnel in developing countries had risen sharply. A State's obligations towards such aliens and the obligations of those aliens towards the host country needed to be defined. While it was still true that individuals could have rights and duties under international law only if endowed with them by virtue of a treaty between States, the rights and duties so conferred could be, and were, directly exercisable by the individuals concerned vis-à-vis States. Two recent examples of international arrangements providing for direct settlement of disputes between States and individuals were the reorganization of the procedures of the Permanent Court of Arbitration in 1962,[79] and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,[80] which had come into effect in 1966.

(c) *Relations between States and inter-governmental organizations*

86. The hope was expressed that the Commission would receive and consider at its next session a report on this topic containing a full set of draft articles on the privileges and immunities of representatives of States to inter-governmental organizations. It was also suggested that due attention should be given to the development of practice and procedures now emerging from inter-state and international activities in Africa.

(d) *Additional topics suggested for inclusion in the programme of work*

87. Some representatives welcomed the Commission's decision to set aside topics of a limited scope for discussion at times when the larger issues could not be pursued. The fear was expressed, however, that to place topics in such a category would have the effect of belittling their importance since the impression would be given that they lent themselves to more leisurely study than the other problems before the Commission.

88. Several representatives noted with approval that the Commission had placed on its programme the topic of most-favoured-nation clauses in the law of treaties and had appointed a Special Rapporteur to deal with it. It was suggested in this connexion that the Commission might wish to ask the United Nations Conference on Trade and Development (UNCTAD) and perhaps also the General Agreement on Tariffs and Trade (GATT) to submit their comments or recommendations before it completed its final text on the topic.

89. Several representatives expressed the hope that the Commission would soon be able to study the right of asylum, both diplomatic and territorial, a subject which the General Assembly had referred to it in 1959 by resolution 1400 (XIV) and which was becoming increasingly important in connexion with the protection of human rights.

90. It was also suggested that the Commission might consider taking up the problem of the use of international rivers and studying model rules for conciliation which might lead to the formulation of new methods for the pacific settlement of disputes. After it had completed its examination of priority issues, the Commission might also study the possibility of revising the draft Declaration on Rights and Duties of States (General Assembly resolution 375 (IV), annex).

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[79] « Rules of Arbitration and Conciliation for Settlement of International Disputes between Two Parties of which Only One is a State », *American Journal of International Law*, vol. 57, 1963, p. 500.

[80] See *International Bank for Reconstruction and Development publications* (Washington, 1965); see also United Nations, *Treaty Series*, Vol. 575, No. 8359.

(e) *Review of the Commission's programme and methods of work*

91. Several representatives welcomed the Commission's decision to undertake at its next session a review of its programme and methods of work. It was observed in this connexion that there should be a continuing adjustment of the programme of work, so that the codification and progressive development of international law might always be responsive to the current needs of the community of States. It was also suggested that in the course of the review of its methods of work the Commission should undertake an evaluation of its Statute.

92. One representative expressed the view that it was preferable for the Commission to complete one item of considerable importance rather than to consider several items simultaneously without taking any action. Another observed, however, that the Commission should be able to deal with several items at one session. It was also suggested that the Commission could hold two short regular sessions each year, in preference to extending its summer session and holding a special winter session, as it had had to do recently.

93. Some representatives stressed the need to avoid referring to the Commission issues the political implications of which might hinder the accomplishment of its task.

### 2. *Co-operation with other bodies*

94. Several representatives noted with approval that the Commission had maintained during the past year its co-operation with regional legal bodies. One representative, however, regretted that the Commission had decided not to send an observer to the 1967 session of the Inter-American Juridical Committee on the ground that the items on the agenda of that session were unrelated to the Commission's present programme of work.

### 3. *Seminar on International Law*

95. Many representatives expressed satisfaction at the holding at Geneva of the third session of the 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. Several representatives thanked the members of the Commission and of the Secretariat who had participated in the Seminar and the six Governments which had granted scholarships to young specialists from developing countries. Some representatives informed the Committee that their Governments had decided to grant scholarships to participants from developing countries for the next session of the Seminar.

96. Several representatives welcomed the Commission's recommendation that further sessions of the Seminar be held in conjunction with session of the Commission and voiced the hope that they would be continued and developed in the future. The wish was expressed that in the discussion of topics due account would be taken of the views of different schools of international law.

## IV. Voting

### A. Report of the International Law Commission

97. At its 970th meeting, on 12 October 1967, the Sixth Committee adopted unanimously the draft resolution submitted by Bulgaria, Colombia, Ecuador, Guatemala and Nigeria (A/C.6/L.617/Rev.2) (see paragraph 99, draft resolution I). At that meeting, the representatives of Bulgaria, Canada, the Dominican Republic, Italy, Morocco, the Netherlands, Norway and the United States explained the vote of their respective delegations.

B. SPECIAL MISSIONS

98. At its 973rd meeting, on 17 October 1967, the Sixth Committee voted on the draft resolution submitted by Argentina, Cameroon, Canada, Ecuador, Guatemala and Nigeria (A/C.6/L.618). The voting was as follows:

(*a*) The amendment submitted by Dahomey, Ethiopia, Ghana, Kenya, Mali, Morocco, Senegal, Somalia, the United Republic of Tanzania and Zambia (A/C.6/L.620 and Add.1) was adopted by 74 votes to 1, with 22 abstentions.

(*b*) Paragraph 5 of the amendment submitted by Iraq (A/C.6/L.622) was adopted unanimously;

(*c*) Paragraph 6 of the amendment submitted by Iraq was adopted by 61 votes to none, with 29 abstentions;

(*d*) The oral proposal submitted by Ecuador, supported by Guatemala, to maintain the order of paragraphs as it appears in documents A/C.6/L.620 and Add.1 and A/C.6/L.622 was adopted by 72 votes to 2, with 16 abstentions;

(*e*) Draft resolution A/C.6/L.618, as amended, was then adopted by 92 votes to none, with 2 abstentions (see paragraph 99, draft resolution II). Statements in explanation of votes were made at the 973rd meeting by the representative of the Philippines, and at the 974th meeting by the representatives of Australia, Austria, Belgium, Canada, France, Sweden and the United Kingdom.

**Recommendations of the Sixth Committee**

99. 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 1615th plenary meeting, on 1 December 1967, the General Assembly adopted the draft resolutions submitted by the Sixth Committee (para. 99 above). For the final texts, see resolutions 2272 (XXII) and 2273 (XXII) below.

### 2272 (XXII). Report of the International Law Commission

*The General Assembly,*

*Having considered* the report of the International Law Commission on the work of its nineteenth session, [81]

*Recalling* its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963, 2045 (XX) of 8 December 1965 and 2167 (XXI) of 5 December 1966, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of succession of States and Governments, relations between States and intergovernmental organizations and State responsibility,

*Emphasizing* the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and

[81] *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9* (A/6709/Rev.1 and Corr.1).

principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

*Noting with satisfaction* that at its nineteenth session the International Law Commission adopted the final text of its draft articles on special missions, [82]

*Noting further with appreciation* that the United Nations Office at Geneva organized in May and June 1967, during the nineteenth session of the International Law Commission, a third session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law, that the Seminar was made possible by the generous collaboration of members of the Commission, that more scholarships were made available for participants from developing countries and that the Commission recommended that further seminars should be held in conjunction with its sessions,

1. *Takes note* of chapters I and III of the report of the International Law Commission on the work of its nineteenth session;

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

3. *Notes with approval* the programme of work for 1968 proposed by the International Law Commission in chapter III of its report;

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

(*a*) Continue its work on succession of States and Governments and relations between States and inter-governmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

(*b*) Study the topic of most-favoured-nation clauses in the law of treaties;

(*c*) Expedite the study of the topic of State responsibility;

(*d*) Carry out a review of its programme and methods of work;

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

6. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-second session of the General Assembly on the report of the Commission.

*1615th plenary meeting*
*1 December 1967*

### 2273 (XXII). Special missions

*The General Assembly*,

*Having considered* chapter II of the report of the International Law Commission on the work of its nineteenth session,[83] which contains final draft articles and commentaries on special missions,

*Recalling* that in its resolutions 1687 (XVI) of 18 December 1961, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development

[82] *Ibid.*, chapter II.

[83] *Ibid.*, *Supplement No. 9* (A/6709/Rev.1 and Corr.1).

of the topic of special missions, taking into account the views expressed in the General Assembly and the comments submitted by Governments, and that in its resolution 2167 (XXI) of 5 December 1966 it recommended that a final draft on special missions should be submitted to the Assembly by the Commission in its report on the work of its nineteenth session,

*Noting further* that at its eighteenth and nineteenth sessions, in 1966 and 1967, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on special missions prepared at its sixteenth and seventeenth sessions and that at its nineteenth session the Commission finally adopted the draft articles.

*Recalling* that, as stated in paragraph 33 of the report of the International Law Commission on the work of its nineteenth session, the Commission decided to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions,

*Mindful* of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

*Believing* that the Vienna Convention on Diplomatic Relations [84] and the Vienna Convention on Consular Relations [85] have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and the privileges and immunities of such missions,

1. *Expresses its appreciation* to the International Law Commission for its valuable work on special missions and to the Special Rapporteur for his contribution to this work;

2. *Invites* Member States to submit, not later than 1 July 1968, their written comments and observations on the final draft articles on special missions prepared by the International Law Commission;

3. *Requests* the Secretary-General to circulate the comments submitted by Member States on the subject, so as to facilitate its consideration by the General Assembly at its twenty-third session in the light of those comments;

4. *Decides* to include an item entitled "Draft Convention on Special Missions" in the provisional agenda of the twenty-third session, with a view to the adoption of such a convention by the General Assembly;

5. *Requests* the Secretary-General to arrange for the presence of the Special Rapporteur on special missions as an expert during the debates on the topic at the twenty-third session of the General Assembly and to submit at that session all relevant documentation;

6. *Invites* Member States to include as far as possible in their delegations to the twenty-third session of the General Assembly experts competent in the field to be considered.

*1615th plenary meeting*
*1 December 1967*

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[84] *United Nations Conference on Diplomatic Intercourse and Immunities, 1961, Official Records*, vol. II (United Nations publication, Sales No.: 62.X.1), p. 82.

[85] *United Nations Conference on Consular Relations, 1963, Official Records*, vol. II (United Nations publication, Sales No.: 64.X.1), p. 175.

## (9) Law of treaties (agenda item 86)

### (*a*) Report of the Sixth Committee[86]

[*Original text: English/Spanish*]
[*24 November 1967*]

### I. Introduction

1. The General Assembly, at its 1564th plenary meeting on 23 September 1967, placed on the agenda of its twenty-second session an item entitled "Law of treaties" and decided to allocate it to the Sixth Committee.

2. The Sixth Committee examined this agenda item at its 964th, 967th, 969th, 971st and 974th through 983rd meetings, from 9 to 26 October 1967.

3. The item entitled "Law of treaties" was included in the provisional agenda of the twenty-second session in accordance with paragraph 11 of General Assembly resolution 2166 (XXI) of 5 December 1966, concerning the convening of an international conference of plenipotentiaries on the law of treaties in 1968 and 1969. That decision was taken with a view to further discussion of the draft articles on the law of treaties which were set forth in chapter II of the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, part II), which were submitted to the General Assembly at its twenty-first session and which were referred to the future international conference as the basic proposal for its consideration.

4. The General Assembly, in paragraph 9 of the same resolution (2166(XXI)), invited Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit their written comments and observations on the final draft articles on the law of treaties. The Secretary-General, in letters of 18 January 1967, requested these comments and observations. Those received from seventeen Member States, the Secretary-General, four specialized agencies and the International Atomic Energy Agency were published in documents A/6827 and Corr.1 and Add.1 and 2, and were before the Sixth Committee. The Committee also had before it a guide to the draft articles on the law of treaties (A/C.6/376) prepared by the Secretariat.

5. At the opening of the discussion at the 964th meeting of the Sixth Committee a statement (A/C.6/L.619) was made by Sir Humphrey Waldock, Chairman of the International Law Commission and formerly its Special Rapporteur on the law of treaties. Sir Humphrey Waldock also, at the 969th meeting of the Committee, replied to questions which had been put to him.

### II. Proposals

6. A draft resolution proposed by Congo (Democratic Republic of), Dahomey, Ethiopia, Ghana, Kenya, Liberia, Morocco, Nigeria, Sierra Leone, Somalia, Tunisia, United Republic of Tanzania and Zambia (A/C.6/L.623), later joined by Cameroon (A/C.6/L.623/Add.1), was circulated on 23 October 1967. The draft resolution read as follows:

"*The General Assembly,*

"*Recalling* that by its resolution 2166 (XXI) of 5 December 1966 it decided that an international conference of plenipotentiaries should be convened at Geneva or at any other suitable place, the first session early in 1968 and the second early in 1969,

[86] Document A/6913, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 86.

to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate,

"*Recalling also* that it referred to the conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session as the basic proposal for consideration by that conference,

"*Having considered* the item entitled 'Law of treaties' at its twenty-second session,

"*Recognizing* that the exchange of views and the written comments of Governments on the draft articles on the law of treaties prepared by the International Law Commission at its eighteenth session may facilitate the work at the international conference,

"*Noting* that an invitation has been extended by the Austrian Government to hold at Vienna both sessions of the conference on the law of treaties convened by the General Assembly in resolution 2166 (XXI),

"1. *Decides* that the first session of an international conference of plenipotentiaries shall be convened at Vienna in March 1968;

"2. *Invites* participating States to submit to the Secretary-General not later than 15 February 1968, for circulation to Governments, any additional comments and draft amendments to the draft articles prepared by the International Law Commission which they may wish to propose in advance to the Conference.

"3. *Requests* the Secretary-General to transmit to the Conference the summary records relating to the consideration of this item at the twenty-second session of the General Assembly together with all other relevant documentation."

7. At the 980th meeting, on 25 October 1967, a revised draft resolution (A/C.6/L.623/Rev.1) which was submitted by Cameroon, Congo (Democratic Republic of), Czechoslovakia, Dahomey, Ethiopia, Ghana, Kenya, Liberia, Mongolia, Morocco, Nigeria, Poland, Sierra Leone, Somalia, Tunisia, the United Republic of Tanzania and Zambia, later joined by Central African Republic, Cyprus and Thailand, (1) added a new paragraph after the first paragraph of the preamble with the following wording: "*Recalling also* its request that the Secretary-General convoke that conference,"; and (2) revised the next preambular paragraph to begin "*Recalling further*" instead of "*Recalling also*". At the 982nd meeting, on 26 October 1967, the representative of Dahomey, on behalf of the sponsors, orally revised the draft resolution by (1) replacing the word "referred" in the third preambular paragraph by "decided to refer" and (2) replacing the words "an international conference of plenipotentiaries" in paragraph 1 by the words "the international conference of plenipotentiaries on the law of treaties". Thereafter the representative of Cameroon, on behalf of the sponsors, reworded paragraph 1 as follows:

"*Decides* that the first session of the international conference of plenipotentiaries on the law of treaties,[87] referred to in resolution 2166 (XXI), to be held in 1968, shall be convened at Vienna in March 1968".

The draft resolution as thus orally revised was reproduced in document A/C.6/L.623/Rev.2. That document was identical[87] with the draft resolution proposed by the Sixth Committee (see paragraph 66 below).

## III. Debate

8. A number of representatives stressed the importance of the law of treaties in the contemporary world. It was said that treaties were now the most important source of international law, and would continue to be as long as the international society continued

[87] The words "international conference of plenipotentiaries on the law of treaties" were later changed to "United Nations Conference on the Law of Treaties."

to be an association of sovereign and independent States. All States, and in particular the small and middle-ranking ones, had a strong interest in a soundly based system of treaty law, which would protect their freedom and security, and would help to maintain the stability of their treaty arrangements.

### A. Comments on the draft articles on the law of treaties

9. Many representatives congratulated the International Law Commission and its members on their work on the law of treaties, which took full account of the aspirations and the realities, including the legal systems, of the contemporary world. The Commission was commended for the outstanding ability and skill which it had devoted to the completion of its monumental work. Many representatives also paid tribute to the four successive Special Rapporteurs of the Commission on the topic, and particularly to Sir Humphrey Waldock, the most recent of them, with whose assistance the great task had been brought to fruition. The quality of the work accomplished by the Commission was good, although improvements might still be possible. In a few cases, some representatives said, the Commission's awareness of the need for accommodation and compromise led it to adopt articles which did not fully solve the problems dealt with; this was not, however, a criticism of the Commission, but was attributable to the present state of international relations.

10. It was pointed out that the debates in the Sixth Committee at the twenty-first and twenty-second sessions were no longer directed to the International Law Commission, but to Governments and to the future conference on the law of treaties; it was important that as much as possible should be known before the conference of the attitudes likely to be taken on major questions of principle and on detailed questions of drafting. Many representatives made comments on the draft articles prepared by the International Law Commission. The great majority of those who spoke reserved the right of their Governments to make additional comments and suggestions at a later stage.

11. A number of representatives commented on the basic principles underlying the draft articles. Several of them stressed the requirement of free consent of States. This requirement was said to be embodied in particular in the section on invalidity of treaties. The principle of good faith was also mentioned by several representatives; that principle, it was said, tended to uphold the stability of treaties. The functions of the draft in regard to the maintenance of justice and in regard to the maintenance of stability of treaties came to a meeting point in the section on procedure in cases of invalidity, termination and suspension, and the conciliation of the two aims would be one of the tasks of the forthcoming conference.

12. Several representatives remarked that the draft articles went beyond existing customary law in some respects. Some of them thought that the new developments in the draft were progressive and practical, and would have the effect of bringing the law into accord with contemporary realities. Others, however, thought that some of these developments, on which the Commission itself was sometimes not unanimous, could hardly be considered satisfactory by all Governments, and gave rise to misgivings. Of these representatives, a few expressed doubts as to the wisdom of what they regarded as an attempt to import into international law rules from the national law of States regarding the invalidity of contracts. Others said that some of the draft articles covered points which were not yet ripe for codification.

13. The majority of representatives who spoke on the scope of the draft articles approved the limitations adopted by the Commission. Prolonged study would be necessary before the precise extent of application of the general law of treaties to the agreements of

international organizations could be determined. State responsibility and State succession in the field of treaties were parts of other branches of international law already under separate study by the Commission. The most-favoured-nation clause was likewise under separate study. To attempt to deal with the effects of hostilities upon treaties would open up difficult questions relating to the provisions of the Charter of the United Nations forbidding the threat or use of force.

14. On the other hand, some representatives would have preferred that the draft articles be given a broader scope. One representative stated that the omission to deal with treaty-making by international organizations might prove unfortunate in view of the growing importance and number of such treaties. Others regretted the omission of rules concerning the most-favoured-nation clause, the succession of States in respect of treaties, and the international responsibility of a State with respect to a failure to perform a treaty obligation.

15. The more detailed comments of representatives on particular parts of the draft articles are sketched in general outline below.

### *Part I. Introduction (articles 1-4)*

16. The majority of the representatives who spoke on the question favoured the limitation of the draft to treaties concluded between States in written form, as other kinds of agreements might require special rules. Some representatives stated, however, that the scope of the draft articles, which was dealt with in articles 1, 2 and 3 of the draft, should be clearly set out, in a single article if possible.

17. Several views were expressed about the meanings given to terms by article 2 (Use of terms). One thought that some of the definitions in the article might not be necessary, or could better be transferred to the parts of the text to which they directly referred.

18. Doubts were expressed by a few representatives that the meaning given to "treaty" was entirely satisfactory, as it did not contain all the characteristic elements; one representative thought that the article should specify that a treaty was intended to create rights and obligations, or to establish relationships governed by international law. One representative regretted that the Commission had given up the distinction between formal treaties and treaties in simplified form, as there could be differences regarding ratification. A few thought that a "general multilateral treaty" should have been defined, since in their view all States could become parties to such treaties, without discrimination of any kind.

19. One representative considered that, in the definition of "reservation", it should be specified that a reservation might purport to limit, as well as to exclude or vary, the legal effect of certain provisions. Another thought that reservations might also be intended to interpret or clarify a provision of the treaty. The view was also expressed that the definition of "party" should take account of developments in various parts of the world, where States were undertaking common action through joint diplomatic missions.

20. As regards article 3 (International agreements not within the scope of the present articles), one representative said that, in addition to the reservation as to the legal effect of agreements not in written form, a similar reservation should be made as to that of the various forms of tacit or implied consent, of which only some were dealt with in the draft articles.

21. As regards article 4 (Treaties which are constituent instruments of international organizations or are adopted within international organizations), some representatives found it generally acceptable; others, however, noting the complexity of the problems it dealt with and the various comments which had been made on the provision, felt that the

article should be thoroughly studied with a view to improvement or to deletion. One representative thought that the constituent instruments of international organizations should be fully subject to the rules laid down in the future convention, without any possibility of exceptions created by the rules of the organization itself. Another pointed out the problems the article might create if the constituent instruments of one international organization was adopted within an organ of another such organization. Others considered that the rules of international organizations should play only a secondary or supporting role in the law of treaties.

### *Part II. Conclusion and entry into force of treaties*

#### *Section I. Conclusion of treaties (articles 5-15)*

22. Several representatives attached special importance to paragraph 1 of article 5 (Capacity of States to conclude treaties), which in their view embodied the principle of sovereign equality of States. Others, however, thought that the article did not go far enough, as in their view all States had not only the capacity but the right to participate in negotiating and to conclude multilateral treaties affecting their interests, including especially the future convention on the law of treaties. One representative said that only States possessing full internal and external sovereignty had the capacity to conclude treaties; if one party to a treaty enjoyed only limited and formal sovereignty, the treaty should be void. Another found that the use of the word "State" in the article was not wholly consistent.

23. As for paragraph 2 of article 5, one representative doubted that it was reasonable to equate the capacity of a component state of a federal union with that of a State under international law, as foreign States could not be expected to master the intricacies of federal constitutions, and another thought that the article required careful examination.

24. One representative thought that article 6 (Full powers to represent the State in the conclusion of treaties), was too detailed, and that it should only have stated certain conditions as a guide, leaving the details to be settled by national law.

25. In regard to article 8 (Adoption of the text), one representative thought that it did not adequately cover at least one of the new techniques of treaty-making, namely, adoption of the text of a treaty by an international organization pursuant to its inherent powers. The article should allow for tacit, as well as express, agreement to dispense with the unanimity rule. Another said that paragraph 2 of the article should apply only in the case of the adoption of general multilateral treaties; in other cases, especially of regional treaties, unanimous adoption might be desirable.

26. Articles 10 (Consent to be bound by a treaty expressed by signature), 11 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) and 12 (Consent to be bound by a treaty expressed by accession), one representative stated, were the result of compromises, and, since they left everything to the intention of States, had little legal content; it would have been desirable to provide a residuary rule for the infrequent cases where the intention of the parties cannot be discerned, to the effect that signature is the method of expression of consent to be bound, without the need of ratification. Similarly, in article 12 a legal presumption could have been established that accessions are not subject to ratification. On the other hand, another representative interpreted article 11 as making ratification the rule and binding signature the exception, a view which he favoured. Some others said that under their national constitutions all treaties required ratification.

27. In respect of the question of participation in treaties, a number of representatives regretted that the Commission had not provided that general multilateral treaties were open for accession by all States, without discrimination. In their view, such a rule was

an application of the principle of universality, and was a consequence of the principles of sovereign equality of States and equal rights of peoples which were embodied in the United Nations Charter. To give all States the opportunity to become parties to general multilateral treaties would strengthen the international community and contribute to the maintenance of peace. Recent practice of the United Nations, it was said, showed that non-recognition by some States was not a bar to participation in multilateral treaties. Some considered that what had been article 8 in the draft provisionally adopted by the Commission in 1962 [88] should have been retained. On the other hand, other delegations preferred the text adopted in 1966 by the Commission.

28. In regard to article 15 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force), one representative thought that it was premature in present circumstances to make the obligation begin as soon as a State had agreed to enter into negotiations for the conclusion of a treaty.

*Section 2. Reservations to multilateral treaties (articles 16-20)*

29. Some representatives found that the articles on reservations were on the whole satisfactory, subject to a few minor changes. Others, however, expressed doubts about them or thought that further study was required. One point on which some delegations had difficulty was the test of compatibility with the object and purpose of the treaty, mentioned in article 16 (Formulation of reservations); they considered that that test was subjective in content and uncertain in its application. Moreover, one of them considered that the legal effect of a reservation which did not meet that test was left uncertain. One representative found the relationship unclear between articles 16 and 17. Another suggested that the rule in article 16 should be reversed to provide that reservations were prohibited unless expressly authorized by the treaty.

30. In regard to article 17 (Acceptance of and objection to reservations), one representative doubted the appropriateness of paragraph 3. Others suggested that paragraph 4 (*b*) should be revised to provide that a treaty would enter into force between a State making a reservation and a State objecting thereto unless the latter expressed a contrary intention. As for paragraph 5 of that article, one representative thought that the period for making objections to reservations should be increased from one year to two years, while another thought that it should be shorter than one year. As for article 20 (Withdrawal of reservations), one representative considered that it should be specified that withdrawal of a reservation should be formulated in writing.

*Part III. Observance, application and interpretation of treaties*

*Section 1. Observance of treaties (article 23)*

31. Many representatives stressed that the principle *pacta sunt servanda* was the cornerstone of the law of treaties and was the main stabilizing force in the legal order of the international community, since it gave efficacity to treaties and confidence in that efficacity to States which concluded them. Some pointed out, however, that the principle was not absolute, as it applied only to treaties in force; consequently its application was subject to all the other rules stated or referred to in the draft articles under which a treaty might not be in force, including the peremptory norms of international law, the rule concerning fundamental changes of circumstances (*rebus sic stantibus*), Article 103 of the Charter, etc. Reference was also made to the requirement of good faith, which in the view of one representative meant equality of consideration and mitigated the harshness of agreements which

[88] See *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9* (A/5209), chap. II, p. 10.

became excessively burdensome for one party. International justice and equity, they said, could not be sacrified to maintain the stability of treaties. Thus, in their view, there could be no unqualified reliance on *pacta sunt servanda* to perpetuate anjust or obsolete treaty rights. A number of representatives said that the principle did not protect unequal treaties, which had been imposed by coercion of powerful States on weaker ones, and some wished that this had been more clearly stated in the draft articles. Others, however, supported the formulation by the Commission, and warned against endangering the principle by stating excessive restrictions to it.

*Section 2. Application of treaties (articles 24-26)*

32. One representative, pointing out that article 24 (Non-retroactivity of treaties) dealt exclusively with the question of retroactivity, suggested the inclusion of another article providing that a treaty, unless it otherwise provided, should become effective on the date of its entry into force. One representative considered that it was by no means clear that article 26 (Application of successive treaties relating to the same subject matter), dealt adequately with its very complex subject. Another suggested that that article should settle the question of the relationship between the obligations imposed by multilateral treaties and those imposed by bilateral treaties.

*Section 3. Interpretation of treaties (articles 27-29)*

33. One representative considered that the articles on interpretation might constitute a consensus that would obviate difficulties of interpretation. Some others, however, considered that the Commission should not have approached the problem simply as one of the elucidation of the meaning of the text, since equal importance should be given to establishing the intention of the parties from the *travaux préparatoires*. One representative stressed the importance of the intention of the parties and criticized the provision that treaties must be interpreted "in accordance with the ordinary meaning", since words did not usually have any "ordinary meaning" outside their context; in his view, all sources of evidence should be freely available to determine the intention of the parties, and the preparatory work should not be relegated to a secondary position. Others thought that it should have been specified that treaties are to be interpreted in the light of generally recognized rules of international law.

*Section 4. Treaties and Third States (articles 30-34)*

34. A number of representatives approved the articles in this section, which, they said, was based on the principle *pacta tertiis nec nocent nec prosunt* and reflected the principle of the sovereign equality of States. One representative suggested the deletion of the last sentence of paragraph 1 of article 32 (Treaties providing for rights for third States), establishing a presumption of the assent of a third State to a right conferred on it in a treaty between other States, as such a deletion would permit consistent application of the principle that treaties had no effect on a third State without the latter's express consent. In the view of another representative, article 32 should make it clearer that paragraph 1 did not prevent a party to a treaty from concluding with a State that was not a party an agreement that the treaty should apply to their mutual relations. One representative doubted that the subject covered by the section was ripe for codification, as there was not much State practice on it.

*Part IV. Amendment and modification of treaties (articles 35-38)*

35. One representative suggested that an article on additional protocols should be added, so as to regulate the procedure of amendment of existing treaties. Another said that the line between subsequent practice as a basis for interpretation and subsequent practice as a mode of modification of a treaty was not clear.

*Part V. Invalidity, termination and suspension of the operation of treaties*

36. More comments were made on this part than on any other part of the draft. A number of representatives thought that the draft articles were generally acceptable, and expressed support for particular articles, as in their view the interests of equity, justice and peaceful change were served by the text. One representative said that this part of the draft gave rise to certain risks, but that the risks would be worth taking if more adequate procedural safeguards than those provided in article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty), were afforded, and certain terms were defined more precisely.

37. On the other hand, some representatives had serious and far-reaching misgivings about part V, both as a whole and in detail. It was said that the articles went beyond existing practice and law; as a result several articles dealing with matters on which no practice or judicial opinion existed were in vague and general terms, even though they had the drastic consequence of invalidating treaties. Unless the content of terms such as "fraud", "corruption", "*jus cogens*" etc. could be clarified, it might be preferable not to seek to develop the law by stating all grounds of invalidity, but rather to refrain from affording easy excuses for evasion of treaty obligations. Another representative questioned whether the use in part V of such expressions as "void", "invalidity", "nullity" and "without any legal effect" was fully consistent. It was argued that in international practice cases where the validity of a treaty was not accepted by all parties were rare, and that the interests of all States, including newly independent ones, required stress on the validity of treaties. The articles as they stood, it was said, might have serious repercussions on the stability of international relationships. Some took the view that the concepts in part V would be more acceptable if the safeguards against abuse were strengthened.

*Section 1. General provisions (articles 39-42)*

38. One representative suggested that the question of separability of treaty provisions, dealt with in article 41 (Separability of treaty provisions), was not yet ripe for codification as there was little State practice regarding it. Another said that articles 41 and 57 (Termination or suspension of the operation of a treaty as a consequence of its breach) covered only material breaches of treaties, that is, breaches of a provision essential to the accomplishment of the object or purpose of the treaty; but it would have been desirable to provide also that lesser breaches of inessential provisions justified the termination of the articles violated, if they were separable.

39. With regard to article 42 (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty), one representative thought that the Commission had been right in not extending the rule to certain grounds of invalidity such as the illegal threat or use of force. Another suggested that the article should establish a fixed period after which claims of invalidity could not be made.

*Section 2. Invalidity of treaties (articles 43-50)*

40. One view expressed on this section was full approval of the articles on the ground that they gave striking evidence of courage and a sense of justice. Others had reservations or objections in respect of various articles, and one representative said that they hardly warranted the effort expended on them.

41. As regards article 43 (Provisions of internal law regarding competence to conclude a treaty), some representatives thought that it was not clear what was a "manifest" violation of internal law which could be invoked to invalidate a treaty. Another thought that any violation of internal law, whether manifest or not, could be so invoked. A suggestion

was also made that a paragraph should be added to the article indicating that only a manifest violation of internal law regarding the treaty-making capacity of a State member of a federal union could be invoked to invalidate a treaty concluded by such a State.

42. One representative suggested omission of article 47 (Corruption of a representative of the State) since in his view it almost amounted to recognition and acceptance of the existence of corruption of representatives.

43. A number of representatives welcomed the inclusion of articles 48 (Coercion of a representative of the State) and 49 (Coercion of a State by the threat or use of force) making treaties without legal effect or void if coercion by the threat or use of force had been used. Particularly in regard to article 49, it was said by some that the rule stated therein was *lex lata* in contemporary international law, and it was also a logical consequence of the United Nations Charter, which in regard to the prohibition of the threat or use of force embodied a peremptory norm of general international law. Some of these representatives thought that the article should be broadened to cover treaties whose conclusion had been procured by any form of coercion, whether by economic, political or other kind of pressure. One representative favoured adding another article on the invalidity of unequal treaties. Another thought that the principle of article 49 should apply to treaties procured by coercion even if they had been concluded before the modern rule prohibiting the threat or use of force came into being; such treaties had not ceased to have consequences at the time the rule was established.

44. Many representatives commented on articles 50 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*)) and 61 (Emergence of a new peremptory norm of general international law), dealing with the invalidity of treaties in conflict with a peremptory norm of general international law (*jus cogens*). There was an extensive discussion of the nature of *jus cogens*, and in reply to questions by a representative regarding the elements of *jus cogens* in the law of treaties, explanations were given by Sir Humphrey Waldock, Chairman of the International Law Commission. He said that there was a distinction between, on the one hand, rules of international law whose breach gave rise to international responsibility on the part of the guilty State, and, on the other hand, rules of *jus cogens*, whose breach made a treaty invalid. The breach of either kind of rule was a serious matter, but the consequences differed. Moreover, States were free to derogate by agreement from the first type of rule, but no agreement could be valid if it conflicted with a rule of *jus cogens*. In his view, the law of treaties, the very core of which was mutual consent, was not a promising area in which to look for rules of *jus cogens*; the rule *pacta sunt servanda* was not of itself a peremptory norm, since the parties bound by mutual obligations could agree to vary them or release each other from them. The notion of *jus cogens* did, however, have some bearing on the draft articles, and apart from article 50, it was relevant to article 49 and its influence was more or less evident in the other provisions dealing with free consent.

45. The majority of representatives agreed on the existence of peremptory norms of international law of the character described above, from which no derogation was permitted and which could be modified only by a subsequent norm of the same character. The creation of such norms, it was said, was an important development of modern international law, which, in the view of one representative, had become universalized and socialized. In that law the existence of a public order placed checks on unlimited freedom of contract so as to protect the smaller States against the danger of unequal and inequitable treaties. It was admitted by some that the identification of the rules of *jus cogens* was not without difficulty, but they thought the task was not impossible. Some thought that they could be more precisely defined on the basis of the United Nations Charter. The prohibition of the

threat or use of force was frequently cited as one example of such a rule. Others mentioned were the peaceful settlement of international disputes, non-intervention in the internal affairs of another State, the sovereign equality of all States, self-determination in accordance with the wishes of the population, and the principle embodied in Article 103 of the Charter. While some favoured leaving the identification of rules of *jus cogens* to be worked out in the practice of States and the jurisprudence of international tribunals, others wished that an effort be made to define them more precisely in the articles on the law of treaties. It was said that it would not be realistic to tie the acceptance of the existence of rules of *jus cogens* to compulsory adjudication of disputes. International law, and *jus cogens* in particular, did not lack binding force in the absence of compulsory adjudication, and there were many means for the peaceful settlement of international disputes, including recourse to the Security Council or the General Assembly; these bodies too could pronounce on disputes whether treaty provisions were inconsistent with *jus cogens*.

46. On the other hand, some delegations considered that present international law afforded no means of defining the rules of *jus cogens*, and that there appeared to be profound disagreement on the subject among States. It would prove extremely difficult for the Conference to deal in a specific and satisfactory way with the problem of *jus cogens*; in any event, one representative said, neither the General Assembly nor a United Nations multilateral convention could create a peremptory norm of general international law. The question was therefore, in the view of those representatives, not ripe for inclusion in the codification of the law of treaties. If there was a disagreement on the validity of a treaty, article 62 of the draft merely referred the parties to Article 33 of the Charter, but that Article did not require settlement by any impartial authority. In those circumstances, the incorporation of the concept of *jus cogens* in the articles on the law of treaties would mean opening the door to claims of invalidity of treaties on insubstantial grounds, would give undue advantage to States alleging the invalidity of treaties but refusing all modes of settlement of disputes arising out of such allegations, would prejudice the stability of treaties, and would make a sweeping and fundamental limitation, of vague and indeterminate extent, on the principle of *pacta sunt servanda*.

*Section 3. Termination and suspension of the operation of treaties (articles 51-61)*

47. In regard to article 53 (Denunciation of a treaty containing no provision regarding termination), some representatives said that it should have been provided that treaties should not be perpetual; one of them said that the possibility of denunciation should not turn on the vague criterion of the intention of the parties, but rather on the nature of the treaty. Another said that from the mere silence of the parties it could not be inferred that they had necessarily intended to exclude denunciation or withdrawal. It was also remarked that the provision of paragraph 2 for twelve months' notice of denunciation was too rigid, as in some cases the parties might have intended a longer or shorter period.

48. One representative suggested the deletion of paragraph 1 (*b*) of article 56, so as to prevent its misuse to escape obligations under an earlier treaty by a purely subjective interpretation that a later treaty was "incompatible" with it. Under article 57 (Termination or suspension of the operation of a treaty as a consequence of its breach), it was said by another, it would often be difficult to determine whether a breach of a treaty was "material". One representative thought that article 58 (Supervening impossibility of performance), should be clarified to indicate more precisely the type of case to which it was intended to apply.

49. With respect to article 59 (Fundamental change of circumstances), a number of representatives referred to the doctrine commonly called *rebus sic stantibus*, and approved the way it had been dealt with in the article, which they thought was essential to a draft

on the law of treaties. They considered that the restrictions laid down in article 59 and the procedures provided in article 62 provided sufficient safeguards against misuse, and protected the stability of treaties while promoting equity and justice. A few representatives, however, indicated that they would prefer that the article be formulated in the positive rather than in the negative. On the other hand, other representatives said that the article might in practice be used as a weapon against the security of treaties, because of the subjective element in it and the possibility of unilateral action. Here again they found that State practice was not sufficient to permit the formulation of a clear rule, and they urged the need, if such a provision were to be included, of providing an effective means for the settlement of disputes in article 62.

50. The comments on article 61 have already been described in connexion with article 50 (see para. 44 above).

*Section.4. Procedure (articles 62-64)*

51. Some representatives considered that article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) was fully satisfactory. The procedures referred to in the article were flexible, and allowed the parties in each case to choose a method of settlement appropriate to the particular circumstances. In their view, it would be inappropriate to go further than the provisions of Article 33 of the Charter on settlement of disputes, and in particular the Commission had been right in not providing for compulsory jurisdiction of the International Court of Justice, since many States did not accept compulsory jurisdiction.

52. One representative stated that while the Commission had probably been right in not going beyond Article 33 of the Charter in its draft, there was another aspect of the matter: the need of a fair balance between a State claiming the invalidity of a treaty and a State objecting to that claim. He doubted whether that was so under article 62, and the articles should in his view be re-examined from that standpoint.

53. On the other hand, other representatives considered that article 62 was not adequate for its purpose, and that some effective means of settling disputes over the validity of treaties ought to have been provided. Article 33 of the Charter left the choice of means of settlement to the agreement of the parties; those means included negotiation, and negotiation could be continued indefinitely without result, and without the possibility of claiming violation of article 62. The draft articles were ambiguous as to whether the treaty remained in force or not if the settlement procedures failed. Thus the articles, in their view, jeopardized the security of treaties, and unless some effective mode of peaceful settlement could be laid down, the success of the conference was put in question. Some representatives indicated their preferences as to means of settlement; several favoured the compulsory jurisdiction of the International Court of Justice, at least in the last resort, and some mentioned compulsory arbitration and, in appropriate cases, some form of fact-finding. One representative suggested that if the compulsory jurisdiction of the Court could not be provided in the future convention, there should at least be an optional protocol on compulsory settlement of disputes.

*Part VI. Miscellaneous provisions (articles 69 and 70)*

54. Several representatives attached importance to article 70 (Case of an aggressor State), and said that a definition of aggression was needed in that connexion.

*Part VII. Depositaries, notifications, corrections and registration (articles 71-75)*

55. In regard to article 71 (Depositaries of treaties), one representative thought that the recent practice of having several depositaries should be taken into account. In article 75 (Registration and publication of treaties), one representative said, some sanction similar to that in Article 102, paragraph 2, of the Charter should be provided for failure to register a treaty.

## B. Comments in regard to the United Nations Conference on the Law of Treaties

56. The General Assembly, by resolution 2166 (XXI) of 5 December 1966, decided that an international conference of plenipotentiaries should be convened to consider the law of treaties having the draft prepared by the International Law Commission as its basic proposal, and to embody the result of its work in an international convention and such other instruments as it might consider appropriate. The Secretary-General was requested to convoke, at Geneva or at any other suitable place for which he received an invitation before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969. By a letter of 29 June 1967, the Minister for Foreign Affairs of Austria informed the Secretary-General of the decision of the Austrian Government to extend an invitation to the United Nations to hold both the 1968 and 1969 sessions of the conference at Vienna. The Secretary-General informed Governments of this invitation by a *note verbale* of 25 July 1967. By a letter of 14 September 1967, of which Governments were notified, the Secretary-General informed the Austrian Minister for Foreign Affairs that he had accepted the invitation extended by the Austrian Government, subject to the final decision to be taken by the General Assembly under resolution 2239 (XXI) of 20 December 1966 relating to the pattern of conferences.

57. In the discussions of the Sixth Committee at the twenty-second session of the General Assembly, many representatives stressed the importance and the difficulty of the task to be performed by the conference, and the need that all the arrangements concerning it should be favourable to the performance of that task. While some stressed the inherent difficulties of the subject-matter and raised doubts whether all of the questions dealt with in the draft were ripe for codification, others thought that imagination, energy and resourcefulness, coupled with a recognition of the situation in the modern world and a spirit of compromise would bring about the success of the conference.

58. In regard to the place the conference is to be held, all representatives who spoke on the matter expressed gratitude to the Government of Austria for its invitation, and gratification that the conference would be held in the same place as two previous successful codification conferences. The representative of Austria stated that his Government would do all in its power to facilitate the work of the conference.

59. As regards participation in the conference, some representatives, in the course of the debate and in explanations of vote, stressed that the draft resolution before the Committee did not deal with the question of participation, but they confirmed the position they had previously expressed to the effect that all States which wished to do so should be able to take part in the conference. The subject of the law of treaties was of a universal character, they said, and consequently a conference to draw up a convention on it should have been made open to all States. Some representatives said that they had voted for the draft resolution on the understanding that it was not intended to alter any of the matters which were decided by General Assembly resolution 2166 (XXI), in particular the participation in the conference.

60. The Sixth Committee was informed that the dates foreseen for the first session of the conference were from 26 March to 24 May 1968 (nine weeks), and that it was impracticable to extend this period. A few representatives doubted whether sufficient time remained before March 1968 to make preparations for the conference; one of them referred to the extensive international consultations which he considered indispensable, and another thought it necessary to create conditions in which an international consensus, or the unanimous consent of the international community, could be obtained. One of these representatives said that though his Government would have preferred postponement of the opening of the conference for one year, he had voted in favour of the draft resolution in view of the wishes of the majority. Another representative explained that he had abstained in the vote on the draft resolution because he thought that States should be allowed a two-year period for reflection and for careful preparation of the conference through diplomatic contacts.

61. The majority of speakers, however, favoured the holding of the conference as decided in General Assembly resolution 2166 (XXI) and the holding of the first session at the period foreseen. The law of treaties, they said, had been under discussion for many years, and the final report of the International Law Commission, which took account of the comments of Governments on the provisional draft, had been submitted in 1966; thereafter there had been debates on the draft at two sessions of the General Assembly, and also an opportunity for Governments to make written comments. In their view a further long delay in convening the conference would not only be useless but harmful as well. It was suggested, however, by several representatives in explaining their votes that the time available before the conference should be used by Governments for informal consultations on controversial points in order to reduce the areas of disagreement and to ensure the success of the conference. It was requested that this suggestion should be recorded in the present report, and one representative reserved the right to propose an amendment in this sense in the General Assembly.

62. It was pointed out by several representatives, however, that under present plans the first session of the conference, if it were to produce a complete text for adoption in plenary meeting at the second session, would have to proceed at a rate of almost two articles per working day, and it was felt that in view of the difficulties of the subject and the divergences of views that had appeared from the debates, it was necessary to increase the facilities for work at the first session. A few representatives suggested consideration of the possibility that there should be two main committees instead of a committee of the whole at the first session. Other representatives, however, pointed out that at the twenty-first session of the General Assembly it had been decided that there should be only one main committee, in the interest of the effective participation of the smaller countries in the work of the conference, and they believed that decision should be maintained. Nevertheless, it was generally felt that arrangements should be made for the holding of meetings of the drafting committee or of working groups at the same time as meetings of the committee of the whole, and that additional interpretation services should be provided to make this possible. It was agreed that the matter should be mentioned in the present report, and one representative said that his vote in favour of the resolution had been influenced by the prospect of more extensive working facilities. It was not possible for the Secretariat to confirm the extent to which such services could be provided from within existing resources, pending a final determination of the programme of conferences for 1968. However, the Legal Counsel gave the Sixth Committee at its 983rd meeting, in compliance with rule 154 of the rules of procedure of the General Assembly, a preliminary estimate of $30,000 as the probable additional cost which would be incurred should it be necessary to recruit additional interpreters for this purpose. It was understood that a detailed

statement of financial implications would be provided by the Secretary-General before the General Assembly took a final decision on the question.

63. It was considered useful that Governments should have a further opportunity to submit written comments, and that they should be invited to submit amendments in advance of the conference; the time set for submission was not later than 15 February 1968. Some representatives suggested inserting "if possible" after that date, but the sponsors thought that such an insertion would only complicate matters; the time-limit did not mean that comments and amendments could not be submitted after that date, but merely that those which were submitted by that date would be circulated to Governments in advance of the conference.

64. Some representatives referred to the documents to be produced by the Secretariat for the conference and expressed views relating thereto. One representative suggested that the Secretariat should prepare a study of the formal provisions of international organizations relating to the making of multilateral treaties, a study of certain problems of the amendment of multilateral treaties and an up-to-date volume on laws and practices concerning the conclusion of treaties. He also thought that the guide to the draft articles on the law of treaties (A/C.6/376), which had already appeared, should be thoroughly checked, expanded and organized on a different plan; other representatives, however, expressed satisfaction with the document. The Sixth Committee was informed that the Secretariat would prepare (1) a draft agenda; (2) provisional rules of procedure; (3) a memorandum on the methods of work and procedures; (4) a reprint of chapter II of the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, Part II), containing the draft articles on the law of treaties; (5) a guide to the draft articles on the law of treaties (A/C.6/376); (6) an addendum to the guide, presenting article by article the comments by Governments and international organizations on the final draft articles; (7) a revision of the *Handbook of Final Clauses*;[89] (8) a revision of the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements*;[90] (9) a bibliography; and (10) the summary records relating to the consideration of the item at the twenty-second session of the General Assembly.

## IV. Voting

65. At its 983rd meeting held on 26 October 1967, the Sixth Committee voted on the twenty-Power draft resolution (A/C.6/L.623/Rev.2). The Committee adopted the draft resolution by 91 votes to none, with 1 abstention. One representative announced that had he been present in the conference room during the voting, he would have voted in favour of the draft resolution. Explanations of vote were given at the 982nd and 983rd meetings by the representatives of Sudan, France, Czechoslovakia, Malta, Mali, the Union of Soviet Socialist Republics, the United Kingdom, Mexico, Australia, the United Arab Republic, Somalia, Bulgaria, Guatemala, the United States, Venezuela and Austria (see paras. 59, 60, 61 and 62 above).

### Recommendation of the Sixth Committee

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

[*Text adopted without change by the General Assembly. See "Resolution adopted by the General Assembly" below.*]

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[89] ST/LEG/6.

[90] ST/LEG/7.

### (*b*) Resolution adopted by the General Assembly

At its 1621st plenary meeting, on 6 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 66 above). For the final text see resolution 2287 (XXII) below.

#### 2287 (XXII). United Nations Conference on the Law of Treaties

*The General Assembly*,

*Recalling* that by its resolution 2166 (XXI) of 5 December 1966 it decided that an international conference of plenipotentiaries should be convened at Geneva or at any other suitable place, the first session early in 1968 and the second early in 1969, to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

*Recalling also* its request that the Secretary-General convoke that conference,

*Recalling further* that it decided to refer to the conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session [91] as the basic proposal for consideration by the conference,

*Having considered* the item entitled "Law of treaties" at its twenty-second session,

*Recognizing* that the exchange of views and the written comments of Governments on the draft articles on the law of treaties prepared by the International Law Commission at its eighteenth session may facilitate the work at the international conference,

*Noting* that an invitation has been extended by the Austrian Government to hold at Vienna both sessions of the conference on the law of treaties convened by the General Assembly in resolution 2166 (XXI),

1. *Decides* that the first session of the United Nations Conference on the Law of Treaties referred to in General Assembly resolution 2166 (XXI), to be held in 1968, shall be convened at Vienna in March 1968;

2. *Invites* participating States to submit to the Secretary-General not later than 15 February 1968, for circulation to Governments, any additional comments and draft amendments to the draft articles prepared by the International Law Commission that they may wish to propose in advance of the Conference;

3. *Requests* the Secretary-General to transmit to the Conference the summary records relating to the consideration of this item at the twenty-second session of the General Assembly, together with all other relevant documentation.

*1621st plenary meeting*
*6 December 1967*

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[91] *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1), part II.

## (10) Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (agenda item 87)

### (*a*) Report of the Sixth Committee [92]

[*Original text: English*]
[*11 December 1967*]

### I. Introduction

1. At its 1564th plenary meeting, on 23 September 1967, the General Assembly decided to include item 87, 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 agenda of its twenty-second session and to allocate it to the Sixth Committee. In accordance with General Assembly resolution 2181 (XXI) of 12 December 1966, the item had previously been included in the provisional agenda of the session.

2. The item was considered by the Sixth Committee at its 992nd to 1006th meetings, from 6 to 22 November 1967.

3. The Committee had before it, as a basis for its consideration of the item, the report (A/6799) on the 1967 session of the Special Committee on Principles of Internatioanl Law concerning Friendly Relations and Co-operation among States. The report was introduced in the Committee at its 992nd meeting by the Rapporteur of the Special Committee. At the same meeting, the Chairman of the Special Committee and the Chairman of that Committee's Drafting Committee made separate statements on the activities of the Special Committee and of its Drafting Committee respectively.

4. The report on the 1967 session of the Special Committee was divided into the following six chapters: I, Introduction; II, Consideration of the four principles enumerated in paragraph 5 of General Assembly resolution 2181 (XXI) with a view to completing their formulation (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; 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); III, Consideration of proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX); IV, Consideration of the two principles referred to in paragraph 7 of General Assembly resolution 2181 (XXI), with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee (the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; the principle of sovereign equality of States); V, Preambles and general provisions of a draft declaration on the seven principles; VI, Concluding stage of the Special Committee's session.

5. The Committee also had before it a letter (A/C.6/383) dated 8 November 1967 from the President of the General Assembly to the Chairman of the Sixth Committee

[92] Document A/6955, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 87.

transmitting a communication from the Chairman of the Fourth Committee, reproduced in the annex to that document. The communication referred to the Fourth Committee's decision to transmit to the Chairman of the Sixth Committee, in connexion with the latter's consideration of the item which is the subject of this report, the statements made by the representative of South Africa at the 1697th and 1704th meetings of the Fourth Committee on 19 and 27 October 1967, during the discussion on Southern Rhodesia in connexion with agenda item 23, entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples". The General Assembly had taken note of the Fourth Committee's decision at its 1594th plenary meeting, on 3 November 1967.

## II. Consideration of the item prior to the twenty-second session of the General Assembly

6. After examining the item entitled "Future work in the field of the codification and progressive development of international law" at its sixteenth session, [93] the General Assembly adopted resolution 1686 (XVI) of 18 December 1961 in which it decided to place on the provisional agenda of its seventeenth session the question entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". Following its inclusion in the agenda of the seventeenth session, the item has been included in the agenda of subsequent sessions of the General Assembly. The debates on the item at the seventeenth, eighteenth, twentieth, and twenty-first sessions led to the adoption by the General Assembly, on the basis of recommendations by the Sixth Committee, of resolutions 1815 (XVII) and 1816 (XVII) of 18 December 1962, 1966 (XVIII) and 1967 (XVIII) of 16 December 1963, 2103 (XX) and 2104 (XX) of 20 December 1965, and 2181 (XXI) and 2182 (XXI) of 12 December 1966.

7. At its seventeenth session, [94] the General Assembly, in its resolution 1815 (XVII) of 18 December 1962, recognized "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 dutes deriving therefrom, embodied in the Charter of the United Nations, which is the fundamental statement of those principles", and resolved "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". Under operative paragraph 3 of resolution 1815 (XVII), the General Assembly also decided to study at its eighteenth session four of the seven principles listed in that resolution, namely:

(*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;

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[93] See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70.

[94] *Ibid., Seventeenth Session, Annexes*, agenda item 75 General Assembly resolution 1816 (XVII) concerned technical assistance to promote the teaching, study, dissemination and wider appreciation of international law. That question later became a separate item on the agenda of subsequent sessions of the General Assembly.

(*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.

8. At its eighteenth session,[95] the General Assembly, in its resolution 1966 (XVIII) of 16 December 1963, decided to establish a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The Special Committee was requested to draw up and submit to the General Assembly a report "containing, for the purpose of the progressive development and codification of the four principles" referred to in paragraph 7 above "so as to secure their more effective application, the the conclusions of its study and its recommendations. . ." The General Assembly also decided to examine at its nineteenth session the report of the Special Committee and to study the three other principles listed in resolution 1815 (XVII). Those principles are the following:

(*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.

9. At its eighteenth session, the General Assembly, in its resolution 1967 (XVIII) of 16 December 1963 on the question of methods of fact-finding, also invited Member States to submit in writing any views they might have on that subject and requested the Secretary-General to study the relevant aspects of the problem and to report on the results of his study to the General Assembly at its nineteenth session and to the Special Committee referred to in paragraph 8 above. Resolution 1967 (XVIII) also requested the Special Committee to include the above-mentioned subject-matter in its deliberations.

10. The Special Committee established under General Assembly resolution 1966 (XVIII) met at Mexico City from 27 August to 1 October 1964. The Special Committee was composed of twenty-seven Member States appointed by the President of the General Assembly in accordance with operative paragraph 1 of resolution 1966 (XVIII), "taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented". The Special Committee adopted a report on its work and submitted it to the General Assembly.[96]

11. The General Assembly was unable to resume consideration of the question which is the subject of the present report until its twentieth session. It then examined the report of the 1964 Special Committee, the three principles mentioned in paragraph 8 above, and the report of the Secretary-General on methods of fact-finding.[97] The item was considered by the Sixth Committee in conjunction with an 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".[98]

12. The Special Committee was reconstituted by General Assembly resolution 2103 A (XX) of 20 December 1965. The Special Committee, thus reconstituted, was composed

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[95] See *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda item 71.

[96] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

[97] *Ibid.*, document A/5694.

[98] *Ibid.*, document A/6165, paras. 6 and 7.

of thirty-one Member States, [99] the twenty-seven members of the 1964 Special Committee and the four other States mentioned in operative paragraph 3 of resolution 2103 A (XX). The Special Committee was requested to continue the consideration of the four principles studied by the 1964 Special Committee and to consider the three principles which the General Assembly had decided to begin to study, in accordance with the provisions of its resolution 1966 (XVIII). With a view to enabling the General Assembly to "adopt a declaration containing an enunciation of these principles", resolution 2103 (XX) requested the Special Committee to submit "a comprehensive report on the results of its study of the seven principles". Resolution 2103 B (XX) requested the Special Committee to take into consideration the request for the inclusion in the agenda of the item mentioned in paragraph 11 above, and the discussion of that item at the twentieth session of the General Assembly.

13. At its twentieth session, the General Assembly also adopted resolution 2104 (XX) of 20 December 1965, requesting the Secretary-General to make a supplementary study of the question of methods of fact-finding in relation to the execution of international agreements and inviting Member States to submit any further views they might have on the subject.

14. The Special Committee reconstituted under General Assembly resolution 2103 A (XX) of 20 December 1965 met at United Nations Headquarters, New York, from 8 March to 25 April 1966 and adopted a report [100] on its work, which it submitted to the General Assembly in accordance with the terms of the above-mentioned resolution.

15. The report of the 1966 Special Committee and the Secretary-General's supplementary study on the question of methods of fact-finding [101] were considered by the General Assembly at its twenty-first session in connexion with the present agenda item. The Assembly also had before it the comments received from Governments of Member States on the question of methods of fact-finding. [102]

16. At its twenty-first session, the General Assembly adopted two further resolutions on the subject. Under the first, resolution 2181 (XXI) of 12 December 1966, the Assembly decided to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to continue its work. The Special Committee's terms of reference were defined in operative paragraphs 5 to 8 of resolution 2181 (XXI).

17. By resolution 2182 (XXI) of 12 December 1966, the second of those adopted by the General Assembly at its twenty-first session in connexion with the present item, the Assembly decided to include the "Question of methods of fact-finding" as a separate item in the provisional agenda of its twenty-second session.

18. The Special Committee held its 1967 session at the United Nations Office at Geneva, from 17 July to 19 August 1967. During that session, in pursuance of resolution 2181 (XXI) of 12 December 1966, the Special Committee examined each of the seven principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. On the conclusion of its work,

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[99] Algeria, Argentina, Australia, Burma, Cameroon, Canada, Chile, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Kenya, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Syria, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

[100] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230.

[101] *Ibid.*, document A/6228.

[102] *Ibid.*, document A/6373 and Add.1.

the Special Committee adopted the report referred to in paragraphs 3 and 4 of the present report and submitted it to the General Assembly, in accordance with the provisions of operative paragraph 8 of resolution 2181 (XXI).

## III. Proposals

19. The United States of America submitted the following draft resolution (A/C.6/L.627):

"*The General Assembly*,

"*Recalling* its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, and 2181 (XXI) of 12 December 1966, concerning friendly relations and co-operation among States,

"*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, will promote the realization of the purposes of the United Nations,

"*Convinced* of the significance of continuing the effort to achieve general agreement in the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

"*Having considered* the report of the 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States which met at Geneva from 17 July to 19 August 1967,

"1. *Takes note* of the report of the 1967 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

"2. *Expresses its appreciation* to the Special Committee for its work;

"3. *Decides* to ask the Special Committee to complete, as a priority matter, the formulations of:

"(*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 manner inconsistent with the purposes of the United Nations;

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

"4. *Further requests* the Special Committee, if time permits, to complete the formulation of the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;

"5. *Requests* the Special Committee, following the completion of its work on the three principles specified in paragraphs 3 and 4:

"(*a*) To examine additional proposals with a view to widening areas of agreement expressed in the formulations achieved in the Special Committee concerning the following principles:

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

"(ii) The principle of sovereign equality of States;

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

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

"(*b*) To review the formulation of all seven principles and make such editing changes as may be necessary to make them consistent with one another;

"6. *Requests* the Special Committee to meet at United Nations Headquarters or at any other suitable place for which the Secretary-General receives an invitation;

"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-third session."

20. Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Bulgaria, Cameroon, Ceylon, Chile, Colombia, the Congo (Brazzaville), the Congo (Democratic Republic of), Costa Rica, Czechoslovakia, Dahomey, the Dominican Republic, Ecuador, Ethiopia, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Jamaica, Kenya, Kuwait, Lebanon, Lesotho, Libya, Madagascar, Mali, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Paraguay, Poland, Romania, Rwanda, Sierra Leone, Sudan, Syria, Trinidad and Tobago, Tunisia, the United Arab Republic, the United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia and Zambia also submitted a draft resolution (A/C.6/L.628). Burma, Chad and the Central African Republic (A/C.6/L.628/Add.1), Peru and the Ukrainian Soviet Socialist Republic (A/C.6/L.628/Add.2) and the Byelorussian Soviet Socialist Republic, Mauritania, Panama and the Union of Soviet Socialist Republics (A/C.6/L.628/Add.3) subsequently became co-sponsors of this draft resolution. The sixty-seven Power draft resolution read as follows:

"*The General Assembly*,

"*Recalling* its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, and 2181 (XXI) of 12 December 1966, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

"*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 those 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 the adoption of a declaration on these principles as an important step towards the enhancement of the role of international law in present-day conditions,

"*Convinced* of the significance of continuing the effort to achieve general agreement in the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII), but without prejudice to the applicability of the rules of procedure of the Assembly, with a view to the adoption of a declaration which would constitute a landmark in the progressive development and codification of those principles,

"*Having considered* the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which met a Geneva from 17 July to 19 August, 1967,

"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 that Committee for the valuable work it has performed;

"3. *Decides* to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to meet in 1968 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue its work;

"4. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth, twenty-first and twenty-second sessions of the General Assembly and in the 1964, 1966 and 1967 sessions of the Special Committee, to complete the formulation of:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

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

"5. *Requests* the Special Committee to consider proposals compatible with General Assembly resolution 2131 (XX) of 21 December 1965 on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations, with the aim of widening the area of agreement already expressed in that resolution;

"6. *Calls upon* the members of the Special Committee to devote their utmost efforts to ensuring the success of the session of the Special Committee, in particular by undertaking, in the period preceding the session, such consultations and other preparatory measures as they may deem necessary;

"7. *Requests* the Special Committee to submit to the General Assembly at its twenty-third session a comprehensive report on the principles entrusted to it;

"8. *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;

"9. *Decides* to include in the provisional agenda of its twenty-third session an item entitled 'Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations'."

21. The Committee on Conferences, established under General Assembly resolution 2239 (XXI) of 20 December 1966, decided to recommend that, if draft resolution A/C.6/L.627 or draft resolution A/C.6/L.628 and Add.1-3 was approved, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States should be convened at United Nations Headquarters commencing 9 September 1968 for a period of three to four weeks. The Chairman of the Committee on Conferences informed the Chairman of the Sixth Committee of this recommendation in a letter dated 20 November 1967 (A/C.6/L.629). The Secretary-General submitted a statement (A/C.6/L.630) concerning the administrative and financial implications of these draft resolutions.

## IV. Debate

### A. General comments on the work done by the Special Committee in 1967 and on the aims of the work

22. In the opinion of many representatives, the progress made by the Special Committee in 1967, though limited, was laudable and represented a definite step towards the codification of the seven principles which the Special Committee had been asked to consider. Even though certain representatives reaffirmed their reservations in that regard, texts on the principle concerning the duty of States to co-operate with one another in accordance with the Charter and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter had been agreed upon by the Drafting Committee of the Special Committee, submitted to the Special Committee and included in the Special Committee's report (A/6799). On the other hand, agreement had been reached on further points relating to other principles, mainly the principle prohibiting the threat or use of force, and certain areas of disagreement had been more clearly defined. In view of those circumstances and the fact that the Special Committee had already adopted in 1966, subject to further improvement, formulations for two other principles —that of the peaceful settlement of disputes and that of sovereign equality of States— and that it had linked the principle of non-intervention in matters within the domestic jurisdiction of any State with General Assembly resolution 2131 (XX), some representatives considered that the results obtained were encouraging from the point of view of the adoption by the General Assembly of a declaration which would constitute a landmark in the progressive development and codification of those principles. Some representatives also mentioned that another positive result of the Special Committee's 1967 session had been the opportunity provided by it for States to display their determination to try harder to reach an agreement; it was significant that two new complete draft declarations had been examined by the Special Committee in 1967, as well as other proposals on each individual principle. One representative pointed out that the Special Committee had achieved those results in only some fifteen weeks of work, which was not a very long time, considering that the Special Committee was composed of jurists representing States and not of experts acting in their private capacity like those of the International Law Commission.

23. Other representatives however, expressed regret that more progress had not been made in 1967. In their view, the results achieved were not enough to justify the efforts that had been made; and they emphasized the lack of general agreement or consensus in

the Special Committee on the three principles most important for the maintenance of international peace and security, namely, the principle prohibiting the threat or use of force, the principle of equal rights and self-determination of peoples, and the principle of non-intervention in matters within the domestic jurisdiction of any State. Lastly, some representatives expressed the view that, although some progress had been made, the results were not satisfactory, since the wordings adopted were too limited and should be amplified or improved. Nor should it be forgotten that the two consensus texts of 1967 had so far been approved only by the Special Committee's Drafting Committee.

24. Some of the representatives who spoke recognized that the main reason why the results achieved by the Special Committee were incomplete was that the scope, variety and complexity of the subject made the task ambitious, arduous and difficult. Various representatives observed that the seven principles affected the international legal order as a whole and had a bearing on vital or sensitive sectors of inter-State relations. It was pointed out in that connexion that concessions made by a State in relation to a particular principle could subsequently be invoked against it and weaken its position in a future dispute. Others mentioned the fundamental divergence of view between those who wished to maintain the *status quo* and those who wished to adapt international law to the realities and needs of the contemporary international community. It was also pointed out that the debates in the Special Committee had simply reflected the profound differences of opinion which separated the great from the lesser Powers, the economically developed countries from those which were less developed and the States with long-established traditions from the new States. Others maintained that the failure to make greater progress was due to those who adopted imperialist attitudes and were supporters of power politics. It had also been said that the discussions in the Special Committee had been adversely affected in 1967 by the international situation. In the view of other representatives, the difficulties encountered were due not only to political and legal factors, but also to the procedures, methods and codification techniques employed, and they pointed out that the work had not been so thorough or on such a firm legal basis as could have been wished.

25. The representatives who spoke in the debate congratulated the Rapporteur of the Special Committee on that Committee's report (A/6799), which was of great value in the consideration of the item, since it clearly reflected the determining factors in the study of the seven principles.

26. Many representatives reaffirmed the necessity and importance of the codification and progressive development of the principles of international law concerning friendly relations and co-operation among States. The codification and progressive development of those basic principles of the Charter and of the international legal order would enable their scope and content to be determined with precision, thus helping to ensure the maintenance of international peace and security and to promote coexistence and peaceful co-operation between States with different political, economic and social systems. In their view, it was becoming increasingly urgent to strengthen the international legal system in view of the repeated violations of the Charter and of the fundamental principles of international law.

27. One representative emphasized that international law could and should guide the conduct of States, and that the rule of law in international life was perfectly compatible with the sovereign position of States in their mutual dealings. In his view, there was no need to resort to such concepts as the "supremacy" of international law in order to uphold the authority of the law. He added that, in seeking to define the principles, it was important to keep in mind the structure of international relations, and the prime moving forces—such as the nation—of the world's social and political evolution.

28. Various representatives emphasized the need to develop the principles, taking into account the realities of international life and the changes that had occurred since the adoption of the Charter. It was pointed out in particular that the number of Members of the United Nations had more than doubled since the adoption of the Charter. It was also emphasized that the progressive development of the principles should ensure the equality of all States, great and small, should make more effective the principle of the indivisibility of prosperity and should speed up decolonization. Some representatives affirmed that the great Powers had a special responsibility in that connexion. Stress was also placed on the part played by the small countries in the progress of law and international legal institutions.

29. Other representatives considered it illusory to seek the solution of conflicts in the formulation of rules. Attention was also drawn to the need to bear in mind the cardinal requirement that the formulations adopted for the principles should be such that they could be recognized and applied, and that therefore a balanced and painstaking effort, though slow, was preferable to undue haste, which might prevent the achievement of the aim in view. Some representatives said in this connexion that if it was desired that the principles should eventually be recognized as universal, it was necessary that they should be formulated in such a way that they would receive as wide a measure of support as possible.

30. One representative pointed out that, under Article 13, paragraph 1 a, of the Charter, the General Assembly could not, through its resolutions, adopt binding rules of international law, but only recommendations. So far as progressive development was concerned, he thought that the preparation of draft conventions was perhaps the most appropriate method at the General Assembly's disposal for carrying out its task. Another representative observed that the General Assembly had reaffirmed every year, almost unanimously, its previous decisions relating to the continuation of the Special Committee's work, without any change in the procedures and methods adopted. That, he added, was proof that the General Assembly had demonstrated its understanding of the limits of its own competence and powers in the matter of the development or creation of international law, in accordance with the provisions of the above-mentioned paragraph of Article 13 of the Charter.

31. One representative said that his delegation's position on the subject was based on two points. The first was that there should be clarity in the objectives which were being pursued, especially in view of the ambiguity of the legal status of resolutions of the General Assembly. Not enough attention, he added, had been given to the implications, from the point of view of the question that was being studied, of a declaration on the interpretation of the Charter as adopted at San Francisco. The second point was that the current efforts should not, as seemed to be the case with some of the provisional formulations, be intended to lead to any amendment of the Charter, through a procedure not provided for therein, by enlarging or narrowing the scope of the obligations which its provisions contained.

32. Some representatives stressed the relationship of the seven principles to each other, and concluded that any attempt to develop and codify one of them must take into account the existence and formulation of the others, especially if they were to be incorporated in a single declaration. One representative expressed the opinion that in the formulation of the principles for which consensus texts had been produced, there were certain basic points which would have to be borne in mind for the study of the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. Those points were, according to him, the following: (*a*) the recognition of the universal legal validity of the principles in question, as proclaimed in or deriving from the Charter; (*b*) the need for formulations which would respect the sovereign equality,

territorial integrity and political independence of States, and the obligation of States to co-operate among themselves, at the current stage of development of their relations in all fields; (*c*) the recognition of the importance of the Charter as one of the principal sources of universal international law and the recognition of the need to improve the work of the United Nations; (*d*) the need to take account of the general development of international law, as expressed in conventions adopted since the Charter, in State practice and, in particular, in the form of the instruments of the General Assembly and other international organizations and conferences, thus making it possible not only to define the principles but also to set out the legal rules concerning their application; (*e*) the interdependence of the seven principles, of which the greatest account had had to be taken in the course of formulating the four principles already enunciated.

33. Various representatives said that if it were desired to advance the work of the Special Committee and arrive at just and reasonable solutions it would be necessary to proceed by making mutual concessions, in a spirit of co-operation and goodwill. Some considered that it would be desirable to concentrate on less controversial questions, whereas others were of the opposite opinion. Some representatives also said that new agreements should not be sought at the expense of the texts already agreed upon.

## B. Observations on the principles examined by the Special Committee in 1967

34. In the course of the debate, various representatives refrained from repeating the observations they had made on the seven principles examined by the Special Committee, and referred to what had been said on previous occasions by their respective delegations in the Sixth Committee or in the Special Committee. Many, however, repeated their views on general aspects of the principles and on their scope, content and formulation. It is those points of view which are summarized in the present section.

### 1. *Principles enumerated in operative paragraph 5 of General Assembly resolution 2181 (XXI)*

#### (a) *The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations*

35. A certain number of representatives considered it unfortunate that the Special Committee had been unable, at its 1967 session, to formulate the principle prohibiting the threat or use of force. Some attributed this to political reasons, believing that certain States were unwilling to have their freedom of action limited in this matter. Others stressed the need to improve upon the working methods which had thus far been followed, and one representative suggested that the Drafting Committee of the Special Committee should deal only with those aspects of the principle on which negotiation was feasible, as determined through informal negotiations prior to the next session of the Special Committee. It was also stated that negotiation would sometimes be facilitated if undue emphasis was not placed on purely formal differences. Others again pointed out that some of the difficulties were due to the very nature of the principle, and one representative noted that some elements of the principle were so closely interrelated that a separate formulation of them was not always possible or correct.

36. Many representatives, however, while acknowledging the fundamental differences which were still apparent, thought that in 1967 the Special Committee had done important exploratory work and had made progress with regard to the formulation of this principle.

A further serious effort should be made at the next session of the Special Committee, with a view to reaching a consensus on those aspects of the principle which were still in dispute. The representatives in question laid stress on the areas of agreement which had been reached in the Working Group that had considered the principle and which were set out in the report of the Working Group transmitted to the Special Committee by the Drafting Committee (A/6799, para. 107). These representatives considered the areas of agreement sufficient to justify the hope that a general formulation of the principle might be achieved in the near future. They felt that progress could best be made by preserving areas of agreement as and when they were reached. Some representatives considered that the proposal submitted to the Special Committee by its Latin American members (*ibid.*, para. 27) was constructive and valuable and could serve broadly as a basis for agreement. Others referred to the near-consensus text which had been produced by the 1964 Special Committee [103] as being one of those most likely to facilitate the formulation of the principle. Regret was expressed by certain representatives that some had tended to put aside this text which had, over a period of time, been agreed to by all members of the 1964 Special Committee. It was also explained that the joint proposal submitted to the Special Committee by Italy and the Netherlands (*ibid.*, para. 25) set out a programme *de lege ferenda*, bearing in mind the impossibility of achieving complete agreement at present and the fact that the adoption of a declaration of principles by the General Assembly was not an end in itself, but that the preparation of instruments and machinery would be required in order for the principles embodied therein to become a genuine force in international life.

37. Some representatives stressed the need to produce as soon as possible an adequate formulation of this fundamental Charter principle, which was the corner-stone of the international legal order, because repeated violations of it were creating situations of extreme gravity to world peace. A clear and unequivocal statement of the principle would facilitate its observance and application in international relations, thus contributing to stability and balance in the international community and to the maintenance and development of friendly relations and co-operation among States. The formulation of the principle should be in conformity with the Charter, taking into account the developments which had occurred in international law and State practice since the Charter had been drawn up. General Assembly resolution 2160 (XXI) of 30 November 1966 was mentioned by some representatives as an element which could serve to facilitate the codification and progressive development of the principle.

38. One representative traced the historical development of the principle proclaimed in Article 2, paragraph 4, of the Charter and stated that, in contemporary international law, the prohibition of the use of force had become a norm of *jus cogens*. It was also emphasized that the Charter had centralized the use of force in the United Nations by virtue of the powers and the authority conferred on its organs for the maintenance of international peace and security. It was only to the extent that the Organization was ineffective that certain limited aspects of the power to use force were retained by States within the framework of the exercise of the right of individual or collective self-defence, as recognized and regulated by the Charter.

39. Other representatives referred to the need to take into account the relationship between this principle and the others, especially the principle of non-intervention in matters within the domestic jurisdiction of any State, with a view to specifying the area protected by each of the principles and determining accordingly what elements should be included in each of them. One representative advocated devoting a few paragraphs to the relationship between the principle prohibiting the threat or use of force, the principle

[103] *Ibid.*, *Twentieth Session*, *Annexes*, agenda items 90 and 94, document A/5746, para. 106.

of non-intervention in matters within the domestic jurisdiction of any State and the principle of sovereign equality of States.

40. The representatives who referred to this point took the view that the prohibition of armed force stated in the principle extended to the prohibition of the use of irregular forces, volunteer or mercenary forces or armed bands, and to other acts of indirect aggression. The representatives in question asserted that States had an obligation to refrain from such acts and from inciting to civil war or fomenting acts of terrorism in other States, and they favoured the inclusion of an express provision on this point in the formulation of the principle prohibiting the threat or use of force, although they recognized that certain aspects of such acts were also related to the principle of non-intervention in matters within the domestic jurisdiction of any State.

41. A number of representatives maintained that the term "force" covered not only armed force, but also any form of coercion, including political, economic or any other kind of pressure directed against the territorial integrity or political independence of a State. They considered that political or economic pressure was sometimes quite as dangerous as the use of armed force, especially when such coercive action was taken against developing countries or countries which had recently become independent. In the view of these representatives, a broad interpretation of the term "force" in the context of article 2, paragraph 4 of the Charter was perfectly compatible with the provisions of the Charter, found support in the writings of legal experts, strengthened the principle prohibiting the threat or use of force, and was in keeping with developments since the entry into force of the Charter. In support of that interpretation, mention was made of the Charter of the Organization of American States, the Programme for Peace and International Co-operation adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held at Cairo in 1964, and General Assembly resolution 2160 (XXI), referred to above.

42. Several representatives condemned wars of aggression and some stressed the necessity and urgency of producing an adequate formulation of the principle of the responsibility of States which unleashed wars of aggression or committed other crimes against peace. One of these representatives stated that this gave rise to political and material responsibility of States and to penal liability of the perpetrators of those crimes, and he said that the principle of responsibility would be strengthened by the adoption of the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. Some representatives also said that States should enact domestic legislation prohibiting propaganda designed to encourage wars of aggression, and recalled that the League of Nations had considered the question and that the General Assembly of the United Nations had condemned all war propaganda in its resolutions 110 (II) of 3 November 1947 and 381 (V) of 17 November 1950 and had included a provision to that effect in article 20, paragraph 1, of the International Covenant on Civil and Political Rights, which it had adopted in its resolution 2200 A (XXI) of 16 December 1966. Armed reprisals were also condemned by some representatives as being contrary to the Charter.

43. On the question of the prohibition of the use of force in territorial disputes and frontier claims, one representative expressed the view that, since it was quite as illegal to use force to violate an "international line of demarcation" as it was to use it to alter a frontier, a reference to international lines of demarcation should therefore be included in the formulation of the principle. In the view of this representative, the application of Article 2, paragraph 4, of the Charter to international lines of demarcation would in no way imply that an armistice demarcation line was political in character or of indefinite duration; it would merely state that any change in such a demarcation line, as in the case of a border or frontier, could only be brought about by peaceful means.

44. The inviolability of State territory was regarded by a number of representatives as an essential element of the principle, especially for the newer or weaker States. Some of these representatives maintained that a State's territory could not be subjected—even temporarily—to military occupation or other measures involving the use of force by another State, directly or indirectly, for any reason whatsoever. One representative also condemned the peaceful occupation of foreign territories which the country exercising sovereignty over them was unable to protect because of its weakness. Several representatives took the view that the formulation of the principle should exclude the possibility of recognizing territorial acquisitions obtained by the threat or use of force or other forms of coercion, since international law could not sanction the consequences of unlawful acts which were incompatible with the Charter. In the view of one representative, the rule concerning the non-recognition of situations brought about by the threat or use of force, which had come to be known as the "Stimson Doctrine", had been implicit in the Briand-Kellogg Pact, in the Covenant of the League of Nations and in the United Nations Charter, and had been rendered explicit in many instruments of American States, in the 1964 Cairo Declaration of Non-aligned Countries and in the draft Declaration on Rights and Duties of States prepared by the International Law Commission in 1949. [104]

45. One representative stated that, where a territory was under dispute between two States and one of them refused to comply with Article 33 of the Charter, the latter State could not invoke the guarantee of "territorial integrity" provided in Article 2, paragraph 4, especially if both States had recognized the existence of the dispute and the United Nations had called upon the parties to settle the dispute by peaceful means.

46. The hope was also expressed that it would be possible to include in the formulation of the principle a statement concerning the desirability of making the United Nations security system more effective, because, while there were differing views as to how the Organization might best be equipped to fulfil its principal purpose, there appeared to be general agreement on the purpose itself. Other delegations emphasized that there should be an urgent appeal to States to secure general and complete disarmament under effective international control.

47. With regard to exceptions to the prohibition of the threat or use of force, certain representatives emphasized that the right of individual or collective self-defence should be limited strictly to the circumstances specified in Article 51 of the Charter. Some of these representatives also referred to the lawful use of force pursuant to a decision by a competent organ of the United Nations.

48. Some delegations expressed the view that the use of force by regional agencies, except in the case of self-defence, individual or collective, required the express authorization of the Security Council. In that connexion, it was noted that regional arrangements, such as the Rio de Janeiro Inter-American Treaty of Reciprocal Assistance of 1947 and the Charter of the Organization of American States, should be interpreted in the light of Articles 51 and 53 of the United Nations Charter. One representative agreed with that interpretation, on the understanding that in that context the expression "use of force" by regional agencies meant "use of armed force"; he also emphasized that any State which was subject to subversive or terrorist acts had the right to take reasonable and appropriate measures to safeguard its institutions, including the right to seek assistance from regional agencies. Another representative, however, took the view that any coercive measure taken by a regional organization against a Member of the United Nations without the cognizance of the Security Council would constitute a violation of the principle proclaimed in Article 2,

[104] See *Yearbook of the International Law Commission, 1949* (United Nations publication, Sales No.: 57.V.1), p. 287.

paragraph 4, of the Charter. One representative maintained that the Rio de Janeiro Treaty conflicted with the Charter, since it did not limit collective self-defence to cases where an armed attack occurred, as required by Article 51 of the Charter, and introduced new factors, such as any act or situation that might endanger the peace of America.

49. Several representatives expressed the view that the prohibition of the threat or use of force could not be interpreted as affecting the right of peoples to defend themselves against colonial domination in the exercise of their right of self-determination. They believed that self-defence against colonial domination should be regarded as an exception to the general rule, since—as some of these representatives stated—colonialism was an act of force and was actually aggression. In support of the legitimacy of the struggle against colonialism and of assistance to national liberation movements, some representatives cited General Assembly resolutions 1514 (XV) of 14 December 1960 and 2105 (XX) of 20 December 1965, and article 1 of the International Covenant on Civil and Political Rights, which had also been adopted by the General Assembly (resolution 2200 A (XXI) ). Other representatives considered that every State should refrain from the use of force against those dependent peoples to which resolution 1514 (XV) applied. Others considered it unacceptable to extend the doctrine of self-defence into the colonial field, and felt that attempts to do so had been one of the major obstacles to agreement on the formulation of the principle.

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

50. The consensus text on this principle approved by the Drafting Committee of the Special Committee in 1967 (A/6799, para. 161) was considered by a number of representatives to be generally satisfactory, although some expressed the hope that its content could be expanded or improved in the future. One representative said he believed that the main objectives of co-operation were stated in that text.

51. During the debate, many speakers acknowledged the general importance of this principle and the necessity of codifying it as soon as possible because, in their view, the affirmation of the principle was essential to international stability and the maintenance of peace. Some representatives stated that it was a prerequisite for, or a corollary of, the concept of peaceful coexistence. In the view of one representative, its applicability extended to every aspect of international relations, and all States should co-operate, irrespective of their political, economic and social systems. Another representative stated in that connexion that it was the very task of his country, as a permanently neutral State, to co-operate with all States.

52. One representative observed that the duty to co-operate was quite clearly enunciated in various provisions of the Charter, particularly Article 1, paragraph 3, Article 2, paragraph 5, and Articles 25, 48, 49, 55 and 56. Some representatives felt that this principle implied the recognition not only of a duty but also of a right; in the view of one representative, to envisage it solely as a duty would result in an incomplete formulation, and he believed that the principle applied not only to States but also to such entities as groups of countries or international agencies. In addition, it was an institution which differed from the other principles under consideration because, while the latter could be stated in mere declarations, the system of rights and obligations which co-operation imposed required a whole body of functional rules.

53. Some representatives took the view that there was a close relationship between this principle and other principles of international law. If co-operation was lacking, the other principles studied by the Special Committee would remain of no effect. One representative considered that international co-operation was based on, and called for, the

promotion of respect for national sovereignty and independence, equal rights of States, non-intervention and mutual advantage. All these were constituent elements of the principle of co-operation and should be included in its definition, as his delegation had formally proposed in 1967 in the Special Committee; he hoped that that proposal would be considered in greater detail during the Special Committee's future deliberations.

54. Several representatives pointed out that the economic and social imbalance between countries was not conducive to the maintenance of friendly relations and co-operation among them. In the view of one representative, the purpose of economic and social co-operation should be to create, especially in developing countries, the conditions of stability, well-being and economic growth which were vital to the maintenance of peace and to world stability. It was recalled that the wealthier countries had a special responsibility in that respect, and the hope was expressed that it would be possible at some future date to establish the obligation of the wealthier peoples to come to the aid of the poorer peoples, as proclaimed in the Declaration of Philadelphia adopted by the International Labour Organisation on 10 May 1944.

55. Some representatives referred to the efforts made by developing countries through regional groupings of South-East Asia and Latin America. With regard to the latter, mention was made of the Central American Common Market and the Latin American Free-Trade Association. The purpose of those groupings was to co-operate for the welfare and development of their peoples, to protect their primary commodities, to promote investment and technical assistance accompanied by respect for the sovereignty of each State, and to bring about more complete independence vis-à-vis foreign Powers. In this connexion, one representative felt that the consensus text ignored one important element of the principle, namely, the duty of States to refrain from hindering other States which were co-operating among themselves in accordance with the Charter.

56. With respect to paragraph 1 of the text approved by the Drafting Committee of the Special Committee, some representatives expressed gratification at the reaffirmation of the concept of co-operation among States having different political, economic and social systems, without any discrimination based on such differences. Other representatives, however, considered that the text would have derived greater strength from an open acknowledgement of the fact that non-discrimination was an essential part of the duty to co-operate. One representative took the view that, in order to make such co-operation universal, all discrimination between States must be prohibited, and that that could be achieved by the adoption of the proposals in paragraphs 115 and 123 of the report of the Special Committee (A/6799). Another representative regretted the failure to mention, among the aims listed in paragraph 1 of the formulation of the principle, the eradication of colonialism, the persistence of which ran counter to the maintenance of peace, economic progress and general well-being. To mention it in the context of that principle would not mean that it could not be included in the formulation of the principle of equal rights and self-determination of peoples.

57. Several delegations felt that the Drafting Committee had rightly given primacy of place, in paragraph 2 of its text, to the duty of States to co-operate with one another in the maintenance of international peace and security. Some of them stressed the importance of the obligation to-operate with the United Nations in this vital area. One representative, however, stated that sub-paragraph (a) of that paragraph simply reproduced what had already been said in paragraph 1 and that, in his view, the repetition added nothing to the content of the principle.

58. Many representatives said they were gratified at the inclusion, in paragraph 2, of sub-paragraph (b) concerning human rights and fundamental freedoms and the elimination

of all forms of racial discrimination and religious intolerance—an addition which represented an improvement upon the text nearly agreed to in 1966. Several representatives spoke of the importance which their delegations attached to the idea of the legal obligation in that field, especially in view of the persistent violation of human rights and fundamental freedoms by certain Governments. One representative considered that sub-paragraph (b) should be interpreted as broadly as possible. Another representative took the view that that sub-paragraph was in conformity with Article 55 of the Charter and that the principle would be applied without distinction as to race, sex, language or religion. Yet another representative considered that, in view of the fact that the General Assembly had recently adopted the Declaration on the Elimination of Discrimination against Women (resolution 2263 (XXII)), the words "and the elimination of discrimination against women", should be added at the end of sub-paragraph (b), since that aspect did not appear to be covered by the formulation as it stood.

59. One representative was of the opinion that the reference in paragraph 2 (c) to the principles of sovereign equality of States and non-intervention in matters within the domestic jurisdiction of any State was not very clear. Another representative expressed his satisfaction with the provision contained in paragraph 2 (d); so general a clause could not resolve the issues which had divided the membership of the Organization, but it represented considerable progress.

60. Some representatives stressed the fact that paragraph 3 of the consensus text did not speak of a legal duty; its sole purpose was to promote co-operation in the area to which it referred and to encourage States towards a desirable future goal. Another representative felt that that text established a happy balance between the existing positions and opened the door to a beneficial evolution. Some others, however, expressed regret that paragraph 3 was only in the form of an exhortation. One of these representatives felt that the fact that paragraph 1 imposed a legal obligation but paragraph 3 did not weaken, and indeed appeared to contradict, the relevant provisions of the Charter. Another representative expressed the belief that, if it was not possible to give that concept a legal content, it would have been preferable to omit it from a text which formulated legal obligations stemming from the Charter principles, with a view to their codification.

(c) *The principle of equal rights and self-determination of peoples*

61. A number of representatives expressed regret that there were aspects of this principle on which the Working Group concerned had been unable to reach agreement in 1967, and that the Drafting Committee had arrived at the conclusion that the points on which agreement had been reached were insufficient to justify reference to the Special Committee. In the opinion of various representatives, that situation was the result of the divergency of opinions on the content of the principle, divergencies which existed despite the sincere efforts that had been made by some delegations to reconcile the opposing viewponts. In that connexion, one representative regretted the fact that the Working Group's report had not been published, for it would have enabled delegations not represented in the Special Committee to study those points of agreement. A number of representatives said that in their opinion it was urgent that the Special Committee should succeed in giving that basic principle a generally acceptable legal formulation, and at the same time they expressed the hope that further discussion in the Special Committee would prove more fruitful. In one representative's opinion, the current international situation had given urgency to the task. Various representatives considered that the existing differences of view were not so great as to prevent that aim from being achieved, which it could be if all delegations were prepared to co-operate. One representative said he hoped

that future endeavours would take into account the areas of agreement that had been reached in the Working Group.

62. Some representatives recalled that the principle was embodied in the Charter, explicitly in Articles 1, paragraph 2, and 55, and implicitly in Chapters XI, XII and XIII, and that it had been reaffirmed in numerous resolutions of the General Assembly, particularly resolutions 1514 (XV) and 2160 (XXI), in other international instruments such as the International Covenants on Human Rights (see General Assembly resolution 2200 A (XXI) ), and in declarations by international conferences, such as the Conferences of non-aligned States. Some representatives said that the principle was the basis of one of the characteristic features of our time, namely the national emancipation movement, which in the last twenty years had enabled more than fifty countries, today united in the organized international community, to achieve independence and sovereignty. In the opinion of those representatives that was the most important success which the United Nations had achieved. The principle continued to be of decisive importance to peoples still living under colonial domination.

63. A number of representatives said that the principle could not be regarded as a mere moral or political postulate but constituted an established rule of contemporary international law. In the view of one representative, it was also one of the pillars of the present international order; it defined, in his opinion, one of the constituent elements of the community of nations—a community of peoples based on self-determination and equal rights—in which subject peoples did not exist. In the view of another representative, the principle was part of the foundations on which the United Nations had been built. One representative said that there was no basis in the discussions at San Francisco or in the practice of the General Assembly for the view that only the principles set out in Article 2 of the Charter were legal principles. Various representatives said that the maintenance of international peace and security, the development of friendly and co-operative relations between States and the promotion of the economic, social and cultural advancement of mankind largely depended on the unequivocal recognition of the principle.

64. With respect to the content of the principle, some representatives referred to the freedom of any State to choose, without foreign interference, the political, economic and social system which it considered desirable; one representative expressed his disagreement with a proposal aimed at replacing self-determination by the idea of uniting divided countries, which in his view bore no relation to the principle in question. Reference was also made by some representatives to the exercise of full sovereignty and the right of any State to dispose freely of its wealth and natural resources.

65. Some representatives expressed the view that any formulation of the principle must be based on the relevant provisions of the Charter and on the letter and spirit of General Assembly resolutions 1514 (XV), 1541 (XV) and 2131 (XX). One representative said that in studying the principle it was essential to bear in mind that the right of peoples to self-determination resulted from the principle of equal rights, and that it must therefore be recognized without any reservation by all States. Other representatives considered that the formulation should include a statement to the effect that the right of self-determination was inalienable. On that point, some representatives expressed support for certain of the proposals put forward by the Special Committee in 1967.

66. One representative expressed disagreement with another of those proposals, in which the right of peoples to self-determination was recognized as being more in the nature of an individual right, within the context of human rights. In his opinion, the truth was rather that respect for the right of peoples to self-determination—one of the foundations of peaceful and friendly relations among States and of international co-operation according

to the Charter—was on the contrary the basis for the enjoyment of human rights, which in turn was one of the components of the notion of peaceful relations. One representative expressed the view that since self-determination was an individual as well as a collective right, its exercise involved certain duties which must be regulated through codification.

67. Some representatives drew attention to the existence of differences of opinion regarding the definition of "people" and the recognition of the rights of peoples as differentiated entities in international law. One representative observed that while for some States "people" meant primarily independent States, other States held that the principle applied essentially to peoples still living under colonial domination. In the view of one representative, the question of definition was not an insurmountable obstacle to agreement. In the judgement of other representatives, the proposals submitted to the Special Committee in 1967 confirmed the vast scope of the principle, which applied to all peoples. Nevertheless, one representative repeated that it was desirable to use the term "all subject peoples" instead of "all peoples", for the use of the latter expression would encourage secessionist movements in multinational States and thus endanger the territorial integrity and political independence of certain States.

68. A number of representatives expressed agreement with the idea that the principle should not be used in such a way as to affect the national sovereignty and territorial integrity of States. In the opinion of one of them, the principle could not be invoked by minorities living in the territory of a State to bring about the dismemberment of that State; respect for minorities, in his opinion, was at once a duty and a right laid down by international instruments, and it was the responsibility of the United Nations to enforce it while protecting the territorial integrity of States.

69. In the opinion of some representatives, self-determination could not, moreover, be exercised by the populations of territories which were the subject of a legal dispute between States, especially, in the opinion of one of those representatives, if such territories had been acquired by force or through unjust treaties imposed by the threat or use of force. In the opinion of another representative, such disputes could furthermore not be left to the population which had been placed in that territory by the State which illegally had possession of it; the issue, in his view, was a dispute which could be settled in only accordance with juridical principles.

70. One representative affirmed that the idea that a State should refrain from any action aimed at the disruption of the national unity and territorial integrity of other States was foreign to the principle, and belonged rather to the principle of non-intervention in matters within the domestic jurisdiction of any State, or the principle prohibiting the threat or use of force. Another representative, however, said that subversive activities aimed at changing the régime of another State by violence were a violation of the principle and constituted intervention.

71. On the subject of the legality of the colonial system, one representative said that he could not accept the doctrine that any colonial relationship was illegal merely because it was colonial; in his view, the existence of Chapter XI of the Charter contradicted that contention. Some representatives, however, considered that colonial situations were only *de facto* situations without any legal basis. In their view, the provisions of Chapter XI of the Charter had, of course, legal validity, but far from providing a foundation for colonialism they could be applied only in the context of the right of peoples to self-determination and subject to the implementation of that right. In the view of one representative, even if it was granted that the colonial system had been based on customary rules, the latter had lost their binding force through the absence of an *opinio necessitatis*. Another representative reached the conclusion that if particular obligations were mentioned in the formulation of

the principle on the basis of Chapter XI of the Charter, he would be obliged to ask that the principle should be made applicable to all existing situations involving colonial territories. The view was also expressed, by another representative, that all States should render assistance to the United Nations in bringing about an immediate end to colonialism and transferring all powers to the peoples of territories which had not yet achieved independence. He also considered that territories under colonial domination did not constitue an integral part of the territory of States exercising colonial rule over them.

72. In the view of some representatives, the affirmation of the colonial peoples' so-called right of self-defence had raised a very serious obstacle to agreement on the formulation of the principle. Another representative, on the other hand, considered that people deprived of their freedom and their right to self-determination were entitled to exercise their right of self-defence by every means, without the rules of the Charter relating to the non-use of force being applicable to them. Those peoples, they added, might receive assistance from other States by virtue of that right.

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

73. Several representatives expressed satisfaction at the results achieved in 1967 in connexion with this principle despite the difficulties involved in its formulation. Most of the observations made during the discussion concerned mainly the text agreed upon in 1967 in the Special Committee's Drafting Committee (A/6799, para. 285); but general opinions on the principle were also expressed. One representative, for example, felt that the principle was fully justified; since it involved the rule *pacta sunt servanda*, which was the basis of contemporary international law, observance of it was the prerequisite for the observance of all the other principles under consideration. Others noted that it was founded upon mutual trust between States having different political, economic and social systems, a trust which was vital at a time when the complexity and diversity of international relations were increasing. In the opinion of one representative, the fact that his country, as a permanently neutral State, had renounced any active use of force implied that it depended in its international relations on the good faith of other States in fulfilling their obligations. Another representative, however, said that the principle seemed to be only very remotely connected with friendly relations and co-operation among States. One representative also found it disturbing to note that the principle was not applied in practice by certain countries, and that was one of the causes of the current international tension.

74. The 1967 Drafting Committee's text was praised for its brevity and succinctness, but certain criticisms were also voiced. In the view of one representative, the text presented difficulties in that it dealt with delicate and complex questions which had not been adequately explored from either a theoretical or a practical point of view, such as the relationship between the Charter and treaty law, between the Charter and customary international law, and between treaty law and customary international law. Another representative considered that the text was not entirely satisfactory, for such expressions as "good faith" and "the generally recognized principles and rules of international law" had not been defined, and he thought they might later be given divergent and even conflicting interpretations.

75. Several representatives welcomed the fact that the formulation of the principle not only proclaimed the legal requirement that the paramount obligations deriving from the Charter should be fulfilled, but also properly reflected the need for compliance with the obligations arising from both customary and conventional international law. That formulation, in the opinion of one representative, strengthened those obligations. Another felt that it went beyond a mere paraphrase of the provisions of the Charter; in his opinion, it was a reaffirmation of the vital importance, in an interdependent world, of the fulfilment

of such Charter obligations as the duty to refrain from the threat or use of force against the territorial integrity or political independence of any State. In the view of a third representative, the formulation correctly placed those obligations in perspective, striking a satisfactory balance between the obligations of conventional and customary international law, thus clarifying and elaborating the relevant provisions of the Charter. One representative also expressed satisfaction that the text had implicitly recognized some of what he considered to be exceptions to the principle; for example, a State was not required to fulfil obligations assumed in violation of the Charter or of the generally recognized principles and rules of international law.

76. A number of representatives referred to the duty to fulfil obligations arising from treaties, as formulated in paragraph 3 of the consensus text. In that connexion one representative said that in his opinion only obligations deriving from treaties that were still valid must be fulfilled. Another representative considered that paragraph 3 interpreted the rule *pacta sunt servanda* in the light of the principles of the Charter and in a way complemented the relevant provisions of the draft articles on the law of treaties prepared by the International Law Commission. Some representatives also stressed that the duty to fulfil obligations arising from treaties did not apply to treaties resulting from the threat or use of force, and reference was made in that connexion also to the work of the International Law Commission. Another representative said it was entirely in order that treaties which conflicted with a peremptory norm of international law should be declared void. One representative also affirmed that the wording of the principle should allow for the *rebus sic stantibus* clause. Several representatives referred to the fact that in 1967 the Drafting Committee of the Special Committee had rejected the proposal to add to paragraph 3 the words "freely concluded on a basis of quality". They expressed approval of that decision, for the proposal in question was related to complex and controversial problems of treaty law, which were to be the subject of a profound examination at the forthcoming United Nations Conference on the Law of Treaties, to be held at Vienna. One representative also noted that the International Law Commission had postponed a detailed consideration of the problem of unequal treaties as being more appropriate to its future work on the succession of States. Other representatives, however, expressed regret that there was no explicit provision in the consensus text that only those international agreements which were concluded freely and on the basis of equality were valid. In the absence of such a provision and with the hope that that idea might still be specifically included, they accepted the formulation arrived at by the Drafting Committee, on the understanding that the text in question covered that vital point.

77. One representative noted in that connexion that in recent years new States had emerged which had had to choose between different economic and social systems, a choice which had given a new direction to international law because it implied the right to refuse to be bound by the treaties concluded under the former régime. Another representative expressed a similar view, referring to the draft articles on the law of treaties prepared by the International Law Commission; he conceded, however, that there were some unequal treaties which were justified, such as a treaty under which one country; without any *quid pro quo*, granted permanent access to the sea to another country that was land-locked.

78. Some representatives expressed satisfaction that paragraph 4 of the consensus text clearly recognized the supremacy of the obligations arising from the Charter over other obligations of States Members of the United Nations. In the view of one representative, that paragraph clearly brought out the interdependence of two basic provisions of the Charter, those of Article 2, paragraph 2, and Article 103. Another representative said that although the provision in paragraph 4 was correct, the wording of the consensus text might

lead to misinterpretation, for it was not sufficiently clear whether the provision in that paragraph also applied to the obligations of Member States under generally recognized principles and rules of international law. In his opinion, paragraph 4 of the consensus text should be made to cover the obligations referred to in paragraph 2 thereof. One representative said that his country's status of permanent neutrality did not prevent it from fulfilling in good faith its obligations as a Member of the United Nations because it was convinced that that special status, which had been duly notified, would be taken into account by the Security Council and all States Members of the United Nations.

79. Some representatives recognized the supremacy of international legal obligations over those deriving from domestic law and regretted that the Drafting Committee of the Special Committee had been unable to include that point in the consensus text. In that connexion, one representative recalled that that supremacy had already been affirmed by the International Law Commission in article 13 of the draft Declaration on the Rights and Duties of States, and that the General Assembly had taken note of that draft in its resolution 375 (IV) of 6 December 1949. Another representative, however, expressed the opinion that the consensus text in its present wording incorporated that idea, since the very function of the entire text was to call the attention of States to their international legal obligations.

### 2. *The principle set forth in operative paragraph 6 of General Assembly resolution 2181 (XXI): the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

80. The situation which had arisen in the Special Committee with regard to this principle was a matter of concern to a number of representatives, who felt that there was a broad area of agreement on it in General Assembly resolution 2131 (XX) of 21 December 1965, containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. Some of those representatives attributed the lack of progress at the Special Committee's 1967 session to the fact that certain delegations, in ignoring the Special Committee's terms of reference as specified in operative paragraph 6 of General Assembly resolution 2181 (XXI) of 12 December 1966, and the Special Committee's own decision taken in 1966, [105] had submitted proposals which, far from widening the area of agreement expressed in resolution 2131 (XX), had had the effect of restricting that agreement or ignoring it, and thus cutting down the content of the principle and reducing its scope. The fact that not all the members of the Special Committee had adhered unequivocally to resolution 2131 (XX), and that some of them had sought to change the agreement already set forth in that resolution, had had the effect, in the opinion of the representatives in question, of preventing the fulfilment of the terms of reference given to the Special Committee by resolution 2181 (XXI) and paralysing the Special Committee's work on the principle. Consequently, it had not been possible to widen the area of agreement expressed in resolution 2131 (XX). Some representatives said they had supported the proposal in document A/AC.125/L.54 (see A/6799, para. 307) —that the Special Committee should include the operative paragraphs of resolution 2131 (XX) in the formulation of the principle of non-intervention in matters within the domestic jurisdiction of any State—with the idea of checking any attempts to weaken the resolution.

[105] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230, para. 341.

81. However, some representatives considered that although resolution 2131 (XX) was an important political document, it was not legal in character. Some of them were of the opinion that the delegations responsible for the situation which had arisen in the Special Committee in connexion with this principle had been those whose interpretation of the mandate contained in resolution 2181 (XXI) was to the effect that the Special Committee did not even have the authority to make formal changes in the text of resolution 2131 (XX). It was pointed out that the restrictive interpretation given to the Special Committee's mandate was at variance to what resolution 2181 (XXI) had been understood to mean. Some of these representatives indicated that they could not accept an interpretation which made it inadmissible to introduce the slightest modification to any of the paragraphs of resolution 2131 (XX). Other representatives maintained that what in reality had virtually paralysed the Special Committee had been not so much disagreement on substance as disagreement on how the principle was to be formulated. In their opinion, the resulting stalemate should cause delegations to reflect on the desirability of continuing on the course which had been pursued so far. For the purposes of the formulation of the principle, it was pointless to talk about the existence of a consensus which did not reflect reality, for to do so would only delay the solution of the problem. What was required was effort to harmonize the positions in so far as they were in conflict or divergent, bearing in mind that the basis for agreement already existed, and to prevent procedural or drafting questions from continuing to stand in the way of a consensus. It was recalled in that connexion that both operative paragraph 2 of resolution 2131 (XX) and the proposal submitted to the Special Committee by the United Kingdom (see A/6799, para. 306) contained the substance of the idea that had been at the centre of the discussion, namely, that coercive intervention involving measures of an economic, political or other nature constituted a violation of international law and of the Charter.

82. Some representatives indicated that, although for them the content of resolution 2131 (XX) was definitive, they respected the position of those delegations which did not share that view and they would be prepared to enter into negotiations, not, of course, on the content or form of resolution 2131 (XX) but on a wording which would not do violence to the fundamental positions of all delegations and which would allow the Special Committee to continue its work.

83. Resolution 2131 (XX) was regarded by many representatives as the expression of a universal juridical conviction of the principle of non-intervention in matters within the domestic jurisdiction of any State and not merely as a political declaration. Stressing the importance of the content of the resolution, the fact that it had been adopted with no votes cast against it, the elements that gave it the character of general State practice, and the fact that it embodied a principle recognized in several international instruments for over a century, those representatives considered that resolution 2131 (XX) was the accepted minimum on which the Special Committee should base its work on the principle. They felt that the operative part of the resolution should be included in the formulation of the principle, and some of them were in favour of including the preamble also, or at least certain ideas expressed in the preamble. In their view, the agreement expressed in resolution 2131 (XX) could be widened, but a formulation of the principle which did not fully reflect the resolution would be unacceptable and contrary to what had already been decided by the General Assembly. One representative pointed out that those who criticized the Declaration in resolution 2131 (XX) for containing vague ideas which lent themselves to varying interpretations forgot that a number of current legal concepts ("due process of law", "due diligence", "*ordre public*" etc.) were in effect no less precise than some of the terms used in the resolution so often referred to. Another representative considered the text of resolution 2131 (XX) entirely appropriate for a formulation of the principle, since the

purpose was to adopt not a treaty but a declaration which would be approved by the General Assembly and which would have the same legal standing as resolution 2131 (XX). A third representative felt that if the Special Committee could not agree on the extent to which the area of agreement expressed in resolution 2131 (XX) should be widened, it would be better so to inform the General Assembly instead of criticizing certain terms or limiting the scope of the resolution.

84. Some representatives found it strange that it should be so difficult to draft a legal text in language all could accept when there existed a large measure of agreement, expressed in the near-unanimous support for resolution 2131 (XX). One representative, while fully endorsing all the provisions of the resolution, did not consider it a legal document in the strict sense and thought that the Special Committee should formulate the principle in legal terms after giving due consideration to the area of agreement marked by the resolution.

85. Other representatives were of the opinion that the General Assembly had done well to adopt resolution 2131 (XX) as an expression of its concern at the many violations of the principle but they thought that the wording of the resolution was open to differing interpretations and was therefore not suitable for a legal text. For example, the resolution dealt with some of the most fundamental principles of the United Nations without clearly defining their relationship to non-intervention. One representative pointed out that the wording of the resolution's operative part was so sweeping as to appear to prohibit any action which, whether intentionally or not, might adversely affect the interest of other States, thus ignoring the fact that that was often only a consequence of the interdependence among nations that existed in the present-day world.

86. Some representatives stressed the need to affirm and strengthen the principle, in view of the fact that intervention was becoming more frequent, assuming varied forms, violating the basic principles of peaceful coexistence and endangering peace. They considered non-intervention a central principle of international law, general and universal in character and of special importance to developing countries, countries not very strong or which had only recently acceded to independence.

87. Others took the view that the complexity of international relations urgently required that the formulation of the principle should define what forms of intervention could not be tolerated and should therefore be outlawed. One representative emphasized that a careful distinction must be made between lawful and unlawful intervention on the one hand, and aggression and self-defence on the other, lest the victim of aggression be labelled the aggressor. On the other hand, another representative expressly opposed the tendency to consider the principle a mere limitation of an alleged right of intervention.

88. It was also pointed out that in formulating the principle it was necessary to bear in mind its relationship to the principle of sovereign equality, the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. In the view of one representative, the prohibition of the use of force would be a specific manifestation of the principle of non-intervention in matters within the domestic jurisdiction of any State.

89. In reviewing the historical evolution of the principle, representatives observed that it had been laid down in one form or another in many international instruments, including the Convention on Rights and Duties of States concluded at Montevideo in 1933, the Charter of the Organization of American States, the Charter of the Organization of African Unity and the Charter of the United Nations. Some representatives said that the history of Latin America was the history of the principle of non-intervention in matters within the domestic jurisdiction of any State. For the peoples of Latin America the prin-

ciple, far from being a mere formal clause, reflected their profound convictions and constituted the main juridical defence of their independence and sovereignty.

90. It was also emphasized by certain representatives that Article 2, paragraph 7, of the Charter dealt with only one aspect of non-intervention, namely interference in the internal affairs of another State. One representative expressed the view that in Article 2, paragraph 7, the term "United Nations" meant both the Organization and any of its Members and the word "essentially" referred to matters in respect of which States had exclusive competence.

91. Some representatives called on the Special Committee to attempt to define the limits of the principle of non-intervention in matters within the domestic jurisdiction of any State by indicating what was to be regarded as falling within the domestic jurisdiction of States. One representative considered as not coming within that jurisdiction such acts as genocide, crimes against humanity, the denial of the right of self-determination to peoples under colonial or alien rule, or acts committed in violation of international agreements. Another representative felt that the principle could not be construed to mean that a country could violate the fundamental human rights of its citizens without such violations becoming the concern of the entire world community and that it could not be understood to refer to Governments which had not been voluntarily created by the people.

92. Recalling that military intervention was only one of the possible forms of intervention, which tended to assume clandestine and concealed forms, some representatives felt that the formulation of the principle should deal with intervention in any form, whether open or indirect, in the foreign or domestic affairs of a State for political, military, economic, ideological or other reasons. Others emphasized the obligation not to interfere in the internal affairs of a State, condemning as unlawful not only the various forms of aggression but also subversive activities, the activities of infiltrators and mercenaries, and propaganda campaigns aimed at changing the system of another State by violence. It was added that certain apparently passive attitudes could also constitute acts of intervention. One representative was of the opinion that the formulation of the principle must exclude any possibility of subjective evaluations, so as to prevent interventionists from trying to justify their intervention. Certain representatives also condemned acts of intervention for the maintenance of colonialism or neo-colonialism, and felt that the obligation laid down in the principle did not apply to aid given to peoples under colonial rule with a view to accelerating their accession to independence.

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

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

93. Various representatives expressed regret that the Special Committee, despite a further exchange of views, had been unable in 1967 to amplify the consensus text adopted on this principle in 1966.[106] Some representatives thought, however, that an amplification could still be achieved by taking into account some of the proposals submitted to the Special Committee in 1967.

94. It was affirmed that this principle, which is closely akin to the principle prohibiting the threat or use of force, should be respected by all States, since the establishment of peaceful international relations depends on its implementation. In the opinion of one representative, the formulation of the principle must be compatible with Chapter VI of

[106] *Ibid.*, para. 248.

the Charter, in that States must be allowed to choose among the various means of peaceful settlement listed in Article 33. He drew attention to the adoption on 21 July 1964 by the Organization of African Unity, in accordance with article XIX of its Charter, of a Protocol on Mediation, Conciliation and Arbitration.

95. Various representatives commented on some aspects of the principle in relation to the consensus text of 1966. One of them considered that that text was open to misinterpretation because it ignored the principle which appeared in Article 95 of the United Nations Charter. Another representative expressed the view that, with regard to the right of States members of a regional agency to have direct recourse to the United Nations, the consensus text struck a just balance by recommending that such States should make all possible efforts to bring about the peaceful settlement of disputes of a local character by means of those agencies. On this subject, however, another representative maintained that the formulation could be improved by insertion of the amendment proposed in the Special Committee by Chile.[107] According to another representative, the formulation should stress that only the United Nations, through its appropriate organs, could use force to impose its decisions, except in cases of self-defence against an armed attack pending action by the United Nations. Lastly, another representative expressed support for the five-Power proposal[108] relating to the application and interpretation of general multilateral agreements, since the fact that such agreements were carefully drafted with the participation of the entire international community seemed sufficient reason to recommend that the parties should deny themselves the power to decide unilaterally on the interpretation or application of them.

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

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

(b) *The principle of sovereign equality of States*

98. In the opinion of one representative, the formulation of this principle in the Special Committee in 1966[109] had been augured well for the subsequent consideration of the principles as a whole, for it had implied the reaffirmation of the principle on which the international relations of States and their participation in internation organizations were based. According to another representative, the principle implied that States had the

[107] *Ibid.*

[108] *Ibid.*, para. 159.

[109] *Ibid.*, para. 403.

sovereign right to determine their reciprocal relations, and were strictly equal, so that no State, acting individually or with others, could lawfully claim superiority or authority of any kind over any other State.

99. One representative said he supported the consensus text because it reproduced, in the main, the wording adopted at San Francisco in 1945, with the addition, in paragraph 2 (*e*), of a reference to the right of every State freely to choose and develop its political, social, economic and cultural system. The inclusion of that clause had represented, in the opinion of another representative, a real advance in the codification of the basic principle enunciated in Article 2, paragraph 1, of the Charter. One representative, however, was of the opinion that the second sentence in paragraph 1 of the consensus text adopted in 1966 was not clear, and that it seemed to mean that States were equal in law in spite of their inequalities in economic, social, political or other fields. That would legalize some *de facto* inequalities between States. In order to avoid such an erroneous interpretation, and in view of the fact that the implications of the words "differences" and "different systems" were not the same, his delegation had suggested that the sentence should read as follows: "They have equal rights and duties and are equal members of the international community, notwithstanding the different economic, social and political systems or other way of life they have adopted."

100. A number of representatives referred to specific aspects which in their opinion should have been included in the text with a view to widening the area of agreement. For example, frequent mention was made of the matter of the right of States to dispose freely of their national wealth and natural resources. Several representatives noted with satisfaction that in 1967 the Special Committee had agreed in principle that a matter of such great importance to the developing countries should be included in the formulation of the principle, and expressed the hope that appropriate agreement on a specific wording would finally be reached. On that point, in the view of one representative, the formulation of the principle should be made in the light of General Assembly resolutions 1803 (XVII), 2158 (XXI) and 2200 A (XXI).

101. One representative expressed his gratification at the agreement in principle of the Special Committee in 1967 with respect to the possible mention in the formulation of the principle of the right of every State to participate in the solution of international questions affecting its legitimate interests.

102. Finally, certain representatives strongly supported the right of every State to be admitted to international organizations, to become a party to multilateral treaties that affect its legitimate interests, to eliminate foreign military bases established on its territory and to prohibit aircraft carrying nuclear weapons from flying over its territory. Emphasis was also laid on the primacy of international law.

### C. Considerations on future work and methods of work

103. There was general agreement on the need to continue the work of codification and progressive development of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, and the idea that an item with that title should be included in the provisional agenda for the twenty-third session of the General Assembly was approved. Certain representatives, however, expressed reservations about the procedures or methods of work adopted so far and some stated that the final position of their Governments on any texts that might be adopted would depend on the adequacy of the methods of legal codification and development to be followed in the Special Committee.

### 1. *Convening of the Special Committee*

104. It was generally recognized that the best way of continuing the examination and formulation of the principles was again to invite the Special Committee reconstituted by General Assembly resolution 2103 A (XX) of 20 December 1965 to continue its work. Although some representatives expressed doubts about the advisability of convening the Special Committee at too early a date, in view of the United Nations heavy programme of legal activities for 1968, the majority of those who spoke in the debate declared themselves in favour of holding a new session of the Special Committee in 1968, as provided for in operative paragraph 3 of draft resolution A/C.6/L.628 and Add.1-3 (see para. 20 above). It was agreed that in view of the administrative facilities and the time available, the 1968 session of the Special Committee should last three or four weeks.

### 2. *Mandate of the Special Committee for its 1968 session*

105. In the general debate, there were various trends of opinion on this question. Some representatives urged that the Special Committee should try to finish its work at its 1968 session. Others, however, considered it more realistic, in view of the time the Special Committee would have available, to keep its task in 1968 limited, bearing in mind the state of work on each of the principles and the draft declaration as a whole. Certain representatives considered that the Special Committee should adopt a programme of work in three stages, namely: (*a*) formulation of the principles on which there had been no consensus; (*b*) widening of the points of agreement on the other principles; (*c*) preparation of a legal document or draft declaration on all the principles.

106. Some representatives were of the opinion that the Special Committee should resume its work in 1968 at the point where it had left off at the close of its 1967 session and that the seven principles should therefore be referred to it with an order of priority which took into account the state of the work on each of them. Many representatives, on the contrary, expressed the opinion that in 1968 the Special Committee should concentrate on those principles on which there had not been any agreement. In that connexion, some mentioned the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. It was urged by others that the principle of non-intervention in matters within the domestic jurisdiction of any State should also be referred to the Special Committee. Some favoured the referral of this principle but insisted that consideration should be limited to only those proposals relating to it that were compatible with General Assembly resolution 2131 (XX), with a view to widening the area of agreement already expressed in that resolution. Others favoured the referral but would have the Special Committee deal with the principle only after work had been completed on the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples. Some representatives were opposed to referring the principle of non-intervention in matters within the domestic jurisdiction of any State to the Special Committee in such terms that its study would be unduly restricted. Certain representatives thought that it would be preferable to seek the improvement of the texts on which agreement had already been reached when the final text of the draft declaration was drafted. Finally, one representative considered that the new mandate given to the Special Committee should not depart from that laid down in General Assembly resolution 2181 (XXI).

107. Operative paragraphs 3, 4 and 5 of draft resolution A/C.6/L.627 and operative paragraphs 4, 5 and 7 of draft resolution A/C.6/L.628 and Add.1-3 set forth the mandate of the Special Committee for its 1968 session. The position of representatives on those paragraphs was determined on the basis of the following main questions: (*a*) whether an

order of priority should be expressly established for the consideration of the principles referred to the Special Committee; (*b*) whether it was appropriate to refer to it all seven principles or only those on which there had not yet been any agreement; (*c*) whether reference should be made to General Assembly resolution 2131 (XX) in connexion with the principle of non-intervention in matters within the domestic jurisdiction of any State, and if so, how the task to be performed by the Special Committee on that principle should be defined; (*d*) whether the Special Committee should try to widen the area of agreement on the principles already formulated; (*e*) whether it was appropriate to entrust the Special Committee with the task of revising the drafting of the seven principles in order to harmonize the texts and in what terms that task should be defined; (*f*) whether it would be opportune to ask the Special Committee to prepare a draft declaration, including the preamble and final clauses; (*g*) whether the Special Committee should be expressly requested to submit a complete report on the principles it was asked to consider. Differences with regard to the third of these questions had a decisive effect on the nature of the voting.

### 3. *Consensus and majority*

108. Several representatives considered that the method of consensus or general agreement should be an incentive for negotiation and compromise, but not an absolute rule or immutable dogma. They emphasized that unanimity or consensus was a legally desirable and important goal to be aimed at, but they were opposed to its abuse as a kind of right of veto to prevent or hinder the progressive development of international law. It was unacceptable that a small number of States should oppose that development by refusing to recognize rules of international law that were almost universally accepted. Furthermore, the main concern should be with the substance of the rules and not with trying at all costs to reach a consensus in which their content was sacrificed. A clear formulation accepted by a great majority of States would be preferable to an inadequate or defective rule adopted unanimously. One representative added that most of the present rules of international law had originated in the practice of some States only and that even for the adoption of the Charter of the United Nations the procedure of a qualified majority vote had been used. All these representatives agreed that the Special Committee should do everything possible to reach a consensus, but that if that proved impossible because of unjustified opposition by some States, the Special Committee should give up the rigid procedure of consensus and adopt majority decisions. Some representatives said that in that event they would prefer the procedure of a qualified majority. Pointing out that the rules of procedure of the General Assembly applied to the proceedings of the Special Committee, some representatives welcomed the reference to them in the sixth preambular paragraph of draft resolution A/C.6/L.628 and Add.1-3. Finally, it was also observed that the consensus of a body with limited membership like the Special Committee did not necessarily represent the consensus of the international community.

109. Other representatives, on the other hand, expressed concern at the fact that doubt had been cast on the advisability of following the consensus method in dealing with the development of principles of international law and opposed any attempt to substitute majority vote for consensus. To those representatives, the method of consensus, based on a spirit of mutual co-operation, was not only the most appropriate method, but in fact the only possible one. Noting the great importance attached to consensus in the Sixth Committee and the International Law Commission, those representatives stated that if that method was abandoned there would be less effort to overcome differences and to compromise and that there would be appreciably less possibility of universal recognition and application of formulations which were adopted by majority vote and lacked the support of all or almost all States. A text adopted by consensus, however imperfect,

would be more likely to be faithfully respected and observed by all States in their relations with each other. Consequently, those representatives felt that the codification and development of principles by means of a simple majority vote would be harmful to the unity and indivisibility of the international legal order. One of them said that codification achieved through such a procedure would merely reveal the existence of open disagreement among States, which might mean that the development of the principles of international law under consideration would move backwards rather than forwards. It was added that only if the declaration on those principles ultimately adopted by the General Assembly met with the quasi-unanimous approval of the Members of the United Nations could it be said to express a universal legal conviction and thus be considered a source of law under Article 38, paragraph 1 c, of the Statute of the International Court of Justice. Lastly, it was also asserted that undue haste would only place the texts already adopted by consensus in jeopardy and undermine the authority of the United Nations by drawing attention to its limitations.

110. One representative felt that the Special Committee should continue to employ the method of unanimity, unless it might be desirable in the future to resort to a majority vote in order not to have to abandon the formulation of principles on which unanimity could not be achieved. Some representatives pointed out that a minority position in the Special Committee could become a majority position in the General Assembly and the Sixth Committee. One representative believed that the Special Committee should continue to adopt its formulations by consensus but that the General Assembly and the Sixth Committee should take decisions on them by majority vote. He added that where the Special Committee failed to achieve a consensus on a particular text because of a slight difference of opinion, it could authorize its Rapporteur to note and examine the differences and to recommend an objective formulation in his report.

### 4. *Need to improve future methods of work*

111. The suggestions made by the Italian representative in the Special Committee in his statement on methods and procedures for future work (A/6799, paras. 481 and 482) were received with interest and some representatives considered that the Special Committee should study the question seriously at its next session.

112. Certain representatives maintained that the Special Committee should base its work on a serious legal study of the theoretical positions and practices of all States, old and new, also taking into account the instruments and declarations concerning the principle under study. In point of fact, they said, the Special Committee's work had been based on proposals which mainly reflected the States' own points of view on those aspects of the principles in which they were particularly interested.

113. Others stressed the advantages of making better use of the working groups set up within the Drafting Committee of the Special Committee. It was suggested that these groups should meet before the next session of the Special Committee and that any States which so desired should be allowed to participate in their discussions. Some representatives saw the working groups' activity as a general preparation for the debate in the Drafting Committee. It was also suggested that the results of the working groups' proceedings could be submitted to the Special Committee itself.

114. Certain representatives considered it essential that possible compromise formulations should be discussed outside the conference rooms or by unofficial groups composed of representatives of the countries upholding different points of view. One representative was in favour of reducing the time allowed by the Special Committee for general statements on the principles, in order to increase the time allocated to the detailed study of the texts

submitted, and another thought that the Special Committee should have a free exchange of views on a principle as a whole studying the formulation of each of its particular elements.

115. With regard to the appointment of special rapporteurs by the Special Committee, the special rapporteur would at the same time be a representative of one of its Member States; he thought it might be preferable to entrust the preparatory work to a body of experts such as the International Law Commission.

### 5. *Preparatory consultations*

116. Many representatives said that the Special Committee's work could be advanced if the Governments of Member States gave more attention to the preparation of its sessions; particular importance should be attached to unofficial contacts and preliminary consultations between sessions. That would facilitate the planning and co-ordination of the Special Committee's work. These representatives emphasized their agreement with the recommendation contained in operative paragraph 6 of draft resolution A/C.6/L.628 and Add.1-3.

### 6. *Work after 1968*

117. A few representatives thought that, if the Special Committee did not complete its work in 1968, the General Assembly should decide at its twenty-third session on the way in which the work should be pursued. One representative said that, to hasten the adoption of the declaration, whatever draft resolution was adopted at the present session of the General Assembly should indicate that if the Special Committee did not reach general agreement in 1968, the Assembly itself would undertake the task of codifying the principles. It was also said that the Special Committee could not be reconstituted indefinitely.

### 7. *Adoption of a General Assembly declaration on the principles*

118. Several representatives reaffirmed the aim of the Special Committee's work, which was the adoption by the General Assembly of a declaration setting forth the principles of international law concerning friendly relations and co-operation between States, adding that no effort should be spared to see that the declaration was adopted as soon as possible.

119. Some representatives stressed the close connexion between the principles under consideration and took the view that they should be included in a single declaration forming a coherent whole, accompanied by a preamble and the necessary final clauses. Others stated that, if the existing differences of opinion prevented the adoption of a declaration on the seven principles, they would not be opposed to the approval of separate declarations on the principles upon which agreement had been reached.

120. Certain representatives thought that each of the seven principles and the draft declaration as a whole should be formulated and adopted by the Special Committee in accordance with the appropriate procedures before their adoption by the General Assembly. Others, on the contrary, considered that the General Assembly would have to take a decision on the questions upon which the Special Committee had not been able to agree, with a view to the final adoption of the draft declaration.

121. It was also suggested by certain representatives that when the Special Committee prepared its final draft declaration, all Member States should be given the opportunity to express their opinions explicitly and in detail by the submission of written observations, as was done for the drafts prepared by the International Law Commission. One representative suggested that the International Law Commission should be requested to comment on the final formulation of the seven principles before they were sent to the Sixth Committee for examination.

122. Several representatives emphasized that the adoption of a declaration by the General Assembly was only an important step, a "landmark" in the codification and progressive development of the seven principles under study. Some thought that it would ultimately be necessary to consider the possibility that the formulation of the principles, or at least of some of them, would be the subject of conventions which would give them the status of conventional norms.

123. After pointing out that codification and progressive development were very different operations and indicating the General Assembly's competence in that respect, one representative said that the declaration, when adopted, would be important in so far as it expressed not merely a political desire but the recognition of those principles by all the Member States through a formulation on which they obviously intended to confer a legal character. That would encourage the generalization of a practice which might become established as a custom within the meaning of paragraph 1 b of Article 38 of the Statute of the International Court of Justice.

## V. Voting

124. At its 1006th meeting, the Sixth Committee decided to vote on the draft resolutions (see paras. 19 and 20 above). It voted first on the sixty-seven-Power draft (A/C.6/L.628 and Add.1-3). The voting took place as follows:

(*a*) Paragraph 5 of the operative part of the draft resolution, on which a separate vote was requested by the representative of the United States, was adopted by a roll-call vote—requested by the representative of Nigeria—by 72 votes to 13, with 7 abstentions. The result of the vote was as follows:

*In favour:* Afghanistan, Algeria, Argentina, Barbados, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Ceylon, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia, France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malayisia, Mali, Mauritania, Mexico, Mongolia, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Rwanda, Sierra Leone, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

*Against:* Australia, Belgium, Denmark, Iceland, Japan, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, United Kingdom of Great Britain and Northern Ireland, United States of America.

*Abstaining:* Austria, Canada, Finland, Italy, Somalia, Sweden, Turkey.

(*b*) On the proposal of the representative of Cameroon, a vote was taken on the remainder of the draft resolution. It was adopted by 88 votes to none, with 3 abstentions.

(*c*) The draft resolution was then put to the vote as a whole. By a roll-call vote, requested by the representative of Mexico, it was adopted by 78 votes to none, with 15 abstentions. The result of the vote was as follows:

*In favour:* Afghanistan, Algeria, Argentina, Austria, Barbados, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia,

France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Lesotho, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Romania, Rwanda, Sierra Leone, Somalia, Spain, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

*Against:* None.

*Abstaining:* Australia, Belgium, Denmark, Finland, Iceland, Japan, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

125. At the same meeting, the representatives of Australia, Austria, Belgium, Canada, Finland, France, Italy, the Netherlands, New Zealand, Pakistan, the Philippines, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, and the United States of America gave explanations of the votes of their delegations.

**Recommendation of the Sixth Committee**

126. The Sixth Committee 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 1636th plenary meeting, on 18 December 1966, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 126 above). For the final text, see resolution 2327 (XXII) below.

### 2327 (XXII). Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

*The General Assembly,*

*Recalling* its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965 and 2181 (XXI) of 12 December 1966, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

*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 those 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 the adoption of a declaration on these principles as an important step towards the enhancement of the role of international law in present-day conditions,

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

*Having considered* the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, [110] which met at Geneva from 17 July to 19 August 1967,

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 that Committee for the valuable work it has performed;

3. *Decides* to ask the Special Committee, as reconstituted by the General Assembly in resolution 2103 (XX), to meet in 1968 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue its work;

4. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth, twenty-first and twenty-second session of the General Assembly and in the 1964, 1966 and 1967 sessions of the Special Committee, to complete the formulation of:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

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

5. *Requests* the Special Committee to consider proposals compatible with General Assembly resolution 2131 (XX) of 21 December 1965 on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter of the United Nations, with the aim of widening the area of agreement already expressed in that resolution;

6. *Calls upon* the members of the Special Committee to devote their utmost efforts to ensuring the success of the Special Committee's session, in particular by undertaking, in the period preceding the session, such consultations and other preparatory measures as they may deem necessary;

7. *Requests* the Special Committee to submit to the General Assembly at its twenty-third session a comprehensive report on the principles entrusted to it;

8. *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;

9. *Decides* to include in the provisional agenda of its twenty-third session an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations".

*1637th plenary meeting*
*18 December 1967*

[110] *Ibid.*, document A/6799.

## (11) QUESTION OF METHODS OF FACT-FINDING (AGENDA ITEM 88)

### (*a*) Report of the Sixth Committee[111]

[*Original text: English, French and Spanish*]
[*15 December 1967*]

### I. Introduction

1. The item concerning methods of fact-finding was first placed on the agenda of the General Assembly at its twentieth session as a sub-item of 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". In its resolution 1967 (XVIII) of 16 December 1963, the Assembly had requested the Secretary-General to study the problem and referred the question to the 1964 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. At its twentieth session, the Assembly examined the relevant reports of the Secretary-General[112] and of the 1964 Special Committee[113] and adopted resolution 2104 (XX) of 20 December 1965, in which it requested the Secretary-General to prepare a second report on the question and invited Member States to submit any further views they might have on that subject. At its twenty-first session, the General Assembly, having been unable to consider the substance of the question, decided in its resolution 2182 (XXI) of 12 December 1966 to include an item entitled "Question of methods of fact-finding" in the provisional agenda of the twenty-second session and to renew its invitation to Member States to submit any views, or further views, they might have on that subject.

2. At the twenty-second session of the General Assembly, the General Committee recommended that the item entitled "Question of methods of fact-finding" should be allocated to the Sixth Committee and the Assembly approved that recommendation at its 1564th plenary meeting, on 23 September 1967.

3. At the 973rd meeting of the Sixth Committee, on 17 October 1967, in the course of a discussion on the organization of work, a representative recalled that at the twenty-first session a number of delegations had expressed themselves in favour of establishing a working group on the question of methods of fact-finding. As it had been planned to allocate only five meetings to the item during the twenty-second session, he thought that the Chairman should be authorized to appoint a working group whose task would be to draw conclusions concerning the question. In reply to that suggestion, some representatives pointed out that such a group would not be able to work efficiently without knowing the views of delegations. The Committee finally decided, therefore, to devote part of its scheduled meetings to a general debate during which the question of the possible establishment of a working group would also be considered, on the understanding that if an affirmative conclusion was reached on that point, a working group would be established and the results of the deliberations of the group subsequently considered by the Committee at its remaining meetings.

4. The Sixth Committee devoted its 989th, 990th and 991st meetings, held on 2 and 3 November 1967, to the general debate and decided, at the conclusion of that debate, to establish a working group. After receiving the report of the Working Group (A/C.6/

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[111] Document A/6995, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 88.

[112] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694.

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

L.639), the Committee again took up the item at its 1023rd and 1024th meetings, held on 13 December 1967.

5. In studying the item, the Committee had before it the observations and additional comments received from Governments in pursuance of General Assembly resolution 2182 (XXI) (A/6686 and Corr.1 and Add.1-3).

## II. Proposal

6. On 12 December 1967 a draft resolution (A/C.6/L.642), identical with the compromise proposal approved unanimously by the Working Group (annex I, para. 17, below), was circulated under the sponsorship of the delegations of Czechoslovakia, Ecuador, Finland, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia and Togo. The draft resolution was adopted without change by the Sixth Committee (see paragraph 24 below).

## III. Discussion

### A. First stage

#### 1. *General debate*

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

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

9. Several delegations supported this suggestion, but many others took opposing views. Three main arguments were adduced against the establishment of a permanent international fact-finding body. In the first place, some delegations said that the establishment in the United Nations system of a permanent body which would have powers assigned to the Security Council would be contrary to the provisions of the Charter. In reply, it was argued that the proposed body could be used for fact-finding in many situations other than those in which the Council had competence, and that it would function in matters within

the Council's competence only in so far as the Council decided to have recourse to it. That argument was countered by the observation that the Security Council could always establish an *ad hoc* organ if it saw fit and that there was no need for a permanent body. Secondly, it was pointed out that in addition to regional fact-finding machinery there were already institutions of a general character in that field, and that in all cases it was the prerogative of States, as sovereign entities, to decide what fact-finding body was most appropriate in a given instance. It was also pointed out that the present stage of development of international law did not permit the centralization of existing fact-finding procedures. Thirdly, it was claimed that there were no grounds for assuming that a permanent body would be more effective than the existing procedures. Experience had proved, on the contrary, that what had made these procedures successful was their flexibility and diversity, and that therefore nothing would be gained by trying to centralize or codify them.

10. In addition to the suggestion that a permanent fact-finding body should be established, it was asked what steps might be taken to improve the existing facilities for fact-finding and why those facilities were not used more frequently. In the course of the discussion it was suggested that the Assembly might again invite Member States to consider submitting names for inclusion in the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III), thereby taking up the suggestion made in the report of the Secretary-General on the question submitted at the twentieth session. More frequent recourse to the services of rapporteurs and mediators was also advocated in cases submitted to the Security Council or the General Assembly. Reference was made to a number of other facilities, such as those provided for in the Hague Conventions of 1899 and 1907 and the 1928 General Act for the Pacific Settlement of International Disputes.[114] Various regional facilities were also mentioned.

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

### 2. *Establishment of a working group*

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

"*The Sixth Committee*,

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

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

"*Noting* that, with regard to methods of fact-finding in international relations, a considerable documentation has now been made available by the reports of the

[114] League of Nations, *Treaty Series*, vol. XCIII (1929-1930), No. 2123, p. 345.

Secretary-General [115] on practice in relation to settlement of disputes as well as in respect to the execution of international agreements, by chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, [116] and furthermore by the views expressed and the proposals made by Member States since the seventeenth session of the General Assembly, including the written comments by Governments submitted in pursuance of Assembly resolutions 1967 (XVIII), 2104 (XX) and 2182 (XXI), [117]

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

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

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

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

"3. *Requests* its Chairman after consultations to propose to the Committee the composition of the working group containing no more than fifteen members and being so designated as to ensure a balanced representation of the various geographic groups within the United Nations."

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

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

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

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

[116] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

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

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

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

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

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

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

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

18. At its 1023rd and 1024th meetings, held on 13 December 1967, the Sixth Committee considered the report submitted by the Working Group (A/C.6/L.639). The Sixth Committee also had before it a draft resolution (A/C.6/L.642), co-sponsored by the States listed in paragraph 6 above, identical in its terms with that submitted by the Working Group. It was stated in the course of the Sixth Committee's discussions that the Legal Counsel had given his opinion that, in accordance with standard United Nations practice, it was not necessary for the draft resolution, which had been unanimously adopted by the Working Group, to be sponsored by individual Member States; the opening words of paragraph 17 of the Working Group's report had nevertheless been chosen so as not to prevent States from sponsoring the proposal if they wished to do so.

19. All representatives speaking on the item during the second stage of the Sixth Committee's debate expressed their support for the draft resolution which had been proposed. A tribute was paid to the efforts of the Working Group, which, despite the difficulties encountered, had successfully led to a reconciliation of the different views held on the question of methods of fact-finding. Although the results achieved had not been spectacular, they represented a positive if modest step towards wider acceptance of the importance

of recourse to impartial methods for the settlement of international disputes. In this sense the item could be said to have made distinct progress since its first inclusion in the agenda of the General Assembly. Several delegates, speaking in explanation of vote, wished to emphasize that the draft resolution was based on the assumption that no permanent organ would be established. They pointed out that the majority of members had not in fact favoured any advance along those lines; the draft resolution did not therefore institute any change in the obligations of Member States.

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

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

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

## IV. Voting

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

## Recommendation of the Sixth Committee

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

[*Text adopted without change by the General Assembly. See "Resolution adopted by the General Assembly" below.*]

# ANNEXES

## Annex I

## Report of the Working Group on the Question of Methods of Fact-Finding*

### I. Establishment of the Working Group, membership and documentation

1. At its 991st meeting, on 3 November 1967, the Sixth Committee adopted a resolution, the operative part of which was worded as follows:

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

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

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

2. At its 998th meeting the Committee decided, on the proposal of the Vice-Chairman, to increase the membership from fifteen to sixteen; the following States were designated as members of the Working Group: Ceylon, Czechoslovakia, Ecuador, Finland, France, Jamaica, Japan, Lebanon, Liberia, the Netherlands, Somalia, Togo, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America. It was also agreed that the representative of Mexico would attend the debates of the Group in his capacity as Rapporteur of the Sixth Committee.

3. The Group held seven meetings on 17, 22 and 27 November and 4, 8 and 11 December 1967. At its first meeting, convened on 17 November by the Rapporteur of the Sixth Committee, it unanimously elected Mr. El-Erian (United Arab Republic) Chairman and Mr. Francis (Jamaica) Rapporteur. The Chairman, having been called away on other duties, was replaced as from the third meeting by the Rapporteur of the Group.

4. The document prepared by the Secretariat listing the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding (A/C.6/SC.9/L.1) was submitted to the Working Group by the Secretariat, pursuant to paragraph 2 of the above-mentioned resolution. The Working Group recommends to the Sixth Committee that this document should be included as an annex to the Committee's report to the General Assembly.

### II. Discussion

5. In accordance with a suggestion made by the Chairman, the Group proceeded first, on the basis of the Secretariat document (A/C.6/SC.9/L.1), to the general debate on the methods to be followed, bearing in mind the terms of reference laid down by the Sixth Committee.

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

* Previously issued under the symbol A/C.6/L.639.

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

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

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

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

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

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

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

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

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

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

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

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

" '*The General Assembly*,

" '. . .

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

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

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

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

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

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

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

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

"*The General Assembly,*

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

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

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

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

"*Considering* that, in Article 33 of the Charter of the United Nations, inquiry is mentioned as one of the peaceful means by which the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution, and that inquiry, investigation and methods of fact-finding are also referred to in other instruments of a general or regional nature,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. The representative of the Netherlands pointed out that the fifth and eleventh preambular paragraphs of his proposal were based on preambular paragraphs contained in Assembly resolution 1967 (XVIII) and that the eighth preambular paragraph followed the wording agreed upon by the Special Committee on Principles of International Law concerning Friendly Relations and co-operation among States with regard to the principle of the peaceful settlement of disputes. As to operative paragraphs 4 and 6, he explained that they reflected the suggestions put forward by the Secretary-General in his report; [118] operative paragraph 10 was also to be read in the same context. Operative paragraphs 5 and 7 were founded on the proposals made by the United Kingdom and Japan (A/C.6/SC.9/L.1, paras. 16 and 11 respectively. Operative paragraphs 8 and 9 took up the ideas put forward by Ceylon and Nigeria (*ibid.*, paras. 7 and 13 respectively). Operative

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

paragraph 11 was based on the report of the United Nations Institute for Training and Research, [119] while operative paragraph 12 should be considered in the light of the report of the International Law Commission on the work of its nineteenth session. [120]

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

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

At the same time, the Group accepted that it should be stated in its report that the facilities referred to included those provided by the Panel for Inquiry and Conciliation set up under General Assembly resolution 268 D (III), the facilities for the formation of *ad hoc* international commissions of inquiry under The Hague Conventions of 1889 and 1907 and the facilities within the framework of the Permanent Court of Arbitration and under the provisions of the General Act for the Pacific Settlement of International Disputes. A few delegation stressed the fact that this statement was without prejudice to their position in regard to those facilities.

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

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

"*The General Assembly*,

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

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

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

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

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

"2. *Draws attention* to the fact that, whenever methods for the peaceful settlement of disputes are applied in accordance with Article 33 of the Charter of the United Nations,

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

[120] *Ibid., Twenty-second Session, Supplement No. 9*, para. 46.

in every concrete case recourse should be had according to the possibilities, if it appears appropriate, to investigation for fact-finding purposes in accordance with the provisions of the Charter."

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

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

## III. Recommendation of the Working Group

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

"*The General Assembly*,

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

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

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

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

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

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

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

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

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

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

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

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

## Annex II

**Document prepared by the Secretariat listing the suggestions made by Member States and by the Secretary-General in relation to the question of existing or possible improved methods of fact-finding***

### INTRODUCTION

1. At its 991st meeting, on 3 November 1967, the Sixth Committee adopted a resolution establishing a Working Group on the Question of Methods of Fact-Finding. In operative paragraph 1 of the resolution it was stated that the task of the Working Group would be

> "to report and to make recommendations on the possibilities of reconciliation of different views in order to expedite the consideration of the item by the Sixth Committee, in the light of the reports of the Secretary-General, the views expressed and the proposals made".

2. In operative paragraph 2 of the resolution the Sixth Committee requested the Secretariat

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

The present document, which has been prepared in response to this request, does not attempt to recapitulate all the views that Member States have expressed at various times since the topic was first raised, but only to list the specific suggestions which have been made regarding either existing or possible improved methods of fact-finding. A more extensive study would, in any case, be difficult to execute in the limited time available, having regard to the fact that the Working Group is to report to the Sixth Committee at the present session of the General Assembly.

3. The present document has been prepared on the basis of the following:

(*a*) The discussion of agenda item 71 in the Sixth Committee at the eighteenth session of the General Assembly; [121]

(*b*) The discussions at the first session in 1964 of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; [122]

(*c*) The discussion of agenda items 90 and 94 in the Sixth Committee at the twentieth session of the General Assembly; [123]

(*d*) The report of the Secretary-General on methods of fact-finding; [124]

(*e*) Comments received from Governments of Member States; [125]

(*f*) Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; [126]

(*g*) The discussion of agenda item 87 in the Sixth Committee at the twenty-first session of the General Assembly; [127]

(*h*) Comments received from Governments of Member States; [128]

(*i*) Comments received from Governments of Member States; [129]

(*j*) The discussion of agenda item 88 in the Sixth Committee at the twenty-second session of the General Assembly; [130]

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* Previously issued under the symbol A/C.6/SC.9/L.1.

[121] *Official Records of the General Assembly, Eighteenth Session, Sixth Committee*, 803rd to 825th, 829th and 831st to 834th meetings.

[122] A/AC.119/SR.36, 37 and 39.

[123] *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 870th to 872nd, 874th to 893rd, and 898th meetings.

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

[125] *Ibid.*, documents A/5725 and Add.1-7.

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

[127] *Ibid., Twenty-first Session, Sixth Committee*, 924th to 942nd meetings.

[128] *Ibid., Twenty-first Session, Annexes*, agenda item 87, documents A/6373 and Add.1.

[129] A/6686 and Corr.1 and Add.1-3.

[130] *Official Records of the General Assembly, Twenty-second Session, Sixth Committee*, 989th to 991st meetings.

In addition, reference is made in one case to a statement made in the General Assembly.

4. The suggestions are set out in the alphabetical order of the Member States making the suggestions, followed by the suggestion of the Secretary-General. No reference is made to the comments of other Member States regarding the suggestions made.

## SUGGESTIONS

### *Establishment of a special body reporting to the Security Council (Cameroon)*

5. In submitting its comments in response to General Assembly resolution 1967 (XVIII), the Government of Cameroon stated:

> "As for the question of methods of fact-finding, it would be desirable for consideration to be given to the establisment of a special body reporting to the Security Council. Such a body should draw up an inventory of existing national customs and legal media, develop and improve them and make them effective. It should also study the most up-to-date methods of impartial fact-finding". [131]

### *Maintenance of a panel by the General Assembly (Ceylon)*

6. In the course of his statement at the 990th meeting of the Sixth Committee, on 3 November 1967, the representative of Ceylon stated that:

> "His Government might be willing to consider the maintenance by the General Assembly of a panel which would include nominees from all Member States and offer a complete range of specialization. While the parties should be encouraged to select the members of a particular commission of inquiry from such a panel, their choice should not be limited to the panel. In that way, the flexibility of the investigating organ's terms of reference would be matched by the flexibility of its composition. That would allow for the fact that the report of an organ of inquiry was inevitably coloured to some extent by the individual judgements of its members, and would at the same time ensure that the membership continued to enjoy the confidence that the parties had placed in it. The *ad hoc* approach would ensure the representation on an organ of inquiry of persons trained in the particular disciplines demanded by the nature of the investigation, and would reduce the membership to the number required for the efficient discharge of the organ's funtions."

7. He added that:

> "If the General Assembly were to establish a roster of names, the Secretariat might be asked to supply the requisite staff and administrative support, initially perhaps on a part-time basis. The staff might be headed by an executive secretary whose functions would be confined to providing organs of inquiry with the facilities and services required for the discharge of their functions, and who would seem well qualified to act as repository of the body of experience that would develop from the work."

### *Establisment of a special international body for fact-finding or, alternatively, the conferring of appropriate powers on existing organizations (Ecuador)*

8. In its written comments submitted in response to Assembly resolution 2182 (XXI), the Government of Ecuador declared that it would be desirable to establish a special international body for fact-finding. As an alternative, however, the Government considered that

> "appropriate powers should be conferred on existing organizations which are capable of undertaking the work of fact-finding in international relations". [132]

A number of other Governments have made similar proposals.

9. Speaking in the General Assembly on 26 September 1967, the representative of Ecuador stated that

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[131] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5725.

[132] See A/6686/Add.1.

"consideration must be given to the possibility of creating a special international body for fact-finding, which must be of a standing nature and endowed with sufficiently flexible terms of reference to permit it to enjoy the assistance of specialists or experts in every case. The presence of such a body in a dispute would be a guarantee of effectiveness and impartiality in the dealings among the parties thereto. [133]

*Compilation of a list of experts (Finland)*

10. In response to Assembly resolution 2182 (XXI), the Government of Finland stated that, in its opinion, the importance of fact-finding as a means of settling international disputes depended primarily upon the fact finders' special expert knowledge and technical experience of the matter which was the subject of the dispute. The Finnish Government accordingly held the view that

"it would be of great importance to consider the possibilities of setting up a list of experts similar to the register of experts and scholars in international law (A/6677 and Add.1), which has been prepared on the initiative of the Secretary-General with a view to furthering the appreciation of international law by providing technical assistance. Likewise, consideration should be given to the way in which international organizations representing special technical and economic fields could offer their help to States needing, for the settlement of disputes, fact-finding carried out by an impartial body." [134]

*Stationing of United Nations representatives in various geographical regions of the world (Japan)*

11. The Japanese Government, in indicating its support for the idea of establising a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities, has on several occasions expressed the view that regard should be had to questions of feasibility and of relative expenditure. With these considerations in mind, the Japanese Government suggested that study should be given to the idea

"of posting representatives of the United Nations in some form or other in the various geographical areas of the world. It would naturally be desirable if such representatives, for example, as representatives of the Secretary-General, were stationed permanently in each part of the world, especially in such unstable regions as South-East Asia, the Middle-East, Africa and Latin America. The Japanese Government considers that securing such a United Nations presence in various regions would make possible speedy fact-finding activities by these representatives upon recommendation either by the Security Council or the General Assembly and would greatly contribute to the pacific settlement of disputes. If the posting of permanent representatives were not feasible, roving institutions in some form or other might also serve the purpose." [135]

*Establishment of a permanent organ (Netherlands)*

12. The Netherlands has made a number of suggestions for the establishment of a permanent organ. The most detailed suggestion is that contained in document A/6373. [136] The main features of that suggestion are that the organ should supplement the function of existing institutions, that the co-operation of States, should be voluntary, and that the means used should be flexible. The organ's terms of reference would be limited to the establishment of facts concerning disputes, or which are relevant to the execution of international agreements, or which are required for informational purposes in the taking of decisions at international level. The organ would be a standing body, composed of independent persons of high moral standing and acknowledged impartiality; it was suggested that fifteen members would be a suitable number. The organ would be placed at the disposal of the United Nations and the specialized agencies, or of two or more States. The terms of reference of the organ would be determined by its statute and by the mandate issued

[133] See *Official Records of the General Assembly, Twenty-second Session, Plenary Meetings,* 1568th meeting, para. 30.

[134] See A/6686/Add.3.

[135] See A/6686/Add.1.

[136] *Official Records of the General Assembly, Twenty-first Session, Annexes,* agenda item 87.

to it for each separate inquiry. As regards procedure, the initiative to institute an inquiry should rest exlusively with States or intergovernmental organizations. The granting of admission to a territory or other facilities for the execution of a fact-finding mandate would, as a rule, be mentioned or implied in the inquiry agreement between the States concerned, but might also be given by a third State if its co-operation was required. The report of the organ would be by majority vote, with mention of any differences of opinion amongst members, if requested to be recorded. The organ might be established and its statute adopted by a resolution of the General Assembly, or by any other means that might be appropriate.

*Special department in the United Nations Secretariat (Nigeria)*

13. In its comments regarding Assembly resolution 2182 (XXI), the Government of Nigeria stated, *inter alia:*

> "The Government of Nigeria is not averse to the establishment within the United Nations Secretariat of a special department to be ready and at hand to advise and help any *ad hoc* fact-finding body that may be established from time to time. Since the questions which will be subject to fact-finding are of different kinds and may necessitate employing the services of experts in the field covered by an inquiry, an *ad hoc* body will have definite advantages over a permanent body." [137]

*Formation of* ad hoc *fact-finding committees by the Secretary-General (Philippines)*

14. In submitting its comments in response to Assembly resolution 1967 (XVIII), the Government of the Philippines declared that, in preference to the establishment of a permanent fact-finding body within the United Nations, the Government considered that

> "it would be more feasible to authorize the Secretary-General to form *ad hoc* fact-finding committees whenever situations arise necessitating the determination of the nature of a dispute or the causes thereof." [138]

*Establishment of a special international body for fact-finding (Singapore)*

15. The Singapore Government states that it welcomes "the establishment of a special international body for fact-finding." [139]

*Use of the Permanent Court of Arbitration (United Kingdom)*

16. In its comments submitted in response to Assembly resolution 2182 (XXI), the Government of the United Kingdom suggested that an examination of existing instruments for fact-finding, with a view to their possible adaptation, should go hand in hand with consideration of the question of whether or not it would be useful to establish a new permanent organ for fact-finding. In this connexion the Government expressed the view that:

> "For example, it is quite likely that the Permanent Court of Arbitration at The Hague already provides the foundation for whatever may be required, at least in the realm of the settlement or prevention of international disputes. The growth of the membership of the Permanent Court of Arbitration from forty-five in 1946 to sixty-five in 1966, as well as the direct experience of the Government of the United Kingdom in the use of that Court in the case of the 'Red Crusader', encourages them in this view." [140]

A similar suggestion was made by the Government of Turkey. [141]

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[137] See A/6686/Add.2.

[138] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5725/Add.7.

[139] See A/6686/Add.1.

[140] See A/6686.

[141] *Ibid.*

*Reconstruction of the Panel for Inquiry and Conciliation established under General Assembly resolution 268 D (III) or greater use of rapporteurs and conciliators in cases before the General Assembly and the Security Council (United States of America)*

17. Speaking in the Sixth Committee at its 990th meeting on 3 November 1967, the representative of the United States suggested that, as regards methods of fact-finding,

> "perhaps the Panel for Inquiry and Conciliation should be reconstructed, or perhaps greater use should be made of rapporteurs and conciliators in cases before the Security Council and the General Assembly".

*Appeal to Member States to accede to the General Act for the Pacific Settlement of International Disputes and to participate in the Panel for Inquiry and Conciliation (Secretary-General)*

18. At the conclusion of his report on methods of fact-finding, the Secretary-General gave an account of the evolution of the institutions of international inquiry. [142] After dealing with the previous efforts made, in particular those of the League of Nations, the Secretary-General drew attention to the ways in which the United Nations had tried to maintain these endeavours. Besides the inclusion of Article 33 in the Charter of the United Nations, in its resolution 268 (III) of 28 April 1949 the General Assembly had sought to renew previous efforts and to give them a fixed status. In resolution 268 A (III) the General Assembly restored to its original efficacy the General Act for the Pacific Settlement of International Disputes (which had been adopted by the Assembly of the League of Nations in 1928), by introducing into its text a number of amendments, which took into account the fact that the organs of the League of Nations and the Permanent Court of International Justice had ceased to function. [143] In resolution 268 D (III), after expressing the view that it was desirable to facilitate in every practicable way the compliance of Member States with the obligation contained in Article 33 of the Charter, the General Assembly decided to establish a panel of persons, with a view to the constitution of commissions of inquiry or conciliation, as a means of promoting the use and effectiveness of procedures of inquiry and conciliation. The Assembly accordingly invited each Member State to designate from one to five persons well fitted to serve as members of such commissions, and adopted a set of articles relating to the composition and use of the Panel thus designated. [144] The Panel, which so far consists of persons designated by only fifteen Member States, [145] has never been used either by States or by the United Nations organs for which it was intended. In addition, only six States [146] have so far acceded to the General Act for the Pacific Settlement of International Disputes, as revised by the General Assembly in 1949. The Secretary-General concluded as follows:

> "This being so, and in view of the large number of States which have become Members of the United Nations since the adoption of the above-mentioned resolution by the General Assembly, it would perhaps be desirable for the Assembly to appeal to Member States which have not yet done so to accede to the Revised General Act and participate in the establishment of the Panel, with a view to the constitution of commissions of inquiry or conciliation. At the same time, the appeal could urge them to make use of the Panel in selecting members of commissions entrusted with inquiry or conciliation functions, constitued either by United Nations organs or by parties to a dispute. Obviously this suggestion is entirely without prejudice to the solution of the general question of the feasibility and desirability of establishing a special international body for fact-finding, or of entrusting fact-finding responsibilities to

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[142] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694, paras. 374-386.

[143] *Ibid.*, paras. 109-118, which contain a description of the measures adopted by the Assembly.

[144] *Ibid.*, paras. 156 and 157.

[145] Austria, Brazil, Ceylon, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Haiti, Israel, Netherlands, Pakistan, Sweden, United Arab Republic, United Kingdom of Great Britain and Northern Ireland.

[146] Belgium, Denmark, Luxembourg, Norway, Sweden, Upper Volta (as at 1 November 1967).

an existing organization—the subject of the last preambular paragraph in General Assembly resolution 1967 (XVIII)." [147]

19. This suggestion was endorsed by a number of Governments of Member States, including in particular the Government of Sweden. [148]

### (*b*) Resolution adopted by the General Assembly

At its 1637th plenary meeting, on 18 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 24 above). For the final text, see resolution 2329 (XXII) below.

#### 2329 (XXII). Question of methods of fact-finding

*The General Assembly,*

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

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

*Noting with appreciation* the two reports submitted by the Secretary-General [149] in pursuance of the above-mentioned resolutions,

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

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

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

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

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

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

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

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

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[147] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694, para. 386.

[148] *Ibid.*, document A/5725/Add.2.

[149] *Ibid.*, document A/5694; *ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6228.

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

*1637th plenary meeting*
*18 December 1967*

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## (12) Draft Declaration on Territorial Asylum (agenda item 89)

### (*a*) Report of the Sixth Committee[150]

[*Original text: English and Spanish*]
[*30 November 1967*]

### I. Introduction

1. By paragraph 3 of its resolution 2203 (XXI) of 16 December 1966, the General Assembly decided "to place an item entitled 'Draft Declaration on Territorial Asylum' on the provisional agenda of its twenty-second session, with a view to the final adoption of a declaration on this subject". At the twenty-second session of the General Assembly, the General Committee recommended that this item should be included in the agenda and allocated to the Sixth Committee (A/6840). The General Assembly so decided at its 1564th plenary meeting on 23 September 1967. Subsequent consideration of the item by the Sixth Committee has resulted in the unanimous recommendation to the General Assembly of the draft resolution containing a declaration on territorial asylum, which will be found at the conclusion of the present report.

2. The present report, after briefly outlining some of the relevant facts in the previous history of the item, summarizes the proceedings relating to it in the Sixth Committee at the twenty-second session of the General Assembly. This summary includes an article-by-article account of the points made in the debate on the declaration recommended for adoption by the General Assembly (see paras. 9 to 61 below), together with the proposal submitted and the discussion thereon (see paras. 62 to 69 below).

### II. History of the item prior to the twenty-second session of the General Assembly

3. The elaboration of a declaration on asylum has been under consideration by various United Nations organs for a considerable number of years.[151] In 1960, by its resolution 772 E (XX), the Economic and Social Council transmitted to the General Assembly the text of a draft declaration on the right of asylum prepared by the Commission on

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[150] Document A/6912, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 89.

[151] For a more detailed account of the history of the item prior to the twentieth session of the General Assembly, including a summary with relevant documentary references to the proceedings of the Commission on Human Rights, the Economic and Social Council, and the Third Committee of the General Assembly, see *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.564.

Human Rights, consisting of a preamble and five articles.[152] On the basis of this text the Third Committee, at the seventeenth session of the General Assembly, in 1962, adopted the preamble and article 1[153] of a draft declaration.[154] Because of pressure of other work at subsequent sessions, the Third Committee was unable to complete the text of the draft declaration. The General Assembly therefore decided to transfer the item to the Sixth Committee at the twentieth session, as it did not have such a heavy agenda as the Third Committee and as the item involved many legal questions, in order to finalize the draft declaration at the earliest opportunity.

4. At the twentieth session of the Assembly, in 1965, the Sixth Committee established a Working Group to examine the various procedural questions which arose in connexion with the transfer of the item from the Third to the Sixth Committee, in order to expedite its further consideration.[155] The Sixth Committee also recommended to the General Assembly a draft resolution, adopted by the latter as resolution 2100 (XX) of 20 December 1965, the last operative paragraph of which provided that the item should be taken up again at the twenty-first session, "with a view to completing the text of a draft Declaration as a whole".[156]

5. At the twenty-first session a further Working Group was set up by the Sixth Committee, with the task of preparing a preliminary draft declaration on the right of territorial asylum, taking into account the text of the draft declaration adopted by the Commission on Human Rights; the text of the preamble and article 1 adopted by the Third Committee; the amendments and comments submitted in writing by Member States; specific suggestions made during the discussion of the item at the twenty-first session of the General Assembly and the existing international instruments relating to the matter. The Working Group submitted a report, containing the text of a draft declaration on territorial asylum, which forms an annex to the report of the Sixth Committee to the General Assembly on the item.[157] As the report of the Working Group was submitted towards the close of the session, the Sixth Committee decided to postpone substantive consideration of the text of the draft declaration drawn up by the Working Group until the twenty-second session of the General Assembly. The Sixth Committee therefore recommended to the Assembly a draft resolution, providing *inter alia* that the text of the draft declaration, together with the report of the Sixth Committee thereon, should be transmitted to Governments for their further consideration. The General Assembly adopted this draft in its resolution 2203 (XXI), to which reference has already been made.

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[152] *Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 8*, para. 147, and *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 46, document A/5359, para. 6.

[153] An amendment to article 1, accepted by the Third Committee that reference be made expressly to "territorial asylum", indicated that the draft declaration was to be limited to that form of asylum. An express limitation of this nature had not appeared in the text prepared by the Commission on Human Rights, but arose as a necessary implication of the provisions of that text. See *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 46, document A/5359, paras. 18, 24 and 25.

[154] *Ibid.*, para. 35 and annex.

[155] *Ibid., Twentieth Session, Annexes*, agenda item 63, document A/C.6/L.581, paras. 1-3.

[156] For the discussion of this item at the twentieth session, see *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 872nd, 882nd and 895th meetings; and *ibid., Plenary Meetings*, 1404th meeting. For the reports of the Sixth Committee and of the Working Group see *ibid., Annexes*, agenda item 63, documents A/6163 and A/C.6/L.581.

[157] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 85, document A/6570. For the discussion of the item at the twenty-first session, see *ibid., Sixth Committee*, 919th to 923rd, 925th, 926th and 953rd meetings, and *ibid., Plenary Meetings*, 1496th meeting.

## III. Consideration of the item by the Sixth Committee at the twenty-second session of the General Assembly

### A. Meetings and documentation

6. At the twenty-second session of the General Assembly, the Sixth Committee considered item 89 entitled "Draft Declaration on Territorial Asylum" at its 983rd to 989th meetings, between 26 October and 2 November 1967.

7. The Committee had before it the report it had adopted at the twenty-first session of the General Assembly, with the annexed report of the Working Group containing the text of a draft declaration on territorial asylum prepared by the latter. The Committee also had available a brief note by the Secretary-General (A/6698), drawing attention to the relevant documentation, and informing the General Assembly that the Secretary-General, pursuant to Assembly resolution 2203 (XXI), had drawn the attention of Member States by a letter of 25 January 1967, to the draft declaration and to the Sixth Committee's report.

8. At the 988th meeting of the Sixth Committee, on 1 November 1967, after the Committee had considered in detail the draft declaration prepared by the Working Group, a draft resolution (A/C.6/L.625) was introduced on behalf of twenty-four Member States, embodying *inter alia* the text of the draft declaration recommended by the Working Group. An oral amendment, which did not alter the substance of the proposed declaration, was also introduced at the same meeting. The draft resolution, an amendment to it and the debate thereon are considered in greater detail in paragraphs 62 to 69 below.

### B. Discussion of the draft declaration

9. In the discussion of the draft declaration on territorial asylum which had been drawn up by the Working Group at the twenty-first session and was embodied in the draft resolution before the Sixth Committee at the twenty-second session, representatives made general comments on the acceptability of the text and on the purpose and legal effect of the adoption of the declaration by the General Assembly. Representatives also commented upon the various specific provisions of the draft. These comments are summarized in the present section of this report.

#### 1. *General comments*

(a) *Acceptability of the text of the draft declaration prepared at the twenty-first session*

10. In their general comments on the text of the draft declaration prepared by the Working Group, many delegations congratulated the Group on the valuable results it had achieved. It was stated that the Group had been able to build upon many years of previous work on the institution of asylum in the United Nations, and had succeeded in bringing that work close to fruition so far as a declaration on territorial asylum was concerned. The text it had prepared was a well-balanced one, representing a compromise between the many different views which had been advanced on the question and a reconciliation of the various interests and requirements of those immediately concerned, namely refugees seeking asylum, the State of origin, the State of refuge and the international community. The text which had emerged from the Working Group gave due weight both to the sovereign rights of States and to the humanitarian considerations underlying the institution of asylum.

11. It was further said that, as the Working Group's text was a compromise, it was bound not to be wholly satisfactory to each delegation. However, if the members of the

Sixth Committee wished to proceed expeditiously and to succeed in securing the proclamation of the declaration at the current session, they would have to exercise restraint in suggesting amendments which might destroy the balance achieved by the Working Group without any assurance that a better draft would result. While individual representatives might have misgivings on the scope of the draft declaration and on the wording of certain parts of the text which they believed might be open to improvement and greater precision, it would be necessary not to press their reservations in the interest of the consensus arrived at by the Working Group.

12. It was therefore the virtually unanimous view in the Sixth Committee that, as a compromise text, the one proposed by the Working Group was generally acceptable, since it contained the essential elements of a declaration on territorial asylum and represented the widest area of agreement at present obtainable. Members of the Committee expressed their gratification that, after consideration of the items by the Committee at two previous sessions, it was now possible to proceed with the final proclamation of the declaration.

(b) *Purpose and effect of the proclamation of the declaration*

13. The great majority of delegations stressed that the draft declaration under consideration was not intended to propound legal norms, but to lay down broad humanitarian and moral principles upon which States might rely in seeking to unify their practices relating to asylum. In this respect it would constitute a valuable elaboration of article 14 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III), which dealt with asylum. The declaration on territorial asylum, when adopted, like any other recommendation of the General Assembly addressed to Governments in the field of human rights, would not of itself be a legally enforceable instrument or give rise to legal obligations, and for that reason would not affect existing international undertakings or national legislation relevant to the subject of asylum and related matters. To the extent that the declaration might, in some respects, go beyond the present state of international law, existing law would continue in effect until such time as the relevant provisions of the declaration were incorporated into positive international law.

14. Other representatives, while agreeing that the declaration would not be binding on States, pointed out that if it achieved its purpose of serving as a guide for State practice it might eventually, through the unification of such practice, lead to the establishment of new customary rules of international law, creating new obligations for States.

15. The view was expressed also that the adoption of the declaration by the General Assembly would be a legal expression of will and, as such, would have legal effects.

16. It was also said that the practical effect given to the declaration by States would help to indicate whether or not the time was ripe for the final step of elaborating and codifying precise legal rules relating to asylum. In this respect, many representatives expressed the conviction that the declaration, when adopted, should be regarded as a transitional step, which should lead in the future to the adoption of binding rules of law in an international convention. They drew attention to the fact that asylum was on the programme of work of the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959. The declaration now to be adopted would be one of the elements to be considered by the Commission in its work. Certain of these representatives expressed the hope that, when it took up the codification of the institution of asylum, the Commission would correct some of the ambiguities in the terms of the Declaration and would also extend the subject to cover other forms of asylum, such as diplomatic asylum, on which there was extensive treaty law in Latin America and an extensive practice, both in Latin America and elsewhere. It was also said that the existence of the Declaration should not

in any way diminish the scope or depth of the work to be undertaken when the International Law Commission took up the subject of asylum.

17. A number of representatives, while expressing the hope that the Declaration would help to gain new adherents for a liberal policy on the right of asylum and be a valuable sequel to the 1951 Convention relating to the Status of Refugees, [158] wished to place on record that they considered the draft declaration to represent a minimum, not a maximum. They stated that it must not be interpreted as placing a limitation upon the policy of their Governments relating to asylum, which already went further than the draft declaration in safeguarding the interests of persons seeking asylum.

18. Several representatives stressed that the current session of the General Assembly would be particularly auspicious for the proclamation of a declaration elaborating upon article 14 of the Universal Declaration of Human Rights, in view of the fact that in 1968 the United Nations would be celebrating both the twentieth anniversary of the Universal Declaration and the International Year for Human Rights. Certain representatives stated that their Governments attached particular importance to the early proclamation of a declaration on territorial asylum in view of the necessity for strengthening the institution of asylum at the present time, when there were certain areas in the world where serious refugee problems were appearing. As long as racial discrimination, religious intolerance and political persecution remained, the institution of asylum would continue to be a vital humanitarian necessity. The adoption of a declaration on the subject should, however, serve to alleviate some of the problems that arose, facilitate the work of the United Nations High Commissioner for Refugees, strengthen the growth of friendly relations and co-operation among States, further the maintenance of international peace and security and promote the purposes and principles of the United Nations. It would also serve as yet another landmark in the history of United Nations declarations furthering the cause of human rights.

### 2. *Title, preamble and recommendatory paragraph*

(a) *Text*

19. The Working Group had recommended that the declaration, in final form, be entitled "Declaration on Territorial Asylum", and had proposed the following preamble and recommendatory paragraph:

> "*Noting* that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations, and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,
>
> "*Mindful* of the Universal Declaration of Human Rights, which declares in article 14 that '(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations',
>
> "*Recalling* also article 13, paragraph 2, of the Universal Declaration of Human Rights which states 'Everyone has the right to leave any country, including his own, and to return to his country',

[158] United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

"*Recognizing* that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that as such it cannot be regarded as unfriendly by any other State,

"*Recommends* that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:"

The above text was included verbatim in the draft resolution introduced in the Sixth Committee at the twenty-second session.

(b) *Title*

20. Many representatives welcomed the fact that the Working Group had made it explicit that the declaration was limited to territorial asylum by making express reference to "territorial asylum" in the title of the declaration and the recommendatory paragraph. [159] They said that territorial asylum was the most important element of the institution of asylum and the one with regard to which the widest State practice existed. While the view was expressed that the text of the declaration might be improved by referring to "territorial asylum" throughout, rather than to "asylum", no formal amendment to this effect was introduced, in view of the reference to "territorial asylum" in the title and the recommendatory paragraph.

21. Some representatives, however, regretted that it had not proved possible to extend the scope of the declaration to diplomatic asylum, in view of the essentially humanitarian nature of the declaration and of the substantial practice of certain countries, particularly in Latin America, relating to diplomatic asylum. These representatives expressed the hope that, when the International Law Commission undertook its study of asylum it would be able to extend any draft it prepared to cover diplomatic asylum. It was also suggested that the Sixth Committee might consider setting up another working group to prepare a draft declaration on diplomatic asylum, but no formal proposal to this effect was pressed.

(c) *First preambular paragraph*

22. Several representatives expressed approval of the change made by the Working Group in the first paragraph of the preamble as adopted by the Third Committee so that it referred to "nations" rather than "States" for reasons of conformity with Article 1, paragraph 2, of the Charter of the United Nations. [160]

(d) *Second preambular paragraph*

23. A number of representatives felt that the second paragraph of the preamble, recalling article 14 of the Universal Declaration of Human Rights, was of particular importance in determining the scope and spirit of the draft Declaration on Territorial Asylum as a whole. These representatives said that this, and other paragraphs of the preamble, clearly indicated that the draft Declaration dealt with questions relating to persecuted persons fighting for purposes and principles proclaimed in the Charter.

(e) *Third preambular paragraph*

24. Reservations were expressed by a few representatives regarding the third preambular paragraph of the draft declaration, which recalled article 13, paragraph 2, of the Universal Declaration of Human Rights, proclaiming the right of everyone to leave any

[159] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 85, document A/6570, annex, para. 12.

[160] *Ibid.*, para. 10.

country, including his own, and to return to his country. These representatives thought that the paragraph was unnecessary in a declaration on territorial asylum, since it fell outside the scope of the question of asylum. The view was also advanced that the paragraph should be understood to mean that practical questions pertaining to the right to leave one's country should be decided in accordance with the procedures established by the country concerned.

25. Certain other representatives, however, were of the opinion that, because of the reference to the right of return in the preamble, it was not necessary to include an article on that subject in the substantive part of the declaration, the preambular reference being sufficient for the purposes of the draft. These representatives cited with approval the decision of the Working Group to delete article 5 of the draft prepared by the Commission on Human Rights, which had dealt expressly with the right of return.[161] Regret was expressed by one representative that it had not proved possible to replace article 5 of the draft of the Commission on Human Rights by another article of a similar nature regarding the termination of asylum, either through the person enjoying asylum acquiring permanent residence in the country of asylum or through his departure from that country.

(f) *Fourth preambular paragraph*

26. The inclusion of the fourth preambular paragraph of the draft declaration, recognizing that the grant of asylum was a peaceful and humanitarian act which cannot be regarded as unfriendly by any other State, was particularly welcomed by some representatives. They expressed the hope that it would go a long way towards avoiding misunderstandings among States, and that it would serve as a basis for rejecting uncalled-for and provocative threats, which were sometimes made by the State of origin of refugees against the State granting asylum.

(g) *Recommendatory paragraph*

27. Certain representatives were of the opinion that the words "without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons", appearing in the recommendatory paragraph of the draft declaration, were superfluous, since the Declaration could not affect in any way existing legal obligations. Other representatives, however, welcomed the inclusion of the phrase, and some of them indicated that they understood it to cover all existing instruments dealing with the status of refugees and stateless persons, whether or not they were legally binding instruments. It was also stated that, while a separate article on the matter might have been preferable, a formal amendment to that effect was not necessary because of the reference to the question in the preamble.

28. While the view was expressed that the clarity of the phrase in question might have been improved by the addition of the word "international" before the word "instruments", it was argued, on the other hand, that the phrase should be understood to cover not only international instruments, but also national instruments, such as constitutions. Constitutional or other legislative provisions in some countries were more liberal in the matter of asylum than the draft declaration, which must not be considered as calling for a restrictive interpretation of liberal provisions of that nature.

29. It was suggested also that the phrase was perhaps too narrowly drawn, since it did not refer specifically to other instruments, such as extradition treaties, the addition of a reference to which would make the paragraph clearer. In a statement agreeing not to press an amendment to that effect, it was said that the phrase must necessarily be under-

[161] *Ibid.*, paras. 73-78.

stood also to cover existing extradition treaties. Doubt was expressed also as to whether the term "instrument" was the best choice in the circumstances, in view of the fact that that term was used in the International Law Commission's draft articles on the law of treaties to refer to instruments of ratification, accession, reservation or withdrawal, rather than to the texts of conventions themselves. However, no formal change was proposed in this respect.

30. In addition to the foregoing remarks on the recommendatory paragraph, a number of representatives welcomed the decision of the Working Group to replace, in the text adopted by the Third Committee, the words "States Members of the United Nations and members of the specialized agencies" by the more general term "States".[162] It was said that the change emphasized that the Declaration should be of a universal character and that its scope should not be restricted with respect to the States to which it was addressed.

### 3. *Article 1*

(a) *Text*

31. Article 1 of the Working Group's text read as follows:

"1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

"2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

"3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum."

(b) *Paragraph 1*

32. Representatives cited with approval the express recognition in paragraph 1 of the fact that the grant of asylum was a sovereign right of States and was not a right of admission upon which individuals were entitled to insist. It was pointed out, in this connexion, that the drafters of the Universal Declaration of Human Rights had themselves rejected a wording for article 14 to the effect that an individual had the right both to seek and to be granted asylum.

33. The decision whether or not to grant asylum, it was said, was within the sole prerogative of the State concerned, as part of its indisputable right of control over individuals within its territory, from which derived the competence to admit or to refuse admission to those seeking asylum at that State's discretion and in accordance with its own legal system. However, this right was balanced by the humanitarian aspect of asylum, which gave every individual the right to seek and, if it was granted, to enjoy in other countries asylum from persecution. In exercising their legal rights, States should bear in mind that humanitarian considerations should prevail over all others.

34. There was considerable discussion in the Sixth Committee concerning the insertion in paragraph 1 of the phrase "including persons struggling against colonialism". Many representatives said that they attached particular importance to the phrase, which was a key provision of the draft declaration, in view of the legitimacy of the struggle against colonialism and in view of the special consideration and protection which should be given to

[162] *Ibid.*, para. 14.

those who were performing an international duty by struggling for the independence and freedom of their peoples.

35. A suggestion was made, but not pressed, that the phrase should be further strengthened to read "and in particular persons struggling against colonialism". It was also said that the reference continued to be a particularly timely one and in line with the realities of modern life, as there were still territories which had not been liberated from the yoke of foreign colonial rule and as the prompt implementation of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples was a matter of major international concern.

36. Several delegations considered that the phrase strengthened the over-all tenor of the declaration, which, they said, dealt with the granting of asylum to persons persecuted because they were fighting for peace and for the realization of the purposes and principles of the United Nations. The view was also expressed that the declaration was not concerned with individuals who had left their countries for economic, social or other similar reasons and been given refuge in certain States, where they had engaged in activities against their countries of origin. The grant of asylum in such cases was improper and without legal foundation, and the draft declaration might have been further strengthened if it had contained an express provision that such persons could not be considered to be refugees applying for asylum.

37. Other representatives, however, regretted the inclusion of the phrase in question, on the ground that it injected political overtones into a declaration which was essentially humanitarian and might consequently weaken its humanitarian impact. It was said that the category of persons to whom paragraph 1 applied were those entitled to invoke article 14 of the Universal Declaration of Human Rights. A person struggling against colonialism might come within the ambit of that article, in which case the specific reference to such a person was unnecessary; if he did not come within the scope of that article, the reference was wrong and confusing. Either all specific categories of persons entitled to seek asylum should be enumerated, and not just a single example, or the definition of such persons should remain a general one.

38. Furthermore, it was said that the word "colonialism" was often used in a variety of meanings. In this connexion the view was expressed that the phrase could not apply to persons involved in wars of national liberation. It was further argued that colonialism was a vanishing phenomenon, and mention of it in the declaration would weaken a document which should be of general and long-lasting validity.

39. The view was also expressed that the confining of paragraph 1 to persons entitled to invoke article 14 of the Universal Declaration of Human Rights was perhaps unnecessarily limitative, a fault which should be corrected at a later stage of United Nations work on the institution of asylum.

40. The text of paragraph 1 was widely commended for its express recognition that a grant of asylum by one State was to be respected by all other States. It was said that, as a result, the State of origin was under an obligation not to regard the grant of asylum as a hostile act justifying retaliation.

(c) *Paragraph 2*

41. There was some discussion in the Sixth Committee concerning the reference, at the beginning of paragraph 2, to "the right to seek and to enjoy asylum". It was said that this phrase was perhaps misleading, in that the granting of asylum was the sovereign prerogative of States and not a right of individuals to gain admission to other countries. In this respect a number of delegations cited with approval, and wished to have placed again

on record, the view expressed in the Working Group's report [163] that the word "right" was to be interpreted as a moral right and not as a legal right which imposed obligations upon States.

42. Certain delegations welcomed the inclusion of paragraph 2 in the text, and stressed the importance they attached to it. They said that all States had an obligation not to grant asylum to persons who had committed crimes against peace, war crimes, or crimes against humanity. On the contrary, States had the obligation to prosecute such persons. The terms of paragraph 2, it was argued, reflected existing rules of contemporary international law to be found in the Charter of the International Military Tribunal at Nürnberg, [164] the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, [165] the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, [166] the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War [167] and in a number of General Assembly resolutions, particularly resolution 95 (I) of 11 December 1946 entitled "Affirmation of the principles of international law recognized by the Charter of the Nürnberg Tribunal".

43. It was also stressed that asylum should not be granted to persons who had committed common crimes, and reference was made to provisions made in extradition treaties for the return to the State of origin of persons who had committed therein offences qualified as common crimes by the laws of both the State of origin and the State of refuge. It was pointed out that the incorporation of the text of article 14 of the Universal Declaration of Human Rights in the preamble to the draft declaration under discussion and the reference to that article in article 1, paragraph 1, clearly established that persons seeking to escape prosecution for common crimes were excluded from the benefits of the draft declaration.

(d) *Paragraph 3*

44. A number of representatives, while supporting the inclusion of paragraph 3, stressed and wished to have recorded their view that in evaluating the grounds for the grant of asylum the State concerned was obliged to exercise its right in good faith and in a non-arbitrary manner.

45. Other representatives pointed out that the right of a State to evaluate the grounds for the grant of asylum derived from the principles of the sovereignty and equality of States, and that the exercise of such a right could not be considered an unfriendly act. Nevertheless, States, while paying full regard to humanitarian considerations, should satisfy themselves that persons seeking asylum had not committed any acts contrary to the purposes and principles of the United Nations, or any war crimes, crimes against peace, crimes against humanity or common crimes.

### 4. *Article 2*

(a) *Text*

46. Article 2 of the Working Group's text read as follows:

"1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

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[163] *Ibid.*, para. 27.

[164] United Nations, *Treaty Series*, vol. 82 (1951), II, No. 251, p. 284.

[165] *Proclaimed* at Tokyo on 19 January 1946.

[166] United Nations, *Treaty Series*, vol. 78 (1951), No. 1021, p. 278.

[167] *Ibid.*, vol. 75 (1950), No. 973, p. 287.

"2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State."

(b) *Paragraph 1*

47. A number of representatives welcomed the inclusion of paragraph 1 as an explicit recognition that the situation of persons compelled to seek asylum was a matter of concern to the international community. The paragraph demarcated the sphere of international competence with respect to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, and enshrined the principle of the co-operation of all States with a view to ensuring respect for human rights and the protection of individuals. It was said that the paragraph reflected one of the main considerations on which any declaration on asylum should be based.

(c) *Paragraph 2*

48. A number of representatives considered that paragraph 2 was a valuable one which broadened the essentially humanitarian scope of the draft declaration and which would lighten the burden of States that had found their resources overtaxed by an influx of refugees. It was most important to provide expressly for the possibility of international assistance in cases where a State found difficulty in granting or continuing to grant asylum, and the inclusion of this paragraph in the declaration would assist refugee organizations in their work. Since the draft declaration called upon States to adopt a liberal policy in matters of asylum, it was only right that States so doing should be able to make certain claims on the international community in seeking to alleviate the suffering of refugees who were dispossessed and destitute of the means of subsistence.

49. Certain representatives, however, expressed reservations regarding paragraph 2 and indicated that they would have preferred it to have been amended or deleted. It was said, in this connexion, that the paragraph was unnecessary, since it went beyond the scope of the declaration, which dealt with asylum and not with international aid. It was also argued that in its present wording the paragraph might be open to the interpretation that it permitted a violation of State sovereignty and intervention in domestic affairs. The paragraph would therefore have been more satisfactorily worded if it had ended with the words "at its request", thus making it plain that only the State granting asylum could define whether or not it was in difficulty and wished for assistance from other States. Such an approach was inherent in the very idea of international solidarity, but the text should in any event be understood as not introducing any new elements into relations between States.

50. Other representatives were of the opinion that the wording, as it stood, did not imply any possibility of infringement of State sovereignty or interference in domestic affairs. It was pointed out that State sovereignty was expressly reaffirmed in paragraph 1 of the same article. Paragraph 2 was to be understood to mean that States might request assistance if they deemed it necessary as a consequence of difficulties confronting them in granting or continuing to grant asylum.

### 5. *Article 3*

(a) *Text*

51. Article 3 of the Working Group's text read as follows:

"1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

"2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

"3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State."

(b) *Paragraph 1*

52. Many representatives stressed the importance which they attached to article 3 as a whole, and to paragraph 1 in particular, which embodied the principle of non-*refoulement* and which was perhaps the key provision in the draft declaration. It was said that the article sought to strike a fair balance between the sovereign rights of States and the protection to which an individual should be entitled on humanitarian grounds.

53. Some representatives believed, however, that paragraph 1 might have been more precisely drafted. Certain of these representatives considered that the words "if he has already entered the territory in which he seeks asylum" were redundant, since a person could not be subjected to expulsion from a territory to which he had not been admitted. They were of the opinion that the deletion of these words would improve the text by making it more forceful and clear and by establishing more closely the link between rejection at the frontier and expulsion or compulsory return, all of which should be considered as qualified by the phrase "to any State where he may be subjected to persecution". The principle of non-*refoulement*, of which the prohibition of rejection at the frontier was a part, was only valid with respect to a State where the person seeking asylum would be exposed to persecution if he were returned.

54. The words "where he may be subjected to persecution" were also the subject of comment. While some delegations preferred this formulation, others considered that it lacked precision, and would require a subjective evaluation in each case. These representatives indicated their continuing preference for the original draft of the Commission on Human Rights, which had referred to a "well-founded fear of persecution endangering his life, physical integrity, or liberty". It was said that in order to benefit from the provisions of paragraph 1, the person seeking asylum must prove, to the satisfaction of the authorities of the State involved, that he was really in danger of persecution. The representatives concerned indicated that they would continue to understand the present wording in the sense originally indicated by the Commission on Human Rights, as the wording in paragraph 1 was a less precise formulation of the same notion as a "well-founded fear of persecution endangering his life, physical integrity or liberty".

(c) *Paragraph 2*

55. With respect to paragraph 2, dealing with exceptions to the principle of non-*refoulement*, a number of representatives indicated that they found the present wording somewhat vague, and regretted that it had not been possible to express the concept involved more precisely. They feared that the present text might, in practice, be used to encourage unwarranted departures from the principle of non-*refoulement*, but recognized that any change would present considerable problems at this stage, the text, as it stood, representing a compromise reached with some difficulty in the Working Group. [168]

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[168] See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 85 document A/6570, annex, paras. 56-59.

56. Representatives who spoke on the point recorded their understanding that paragraph 2 permitted exceptions to the principle of non-*refoulement* in instances other than those expressly mentioned in the paragraph. However, such an exception in their view, could be made under this paragraph only if the case involved was comparable in seriousness to a mass influx of persons. It was further stated that, in deciding whether or not to make exceptions, it was necessary to take into account the conditions prevailing at the time in the territory concerned in determining what measures were necessary to safeguard the population. It was also stressed that, where a State invoked paragraph 2, paragraph 3 became relevant, and the persons concerned should be accorded the opportunity to go to another country.

(d) *Paragraph 3*

57. There was little specific comment on the provisions of paragraph 3 in the Sixth Committee. It was pointed out, however, that implementation of the paragraph might give rise to difficulties for land-locked States which formed enclaves surrounded by the territory of the State of origin of the persons seeking asylum. In such cases it might in practice prove necessary to negotiate transit facilities for the persons concerned through the territory of the State of origin.

### 6. *Article 4*

58. Article 4 of the Working Group's text read as follows:

> "States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations."

59. A number of representatives welcomed the inclusion of article 4, which was said to be well drafted and modest but none the less indispensable, as persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

60. Some representatives regretted, however, that specific mention had not been made, in article 4 or elsewhere in the Declaration, of the right of States to exercise surveillance over persons to whom asylum had been granted or to direct them to reside in certain areas. It was said, furthermore, that a State would become internationally responsible if it permitted and in fact encouraged a person enjoying asylum in efforts to subvert his State of orgin. These representatives indicated that they would have found the text more acceptable if it had prohibited persons enjoying asylum from being used "for purposes of espionage, subversion or sabotage against other States". It was also said that the text would be improved if it provided that asylum should be terminated in such cases, or when a refugee otherwise abused the hospitality afforded him. Refugees should be obliged to respect the laws of the State granting asylum and to refrain from acts involving the use of force or violence against the State of origin or any other acts which might prejudice friendly relations between that State and its neighbours or other States with which the former maintained relations.

61. Other representatives considered that article 4 could have been deleted without adversely affecting the Declaration, since its terms were vague, it might be open to widely differing interpretations, and it was difficult to see how persons could engage in activities contrary to the purposes and principles of the United Nations, such purposes and principles being applicable to States and not to individuals. If the present text were to stand, it should include some examples of the kind of activities that were prohibited. Even though the wording was derived from the Universal Declaration of Human Rights, that did not preclude its improvement. These representatives feared that the provision might in practice be invoked to justify the adoption of measures unnecessarily restricting the liberty of

persons enjoying asylum, and wished to place on record their understanding that the article did not call for restrictions on the liberty of individuals or require States to take additional powers to impose such restrictions.

### C. Consideration of the draft resolution and amendment

#### 1. *Draft resolution*

62. As mentioned in paragraph 8 above, a draft resolution (A/C.6/L.625) was introduced at the 988th meeting of the Sixth Committee on 1 November 1967. The opening paragraphs of this draft, which was sponsored by the delegations of Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Somalia, Uruguay and Venezuela, read as follows:

"*The General Assembly*,

"*Recalling* its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

"*Considering* the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

"*Adopts* the following Declaration:

"*Declaration on Territorial Asylum*".

The draft resolution then incorporated verbatim the text of the declaration as drawn up by the Working Group in 1966 and as set out above, article by article, in paragraphs 19 to 61 of the present report.

63. It was explained on behalf of the sponsors that, although they considered that the draft declaration prepared by the Working Group might have dealt with additional aspects of the institution of asylum, it represented the culmination of many years of effort by the Commission on Human Rights, the Third Committee and the Sixth Committee and was a well-balanced document which did justice to the humanitarian ends which it pursued. The sponsors had therefore decided to incorporate the Working Group's text verbatim in their draft resolution, and were confident that the Declaration, together with the rules of international law which had been codified in Latin America to regulate the institution of asylum, such as the 1928 Havana Convention on Asylum, also the Convention on Diplomatic Asylum and the Convention on Territorial Asylum, both signed at the Tenth Inter-American Conference at Caracas in 1954, would in the future constitute a direct source of inspiration for a universal convention on the subject.

64. It was further explained that the sponsors had found it necessary, in order to stress that the adoption of a declaration on territorial asylum would not bring to an end the work of the United Nations in codifying the rules and principles relating to the institution of asylum, to make a reference at the very beginning of the draft resolution, in a preambular paragraph to the proposed declaration, to the work of codification on the right of asylum to be undertaken by the International Law Commission pursuant to General Assembly resolution 1400 (XIV) of 21 November 1959.

65. Some other delegations, while accepting such a reference, recorded their understanding that the preambular paragraph in question should not be understood as modifying

or prejudicing in any way the order of priorities for the consideration of items, already established by the International Law Commission and by the General Assembly.

### 2. *Amendment*

66. At the 988th meeting of the Sixth Committee, shortly after the introduction of the draft resolution, the representative of Sweden orally proposed an amendment to it, to the effect that the title of the Declaration contained therein should be followed by the words "*The General Assembly*", so that the relevant portion would read as follows:

"*Adopts* the following Declaration:

"*Declaration on Territorial Asylum*

"*The General Assembly*,"

67. In support of this amendment, it was pointed out that while the paragraphs of the draft resolution preceding the text of the proposed declaration were necessary and useful, they were not an integral part of the declaration itself. It was therefore necessary to insert a reference to the General Assembly at the beginning of the declaration, so that the name of the declaring body would appear in the text of the declaration when it was published as a separate document. Declarations of this nature were bound to have a very wide circulation and should be complete in themselves. The Swedish amendment, designed to complete the declaration, was in line with previous precedents in similar General Assembly resolutions, such as resolution 217 A (III) of 10 December 1948 proclaiming the Universal Declaration of Human Rights.

68. One representative, while indicating that he would not vote against the Swedish amendment, felt that, as the draft resolution itself opened with the words "*The General Assembly*," it was repetitious to insert them at the beginning of the declaration, and that might also diminish the force of the preambular paragraph prefacing the declaration which referred to the work of codification to be undertaken by the International Law Commission. He therefore wished it placed on record that the adoption of the resolution would not bring this work of codification to an end.

### 3. *Voting*

69. The Sixth Committee voted on the Swedish amendment and on the twenty-four-Power draft resolution at its 988th meeting. The amendment was adopted by 68 votes to none, with 25 abstentions. The resolution, as amended, was then adopted without objection. Points made by the delegations of Australia, Belgium, Hungary, Iran, Iraq, Japan, Madagascar, Portugal, Romania, the Union of Soviet Socialist Republics, the United Kingdom, Yugoslavia and Zambia in explanation of vote regarding the text and the effect of the Declaration on Territorial Asylum have been recorded in the immediately preceding section of this report, in connexion with the article-by-article consideration of the Declaration (see, in particular, paragraphs 10-13, 17, 18, 24, 26-28, 40, 41, 44, 47-50, 52, 54, 56, 60, 61, 65 and 67 above).

## Recommendation of the Sixth Committee

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

[*Text adopted without change by the General Assembly. See "Resolution adopted by the General Assembly" below.*]

(*b*) Resolution adopted by the General Assembly

At its 1631st plenary meeting, on 14 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 70 above). For the final text, see resolution 2312 (XXII) below.

**2312 (XXII). Declaration on Territorial Asylum**

*The General Assembly*,

*Recalling* its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

*Considering* the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

*Adopts* the following Declaration:

DECLARATION ON TERRITORIAL ASYLUM

*The General Assembly*,

*Noting* that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

*Mindful* of the Universal Declaration of Human Rights, which declares in article 14 that:

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution,

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

*Recalling also* article 13, paragraph 2, of the Universal Declaration of Human Rights, which states:

"Everyone has the right to leave any country, including his own, and to return to his country",

*Recognizing* that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

*Recommends* that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

*Article 1*

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

*Article 2*

1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

*Article 3*

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

*Article 4*

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

*1631st plenary meeting*
*14 December 1967*

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(13) UNITED NATIONS PROGRAMME OF ASSISTANCE IN THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 90)

Resolution [2313 (XXII)] adopted by the General Assembly

**2313 (XXII). United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law**

*The General Assembly,*

*Recalling* its resolutions 2099 (XX) of 20 December 1965 and 2204 (XXI) of 16 December 1966 regarding the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law,

*Noting with appreciation* the report of the Secretary-General on the implementation of the Programme [169] and the recommendations made to the Secretary-General by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which are contained in that report,

*Emphasizing* that, in ensuring the execution of the Programme, the United Nations should bear in mind the need to continue its efforts to encourage and coordinate the activities of the States and international organizations concerned in assisting the promotion of the teaching, study, dissemination and wider appreciation of international law,

*Considering* that in the conduct of the Programme it is desirable to use as far as possible the ressources and facilities which may be made available by the international organizations concerned, Member States and others, in accordance with the procedures and rules of United Nations technical assistance programmes or other relevant rules and consistent with the purposes and direction of the Programme,

*Considering* that in the organization and conduct of regional seminars and training and refresher courses due regard should be paid to reflecting United Nations efforts towards the codification and progressive development of international law and, in so far as appropriate, the legal thinking of the principal legal systems of the world,

1. *Authorizes* the Secretary-General to carry out in 1968 the activities specified in his report, and in particular the provision of:

(*a*) Fifteen fellowships at the request of Governments of developing countries;

(*b*) The advisory services of experts, if requested by developing countries, within the framework of existing technical assistance programmes or from such voluntary contributions as may be received for that purpose;

(*c*) A set of United Nations legal publications to up to twenty institutions in developing countries;

2. *Notes with thanks* the offer of Ecuador to provide facilities for the regional seminar to be held in Latin America in 1968;

3. *Expresses its appreciation* to the United Nations Educational, Scientific and Cultural Organization for its participation in the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, in particular for its co-operation in the conduct of the regional training and refresher course held in Africa in 1967;

4. *Expresses its appreciation* to the United Nations Institute for Training and Research for its activities in the field of international law, in particular for its decision to conduct regional seminars in international law, beginning with a regional seminar to be held in Latin America in 1968, and for undertaking to conduct studies relating to the codification and progressive development of international law within the framework of the United Nations;

5. *Reiterates* its invitation to Member States, interested bodies and individuals to make voluntary contribution towards the financing of the Programme and expresses its appreciation to those Member States which have made voluntary contributions for this purpose;

6. *Approves* in principle, subject to further consideration by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination

[169] *Ibid., Twenty-second Session, Annexes*, agenda item 90, document A/6816.

and Wider Appreciation of International Law before the twenty-third session of the General Assembly, the Secretary-General's recommendations regarding the execution of the Programme after 1968;

7. *Requests* the Secretary-General to report to the General Assembly at its twenty-third session on the implementation of the Programme during 1968 and, following consultations with the Advisory Committee, to submit recommendations regarding the execution of the Programme in 1969;

8. *Decides* to include in the provisional agenda of its twenty-third session an item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

*1631st plenary meeting*
*14 December 1967*

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## (14) Treaty for the Prohibition of Nuclear Weapons in Latin America (agenda item 91)

### Resolution [2286 (XXII)] adopted by the General Assembly

**2286 (XXII). Treaty for the Prohibition of Nuclear Weapons in Latin America**

*The General Assembly*,

*Recalling* that in its resolution 1911 (XVIII) of 27 November 1963 it expressed the hope that the States of Latin America would carry out studies and take appropriate measures to conclude a treaty that would prohibit nuclear weapons in Latin America,

*Recalling also* that in the same resolution it voiced its confidence that, once such a treaty was concluded, all States, and particularly the nuclear Powers, would lend it their full co-operation for the effective realization of its peaceful aims,

*Considering* that in its resolution 2028 (XX) of 19 November 1965 it established the principle of an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers,

*Bearing in mind* that in its resolution 2153 A (XXI) of 17 November 1966 it expressly called upon all nuclear-weapon Powers to refrain from the use, or the threat of use, of nuclear weapons against States which might conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories,

*Noting* that that is precisely the object of the Treaty for the Prohibition of Nuclear Weapons in Latin America, [170] signed at Tlatelolco, Mexico, by twenty-one Latin American States, which are convinced that the Treaty will constitute a measure that will spare their peoples the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, that it will be a stimulus to the peaceful use of nuclear energy in the promotion of economic and social development and that it will act as a significant contribution towards preventing the proliferation of nuclear weapons and as a powerful factor for general and complete disarmament,

*Noting* that it is the intent of the signatory States that all existing States within the zone defined in the Treaty may become parties to the Treaty without any restriction,

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[170] Text reproduced in this *Yearbook*, p. 272.

*Taking note* of the fact that the Treaty contains two additional protocols open, respectively, to the signature of States which, *de jure* or *de facto*, are internationally responsible for territories which lie within the limits of the geographical zone established in the Treaty and to the signature of States possessing nuclear weapons, and convinced that the co-operation of such States is necessary for the greater effectiveness of the Treaty,

1. *Welcomes with special satisfaction* the Treaty for the Prohibition of Nuclear Weapons in Latin America, which constitutes an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security and which at the same time establishes the right of Latin American countries to use nuclear energy for demonstrated peaceful purposes in order to accelerate the economic and social development of their peoples;

2. *Calls upon* all States to give their full co-operation to ensure that the régime laid down in the Treaty enjoys the universal observance to which its lofty principles and noble aims entitle it:

3. *Recommends* States which are or may become signatories of the Treaty and those contemplated in Additional Protocol I of the Treaty to strive to take all the measures within their power to ensure that the Treaty speedly obtains the widest possible application among them;

4. *Invites* Powers possessing nuclear weapons to sign and ratify Additional Protocol II of the Treaty as soon possible.

*1620th plenary meeting*
*5 December 1967*

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## (15) Need to expedite the drafting of a definition of aggression in the light of the present international situation (agenda item 95)

Resolution [2330 (XXII)] adopted by the General Assembly

### 2330 (XXII). Need to expedite the drafting of a definition of aggression in the light of the present international situation

*The General Assembly*,

*Considering* that in conformity with the Charter of the United Nations all Members of the United Nations must 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,

*Considering* that one of the main purposes of the United Nations is to maintain international peace and security and, to that end, to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace,

*Convinced* that a primary problem confronting the United Nations in the maintenance of international peace remains the strengthening of the will of States to respect all obligations under the Charter,

*Considering* that there is a widespread conviction that a definition of aggression would have considerable importance for the maintenance of international peace and for the adoption of effective measures under the Charter for preventing acts of aggression,

*Noting* that there is still no generally recognized definition of aggression,

1. *Recognizes* that there is a widespread conviction of the need to expedite the definition of aggression;

2. *Establishes* a Special Committee on the Question of Defining Aggression, composed of thirty-five Member States to be appointed by the President of the General Assembly, taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented;

3. *Instructs* the Special Committee, having regard to the present resolution and the international legal instruments relating to the matter and the relevant precedents, methods, practices and criteria and the debates in the Sixth Committee and in plenary meetings of the Assembly, to consider all aspects of the question so that an adequate definition of aggression may be prepared and to submit to the General Assembly at its twenty-third session a report which will reflect all the views expressed and the proposals made;

4. *Requests* the Secretary-General to provide the Special Committee with the necessary facilities and services;

5. *Decides* to include in the provisional agenda of its twenty-third session an item entitled "Report of the Special Committee on the Question of Defining Aggression".

*1638th plenary meeting*
*18 December 1967*

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*The President of the General Assembly, in pursuance of paragraph 2 of the above resolution, appointed the members of the Special Committee on the Question of Defining Aggression.* [171]

*The Special Committee will be composed of the following Member States:* ALGERIA, AUSTRALIA, BULGARIA, CANADA, COLOMBIA, CONGO (DEMOCRATIC REPUBLIC OF), CYPRUS, CZECHOSLOVAKIA, ECUADOR, FINLAND, FRANCE, GHANA, GUYANA, HAITI, INDONESIA, IRAN, ITALY, JORDAN, MADAGASCAR, MEXICO, NORWAY, ROMANIA, SIERRA LEONE, SPAIN, SUDAN, SYRIA, TURKEY, UGANDA, UNION OF SOVIET SOCIALIST REPUBLICS, UNITED ARAB REPUBLIC, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED STATES OF AMERICA, URUGUAY *and* YUGOSLAVIA.

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## (16) QUESTION OF DIPLOMATIC PRIVILEGES AND IMMUNITIES (*a*) MEASURES TENDING TO IMPLEMENT THE PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES OF MEMBER STATES TO THE PRINCIPAL AND SUBSIDIARY ORGANS OF THE UNITED NATIONS AND TO CONFERENCES CONVENED BY THE UNITED NATIONS AND THE PRIVILEGES AND IMMUNITIES OF THE STAFF AND OF THE ORGANIZATION ITSELF, AS WELL AS THE OBLIGATIONS OF STATES CONCERNING THE PROTECTION OF DIPLOMATIC PERSONNEL AND PROPERTY (*b*) REAFFIRMATION OF AN IMPORTANT IMMUNITY OF REPRESENTATIVES OF MEMBER STATES TO THE PRINCIPAL AND SUBSIDIARY ORGANS OF THE UNITED NATIONS AND TO CONFERENCES CONVENED BY THE UNITED NATIONS (AGENDA ITEM 98)

### (*a*) Report of the Sixth Committee [172]

[*Original text: English and Spanish*]
[*14 December 1967*]

### I. Introduction

1. At its 1592nd plenary meeting, held on 25 October 1967, the General Assembly decided to include the following item in the agenda of its twenty-second session:

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[171] See A/7061.

[172] Document A/6965, reproduced from *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 98.

"98. Question of diplomatic privileges and immunities:

"(*a*) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;

"(*b*) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations."

2. At the same meeting, the General Assembly allocated the item to the Sixth Committee for consideration and report. The Sixth Committee examined the item at its 1010th to 1017th meetings, held between 29 November and 7 December 1967.

3. In a note dated 20 September 1967 (A/6832) the Secretary-General had requested the inclusion in the agenda of the twenty-second session of an item entitled "The situation which has arisen between Guinea and the Ivory Coast involving section 11 of the Convention on the Privileges and Immunities of the United Nations". The situation referred to had previously been the subject of a report by the Secretary-General to the Security Council and to the general membership. In a note issued on 27 September 1967 (A/6832/Rev.1) the Secretary-General requested the inclusion of an item entitled "Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations". In the explanatory memorandum attached to his note, the Secretary-General stated that in the light of recent developments he considered that the immediate practical issue had been resolved and expressed the hope it would now be possible for the two Governments concerned to renew close and friendly ties. Nevertheless, he felt that an immediate question of principle had arisen concerning the privileges and immunities specified in Article 105 of the Charter of the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations. The Assembly might therefore consider it timely to reaffirm those principles and to call upon all Member States to ensure that their representatives to United Nations organs and to conferences convened by the United Nations enjoyed immunity from arrest or detention during their journeys to and from the meetings. The Secretary-General declared that he regarded the item as now having a purely legal and formal character, which the Assembly might wish to consider only as a matter of general principle within a legal and formal framework.

4. The General Committee considered the Secretary-General's request at its 170th, 171st and 172nd meetings, on 29 September, 5 October and 18 October 1967. Following the 171st meeting, the United States representative sent a letter to the President of the General Assembly (A/6837), repeating a request which had been made in the General Committee that the topic to be considered by the General Assembly should be widened by the inclusion in the agenda of an additional item entitled

"Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, as well as the obligations of States concerning the protection of diplomatic personnel and property."

He also stated that it was the intention of the United States to renew in the General Committee a proposal that this item, together with that of the Secretary-General, should be included in the agenda as separate sub-headings of an item entitled "Question of diplomatic privileges and immunities". The combined agenda item would read as follows:

"Question if diplomatic privileges and immunities:

"(*a*) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations;

"(*b*) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, as well as the obligations of States concerning the protection of diplomatic personnel and property."

5. At the 172nd meeting of the General Committee, on 18 October 1967, the representative of Jordan proposed that the item submitted by the United States be amended by the insertion of the phrase "and the privileges and immunities of the staff and of the Organization itself" after the words "convened by the United Nations". The amendment was accepted by the representative of the United States. An amendment put forward by the representative of Dahomey, reversing the order of sub-items (*a*) and (*b*) proposed by the United States, was accepted by the General Committee. The agenda item, as so revised, was then adopted by the General Committee and, subsequently, by the General Assembly (see para. 1 above).

6. Besides the documents referred to above, reference was also made during the Sixth Committee's discussions to a Secretariat study entitled "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" (A/CN.4/L.118 and Add.1 and 2).

## II. Proposals

7. A draft resolution proposed by Algeria, Burundi, Congo (Brazzaville), Mauritania, Somalia, Sudan, Uganda, the United Arab Republic, the United Republic of Tanzania and Zambia (A/C.6/L.633) was circulated on 29 November 1967. The draft resolution read as follows:

"*The General Assembly*,

"*Having considered* agenda item 98 (*b*) entitled 'Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations', which was inscribed on the proposal of the Secretary-General,

"*Recalling* the provisions of Article 105 of the Charter of the United Nations and, in particular paragraph 2 thereof, which, *inter alia*, accords to representatives of the States Members of the United Nations such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

"*Recalling further* section 11 of the Convention on the Privileges and Immunities of the United Nations and, in particular, the specific immunity from personal arrest or detention accorded by the Convention to representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations during their journey to and from the place of meeting,

"1. *Reaffirms* the provisions of Article 105 of the Charter of the United Nations and section 11 of the Convention on the Privileges and Immunities of the United Nations;

"2. *Urgently requests* all Member States to ensure that representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences

convened by the United Nations enjoy, during their journey to and from the place of meeting, the privileges and immunities to which they are entitled."

8. A draft resolution which was circulated on 1 December 1967, sponsored by Dahomey, Madagascar, Niger and Rwanda (A/C.6/L.634), later joined by Cameroon, Central African Republic and Chad (A/C.6/L.634/Add.1) and, subsequently, by Togo (A/C.6/L.634/Add.2), provided as follows:

"*The General Assembly*,

"*Having considered* the question of diplomatic privileges and immunities,

"*Recalling* Article 105 of the Charter of the United Nations,

"*Recalling* its resolution 22 (I) of 13 February 1946 relating to the General Convention on the Privileges and Immunities of the United Nations, and its resolution 179 (II) of 21 November 1947 relating to the Convention on the Privileges and Immunities of the Specialized Agencies,

"*Recalling also* the Vienna Convention on Diplomatic Relations, which came into force on 24 April 1964,

"*Convinced* that the purpose of these Conventions will be fully achieved only if all States accede to them and respect their provisions,

"1. *Reaffirms* the provisions of Article 105 of the Charter of the United Nations and the provisions of the above-mentioned Conventions;

"2. *Further reaffirms* the obligations on States arising from these Conventions, especially as regards the protection of diplomatic staff and property;

"3. *Requests* the Member States which are not parties to these Conventions to accede to them as soon as possible and, pending accession, to grant the benefits of the privileges and immunities provided for in the said conventions;

"4. *Appeals* to the States parties to these Conventions to ensure that the privileges and immunities specified in them are respected and to take all action necessary to ensure the application of the said Conventions;

"5. *Reaffirms* the procedure provided for in these Conventions for the settlement of disputes arising out of the interpretation or application thereof, and in particular the procedure provided for in section 30 of the Convention on the Privileges and Immunities of the United Nations in so far as that Convention is concerned."

9. A draft resolution was submitted on 4 December 1967 by Austria, Chile, Dominican Republic, Guatemala, Honduras, India, Mexico, Uruguay and Yugoslavia (A/C.6/L.635). The draft resolution read as follows:

"*The General Assembly*,

"*Recognizing* the importance of the work of the organs of the United Nations and of conferences convened by it and also of the contribution of the Organization itself and its officials to the maintenance of peaceful relations and co-operation among States,

"*Conscious* that the unimpeded functioning of the diplomatic channels for communication and consultation between Governments is vital to avoid dangerous misunderstanding and friction,

"*Recognizing* that, for the independent exercise of their functions, it is essential that representatives of Member States, the United Nations itself and its officials, as well as diplomatic agents, shall enjoy the necessary privileges and immunities,

"*Recalling* that Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of its Members such privileges and

immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

"*Recalling further* that the Convention of 1946 on the Privileges and Immunities of the United Nations confirms and specifies the provisions of Article 105 of the Charter and lays down rules, *inter alia*, regarding the immunity of the property and the inviolability of the premises of the Organization, regarding facilities for its official communications and regarding the privileges and immunities of representatives of Members to organs of the United Nations and conferences convened by it while exercising their functions and during their journey to and from the place of meeting,

"*Recalling* that the rules of international law governing diplomatic relations embodied in the Vienna Convention of 1961 aim at protecting diplomatic missions and diplomatic representatives and otherwise facilitating their functions,

"*Conscious* of its duty to strengthen by every means peaceful relations and co-operation among States,

"1. *Deplores* all departures from the rules of international law governing diplomatic privileges and immunities and the privileges and immunities of the Organization;

"2. *Urges* States Members of the United Nations which have not yet done so to accede to the Convention on Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

"3. *Urges* States Members of the United Nations, whether or not they have acceded to the Convention on Privileges and Immunities of the United Nations, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to the Organization, to the representatives of Members and to the officials of the Organization;

"4. *Urges* States which have not yet done so to ratify or accede to the Vienna Convention on Diplomatic Relations of 18 April 1961;

"5. *Urges* States, whether or not they are parties to the Vienna Convention on Diplomatic Relations, to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations, and in particular to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law."

At the 1015th meeting of the Sixth Committee, the representative of India, on behalf of the sponsors, revised the draft resolution so as to include in the preamble, immediately after the words "*The General Assembly*", a paragraph beginning "*Having considered* the item entitled:", followed by the title of the item (A/C.6/L.635/Rev.1). The sponsors listed above were joined by Finland, Indonesia and Nigeria (A/C.6/L.635/Rev.1) and by Belgium, Denmark and Norway (A/C.6/L.635/Rev.1/Add.1). The draft resolution, as revised, was identical with that adopted and proposed by the Sixth Committee (see para. 25 below).

## III. Debate

### A. General observations

10. There was widespread agreement on the importance of diplomatic privileges and immunities for the maintenance of friendly relations between States and for the effective conduct of international organizations. As many speakers noted, it had been recognized since the earliest times that the representatives sent on behalf of one State to another

should enjoy a special status so as to enable them to perform their functions under conditions of adequate security and without being subject to pressures or constraint on the part of transit or receiving States. The same considerations applied, *mutatis mutandis*, in the case of representatives of Member States to the United Nations and with respect to the Organization itself and its staff. The development of international organizations since 1945, the availability of rapid means of transport and the increase in the number of independent States had, indeed, all served to emphasize the significance of the relevant international rules and agreements.

11. As one representative observed, privileges and immunities were not a favour which was granted but a prerequisite for the fulfilment of diplomatic functions, and they were designed to ensure the maintenance of official contacts at all times. Because the recognized principles and practices of diplomatic privileges and immunities were essential for the meaningful conduct of international affairs, it was said that a failure to observe those principles and practices constituted not merely a threat to the relations between the States immediately involved, but was of concern to the international community as a whole. Having regard to this fact and to the central position of the United Nations in present-day international relations, all speakers endorsed the suggestion that the General Assembly should take the opportunity to reaffirm unequivocally the importance of scrupulous respect for privileges and immunities. While representatives and States were under an obligation, for their part, not to abuse the privileges and immunities which were granted, it was felt that an appeal should be made to States to take all proper measures to secure the implementation of the rules concerned. By so doing, it was said, the General Assembly would help to reverse the apparent trend to disregard the privileges and immunities owed to official missions and their staff.

12. The rules governing privileges and immunities were stated to have acquired the status of norms of international law, major steps in this process being the adoption in 1946 of the Convention on the Privileges and Immunities of the United Nations and in 1961 of the Vienna Convention on Diplomatic Relations, both prepared under United Nations auspices. As one representative pointed out, the topic under discussion involved no difficulty with regard to the content of the law, which from a juridical standpoint was clear and well-developed, but there was difficulty in ensuring that the provisions in question were invariably respected. As a means towards that end, many speakers expressed the hope that States which had not yet done so would become parties to the 1946 Convention and to the Vienna Convention on Diplomatic Relations. It was stated by one of the sponsors of draft resolution A/C.6/L.635 that the appeal made in that proposal to the effect that States which had not yet done so should become parties to those Conventions was without prejudice to the constitutional and administrative procedures required in various countries.

13. During the debate, reference was made to a number of specific incidents and disputes involving the application of privileges and immunities, in particular to the situation referred to in the Secretary-General's report to the Security Council and to all Member States. Many representatives expressed their appreciation of the efforts of the Secretary-General, which had contributed to the practical resolution of that situation.

### B. Observations relating particularly to the privileges and immunities of the representatives of Member States to the United Nations, and of the Organization and its staff

14. The need for the representatives of Member States to the United Nations, the Organization and its staff to enjoy appropriate privileges and immunities was recognized by all speakers. It was emphasized that if Member States wished the work of the

Organization to be properly carried out, they must be prepared to observe strictly the immunities designed to secure the free and successful performance of its functions. It was generally agreed that the Organization itself had an interest in the enjoyment by the representatives of Member States of the privileges and immunities necessary to enable them to carry out their tasks and that the Secretary-General should maintain his efforts to ensure that the privileges and immunities concerned were respected.

15. As regards the content of those privileges and immunities, reference was made to the provisions of Article 105 of the Charter of the United Nations and to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly in 1946 in order to determine the details of the application of paragraphs 1 and 2 of that Article. The view was expressed that the contents of the 1946 Convention now formed part of general international law as between the Organization and its Members and were accordingly binding on States, even in the absence of an express act of accession. Attention was also drawn to the obligations imposed on Member States under Article 105 of the Charter, irrespective of their specific accession to the 1946 Convention. In the light of the appeal in paragraph 2 of draft resolution A/C.6/L.635/Rev.1 and Add.1 that Member States which had not yet done so should accede to the 1946 Convention, two representatives explained that, despite the statement by one of the sponsors of that draft resolution that the request was without prejudice to internal constitutional and administrative procedures, their delegations would be obliged to abstain in a separate vote on that provision. One of the two representatives also abstained in the vote on the draft resolution.

16. As regards the position at United Nations Headquarters, reference was made to the fact that the host State was not yet a party to the Convention on the Privileges and Immunities of the United Nations. It was stated that it was anomalous that although the Headquarters Agreement and the 1946 Convention were stated in the former instrument to be complementary, the United States had nevertheless not acceded to the latter. The hope was expressed that the United States would in fact take the necessary steps to become a party to the 1946 Convention and so regularize the situation. Some representatives drew attention to what they considered were other unsatisfactory features of the present arrangements. Besides references to specific incidents which had occurred, the application by the host State of the principle of reciprocity in determining the treatment to be given to the representatives of individual Member States was criticized on the ground that this principle was inappropriate outside the framework of bilateral relations. One representative declared that the practice whereby permanent observer status was given only to the representatives of States which, although not members of the United Nations, were members of one or more of the specialized agencies and were generally recognized by Members of the United Nations, was arbitrary and discriminatory.

17. In replying to the criticisms made regarding the position at United Nations Headquarters, the representative of the United States declared that his country had made, and was making, every effort to solve problems as they arose and to discharge its responsibilities under the Charter and other governing legal instruments, in good faith and to the best of its ability. He denied that his Government had in any way created difficulties hampering the legitimate functioning of the delegation of any Member State. While there were, of course, unavoidable inconveniences and even injuries, which occurred despite the best efforts of governmental authorities to prevent them, these should be sharply distinguished from incidents involving the tacit or deliberate participation of Governments, which constituted the main threat to the viability of the system of privileges and immunities.

18. At the close of the Sixth Committee's discussion of the item at its 1016th meeting on 6 December 1967, the Legal Counsel, speaking as the representative of the Secretary-General, made a statement (see above, document A/C.6/385).

19. At the conclusion of the Legal Counsel's statement, the Chairman proposed that the Committee should not discuss the statement but that this action should not be taken to imply that the Sixth Committee had adopted any position with regard to it. On this understanding, it was unanimously decided that the entire statement should be circulated as a Committee document.

## IV. Voting

20. At its 1016th meeting, on 6 December 1967, the Sixth Committee decided to vote first on draft resolution A/C.6/L.635/Rev.1 and Add.1. The representative of Algeria announced that the sponsors of draft resolution A/C.6/L.633 would not insist that it be put to the vote. The representative of Dahomey announced that the sponsors of draft resolution A/C.6/L.634 and Add.1 and 2 would not insist that it be put to the vote if draft resolution A/C.6/L.635/Rev.1 and Add.1 was adopted. The Committee then proceeded to vote on draft resolution A/C.6/L.635/Rev.1 and Add.1.

21. At the request of the representative of Venezuela, a separate vote was taken by roll-call on paragraph 2 of the draft resolution, which was adopted by 84 votes to none, with 4 abstentions. The voting was as follows:

*In favour:* Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Liberia, Libya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Yugoslavia, Zambia.

*Against:* None.

*Abstaining:* Botswana, Colombia, Portugal, Venezuela.

22. In a separate vote, requested by the representative of France, paragraph 3 of the draft resolution was adopted by 83 votes to 2, with 2 abstentions.

23. In a roll-call vote requested by the representative of Guinea, the draft resolution as a whole was adopted by 88 votes to none with 1 abstention.

*In favour:* Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Chad, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Kuwait, Lesotho, Liberia, Libya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Togo, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Venezuela, Yugoslavia, Zambia.

*Against:* None.

*Abstaining:* Colombia.

24. Statements in explanation of vote were made before the vote at the 1016th meeting by the representatives of Syria, Australia, the United Arab Republic, Iran, Spain and Venezuela and, following the vote, by the representatives of Guinea, the Ivory Coast and France. At the 1017th meeting of the Committee, on 7 December 1967, the representative of Cameroon stated that by an error his delegation had not been present during the voting but that if it had been present it would have voted for paragraphs 2 and 3 and for the draft resolution as a whole. At the same meeting a statement in explanation of vote was made by the representative of Colombia. The representative of Venezuela also made a statement at that meeting regarding the voting procedure followed by the Sixth Committee with respect to the draft resolution.

**Recommendation of the Sixth Committee**

25. The Sixth Committee 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 1637th plenary meeting, on 18 December 1967, the General Assembly adopted the draft resolution submitted by the Sixth Committee (see para. 25 above). For the final text, see resolution 2328 (XXII) below.

### 2328 (XXII). Question of diplomatic privileges and immunities

*The General Assembly,*

*Having considered* the item entitled:

"Question of diplomatic privileges and immunities:

"(*a*) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;

"(*b*) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations",

*Recognizing* the importance of the work of the organs of the United Nations and of conferences convened by it and also of the contribution of the Organization itself and its officials to the maintenance of peaceful relations and co-operation among States,

*Conscious* that the unimpeded functioning of the diplomatic channels for communication and consultation between Governments is vital to avoid dangerous misunderstanding and friction,

*Recognizing* that, for the independent exercise of their functions, it is essential that representatives of Member States, the United Nations itself and its officials, as well as diplomatic agents, shall enjoy the necessary privileges and immunities,

*Recalling* that Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization,

*Recalling further* that the 1946 Convention on the Privileges and Immunities of the United Nations [173] confirms and specifies the provisions of Article 105 of the Charter and lays down rules, *inter alia*, regarding the immunity of the property and the inviolability of the premises of the Organization, regarding facilities for its official communications and regarding the privileges and immunities of representatives of Members to organs of the United Nations and conferences convened by it while exercising their functions and during their journey to and from the place of meeting,

*Recalling* that the rules of international law governing diplomatic relations embodied in the Vienna Convention of 1961 [174] aim at protecting diplomatic missions and diplomatic representatives and otherwise facilitating their functions,

*Conscious* of its duty to strengthen by every means peaceful relations and co-operation among States,

1. *Deplores* all departures from the rules of international law governing diplomatic privileges and immunities and the privileges and immunities of the Organization;

2. *Urges* States Members of the United Nations which have not yet done so to accede to the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;

3. *Urges* States Members of the United Nations, whether or not they have acceded to the Convention on the Privileges and Immunities of the United Nations, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to the Organization, to the representatives of Members and to the officials of the Organization;

4. *Urges* States which have not yet done so to ratify or accede to the Vienna Convention on Diplomatic Relations of 18 April 1961;

5. *Urges* States, whether or not they are parties to the Vienna Convention on Diplomatic Relations, to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations, and in particular to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law.

*1637th plenary meeting*
*18 December 1967*

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[173] United Nations, *Treaty Series*, vol. 1 (1946), No. 4, p. 15.

[174] *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II (United Nations publications, Sales No.: 62.X.1), p. 82.

## 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

#### Procedure for handling communications in individual cases involving human rights in education, science and culture (72 Ex/29)—Decision 8.3 adopted by the Executive Board at its 77th session [175]

The Executive Board,

1. *Having considered* document 77 Ex/29 concerning the procedure for handling communications on individual cases involving human rights in education, science and culture,

2. *Bearing in mind* the resolutions adopted by the Executive Board at its 30th session (1952) and at its 37th session (1954) postponing any final decision to a later date,

3. *Having considered* the procedure at present followed by the United Nations Commission on Human Rights, in accordance with Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959,

4. *Finds* that UNESCO is not authorized under its Constitution to take any measures in connexion with complaints regarding human rights, which can be entertained only in accordance with the Covenants and Protocols subscribed to by Member States;

5. *Decides*, therefore, that communications addressed to UNESCO in connexion with individual cases alleging a violation of human rights in education, science and culture shall be handled by it in the same manner as is stipulated in Economic and Social Council resolution 728 F (XXVIII), except in cases where the author of the complaint does not wish that his name should be mentioned;

6. *Requests* the Director-General, in accordance with the said procedure to bring the communications in question to the notice of the Special Committee on Discrimination in Education;

7. *Decides* to extend the terms of reference of the Committees for this purpose;

8. *Expresses the hope* that the study of procedures at present being carried out by the United Nations and its specialized agencies will lead in the near future to a satisfactory solution.

### 2. INTERNATIONAL CIVIL AVIATION ORGANIZATION

#### Resolution adopted by the Council on nationality and registration of aircraft operated by international operating agencies

*The Council,*

*Considering* the provisions of Article 77 of the Convention on International Civil Aviation, the last sentence of which reads: "The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.",

*Considering* the Report on this subject of the Legal Committee, Doc 8704-LC/155, 22/9/67, Annex C,

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[175] Extract from document 77 EX/Decisions.

*Considering* the conclusions of the Legal Committee as expressed in the said Report,

*Agreeing* that, without any amendment to the Convention on International Civil Aviation, the provisions of the Convention can be made applicable, by a determination of the Council under said Article 77, to aircraft which are not registered on a national basis, such as aircraft "jointly registered" or "internationally registered" (which concepts are defined in Appendix 1 hereto) subject, however, to fulfilment of certain basic criteria, which have been established by the Council,

*Holding* that a determination by the Council pursuant to, and within the scope of, said Article 77 of the Convention, and made in accordance with the procedures indicated below, will be binding on all Contracting States and that, accordingly, in the case of aircraft which are jointly registered or internationally registered and in respect of which the basic criteria which have been established by the Council are fulfilled, the rights and obligations under the said Convention would be applicable as in the case of nationally registered aircraft of a Contracting State,

*Resolves* that the process of determination contemplated in said Article 77 shall include the application of the basic criteria which have been established by the Council to each particular plan for joint or international registration which might be brought before it, with appropriate and definite information relating to and describing such plan, by States constituting the international operating agency concerned;

*Decides*, with regard to the establishment of the basic criteria referred to in the three preceding paragraphs, as follows:

(*a*) In cases of joint registration, to adopt the basic criteria specified in Part I of Appendix 2 hereto;

(*b*) In cases of international registration, to be guided by Part II of Appendix 2 hereto;

*Notes*, in connection with the foregoing process of determination, that, while the Council has discretion to arrive at such determination as it deems appropriate, in the case of joint registration described in Appendix 3 hereto, there should be little problem in regard to the fulfilment of the basic criteria specified in Part I of Appendix 2 hereto and, therefore, a determination by the Council in such or similar cases should merely be formal and could automatically be given;

*Notes* also that other cases of joint registration and all cases of international registration may well require different approaches;

*Decides* that, upon completion of the process of determination as specified above for a particular plan which in the opinion of the Council would satisfy the basic criteria specified in Appendix 2 hereto, the manner of application of the provisions of the Convention relating to nationality of aircraft be as follows:

(1) In the case of joint or international registration, all the aircraft of a given international operating agency shall have a common mark, and not the nationality mark of any particular State, and the provisions of the Convention which refer to nationality marks (Articles 12 and 20 of the Convention) and Annex 7 to the Convention shall be applied *mutatis mutandis*;

(2) Without prejudice to the rights of other Contracting States as provided for in C of Appendix 2 hereto and in Note 2 therein, each such aircraft shall, for the purposes of the Convention, be deemed to have the nationality of each of the States constituting the international operating agency;

(3) For the application of Articles 25 and 26 of the Convention, the State which maintains the joint register or the relevant part of the joint register pertaining to a

particular aircraft shall be considered to be the State in which the aircraft is registered, and

*Declares* that:

(1) This Resolution applies only when all the States constituting the international operating agency are and remain parties to the Chicago Convention.

(2) This Resolution does not apply to the case of an aircraft which, although operated by an international operating agency, is registered on a national basis.

**Appendix 1**

For the purpose of this Resolution

—the expression "joint registration" indicates that system of registration of aircraft according to which the States constituting an international operating agency would establish a register other than the national register for the joint registration of aircraft to be operated by the agency, and

—the expression "international registration" denotes the cases where the aircraft to be operated by an international operating agency would be registered not on a national basis but with an international organization having legal personality, whether or not such international organization is composed of the same States as have constituted the international operating agency.

**Appendix 2**

BASIC CRITERIA

Part I—In the case of *joint registration*

A. The States constituting the international operating agency shall be jointly and severally bound to assume the obligations which, under the Chicago Convention, attach to a State of registry.

B. The States constituting the international operating agency shall identify for each aircraft an appropriate State from among themselves which shall be entrusted with the duty of receiving and replying to representations which might be made by other Contracting States of the Chicago Convention concerning that aircraft. This identification shall be only for practical purposes and without prejudice to the joint and several responsibility of the States participating in the agency, and the duties assumed by the State so identified shall be exercised on its own behalf and on behalf of all the other participating States. (See also Note I below)

C. The operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other Contracting States with respect to the provisions of the Chicago Convention. (See also Note 2 below)

D. The States constituting the international operating agency shall ensure that their laws, regulations and procedures as they relate to the aircraft and personnel of the international operating agency when engaged in international air navigation shall meet in a uniform manner the obligations under the Chicago Convention and the Annexes thereto.

Part II—In the case of *international registration* the Council, in arriving at its determination shall be satisfied that any system of international registration devised by the States constituting the international operating agency gives the other member States of ICAO sufficient guarantees that the provisions of the Chicago Convention are complied with. In this connection the criteria mentioned in A, C and D above shall, in any event, be applicable, it being understood that additional criteria may be adopted by the Council.

*Note 1:* In connection with B above, in the case of joint registration the functions of a State of registration under the Convention (in particular, the issue of certificates of registration and the issue and validation of certificates of airworthiness and of licences for the operating crew) shall be performed by the State which maintains the joint register or the relevant part of the joint register pertaining to a particular aircraft. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

*Note 2:* In connection with C above, and with reference to the undermentioned Articles of the Chicago Convention, it is noted as follows:

*Article 7* (Cabotage): The mere fact of joint or international registration under Article 77 would not operate to constitute the geographical area of the multinational group as a cabotage area.

*Article 9* (Prohibited Areas) and *Article 15* (Airport and Similar Charges): The mere fact of joint or international registration under Article 77 will not affect the application of these Articles.

*Article 27* (Patent Claims): The requirement of this Article being that a given State should be not only a party to the Chicago Convention but also a party to the International Convention for the Protection of Industrial Property, it might be that, in a particular case, one or other of the States constituting an international operating agency was not a party to the latter Convention. In such case the interests of that State are not protected by the terms of Article 27.

**Appendix 3**

In connection with the present Resolution the Council had before it the following scheme of joint registration, noting, at the same time, that other schemes might also be possible:

(*a*) The States constituting the international operating agency will establish a joint register for registration of aircraft to be operated by the agency. This will be separate and distinct from any national register which any of those States may maintain in the usual way.

(*b*) The joint register may be undivided or consist of several parts. In the former case the register will be maintained by one of the States constituting the international operating agency and in the latter case each part will be maintained by one or other of these States.

(*c*) An aircraft can be registered only once, namely, in the joint register or, in the case where there are different parts, in that part of the joint register which is maintained by a given State.

(*d*) All aircraft registered in the joint register or in any part thereof shall have one common marking, in lieu of a national mark.

(*e*) The functions of a State of registration under the Chicago Convention (for example, the issuance of the certificate of registration, certificate of airworthiness or licences of crew) shall be performed by the State which maintains the joint register or by the State which maintains the relevant part of that register. In any case, the exercise of such functions shall be done on behalf of all the States jointly.

(*f*) Notwithstanding (*e*) above, the responsibilities of a State of registration with respect to the various provisions of the Chicago Convention shall be the joint and several responsibility of all the States which constitute the international operating agency. Any complaint by other Contracting States will be accepted by each or all of the States mentioned.

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## 3. INTERNATIONAL TELECOMMUNICATION UNION

### Resolution No. 619—Question of the Territory of South West Africa [176]

The Administrative Council,

*Noting*

that on 11 November 1966, the Government of the Republic of South Africa deposited with the General Secretariat an instrument of accession, on its own behalf and on behalf of the Territory of South West Africa, to the International Telecommunication Convention (Montreux, 1965);

[176] *Ref.* Docs. 3643, 3689 and 3713/CA22—May 1967.

*Noting however*

that on 27 October 1966, the General Assembly of the United Nations had adopted Resolution No. 2145 (XXI) under which it decided:

> "that the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations";

*Considering*

that a majority of the Members of the Union approved the proposal of the Council contained in circular-telegram 15/18 of 18 May 1967;

*Resolves*

that the Government of the Republic of South Africa no longer has the right to represent the Territory of South-West Africa within the Union;

*Instructs the Secretary-General*

to bring this Resolution to the attention of Members of the Union and to that of the Secretary-General of the United Nations.

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