

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1968

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



Copyright (c) United Nations

CONTENTS (continued)

Page

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 ORGA- NIZATIONS

A. DECISIONS, RECOMMENDATIONS AND REPORTS OF A LEGAL CHARACTER BY THE UNITED NATIONS

1. *United Nations General Assembly — twenty-second session (24 April-
12 June and 23 September 1968)*
 - Non-proliferation of nuclear weapons (a) Report of the Conference of the
Eighteen-Nation Committee on Disarmament (agenda item 28)
Resolution [2373 (XXII)] adopted by the General Assembly 71
2. *United Nations General Assembly — twenty-third session*
 - (1) International co-operation in the peaceful uses of outer space: report
of the Committee on the Peaceful Uses of Outer Space (agenda item 24)
Resolution [2453 B (XXIII)] adopted by the General Assembly 72
 - (2) Examination of the question of the reservation exclusively for peaceful
purposes of the sea-bed and the ocean floor, and the subsoil thereof,
underlying the high seas beyond the limits of present national jurisdiction,
and the use of their resources in the interests of mankind: report of the
Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the
Ocean Floor beyond the Limits of National Jurisdiction (agenda item 26)
Resolutions [2467 A and B (XXIII)] adopted by the General Assembly 75
 - (3) Urgent need for suspension of nuclear and thermonuclear tests: report
of the Conference of the Eighteen-Nation Committee on Disarmament
(agenda item 28)
Resolution [2455 (XXIII)] adopted by the General Assembly 78
 - (4) The policies of *apartheid* of the Government of the Republic of South
Africa: report of the Special Committee on the Policies of *Apartheid*
of the Government of South Africa (agenda item 31)
Resolution [2396 (XXIII)] adopted by the General Assembly 79
 - (5) Question of the punishment of war criminals and of persons who have
committed crimes against humanity: report of the Secretary General
(agenda item 55)
Resolution [2391 (XXIII)] adopted by the General Assembly 81
 - (6) Elimination of all forms of racial discrimination (a) Implementation of
the United Nations Declaration on the Elimination of All Forms of
Racial Discrimination (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: report of the Secretary General (agenda item 57)
Resolution [2438 (XXIII)] adopted by the General Assembly 82

CONTENTS (continued)

	<i>Page</i>
(7) Capital punishment (agenda item 59) Resolution [2393 (XXIII)] adopted by the General Assembly	83
(8) International Year for Human Rights (a) Measures and activities undertaken in connexion with the International Year for Human Rights: report of the Secretary General (b) International Conference on Human Rights (agenda item 62) Resolutions [2444 (XXIII) and 2449 (XXIII)] adopted by the General Assembly	85
(9) Report of the International Law Commission on the work of its twentieth session (agenda item 84) (a) Report of the Sixth Committee (b) Resolution adopted by the General Assembly (c) Text of the speech delivered by the Chairman of the International Law Commission, on the occasion of the twentieth anniversary of the first election of members of the Commission	87 105 107
(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 (b) Resolution adopted by the General Assembly	113 130
(11) Report of the United Nations Commission on International Trade Law on the work of its first session (agenda item 88) (a) Report of the Sixth Committee (b) Resolution adopted by the General Assembly	132 138
(12) Conference of Non-Nuclear-Weapon States: Final Document of the Conference (agenda item 96) Resolution [2456 B (XXIII)] adopted by the General Assembly	140
 B. DECISIONS, RECOMMENDATIONS AND REPORTS OF A LEGAL CHARACTER BY INTER-GOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS	
1. <i>United Nations Educational, Scientific and Cultural Organization</i>	
(a) UNESCO's contribution to peace and UNESCO's tasks with respect to the elimination of colonialism and racialism: resolutions adopted by the General Conference on 15 November 1968 during its fifteenth session	140
(b) Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works	146
(c) Transfer to UNESCO of the resources and responsibilities of other international organizations	153

CONTENTS (continued)

	<i>Page</i>
2. <i>Inter-Governmental Maritime Consultative Organization</i> Resolution C.44 (XXI) adopted by the Council of IMCO at its twenty-first session, on 29 November 1968	155
 CHAPTER IV. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS	
A. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS	
1. <i>Treaty on the Non-Proliferation of Nuclear Weapons</i>	156
2. <i>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968</i>	160
B. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF INTER-GOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS	
1. <i>United Nations Educational, Scientific and Cultural Organization</i> Amendments to the Constitution of UNESCO: Resolution 11.1 adopted by the General Conference on November 1968 at its fifteenth session. . .	163
2. <i>International Civil Aviation Organization</i> Protocol on the authentic trilingual text of the Convention on International Civil Aviation (Chicago, 1944). Signed at Buenos Aires on 24 September 1968	164
 CHAPTER V. DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTER-GOVERNMENTAL ORGANIZATIONS	
A. DECISIONS OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS	
1. Judgement No. 114 (23 April 1968): <i>Khederian v. Secretary-General of the United Nations</i> Appeal under article 17 of appendix D to the Staff Rules—Importance of the report of the Medical Board	167
2. Judgement No. 115 (24 April 1968): <i>Kimpton v. Secretary-General of the United Nations</i> Request for the rescinding of a decision rejecting an applicant for employment on medical grounds	168
3. Judgement No. 116 (24 April 1968): <i>Josephy v. Secretary-General of the United Nations</i> Request for the rescinding of a decision, described as a “correction” to an earlier decision, purporting to postpone the date of a salary increment as set by the original decision	168

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. United Nations General Assembly—twenty-second session
(24 April-12 June and 23 September 1968)

NON-PROLIFERATION OF NUCLEAR WEAPONS (a) REPORT OF THE CONFERENCE OF THE EIGHTEEN-NATION COMMITTEE ON DIS- ARMAMENT (AGENDA ITEM 28)

Resolution [2373 (XXII)] adopted by the General Assembly

2373 (XXII). Treaty on the Non-Proliferation of Nuclear Weapons

The General Assembly,

Recalling its resolutions 2346 A (XXII) of 19 December 1967, 2153 A (XXI) of 17 November 1966, 2149 (XXI) of 4 November 1966, 2028 (XX) of 19 November 1965 and 1665 (XVI) of 4 December 1961,

Convinced of the urgency and great importance of preventing the spread of nuclear weapons and of intensifying international co-operation in the development of peaceful applications of atomic energy,

Having considered the report of the Conference of the Eighteen-Nation Committee on Disarmament, dated 14 March 1968,¹ and appreciative of the work of the Committee on the elaboration of the draft non-proliferation treaty, which is attached to that report,²

Convinced that, pursuant to the provisions of the treaty, all signatories have the right to engage in research, production and use of nuclear energy for peaceful purposes and will be able to acquire source and special fissionable materials, as well as equipment for the processing, use and production of nuclear material for peaceful purposes,

Convinced further that an agreement to prevent the further proliferation of nuclear weapons must be followed as soon as possible by effective measures on the cessation of the nuclear arms race and on nuclear disarmament, and that the non-proliferation treaty will contribute to this aim,

Affirming that in the interest of international peace and security both nuclear-weapon and non-nuclear-weapon States carry the responsibility of acting in accordance with the

¹ *Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 28, document A/7072-DC/230.*

² *Ibid.*, annex I.

principles of the Charter of the United Nations that the sovereign equality of all States shall be respected, that the threat or use of force in international relations shall be refrained from and that international disputes shall be settled by peaceful means,

1. *Commends* the Treaty on the Non-Proliferation of Nuclear Weapons, the text of which is annexed to the present resolution;

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

3. *Expresses the hope* for the widest possible adherence to the Treaty by both nuclear-weapon and non-nuclear-weapon States;

4. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament and the nuclear-weapon States urgently to pursue negotiations on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control;

5. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to report on the progress of its work to the General Assembly at its twenty-third session.

*1672nd plenary meeting
12 June 1968*

ANNEX

[Text of the Treaty, reproduced in this *Yearbook*, p. 156]

2. United Nations General Assembly—twenty-third session

(1) INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (AGENDA ITEM 24)

Resolution [2453 B (XXIII)] adopted by the General Assembly

2453 (XXIII). International co-operation in the peaceful uses of outer space

B

The General Assembly

Recalling its resolutions 2260 (XXII) of 3 November 1967 and 2345 (XXII) of 19 December 1967,

Having considered the report of the Committee on the Peaceful Uses of Outer Space,³

Welcoming the entry into force on 3 December 1968 of the Agreement on the Rescue of the Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space,⁴

³ See *Official Records of the General Assembly, Twenty-third Session*, agenda item 24, document A/7285.

⁴ General Assembly resolution 2345 (XXII), annex.

Reaffirming the common interest of mankind in furthering the exploration and use of outer space for peaceful purposes,

Believing that the benefits of space exploration can be extended to States at all stages of economic and scientific development if Member States conduct their space programmes in a manner designed to promote the maximum international co-operation and widest possible exchange of information in this field,

Recognizing the importance of international co-operation in developing the rule of law in this new area of human endeavour,

1. *Endorses* the recommendations and decisions⁵ contained in the report of the Committee on the Peaceful Uses of Outer Space;

2. *Requests* the Committee on the Peaceful Uses of Outer Space:

(a) To complete urgently the preparation of a draft agreement on liability for damage caused by the launching of objects into outer space and to submit it to the General Assembly at its twenty-fourth session;

(b) To continue to study questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including various implications of space communications, as well as those comments which may be brought to the attention of the Committee by specialized agencies and the International Atomic Energy Agency as a result of their examination of problems that have arisen or that may arise from the use of outer space in the fields within their competence;

3. *Urges* those countries which have not yet become parties to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,⁶ and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, to give early consideration to ratifying or acceding to those agreements so that they may have the broadest possible effect;

4. *Reaffirms its belief*, as expressed in resolution 1721 D (XVI) of 20 December 1961, that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis, and recommends that States parties to negotiations regarding international arrangements in the field of satellite communication should constantly bear this principle in mind so that its ultimate realization may not be impaired;

5. *Approves* the establishment by the Committee on the Peaceful Uses of Outer Space of a working group to study and report on the technical feasibility of communication by direct broadcast from satellites and the current and foreseeable developments in this field, including comparative user costs and other economic considerations, as well as the implications of such developments in the social, cultural, legal and other areas, and expresses the hope that interested States Members of the United Nations and members of the specialized agencies will contribute comments and working papers to the working group for its information and guidance in the performance of its task;

6. *Welcomes* the decision of the Committee on the Peaceful Uses of Outer Space to take up at its next session serious consideration of suggestions and views regarding education and training in the field of exploration and peaceful uses of outer space that were expressed in the General Assembly and in the Committee, as requested by the Assembly in paragraph 11 of resolution 2260 (XXII);

⁵ See *Official Records of the General Assembly, Twenty-third Session*, agenda item 24, document A/7285, paras. 11-38.

⁶ See *Juridical Yearbook*, 1966, p. 166.

7. *Approves* the continuing sponsorship by the United Nations of the Thumba Equatorial Rocket Launching Station and recommends that Member States should give consideration to the use of these facilities for appropriate space research activities;

8. *Endorses* the recommendation of the Committee on the Peaceful Uses of Outer Space that, upon notification of the United Nations by the Government of Argentina that the Mar Chiquita station near Mar del Plata is operative, the Secretary-General, in consultation with the Chairman of the Committee, should appoint a small group of scientists, drawn from States which are members of the Committee and are familiar with space research and facilities, to visit the station in Argentina and report to the Committee on its eligibility for United Nations sponsorship, in accordance with the basic principles endorsed by the General Assembly in its resolution 1802 (XVII) of 14 December 1962;

9. *Welcomes* the efforts of a number of Member States to keep the Committee on the Peaceful Uses of Outer Space fully informed of their activities and invites other Member States to do so;

10. *Notes with appreciation* that, in accordance with General Assembly resolution 1721 B (XVI) of 20 December 1961, the Secretary-General continues to maintain a public registry of objects launched into orbit or beyond on the basis of information furnished by Member States;

11. *Requests* the specialized agencies and the International Atomic Energy Agency to examine the particular problems which arise or which may arise from the use of outer space in the fields within their competence and which should in their opinion be brought to the attention of the Committee on the Peaceful Uses of Outer Space, and to report thereon to the Committee for its consideration, as indicated in paragraph 2 (b) of the present resolution;

12. *Invites* the specialized agencies concerned and the International Atomic Energy Agency to furnish the Committee on the Peaceful Uses of Outer Space with progress reports on their work in the field of the peaceful uses of outer space;

13. *Requests* the Committee on the Peaceful Uses of Outer Space to continue its work as set out in the present resolution and in previous General Assembly resolutions, and to report to the Assembly at its twenty-fourth session.

*1750th plenary meeting,
20 December 1968*

(2) EXAMINATION OF THE QUESTION OF THE RESERVATION EXCLUSIVELY FOR PEACEFUL PURPOSES OF THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF PRESENT NATIONAL JURISDICTION, AND THE USE OF THEIR RESOURCES IN THE INTERESTS OF MANKIND: REPORT OF THE *AD HOC* COMMITTEE TO STUDY THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION (AGENDA ITEM 26)

Resolutions [2467 A and B (XXIII)] adopted by the General Assembly

2467 (XXIII). Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind

A

The General Assembly,

Recalling the item entitled "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind",

Having in mind its resolution 2340 (XXII) of 18 December 1967 concerned with the problems arising in the area to which the title of the item refers,

Reaffirming the objectives set forth in that resolution,

Taking note with appreciation of the report prepared by the *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,⁷ keeping in mind the views expressed in the course of its work and drawing upon its experience,

Recognizing that it is in the interest of mankind as a whole to favour the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, for peaceful purposes,

Considering that it is important to promote international co-operation for the exploration and exploitation of the resources of this area,

Convinced that such exploitation should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, taking into account the special interests and needs of the developing countries,

Considering that it is essential to provide, within the United Nations system, a focal point for the elaboration of desirable measures of international co-operation, taking into account alternative actual and potential uses of this area, and for the co-ordination of the activities of international organizations in this regard,

1. *Establishes* a Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, composed of forty-two States;

2. *Instructs* the Committee:

⁷ *Official Records of the General Assembly, Twenty-third Session*, agenda item 26, document A/7230.

(a) To study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction and ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole;

(b) To study the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind the fact that such exploitation should benefit mankind as a whole;

(c) To review the studies carried out in the field of exploration and research in this area and aimed at intensifying international co-operation and stimulating the exchange and the widest possible dissemination of scientific knowledge on the subject;

(d) To examine proposed measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area;

3. *Also calls upon* the Committee to study further, within the context of the title of the item, and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect;

4. *Requests* the Committee:

(a) To work in close co-operation with the specialized agencies, the International Atomic Energy Agency and the intergovernmental bodies dealing with the problems referred to in the present resolution, so as to avoid any duplication or overlapping of activities;

(b) To make recommendations to the General Assembly on the questions mentioned in paragraphs 2 and 3 above;

(c) In co-operation with the Secretary-General, to submit to the General Assembly reports on its activities at each subsequent session;

5. *Invites* the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies including the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization to co-operate fully with the Committee in the implementation of the present resolution.

*1752nd plenary meeting,
21 December 1968.*

B

The General Assembly,

Recognizing that it is in the common interest of all nations that the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, should be conducted in such a manner as to avoid infringement of the other interests and established rights of nations with respect to the uses of the sea,

Mindful of the threat to the marine environment presented by pollution and other hazardous and harmful effects, which might result from exploration and exploitation of the areas under consideration,

Desiring to promote effective measures of prevention and control of such pollution and to allay the serious damage which might be caused to the marine environment and, in par-

ticalar, to the living marine resources which constitute one of mankind's most valuable food resources,

Recognizing the complex problem of ensuring effective co-ordination in the wide field of environmental pollution and in the more specific area of prevention and control of marine pollution,

Noting with satisfaction the measures being undertaken by the Inter-Governmental Maritime Consultative Organization to prevent and control pollution of the sea by preparing new draft conventions and other instruments for that purpose,

Recalling, in this regard, the progress achieved towards such concerted action by inter-governmental bodies and the establishment, by the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and its Intergovernmental Oceanographic Commission, the Inter-Governmental Maritime Consultative Organization and the World Meteorological Organization, of a joint group of experts on the scientific aspects of marine pollution,

Recalling further the competence and continuing valuable contributions of the other intergovernmental organizations concerned,

1. *Welcomes* the adoption by States of appropriate safeguards against the dangers of pollution and other hazardous and harmful effects that might arise from the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, notably in the form of concrete measures of international co-operation for the purpose of realizing this aim;

2. *Considers* that, in connexion with the elaboration of principles underlying possible future international agreements for the area concerned, a study should be made with a view to clarifying all aspects of protection of the living and other resources of the sea-bed and the ocean floor, the superjacent waters and the adjacent coasts against the consequences of pollution and other hazardous and harmful effects arising from various modalities of such exploration and exploitation;

3. *Considers further* that such a study should take into consideration the importance of minimizing interference between the many means by which the wealth of the ocean space may be harvested, and that it should extend to the examination of the circumstances in which measures may be undertaken by States for the protection of the living and other resources of those areas in which pollution detrimental to those resources has occurred or is imminent;

4. *Requests* the Secretary-General, in co-operation with the appropriate and competent body or bodies presently undertaking co-ordinated work in the field of marine pollution control, to undertake the study referred to in paragraphs 2 and 3 above and to submit a report thereon to the General Assembly and the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

*1752nd plenary meeting,
21 December 1968.*

(3) URGENT NEED FOR SUSPENSION OF NUCLEAR AND THERMONUCLEAR TESTS: REPORT OF THE CONFERENCE OF THE EIGHTEEN-NATION COMMITTEE ON DISARMAMENT (AGENDA ITEM 28)

Resolution [2455 (XXIII)] adopted by the General Assembly

2455 (XXIII). 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 report of the Conference of the Eighteen-Nation Committee on Disarmament,⁸

Recalling its resolutions 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965, 2163 (XXI) of 5 December 1966 and 2343 (XXII) of 19 December 1967,

Recalling further the joint memorandum on a comprehensive test ban treaty submitted on 26 August 1968 by Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic and annexed to the report of the Conference of the Eighteen-Nation Committee on Disarmament,⁹

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 1963,¹⁰

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, a voluntary exchange of seismic data so as to create a better scientific basis for a national evaluation of seismic events,

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

Noting in this connexion that experts from various countries, including four nuclear-weapon States, have recently met unofficially to exchange views and hold discussions in regard to the adequacy of seismic methods for monitoring underground explosions, and the hope expressed that such discussions would be continued,

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-fourth session.

*1750th plenary meeting,
20 December 1968.*

⁸ *Official Records of the Disarmament Commission, Supplement for 1967 and 1968*, document DC/231.

⁹ *Ibid.*, annex I, section 10.

¹⁰ United Nations, *Treaty Series*, vol. 480 (1963), No. 6964.

(4) THE POLICIES OF *APARTHEID* OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA: REPORT OF THE SPECIAL COMMITTEE ON THE POLICIES OF *APARTHEID* OF THE GOVERNMENT OF SOUTH AFRICA (AGENDA ITEM 31)

Resolution [2396 (XXIII)] adopted by the General Assembly

2396 (XXIII). The policies of *apartheid* of the Government of South Africa

The General Assembly,

Recalling its resolutions on this question and Security Council resolutions 181 (1963) of 7 August 1963, 182 (1963) of 4 December 1963, 190 (1964) of 9 June 1964 and 191 (1964) of 18 June 1964,

Having considered the report of the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa ¹¹ and the report of the Sub-Committee on Information on *Apartheid* annexed thereto, ¹²

Taking into account the decisions and recommendations contained in the Proclamation of Teheran ¹³ adopted by the International Conference on Human Rights, held at Teheran from 22 April to 13 May 1968,

Noting with concern that the Government of South Africa continues to intensify and extend beyond the borders of South Africa its inhuman and aggressive policies of *apartheid* and that these policies have led to a violent conflict, creating a situation in the whole of southern Africa which constitutes a grave threat to international peace and security,

Recognizing that the policies and actions of the Government of South Africa constitute a serious obstacle to the exercise of the right of self-determination by the oppressed people of southern Africa,

Convinced that the international campaign against *apartheid* must be intensified urgently in order to assist in securing the elimination of these inhuman policies,

Considering that effective action for a solution of the situation in South Africa is imperative in order to eliminate the grave threat to the peace in southern Africa as a whole,

Noting that the Security Council has not considered the problem of *apartheid* since 1964,

1. *Reiterates* its condemnation of the policies of *apartheid* practised by the Government of South Africa as a crime against humanity;

2. *Condemns* the Government of South Africa for its illegal occupation of Namibia and its military intervention and for its assistance to the racist minority régime in Southern Rhodesia in violation of United Nations resolutions;

3. *Reaffirms* the urgent necessity of eliminating the policies of *apartheid* so that the people of South Africa as a whole can exercise their right to self-determination and attain majority rule based on universal suffrage;

4. *Draws the attention* of the Security Council to the grave situation in South Africa and in southern Africa as a whole and requests the Council to resume urgently the consider-

¹¹ *Official Records of the General Assembly, Twenty-third Session*, agenda item 31, document A/7254.

¹² *Ibid.*, annex I.

¹³ See *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No.: E.68.XIV.2), p. 3.

ation of the question of *apartheid* with a view to adopting, under Chapter VII of the Charter of the United Nations, effective measures to ensure the full implementation of comprehensive mandatory sanctions against South Africa;

5. *Condemns* the actions of those States, particularly the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which, through their political, economic and military collaboration with the Government of South Africa and contrary to the relevant General Assembly and Security Council resolutions, are encouraging that Government to persist in its racial policies;

6. *Reaffirms* its recognition of the legitimacy of the struggle of the people of South Africa for all human rights, and in particular political rights and fundamental freedoms for all the people of South Africa irrespective of race, colour or creed;

7. *Calls upon* all States and organizations to provide greater moral, political and material assistance to the South African liberation movement in its legitimate struggle;

8. *Expresses its grave concern* over the ruthless persecution of opponents of *apartheid* under arbitrary laws and the treatment of freedom fighters who were taken prisoner during the legitimate struggle for liberation, and:

(a) *Condemns* the Government of South Africa for its cruel, inhuman and degrading treatment of political prisoners;

(b) *Calls* once again for the release of all persons imprisoned or restricted for their opposition to *apartheid* and appeals to all Governments, organizations and individuals to intensify their efforts in order to induce the Government of South Africa to release all such persons and to stop the persecution and ill-treatment of opponents of *apartheid*;

(c) *Declares* that such freedom fighters should be treated as prisoners of war under international law, particularly the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949;¹⁴

(d) *Requests* the Secretary-General to establish and publicize as widely as possible:

(i) A register of persons who have been executed, imprisoned, placed under house arrest or banning orders or deported for their opposition to *apartheid*;

(ii) A register of all available information on acts of brutality committed by the Government of South Africa and its officials against opponents of *apartheid* in prisons;

9. *Commends* the activities of anti-*apartheid* movements and other organizations engaged in providing assistance to the victims of *apartheid* and in promoting their cause, and invites all States, organizations and individuals to make generous contributions in support of their endeavours;

10. *Urges* the Governments of all States to discourage in their territories, by legislative or other acts, all activities and organizations which support the policies of *apartheid* as well as any propaganda in favour of the policies of *apartheid* and racial discrimination;

11. *Requests* all States to discourage the flow of immigrants, particularly skilled and technical personnel, to South Africa;

12. *Requests* all States and organizations to suspend cultural, educational, sporting and other exchanges with the racist régime and with organizations or institutions in South Africa which practise *apartheid*;

13. *Invites* all States and organizations to commemorate as widely as possible the International Day for the Elimination of Racial Discrimination in 1969 in order to express their solidarity with the oppressed people of South Africa;

¹⁴ United Nations, *Treaty Series*, vol. 75 (1950), No. 972.

14. *Requests* the Special Committee on the Policies of *Apartheid* of the Government of the Republic of South Africa, as a matter of priority, to study and report on the implementation of the United Nations resolutions on the question of *apartheid*, the effects of the measures taken and the means of securing more effective international action;

15. *Requests* the Special Committee to intensify its efforts to promote the international campaign against *apartheid* and, to this end, authorizes it:

(a) To hold sessions away from Headquarters or to send a sub-committee on a mission to consult specialized agencies, regional organizations, States and non-governmental organizations;

(b) To hold consultations with experts and to arrange for special studies on various aspects of *apartheid*, in consultation with the Secretary-General and within the budgetary provision to be made for this purpose;

16. *Requests* all States, specialized agencies and other organizations to intensify the dissemination of information on the evils of *apartheid* in the light of the report of the Special Committee and, in this respect, reiterates its request to those States which have not yet done so to encourage urgently the establishment of national committees as provided in paragraph 9 of General Assembly resolution 2307 (XXII) of 13 December 1967;

17. *Requests* the Secretary-General, in the light of the proposals of the Special Committee for the widest dissemination of information on *apartheid*:

(a) To ensure that the Unit on *Apartheid*, established in pursuance of General Assembly resolution 2144 A (XXI) of 26 October 1966, discharges its increased functions in the light of the proposals outlined in paragraph 146 of the report of the Special Committee;

(b) To take other appropriate steps to assist all States, specialized agencies and other organizations to intensify the dissemination of information;

18. *Requests* the Secretary-General to continue to provide the Special Committee with all the necessary means, including appropriate financial means, for the effective accomplishment of its task;

19. *Invites* States, specialized agencies, regional organizations and non-governmental organizations to co-operate with the Secretary-General and the Special Committee in the accomplishment of their tasks under the present resolution.

*1731st plenary meeting,
2 December 1968.*

(5) QUESTION OF THE PUNISHMENT OF WAR CRIMINALS AND OF PERSONS WHO HAVE COMMITTED CRIMES AGAINST HUMANITY: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 55)

Resolution [2391 (XXIII)] adopted by the General Assembly

2391 (XXIII). Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

The General Assembly,

Having considered the draft Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

Adopts and opens for signature, ratification and accession the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the text of which is annexed to the present resolution.

*1727th plenary meeting
26 November 1968*

ANNEX

[Text of the Convention, reproduced in this *Yearbook*, p. 160]

- (6) ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (a) IMPLEMENTATION OF THE UNITED NATIONS DECLARATION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (b) STATUS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (b) MEASURES TO BE TAKEN AGAINST NAZISM AND RACIAL INTOLERANCE: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 57)

Resolution [2438 (XXIII)] adopted by the General Assembly

2438 (XXIII). Measures to be taken against nazism and racial intolerance

The General Assembly,

Recalling its resolution 2331 (XXII) of 18 December 1967 on measures to be taken against nazism and racial intolerance,

Reaffirming that racism, nazism and the ideology and policy of *apartheid* are incompatible with the objectives of the Charter of the United Nations and the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments,

Expressing its deep concern at the fact that, in spite of General Assembly resolution 2331 (XXII), the activities of groups and organizations propagating racism, nazism and similar ideologies based on terrorism and racial intolerance still continue,

Bearing in mind that such ideologies have in the past led to barbarous acts which outraged the conscience of mankind, to other heinous violations of human rights and eventually to a war which brought indescribable suffering to mankind,

Recalling that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights stipulate that nothing in those instruments may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act such as racist or nazi practices and similar ideologies aimed at the destruction of any of the rights set forth therein,

Taking note of resolution II on measures to be taken against nazism and racial intolerance, adopted on 11 May 1968 by the International Conference on Human Rights,¹⁵

1. *Once again resolutely condemns* racism, nazism, *apartheid* and all similar ideologies and practices which are based on racial intolerance and terror as a gross violation of human rights and fundamental freedoms and of the principles of the Charter of the United Nations, and which may jeopardize world peace and the security of peoples;

2. *Urgently calls upon* all States to take without delay, with due regard to the principles contained in the Universal Declaration of Human Rights, legislative and other positive measures to outlaw groups and organizations which are disseminating propaganda for racism, nazism, the policy of *apartheid* and other forms of racial intolerance, and to prosecute them in the courts;

3. *Calls upon* all States and peoples, as well as national and international organizations, to strive for the eradication, as soon as possible and once and for all, of racism, nazism and similar ideologies and practices, including *apartheid*, which are based on racial intolerance and terror;

4. *Requests* the Secretary-General to submit to the General Assembly a survey of information which may be available to him on international instruments, legislation and other measures taken or envisaged, both at the national and international levels, with a view to halting racist, nazi and similar activities, such as *apartheid*;

5. *Invites* States Members of the United Nations and members of the specialized agencies to co-operate with the Secretary-General by providing him with information of this kind;

6. *Decides* to consider at its twenty-fourth session the question of measures to be taken against nazism and racial intolerance.

1748th plenary meeting
19 December 1968

(7) CAPITAL PUNISHMENT (AGENDA ITEM 59)

Resolution [2393 (XXIII)] adopted by the General Assembly

2393 (XXIII). Capital punishment

The General Assembly,

Recalling that article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, liberty and security of person,

Recalling further that article 5 of the Universal Declaration of Human Rights provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having considered the report entitled *Capital Punishment*¹⁶ in the light of the comments¹⁷ thereon of the *Ad Hoc* Advisory Committee of Experts on the Prevention of Crime

¹⁵ See *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No.: E.68.XIV.2), p. 5.

¹⁶ United Nations publication, Sales No.: E.67.IV.15, part I.

¹⁷ *Official Records of the Economic and Social Council, Thirty-fifth Session, Annexes*, agenda item 11, document E/3724, section III.

and the Treatment of Offenders,¹⁸ and the report entitled *Capital Punishment—Developments 1961 to 1965*,¹⁹

Taking note of the conclusion drawn by the Advisory Committee from the report entitled *Capital Punishment* that, if one looked at the whole problem of capital punishment in a historical perspective, it became clear that there was a world-wide tendency towards a considerable reduction in the number and categories of offences for which capital punishment might be imposed,

Taking note also of the view expressed in the report entitled *Capital Punishment—Developments 1961 to 1965* that there is an over-all tendency in the world towards fewer executions,

Taking note of the report of the meeting of the Consultative Group on the Prevention of Crime and the Treatment of Offenders held in August 1968, in so far as it relates to the question of capital punishment,²⁰ and of the view of the Group that there is a strong trend in most countries towards the abolition of capital punishment or at least towards fewer executions,

Desiring to promote further the dignity of man and thus to contribute to the International Year for Human Rights,

1. *Invites* Governments of Member States:

(a) To ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases in countries where the death penalty obtains, *inter alia*, by providing that:

- (i) A person condemned to death shall not be deprived of the right to appeal to a higher judicial authority or, as the case may be, to petition for pardon or reprieve;
- (ii) A death sentence shall not be carried out until the procedures of appeal or, as the case may be, of petition for pardon or reprieve have been terminated;
- (iii) Special attention be given in the case, of indigent persons by the provision of adequate legal assistance at all stages of the proceedings;

(b) To consider whether the careful legal procedures and safeguards referred to in sub-paragraph (a) above may not be further strengthened by the fixing of a time-limit or time-limits before the expiry of which no death sentence shall be carried out, as has already been recognized in certain international conventions dealing with specific situations;

(c) To inform the Secretary-General not later than 10 December 1970 of actions which may have been taken in accordance with sub-paragraph (a) above and of the results to which their consideration in accordance with sub-paragraph (b) above may have led;

2. *Requests* the Secretary-General to invite Governments of Member States to inform him of their present attitude to possible further restriction of the use of the death penalty or to its total abolition, and to state whether they are contemplating restriction or abolition and also to indicate whether changes in this respect have taken place since 1965;

¹⁸ In accordance with Economic and Social Council resolution 1086 B (XXXIX) of 30 July 1965, the *Ad Hoc* Committee was established on a permanent basis as the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders.

¹⁹ United Nations publication, Sales No.: E.67.IV.15, part II.

²⁰ See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 59, document A/7243, annex.

3. *Further requests* the Secretary-General to submit a report on the matter dealt with in paragraphs 1 (c) and 2 above to the Economic and Social Council at one of its sessions to be held in 1971.

1727th plenary meeting
26 November 1968

(8) INTERNATIONAL YEAR FOR HUMAN RIGHTS (a) MEASURES AND ACTIVITIES UNDERTAKEN IN CONNEXION WITH THE INTERNATIONAL YEAR FOR HUMAN RIGHTS: REPORT OF THE SECRETARY-GENERAL (b) INTERNATIONAL CONFERENCE ON HUMAN RIGHTS (AGENDA ITEM 62)

Resolutions [2444 (XXIII) and 2449 (XXIII)] adopted by the General Assembly

2444 (XXIII). Respect for human rights in armed conflicts

The General Assembly,

Recognizing the necessity of applying basic humanitarian principles in all armed conflicts,

Taking note of resolution XXIII on human rights in armed conflicts, adopted on 12 May 1968 by the International Conference on Human Rights,²¹

Affirming that the provisions of that resolution need to be implemented effectively as soon as possible,

1. *Affirms* resolution XXVIII of the XXth International Conference of the Red Cross held at Vienna in 1965, which laid down, *inter alia*, the following principles for observance by all governmental and other authorities responsible for action in armed conflicts:

(a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;

(b) That it is prohibited to launch attacks against the civilian populations as such;

(c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;

2. *Invites* the Secretary-General, in consultation with the International Committee of the Red Cross and other appropriate international organizations, to study:

(a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts;

(b) The need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare;

3. *Requests* the Secretary-General to take all other necessary steps to give effect to the provisions of the present resolution and to report to the General Assembly at its twenty-fourth session on the steps he has taken;

²¹ See *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No.: E.68.XIV.2), p. 18.

4. *Further requests* Member States to extend all possible assistance to the Secretary-General in the preparation of the study requested in paragraph 2 above;

5. *Calls upon* all States which have not yet done so to become parties to the Hague Conventions of 1899 and 1907,²² the Geneva Protocol of 1925²³ and the Geneva Conventions of 1949.²⁴

*1748th plenary meeting
19 December 1968*

2449 (XXIII). Legal aid

The General Assembly,

Noting with appreciation resolution XIX on legal aid adopted on 12 May 1968 by the International Conference on Human Rights²⁵ held at Teheran from 22 April to 13 May 1968,

Recalling that the Universal Declaration of Human Rights proclaims that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,

Recalling further that article 14 of the International Covenant on Civil and Political Rights provides in part that everyone charged with a criminal offence shall be entitled to defend himself in person or through legal assistance of his own choosing and to be informed, if he does not have legal assistance, of this right and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

Believing that there are cases where the individual's recourse to competent tribunals to which he has a right of access is denied or hindered because of the lack of financial resources to bear the expenses involved,

Convinced that the provision of legal aid to those who need it would strengthen the observance and protection of human rights and fundamental freedoms,

1. *Recommends* Member States:

(a) To guarantee the progressive development of comprehensive systems of legal aid to those who need it in order to protect their human rights and fundamental freedoms ;

(b) To devise standards for granting, in appropriate cases, legal or professional assistance;

(c) To consider ways and means of defraying the expenses involved in providing such comprehensive legal aid systems;

(d) To consider taking all possible steps to simplify legal procedures so as to reduce the burdens on the financial and other resources of individuals who seek legal redress:

(e) To encourage co-operation among appropriate bodies making available competent legal assistance to those who need it;

2. *Requests* the Secretary-General, in consultation with the appropriate United Nations organs, specialized agencies and other intergovernmental organs concerned, to

²² Carnegie Endowment for International Peace, *The Hague Conventions and Declarations 1899-1907* (New York, Oxford University Press, 1918).

²³ League of Nations, *Treaty Series*, vol. XCIV (1929), No. 2138.

²⁴ United Nations, *Treaty Series*, vol. 75 (1950), Nos. 970-973.

²⁵ See *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No.: E.68.XIV.2), p. 15.

provide the necessary resources, within the limits of the programme of advisory services in the field of human rights, to facilitate expert and other technical assistance to Member States seeking to extend the availability of competent legal aid.

*1748th plenary meeting
19 December 1968*

(9) REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE
WORK OF ITS TWENTIETH SESSION (AGENDA ITEM 84)

(a) Report of the Sixth Committee ²⁶

[Original text: English and French]
[3 December 1968]

I. Introduction

1. At its 1676th plenary meeting, on 27 September 1968, the General Assembly included the item entitled "Report of the International Law Commission on the work of its twentieth session" in the agenda of its twenty-third session and allocated it to the Sixth Committee.

2. The Sixth Committee considered the item at its 1029th to 1039th meetings, held from 3 to 15 October 1968. In addition, at its 1060th and 1061st meetings, on 4 November 1968, the Committee commemorated the twentieth anniversary of the first election of members of the International Law Commission. ²⁷

3. At the 1029th meeting, on 3 October 1968, Mr. Ruda, Chairman of the International Law Commission at its twentieth session, introduced the Commission's report on the work of that session (A/7209/Rev.1). At the 1037th and 1038th meetings, on 14 and 15 October 1968, he commented on the observations which had been made during the debate on the report. At the 1060th meeting, on 4 November 1968, he reviewed the work accomplished by the Commission during its first nineteen sessions.

4. At the 1039th meeting, on 15 October 1968, the Rapporteur of the Sixth Committee raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate. Referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject matter, the report should include a summary of the representative trends of opinion and not of the individual views of all delegations.

5. The report of the International Law Commission on the work of its twentieth session, which was before the Sixth Committee, is divided into five chapters, entitled: I. Organization of the session; II. Relations between States and international organizations; III. Succession of States and Governments; IV. The most-favoured-nation clause; V. Other decisions and conclusions of the Commission. The report includes an annex containing

²⁶ Document A/7370 reproduced from *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 84.

²⁷ The text of the speech delivered on this occasion by the Chairman of the International Law Commission, is reproduced in this *Yearbook*, p. 107.

a working paper prepared by the Secretariat and entitled "Review of the International Law Commission's programme and methods of work".

II. Proposals and amendments

6. At the 1037th meeting, on 14 October 1968, the representative of Ghana introduced a draft resolution sponsored by Australia, Austria, Ceylon, Chile, Colombia, the Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Haiti, Hungary, India, Mexico, Mongolia, Nigeria, Peru, Romania, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Yugoslavia (A/C.6/L.649 and Add.1). The draft resolution read as follows:

"The General Assembly,

"Having considered the report of the International Law Commission on the work of its twentieth session (A/7209/Rev.1),

"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, 2167 (XXI) of 5 December 1966 and 2272 (XXII) of 1 December 1967, 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 and relations between States and intergovernmental organizations, expedite the study of State responsibility, study the most-favoured-nation clause and carry out a review of its programme and methods of work,

"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 appreciation that the United Nations Office at Geneva organized in July 1968, during the twentieth session of the International Law Commission, a fourth session of the Seminar on International Law and that more scholarships in the Seminar were made available for participants from developing countries,

"1. Takes note of the report of the International Law Commission on the work of its twentieth session;

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

"3. Notes with approval the programme and organization of work planned by the International Law Commission, but, with respect to the Commission's wish to reserve the possibility of a winter session in 1970, decides to defer a final decision until its twenty-fourth session;

"4. Recommends that the International Law Commission should:

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

"(b) Make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

"(c) Continue its study on the most-favoured-nation clause;

“5. *Recommends further* that the International Law Commission should examine, when it deems it advisable and without affecting its scheduled programme of work, the questions involved in the final stage of the codification of international law referred to in paragraph 102 of the Commission’s report;

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

“7. *Requests* the Secretary-General to undertake the preparation of the new survey of the whole field of international law referred to in paragraph 99 of the Commission’s report;

“8. *Further requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-third session of the General Assembly on the report of the Commission.”

7. At the same meeting, Belgium submitted an amendment (A/C.6/L.650) to the draft resolution proposing the insertion between operative paragraphs 4 and 5 of the following new paragraph:

“*Invites* Member States to submit in writing to the Secretary-General, for the attention of the International Law Commission, not later than 15 May 1969, their comments and observations on the draft articles prepared by the International Law Commission on representatives of States to international organizations.”

8. At the 1038th meeting, on 15 October 1968, the Chairman informed the Committee that Belgium had withdrawn its amendment and that the sponsors of the draft resolution, with the exception of the Dominican Republic and Uruguay, had submitted a new draft resolution (A/C.6/L.651). The preamble of the new text was the same as that of draft resolution A/C.6/L.649 and Add.1. The operative part read as follows:

“1. *Takes note* of the report of the International Law Commission on the work of its twentieth session;

“2. *Expresses its profound appreciation* to the International Law Commission for the valuable work it has accomplished during the past twenty years in the progressive development and codification of international law;

“3. *Notes with approval* the programme and organization of work planned by the International Law Commission, but, with respect to the Commission’s wish to reserve the possibility of a winter session in 1970, decides to defer a final decision until its twenty-fourth session;

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

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

“(b) Continue its study of the most-favoured-nation clause;

“(c) Make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

“5. *Takes note* that the International Law Commission has under consideration the questions involved in the final stage of the codification of international law, referred to in paragraph 102 of the Commission’s report;

“6. *Expresses the wish* that, in conjunction with future sessions of the International Law Commission, other seminars be organized, which should continue to ensure the participation of an increasing number of nationals of developing countries;

“7. *Notes* that the Secretary-General has under study the questions raised in paragraphs 98 (b) and 98 (c) of the report of the International Law Commission;

“8. *Requests* the Secretary-General to undertake the preparation of the new survey of the whole field of international law referred to in paragraph 99 of the Commission’s report;

“9. *Further requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-third session of the General Assembly on the report of the Commission.”

9. At the 1039th meeting, also held on 15 October 1968, the representative of Ghana introduced a revised draft resolution (A/C.6/L.651/Rev.1) submitted by the Dominican Republic, Morocco, the United Republic of Tanzania and the sponsors of draft resolution A/C.6/L.651, namely Australia, Austria, Ceylon, Chile, Colombia, Ecuador, El Salvador, Ghana, Guatemala, Haiti, Hungary, India, Mexico, Mongolia, Nigeria, Peru, Romania, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia.

10. The preamble of draft resolution (A/C.6/L.651/Rev.1) was identical with those of draft resolutions A/C.6/L.649 and Add.1 and A/C.6/L.651. The operative part read as follows:

“1. *Takes note* of the report of the International Law Commission on the work of its twentieth session;

“2. *Expresses its profound appreciation* to the International Law Commission of the valuable work it has accomplished during the past twenty years in the progressive development and codification of international law;

“3. *Notes with approval* the programme and organization of work planned by the International Law Commission, including the preparation, in accordance with article 18 of its Statute, of the new survey of the whole field of international law referred to in paragraph 99 of the Commission’s report, but, with respect to the Commission’s wish to reserve the possibility of a winter session in 1970, decides to defer a final decision in this respect until its twenty-fourth session;

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

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

“(b) Continue its study of the most-favoured-nation clause;

“(c) Make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

“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 an increasing number of nationals of developing countries;

“6. *Notes* that the Secretary-General has under study the questions raised in paragraphs 98 (b) and (c) of the report of the International Law Commission;

“7. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-third session of the General Assembly on the report of the Commission.”

11. With regard to the financial implications of the draft resolutions before the Committee, the representative of the Secretary-General noted at the 1037th meeting that, under paragraph 7 of draft resolution A/C.6/L.649 and Add.1, the Secretary-General would be requested to undertake the preparation of the new survey of the whole field of international law referred to in paragraph 99 of the report of the International Law Commission. That paragraph had mentioned a decision whereby the International Law Commission requested the Secretary-General to prepare a new survey on the lines of the memorandum entitled *Survey of International Law in Relation to the Work of Codification of the International Law Commission*,²⁸ which had been submitted at its first session in 1949. The representative of the Secretary-General said that that memorandum had been prepared by a highly qualified expert and that the Secretariat proposed to secure an equally qualified special consultant to undertake the new survey which was requested. The estimated cost of the special consultant's services was \$6,000. The representative of the Secretary-General subsequently explained that his observations also applied to paragraph 3 of draft resolution A/C.6/L.651/Rev.1. He added that, if the Secretariat could dispense with the services of a special consultant for the preparation of the new survey, the sum of \$6,000 would naturally be saved.

III. Debate

12. The main trends of the Sixth Committee's debate on agenda item 84 are summarized in the following five sections. The first—section A—concerns the observations which were made on the role and the work of the International Law Commission in general. In the other four—sections B to E—the observations relating more particularly to the report of the International Law Commission on the work of its twentieth session are analysed. These four sections correspond to chapters II to V of the Commission's report, and each one bears the title of the chapter to which it relates.

A. THE ROLE AND THE WORK OF THE INTERNATIONAL LAW COMMISSION IN GENERAL

13. Many representatives paid a tribute to the Commission for the contribution it had made during the first twenty years of its existence to the codification and progressive development of international law. It was pointed out that, on the basis of drafts prepared by the Commission, multilateral conventions had been or were about to be concluded on the law of the sea, the reduction of statelessness, diplomatic and consular relations, special missions and the law of treaties.

14. In the view of some representatives, the creation of the Commission had inaugurated a period of rapid and far-reaching “legislative” activity in the development of international law which was without precedent. The substantive achievements of the Commission were ample justification of its establishment and augured well for future advances in the fulfilment of the task of codifying and progressively developing international law, entrusted to the General Assembly under article 13, paragraph 1 (a), of the Charter of the United Nations.

15. The significant role played by the Commission was attributed by a number of representatives to the high standard of its work, which had been carried out not only *de lege lata* but *de lege ferenda* in order to meet the demands of contemporary international life,

²⁸ United Nations publication, Sales No.: 48.V.1 (1).

characterized by political developments such as the emergence of new States and the establishment of international organizations, and by scientific and technological changes. Certain representatives stressed that the Commission had been conscious of the practical importance of its task and had sought to serve the interests of the international community as a whole. It had formulated general principles in a clear and concise fashion, relying on international custom and practice, ascertained by means of repeated consultations with Member States.

16. Certain representatives considered that the presentation of the Commission's report in the Sixth Committee by the Chairman of the Commission was an important means of strengthening the relationship existing between the two bodies. Some representatives emphasized the role which the Sixth Committee played in preparing the General Assembly's recommendations to the Commission and in bringing about the action that Governments considered appropriate in the light of the Commission's final drafts. It was, however, believed that the Commission should have a substantial degree of autonomy and not be subject to detailed directives from the General Assembly.

17. Some representatives pointed out the *de facto* interdependence between international law and international relations. Stress was placed on the importance of the codification and progressive development of international law as a means of building a world order based on the rule of law, of ensuring international peace and security in accordance with the principles of the Charter, in particular those of the sovereign equality of States, non-intervention and self-determination, and of promoting peaceful coexistence and cooperation among all States, irrespective of their political, economic or social systems. In the opinion of some representatives, the importance of establishing harmonious legal norms that would help regulate the international political situation had become more evident in view of the serious decline in the standards of international ethics and morality and the reappearance of the policy of promoting spheres of influence. Certain representatives also emphasized that, with a view to strengthening the role of international law in international affairs, the United Nations should concern itself with the way in which international law was respected in practice. The hope was expressed that it would be possible for the General Assembly to turn again in the near future to the question of a declaration on rights and duties of States. A similar view was expressed regarding the question of international criminal jurisdiction and that of the draft Code of Offences against the Peace and Security of Mankind.

B. RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

18. Most of the observations on chapter II of the International Law Commission's report related to the draft articles on representatives of States to international organizations which are contained in that chapter and which constitute the first unit of the set of draft articles which the Commission intends to submit on relations between States and international organizations. Some representatives raised two further questions not covered in the twenty-one draft articles. The first was the question of delegations to sessions of organs of international organizations and to conferences convened by international organizations. The second was the question of permanent observers from non-member States to international organizations. There were also representatives who stated that they did not intend to comment on the specific content of the draft articles, since they were at a preliminary stage of the consideration of the matter.

1. *General observations on the draft articles on representatives of States to international organizations*

19. A number of representatives congratulated the International Law Commission and its Special Rapporteur, Mr. El-Erian, on the quality of the draft articles on represen-

tatives of States to international organizations. It was pointed out, in that connexion, that the twenty-one draft articles demonstrated the Commission's desire to establish an equilibrium between the interests of the sending States, those of the host States and those of the international organizations. Although they were only the first unit in the work of codification and progressive development which the Commission intended to undertake on the entire subject, the draft articles were a valuable contribution to knowledge of a new domain, which differed in several respects from the traditional domain of relations between States and was governed by rules which were still vague and practices which often varied from organization to organization.

2. *Observations on specific provisions of the draft articles on representatives of States to international organizations*

20. The provisions most frequently mentioned during the debate in the Sixth Committee were those of draft articles 1 to 5, 7, 8, 10, 13, 14 and 16.

Article 1 (Use of terms)

21. The observations on article 1 referred mainly to sub-paragraphs (a) and (b), which concern the definition of the terms "international organization" and "international organization of universal character", respectively.

22. With regard to sub-paragraph (a), some representatives stressed that international organizations were not subjects of international law in the same way as States and that the scope of their legal personality depended on the will of their component States. In that connexion, regret was expressed that the International Law Commission had not retained the definition of the term "international organization" which had been proposed by the Special Rapporteur in his third report.²⁹

23. Two observations were made concerning sub-paragraph (b). First, it was said that the sub-paragraph did not indicate clearly enough that the universal character of an international organization should derive from its object and its purposes. Secondly, it was stated that the sub-paragraph should specify that an international organization of universal character was open to all States which accepted the rights and obligations established in its constitutive document.

Article 2 (Scope of the present articles)

24. Several representatives supported article 2 and endorsed the rule in paragraph 1 thereof limiting the application of the draft articles to international organizations of universal character. It was pointed out, in particular, that regional organizations had a special unity of purpose and that any attempt to standardize the practices which they followed might upset delicate balances and create numerous difficulties. Paragraph 2, moreover, stated a useful reservation to that rule and offered a sound solution for a problem which had long been a matter of concern to the International Law Commission.

25. Some representatives, however, criticized the rule laid down in paragraph 1. Among them were representatives who found the rule too broad and thought that the application of the draft articles should be restricted solely to genuinely important universal organizations. Others considered it too restrictive and expressed regret that regional organizations had been excluded from the scope of the draft articles. It was proposed in that connexion that the presumption embodied in article 2 should be reserved and that it should be specified that the draft articles applied to all important international organizations but that States members of regional organizations could adopt other rules for the latter organizations by mutual agreement.

²⁹ A/CN.4/203, chapter II, article 1, sub-paragraph (a), reproduced in *Yearbook of the International Law Commission, 1968*, vol. II, pp. 119-162.

Article 3 (Relationship between the present articles and the relevant rules of international organizations), Article 4 (Relationship between the present articles and other existing international agreements) and Article 5 (Derogation from the present articles)

26. Many representatives endorsed the provisions of articles 3, 4 and 5. Several of them emphasized that those provisions gave the draft articles the necessary flexibility and made allowance for the diverse character of international organizations and the need for the formulations of particular rule. Referring to paragraph (3) of the commentary on article 5 some representatives stated that they were unable to subscribe to the opinion that the United Nations could be considered in a sense to be a party to the Convention on the Privileges and Immunities of the United Nations.

Article 7 (Functions of a permanent mission)

27. Several representatives expressed support for the text of article 7 as adopted by the International Law Commission. Others, on the contrary, thought that it should be re-drafted. It was suggested, for example, that in sub-paragraph (c) negotiations in the organization should be mentioned first instead of second, so as to make it clear that permanent missions performed their functions in the context of multilateral diplomacy.

28. Two observations were made on sub-paragraph (e). Some representatives said that it added nothing new and that either the sub-paragraph should be deleted or the words "in the organization" should be added before the word "co-operation". Others proposed that the text should follow the corresponding provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations and that sub-paragraph (e) should specify that one of the functions of a permanent mission was to promote friendly relations and co-operation between the member States of the organization.

29. It was also felt that a rule should be drawn up concerning the commencement of the functions of the permanent representative and staff of a mission, in order to determine when their privileges and immunities began.

Article 8 (Accreditation to two or more international organizations or assignment to two or more permanent missions) and Article 13 (Accreditation to organs of the organization)

30. The use of the term "accreditation" in the titles of articles 8 and 13 was criticized. It was pointed out that the word had been borrowed from the terminology of bilateral diplomacy and that, in order to avoid any confusion with the rules governing that subject, it would be desirable to replace it by another term, such as "appointment". A similar observation was made about the use of the term "accredit" in the body of article 8.

31. As regards the text of article 13, attention was drawn to an apparent contradiction between the two paragraphs of that article. It was pointed out that paragraph 2 established the presumption that a permanent representative had general competence to represent the sending State in all the organs of the organization to which he had been accredited. Under paragraph 1, however, the sending State could specify in the credentials given to its permanent representative that he represented it in one or more organs of the organization. The question was whether in such a case the presumption embodied in paragraph 2 was still valid or whether the fact that a State enumerated certain organs in the credentials given to its permanent representative prevented him from representing it in other organs.

Article 10 (Appointment of the members of the permanent mission)

32. Several representatives emphasized the importance of article 10, which, subject only to the reservations mentioned in it, set forth the rule of freedom of choice by the sending

State of the members of the permanent mission. This article was regarded as establishing a fundamental difference between permanent missions to international organizations and traditional diplomatic missions, for in the latter the freedom of choice of the members of the mission by the accrediting State was restricted by the rules concerning the *agrément* of the head of the mission and the declaring of a member of the mission to be *persona non grata* or unacceptable. Those rules did not, however, apply to permanent missions to international organizations.

Article 14 (Full powers to represent the State in the conclusion of treaties)

33. Some representatives pointed out that paragraph 1 of article 14 referred only to the adopting of the text of a treaty between the sending State and the international organization concerned, whereas the corresponding provisions of the draft Convention on the Law of Treaties³⁰ (article 6, paragraph 2 (c)) applied to any treaty adopted by an international organization. They questioned the desirability of thus limiting the powers which in the draft Convention on the Law of Treaties were accorded to permanent representatives in regard to adopting the text of a treaty. On the other hand, several members of the Sixth Committee considered that the rule formulated in article 14 was not open to dispute. Some, however, felt that that rule was perhaps more properly a part of the law of treaties, and they wondered whether it belonged in a draft concerned with the relations between States and international organizations.

Article 16 (Size of the permanent mission)

34. Referring to paragraph (8) of the commentary on article 16, several States noted with satisfaction that the International Law Commission was contemplating the inclusion in the draft articles of a provision of general scope concerning remedies available to the host State in the event of claims of abuses by a permanent mission.

3. *Suggestions that the draft articles should be communicated to international organizations*

35. Noting that the International Law Commission had decided to communicate the twenty-one draft articles to Governments for their comments, several representatives expressed the wish that the draft articles should also be communicated to international organizations.

4. *The question of delegations to organs of international organizations and to conferences convened by international organizations*

36. Several representatives noted that the International Law Commission had expressed the intention of considering at a future session whether rules concerning delegations to organs of international organizations and to conferences convened by international organizations should be included in its draft articles. Some of those representatives expressed the opinion that that should be done, because the absence of such rules in the draft articles would leave an unfortunate gap.

5. *The question of permanent observers from non-member States to international organizations*

37. Some representatives expressed the view that the International Law Commission should take up the question of permanent observers from non-member States to international

³⁰ This draft Convention was adopted at Vienna in 1968 by the Committee of the Whole of the United Nations Conference on the Law of Treaties. For the provisions referred to, see document A/CONF.39/C.1/L.370/Add.4.

organizations. They maintained that this question was particularly urgent, inasmuch as it had often been dealt with on a partisan and discriminatory basis.

C. SUCCESSION OF STATES AND GOVERNMENTS

38. Several representatives expressed gratification that, following the recommendations of the General Assembly, the International Law Commission had begun to consider in depth the topic of succession of States and Governments, which had been included in its programme of work since 1949. They noted with satisfaction the progress achieved at the Commission's twentieth session and paid a tribute to the two Special Rapporteurs, Mr. Mohammed Bedjaoui and Sir Humphrey Waldock, for their contribution to the performance of the Commission's task.

39. A number of representatives considered that the problems involved in this field were of such diversity and complexity, particularly in view of the emergence of many new States on the international scene since the end of the Second World War, that it was essential to carry out very thorough studies before a final text could be prepared.

40. Several representatives endorsed the Commission's decision to divide the topic into three headings, namely, succession in respect of matters other than treaties, succession in respect of treaties and succession in respect of membership of international organizations. They also endorsed the decision to give priority to the second of these headings, and to leave aside for the time being the third heading, for which no Special Rapporteur had been appointed. In that respect the hope was expressed that work on the third heading would be started soon after a convention on relations between States and international organizations had been adopted. The view was also expressed that, once the work on succession of States had been completed, the question of succession of Governments should be considered in order to cover the subject of succession in its entirety.

41. Some representatives, noting the relationship existing between the first two headings of the topic, considered that the Special Rapporteurs concerned should consult one another at a later stage of the work to ensure the harmonization of the separate drafts to be submitted to the Commission.

42. Certain representatives expressed their general agreement with the conclusions reached by the Commission on the reports submitted to it on the first two headings of the topic. Other representatives made detailed comments on specific aspects of each of those headings. A summary of those comments is given below.

1. *Succession in respect of matters other than treaties*

(a) *General definition of State succession*

43. Several representatives noted that the Commission had not attempted so far to define the term "succession". They referred to the difference of opinion which had arisen in the Commission on whether the term meant a transfer of sovereignty or a change in the possession of the competence to conclude treaties with respect to a given territory. The view was expressed that the adoption of either meaning to the exclusion of the other would create problems for new States. Thus, if the term were taken to mean a change in the possession of competence, it might prejudice the sovereign right of newly independent States to repudiate treaties concluded by former minority Governments. Whatever definition was finally arrived at, it should cover both meanings. On the other hand, it was considered that emphasis should be laid on sovereignty and on the expression of the free will of the peoples which might benefit from or have obligations under treaties concluded while they

were subjected to the colonial régime. There were also representatives who thought that any theoretical examination of the definition of succession should be avoided at the present time; what was needed from the Commission was the formulation of rules on the concrete problems raised by the topic.

(b) *Method of work*

44. Several representatives endorsed in general terms the Commission's decision that the study of the topic should combine the technique of codification with that of progressive development in the light of comments to be submitted by Governments. According to some representatives, the recent process of decolonization, giving birth to a large number of independent sovereign States, called for the progressive development of the law of State succession; it was impossible to rely solely on the codification of norms that had been established without the participation of those new States. It was stressed that, since the work of the Commission should seek to adapt the existing norms to current needs and should aim at universality, due account should be taken not only of traditional practices and old rules but also of contemporary conditions and the experience of the newly independent States. The belief was expressed that work on the topic entailed consideration of present trends of international laws, the principles of the Charter, and particularly the right of self-determination and sovereign equality, and permanent sovereignty over natural resources.

(c) *Form of the work*

45. The representatives who referred to this aspect of the question expressed agreement with the Commission's request to the Special Rapporteurs to prepare a draft of articles or rules, in the light of which a decision could be taken on the final form of the work. Some of those representatives expressed the hope that that draft would serve as the basis of a future convention. Others, however, believed that the draft might prove to be more suitable for another type of instrument, such as an expository code.

(d) *Origins and types of State succession*

46. Certain representatives expressed agreement with the conclusion reached by the Commission that it was not advisable to deal separately with the origins and types of State succession and that, for the purposes of codifying the rules relating to succession, it was sufficient to bear in mind the various situations arising in practice, with a view to formulating, when necessary, special rules for a given situation. It was argued that it would be both difficult and dangerous to attempt to codify this branch of law on the basis of a rigid classification into "dismemberment", "decolonization" and "merger", since those categories were neither mutually exclusive nor exhaustive. The view was expressed that from the juridical point of view decolonization was not an aspect of succession different from the traditional type; it was merely one of the ways of transferring sovereignty from one State to another. It was pointed out that problems of succession might arise even after decolonization, if an independent State merged with another or split voluntarily into two or more independent States. The belief was expressed, therefore, that it was better to take as a basis the matters in respect of which the question of succession could arise. The opinion was also voiced that, by avoiding the establishment of different régimes for different types of succession, the Commission would help ensure a major objective of the work being undertaken, namely, the enhancement of uniformity.

47. Other representatives, however, considered that there was a vital difference between decolonization on the one hand and dismemberment and merger on the other. The view was expressed that, while succession by decolonization was usually accompanied by devolution treaties which tended to have the effect of curtailing the freedom of the new State in its relationship with the former colonial Power and with other States, succession

by dismemberment or merger, when it was not the result of imperialist and colonialist activities, was in itself evidence of the free exercise of the sovereign right of an independent State. It was also stated that dismemberment and merger occurred so seldom as to make them relatively insignificant. The belief was therefore expressed that decolonization deserved to be treated separately from other origins and types of State succession but without thereby disregarding the latter.

(e) *Specific problems of new States*

48. Several representatives welcomed the Commission's conclusion that the problems of new States should be given particular attention. In addition, some representatives expressed the belief that State succession resulting from decolonization deserved a special study. A number of representatives emphasized that the importance recently acquired by the topic of State succession was a result of the phenomenon of decolonization. It was stated that the large number of recent emancipations of peoples had blurred the bilateral nature which that process might have had in the past; the process now operated under the surveillance of the international community, which should prevent provisional *de facto* arrangements from taking the place of a final solution to the problems of State succession. It was considered that the problems arising for States emerging as a result of decolonization had specific features which distinguished them from those arising in other cases of succession. Some representatives drew attention to the fact that, although the decolonization process was well under way, many peoples were still struggling for their independence. Emphasis was also placed on the urgent problems which all new States emerging from national liberation movements would have to face. It was pointed out that many newly independent States were still engaged in assessing the legal relationships inherited from past associations with the colonial Powers. The view was also expressed that some former colonial Powers were attempting to perpetuate colonialism in a new form, through economic and social means which placed as great a limitation on self-determination as the old, overt form. It was believed, therefore, that the formulation of rules on succession problems connected with decolonization would help to strengthen the sovereignty and the political and economic independence of the new States. A number of representatives, recognizing the particular importance that the study of the topic had for newly independent States, stressed the need for the Commission to take special account of the views of States which had achieved independence since the Second World War. In that connexion, some representatives made concrete references to difficulties encountered by the countries of which they were nationals during and following the period of their emancipation. The opinion was further expressed that it should be possible to formulate general rules on State succession which would be based on the experience gained from the decolonization process.

49. On the other hand, several representatives were of the opinion that the Commission should not limit its work to the problems arising from decolonization. While recognizing that special attention should be given to the problems of new States, they nevertheless expressed the hope that such an emphasis should not prevent the Commission from establishing general rules suited to all categories of State succession. It was stated that problems had always arisen in connexion with the emergence of new States, and that those problems had been taken into account in the past two decades in the development of rules relating to State succession. It was considered that traditional problems had not lost their significance, whereas the process of decolonization was almost complete; hence, if long-term solutions were to be found, the work of the Commission should be directed towards the problems of the future, in particular those involved in the various forms of economic integration, such as currency unions, common markets and free trade associations. It was also pointed out that the problems of State succession affected not only the newly independent State and the former administering Power but also the whole international community. Stress was

therefore placed on the need to protect and reconcile the legitimate interests of all concerned, rather than on simply viewing the question in the context of relations between the newly independent States and the former administering Powers. It was considered that the practice of all States should be given careful attention in the Commission's study. It was stated that, although there was no doubt that certain characteristics were peculiar to the succession of States arising from decolonization, the question to what extent particular rules should apply to new States could be answered only on the basis of the content of relevant general rules.

(f) *Devolution treaties*

50. Some representatives considered that the so-called devolution treaties had been imposed on subject territories and could not be regarded as agreements concluded between equals. They thought that the Commission should formulate, under the two headings of the topic being considered at present, rules which would provide legal means for putting an end to such treaties. The view was also expressed that it was essential to solve the specific problem of newly independent States with due regard to the general principles of contemporary international law, such as that of self-determination, rather than on the basis of devolution treaties. On the other hand, it was argued that in many situations connected with newly independent States arrangements had been agreed upon which had proved beneficial in promoting a smooth transition. Such arrangements should not be disregarded.

(g) *Judicial settlement of disputes*

51. A number of representatives expressed their agreement with the conclusion reached by the Commission that it was premature to take a decision on the question of the judicial settlement of disputes relating to State succession. Nevertheless, some representatives emphasized the importance of providing adequate machinery for solving the disputes concerning the application of the complex and modern system of codified rules that would emerge from the Commission's work. The opinion was expressed that, although judicial settlement might be regarded as a general problem in international law, the slow progress in solving that problem made it important to move forward in limited areas, such as State succession. For other representatives, however, the question of judicial settlement could not be treated in a piecemeal fashion.

(h) *Acquired rights*

52. Some representatives considered that the question of acquired rights should be examined closely by the Commission. Some expressed the view that the Commission should endeavour to strengthen the sovereignty of new States in that area. States had no obligation, on the international plane, to distinguish between acquired rights and other property rights, which could be modified by their legislation when the general interest so required. It was stated that the application of the so-called principle of acquired rights should not result in undue advantage to aliens. In that respect, the opinion was expressed that compensation for the termination or modification by a newly independent State of a concession granted by the former colonial Power could be claimed only on the basis of unjust enrichment.

(i) *Order of priority*

53. Several representatives supported the Commission's decision to grant priority to the study of economic and financial matters within the framework of the first heading. It was pointed out that such matters included public property and public debts as well as natural resources.

2. Succession in respect of treaties

54. Many comments summarized above under the first heading (Succession in respect of matters other than treaties) also have relevance in the context of the second heading (Succession in respect of treaties). To avoid repetition, a summary is given below only of those comments which were specifically concerned with the second heading. Some of those comments were of a general nature, others related to draft articles 2 and 4 submitted by the Special Rapporteur on succession in respect of treaties.³¹

(a) General comments

55. A number of representatives expressed the belief that succession in respect of treaties should be studied within the framework both of the law of succession and of the law of treaties. Some representatives, while agreeing that both branches of law tended to merge in this context, nevertheless considered that the law of treaties offered the best starting point for an attempt to produce concrete results. Other representatives, however, expressed the opinion that the Commission should base its work on the significant changes that had taken place in international society as a result of decolonization, taking full account of the condemnation of the colonial system by the international community and of the inherent right of peoples to self-determination.

(b) Draft article 2 submitted by the Special Rapporteur

56. Paragraph (a) of draft article 2 as submitted by the Special Rapporteur³² was criticized. That paragraph provided that the draft articles did not relate "to international agreements concluded between States and other subjects of international law or between such other subjects of international law". It was argued that the paragraph could lead to confusion in situations resulting from decolonization. The question could arise, for instance, whether the draft articles were applicable to agreements between two parts of a colonial empire which subsequently became independent and what the effect of such agreements would be. The hope was expressed that such situations would be dealt with by the International Law Commission and that draft article 2 did not foreshadow their exclusion.

(c) Draft article 4 submitted by the Special Rapporteur

57. Opposing views were expressed concerning draft article 4 submitted by the Special Rapporteur and paragraph (2) of the commentary thereon.³² Draft article 4 read as follows: "Nothing in the present articles shall be understood as affecting the continuance in force of a boundary established by or in conformity with a treaty prior to the occurrence of a succession." The article and paragraph (2) of the commentary were supported on the grounds that disregard for boundaries established by a treaty would be a negation of the rule *pacta sunt servanda* and that the resulting reshaping of national boundaries would create a situation which could threaten world peace and international order.

58. On the other hand, it was argued that boundary treaties imposed by colonial Powers against the wishes of the people of subject territories should be regarded as contrary to the rule *pacta sunt servanda*, to the fundamental principle of self-determination, which was resolutions 1514 (XV) and 1654 (XVI). It was also said that draft article 4 and the views expressed in its commentary were contrary to the doctrine of revindication, under which a country might reclaim something which it once held as a right, particularly if such a claim was backed by the right of peoples to self-determination. It was believed that since boundary questions were highly political issues, the Commission should refrain from making

³¹ See the first report on succession of States and Governments in respect of treaties, by Sir Humphrey Waldock, Special Rapporteur (A/CN.4/202), reproduced in *Yearbook of the International Law Commission, 1968*, vol. II pp. 87-93.

³² *Ibid.*, section II.

legal pronouncements when the particular situations involved fell within the competence of other organs of the United Nations.

D. THE MOST-FAVOURLED-NATION CLAUSE

59. Many representatives noted with satisfaction that the International Law Commission had begun the consideration of the most-favoured-nation clause and paid a tribute to Mr. Ustor for the preparatory work he had done on the topic in his capacity as Special Rapporteur.

60. A number of representatives emphasized the important role of the clause in the field of international trade and the interest which their delegations took in the study of the question by the Commission. In the opinion of some representatives, the work of codification and progressive development in this area would help to eliminate discrimination in international trade and promote international co-operation.

61. Several representatives endorsed in general terms the decisions of the Commission on the topic and the instructions it had given to the Special Rapporteur. A number of representatives shared the Commission's view that the clause should be studied as a legal institution in the context of all aspects of its practical application. It was suggested that an attempt should be made to ascertain how far that institution could be used for the ends which the international community sought to achieve, in particular by examining how the clause could be applied multilaterally and how it could work for the benefit of certain categories of States, especially the developing countries. Many representatives supported the Commission's recommendation to the Special Rapporteur to consult all interested organizations and agencies. In this respect, mention was made in particular of the United Nations Commission on International Trade Law.

E. OTHER DECISIONS AND CONCLUSIONS OF THE INTERNATIONAL LAW COMMISSION

62. Most of the observations relating to chapter V of the report of the International Law Commission dealt with the following questions: review of the Commission's programme and methods of work, organization of future work, relations with the International Court of Justice, co-operation with other bodies and the Seminar on International Law.

1. *Review of the Commission's programme and methods of work*

63. Many representatives expressed gratification that the Commission had carried out, during its twentieth session, a review of its programme and methods of work.

(a) *Programme of work*

64. The Commission's decision to give attention to its long-term programme of work before the term of office of the present membership expired was noted with approval. Support was also expressed for the Commission's view that the initial list of subjects which it had drawn up in 1949 should be revised, taking into account the current needs of the international community.

65. In this connexion, a number of representatives welcomed the Commission's decision to ask the Secretary-General to prepare a new survey of the whole field of international law on the lines of the survey in the memorandum submitted to the Commission at its first session in 1949 and referred to in paragraph 11 above. Some representatives, however, believed that the question of how and by whom the new survey would be carried out should not be prejudged, since this was a matter which should be decided at an appropriate time by the Commission in accordance with article 18 of its Statute. While agreeing with

the provisions relating to the survey contained in operative paragraph 3 of draft resolution A/C.6/L.651/Rev.1 (see paras. 9 and 10 above), they could not have supported paragraph 8 of the original text (A/C.6/L.651)³³ since, in their view, that paragraph was contrary to article 18 of the Commission's Statute. Surveying the whole field of international law with a view to selecting topics for codification was a statutory responsibility of the Commission and not of the Secretary-General. Other representatives observed that the Commission was free to request the Secretary-General to do the preparatory work required for the new survey and that it had recorded in paragraph 99 of its report the decision it had taken to that effect.

66. It was noted with satisfaction that the Commission contemplates dealing with the question of treaties concluded between States and international organizations or between two or more international organizations if the General Assembly adopts a resolution to that effect on the recommendation of the United Nations Conference on the Law of Treaties. The hope was expressed by some representatives that the Commission would also undertake the study of topics such as the utilization of international rivers, the recognition of States and Governments, the pacific settlement of international disputes, the juridical régime of historic waters, including historic bays, the right of asylum, the jurisdictional immunities of States and their property and jurisdiction with regard to crimes committed outside national territory.

67. The representatives who referred to the initiative taken in the Commission by one of its members, Mr. Ago, regarding the final stage of the codification of international law (see para. 102 of the Commission's report), observed that the question was one which deserved attention. Some representatives deemed it regrettable that a sufficient number of States had not yet become parties to several codifying conventions. It was also pointed out that it would be in the interests of the international community as a whole to recognize that all States had the right to become parties to multilateral international agreements of a general nature. A number of representatives thought that the Commission could be asked to consider the question more thoroughly and to submit its conclusions to the Sixth Committee, so that the General Assembly could make appropriate recommendations to Member States. They agreed that the work would have to be limited to the question of the ratification of general codifying conventions and that the measures which would be proposed should not derogate from the sovereign right of States freely to decide on the matter. Those measures should be designed, not to force a political decision on individual States, but rather to overcome the difficulties arising from the complexity of the political and administrative machinery of the modern State. In this connexion, certain representatives made reference to the study being undertaken by the United Nations Institute for Training and Research and the subject.³⁴

(b) Methods of work

68. Several representatives expressed general approval of the Commission's methods of work. It was pointed out that the codification and progressive development of international law was inevitably a slow and painstaking process and that the success of the Commission's work in the past was proof of the wisdom of the approach it had adopted. The observation was also made that, although slow, the pace at which the Commission carried out its work seemed at times to outstrip the ability of Governments to give the detailed consideration called for by most of the items studied by the Commission. Stress was laid on the need to ensure the best possible conditions for the work of the Commission and the elimination of obstacles to the efficient performance of its task. It was argued that

³³ See paragraph 8 above. Paragraph 8 of draft resolution A/C.6/L.651 was identical with paragraph 7 of draft resolution A/C.6/L.649 and Add. 1 (see paragraph 6 above).

³⁴ For details of this project of the Institute, see *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 45, document A/6875, annex I, paras. 59-69.

the importance of the role played by the legal bodies of the United Nations was sometimes underestimated and that those bodies had not always been given the resources they required to perform the work entrusted to them by Member States.

69. Other representatives, while recognizing that the methods of work of the Commission had improved, expressed the view that further efforts were required to make them more efficient. It was suggested that the Commission's work should be organized in greater detail and that an agreed priority for the treatment of items should be established and respected, so that the Commission could make the best possible use of its resources and avoid dissipation of effort.

70. A number of representatives spoke in favour of the Commission's proposal that the term of office of its members should be extended from five to six or seven years. Reference was made in this connexion to the time-consuming nature of the codification process and to the desirability of ensuring greater continuity by enabling the Commission to complete the work undertaken on major topics without a change in membership. In this regard, attention was drawn to the fact that the term of office of the judges of the International Court of Justice is nine years.

71. Other representatives found that the Commission had not made it clear whether that proposal was intended to apply to its present or future membership. Some representatives wondered whether the reasons put forward in support of the proposal were the only factors to be taken into account. It was pointed out that a certain degree of continuity in the Commission's work was already ensured by the possibility of re-election of its members, and, in particular, of the Special Rapporteurs. It was also indicated that the adoption of measures such as the increase in the number of daily meetings, the extension of the annual session or the holdings of sessions twice a year would help to expedite the Commission's work within the term of office of its members. Some representatives considered that it was important to safeguard in the Commission's membership the flexibility of the present system and the application of the principle of rotation.

72. Although certain representatives opposed the Commission's proposal, the majority of those who expressed their views on the matter considered that the question required further study and that a decision on the proposal should be deferred to a future session of the General Assembly.

73. A number of representatives noted with sympathy the concern expressed by the Commission at the present situation regarding honoraria and subsistence allowances and supported its recommendation that an additional special allowance should be made available to Special Rapporteurs to help them defray travel and incidental expenses in connexion with their work. It was considered essential that these expenses should be borne by the Organization. The need was also stressed that the United Nations should take the necessary measures to obtain the services of highly qualified international jurists. It was further pointed out that the work of the Commission was one of the most important contributions to the cause of world peace and that the sums involved were but an infinitesimal fraction of what was spent on the arms race. Other representatives, however, were of the opinion that the matter should be considered within the framework of the general review being currently carried out by the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions. Some representatives considered that any increase in honoraria and allowances would be unwise, in view of the financial implications of the matter and the limited capacity of many States to contribute to the expenses of the United Nations.

74. Several representatives paid a tribute to the Codification Division of the Office of Legal Affairs for its valuable contribution to the work of the Commission and, particularly, for the paper on the review of the Commission's programme and methods of work, annexed to the Commission's report. They endorsed the Commission's view regarding

the need to increase the staff of the Codification Division as a measure aimed at facilitating the Commission's work. In this connexion, some representatives stressed their understanding that the financial implications of that recommendation would be taken into account when consideration was given to the various ways of implementing it.

2. Organization of future work

75. The representatives who spoke on this matter noted with satisfaction the Commission's decisions regarding the organization of its future work. Gratification was also expressed that the Commission had planned the work for the remainder of its term of office in so orderly a manner.

76. Certain representatives, emphasizing the importance of the topic of State responsibility, thought that its codification and progressive development, even if the conclusions reached were of a general nature, would be an important factor in strengthening the international legal order and would help to throw light on a number of theoretical and practical problems which arose in almost every field of international law. A number of representatives regretted that the Commission had made little progress and expressed the opinion that work on the subject should be accelerated. They observed that the Commission intended to make a special effort in that field in 1969. The hope was also expressed that the Special Rapporteur on the subject would prepare a practical report covering all aspects of the matter. It was pointed out that the Commission's work would be helped by the study being undertaken on principles of international law concerning friendly relations and co-operation among States.

77. Besides favouring the early consideration of State responsibility, certain representatives expressed the wish that work on that topic, as well as on succession of States and Governments and relations between States and international organizations should be completed during the Commission's present term of office. Some representatives also urged that the Commission continue its work on the most-favoured-nation clause.

78. A number of representatives supported the Commission's recommendation that a winter session be held in 1970 in order to complete its work on major topics before the expiry of the term of office of its present membership. It was also suggested that a winter session of the Commission should become a regular practice. Other representatives, however, doubted that a winter session would be advisable, particularly in the light of budgetary considerations. In the opinion of some representatives, it would be preferable to extend the duration of the Commission's regular session.

3. Relations with the International Court of Justice

79. A number of representatives welcomed the visit paid to the Commission by the Vice-President of the International Court of Justice, which strengthened the natural links existing between two organs whose roles were complementary.

4. Co-operation with other bodies

80. Several representatives expressed gratification at the relations maintained between the Commission and three regional juridical bodies, namely, the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee. It was emphasized that the co-ordination of the various efforts made towards the codification and progressive development of international law helped to ensure that the formulation of legal norms would reflect the trends existing in different parts of the world.

5. Seminar on International Law

81. Many representatives noted with satisfaction the success of the fourth session of the Seminar on International Law, held concurrently with the Commission's session, and supported the latter's recommendation that future sessions be similarly arranged. They expressed their gratitude to those members of the Commission who had contributed to the discussions and to the United Nations Office at Geneva for the manner in which the Seminar was organized. Emphasis was placed on the role of the Seminar as a means of contributing to a better understanding and a wider dissemination of international law and of bringing in contact two generations of jurists representing the various legal systems of the world. The importance of the Seminar was stressed as regards participants from developing countries. A number of representatives thanked all those States which had granted scholarships facilitating the attendance of participants from developing countries and expressed the hope that States would offer similar aid for future seminars.

IV. Voting

82. At its 1039th meeting, on 15 October 1968, the Sixth Committee unanimously adopted draft resolution A/C.6/L.651/Rev.1 (see para. 85 below).

83. Explanations of vote were given by the representatives of the Union of Soviet Socialist Republics, Afghanistan, the United Kingdom, Pakistan, France, the United States and Hungary.

84. The representative of Malawi explained that his delegation had not taken part in the voting because his Government had not yet completed its examination of the International Law Commission's report.

Recommendation of the Sixth Committee

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

REPORT OF THE INTERNATIONAL LAW COMMISSION

[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 1738th plenary meeting, on 11 December 1968, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 85 above). For the final text, see resolution 2400 (XXIII) below.

2400 (XXIII). Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its twentieth session,³⁵

³⁵ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9 (A/7209/Rev. 1).*

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, 2167 (XXI) of 5 December 1966 and 2272 (XXII) of 1 December 1967, 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 and relations between States and inter-governmental organizations, expedite the study of State responsibility, study the most-favoured-nation clause and carry out a review of its programme and methods of work,

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 appreciation that the United Nations Office at Geneva organized in July 1968, during the twentieth session of the International Law Commission, a fourth session of the Seminar on International Law and that more scholarships in the Seminar were made available for participants from developing countries,

1. *Takes note* of the report of the International Law Commission on the work of its twentieth session;

2. *Expresses its profound appreciation* to the International Law Commission of the valuable work it has accomplished during the past twenty years in the progressive development and codification of international law;

3. *Notes with approval* the programme and organization of work planned by the International Law Commission, including the preparation, in accordance with article 18 of its Statute, of the new survey of the whole field of international law referred to in paragraph 99 of the Commission's report, but, with respect to the Commission's wish to reserve the possibility of a winter session in 1970, decides to defer a final decision until its twenty-fourth session;

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

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

(b) Continue its study of the most-favoured-nation clause;

(c) Make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

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 an increasing number of nationals of developing countries;

6. *Notes* that the Secretary-General has under study the questions raised in paragraphs 98 (b) and 98 (c) of the report of the International Law Commission;

7. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussions on the Commission's report at the twenty-third session of the General Assembly.

*1738th plenary meeting
11 December 1968*

- (c) Text of the speech delivered by the Chairman of the International Law Commission, on the occasion of the twentieth anniversary of the first election of members of the Commission

TWENTY YEARS OF WORK OF THE INTERNATIONAL LAW COMMISSION

The twentieth anniversary of the first election of members of the International Law Commission is an excellent occasion to review the work it has accomplished in its first twenty years of activity.

It is not possible to make a valid appraisal of the work of the International Law Commission without viewing it primarily within the larger context of the development of international law over the last several decades.

At the end of the nineteenth century, the prospects for the development of international law were very dim, and, from a legal point of view, international relations were regulated in much the same way as a primitive society. The basic premise of the doctrines of international law which prevailed at that time was that there was no will superior to that of the State, and that consequently the international community was too decentralized to permit the formation of international political organizations.

However, by the end of the nineteenth century, there were a series of technological, social and political developments which gave substance and life to international law and profoundly changed the doctrinal concepts on which it was based. Both the basis and content changed. Those developments, which gathered momentum as the twentieth century progressed, are reflected in the greater interdependence between States. Communication is being accelerated at an incredible rate; nations are more and more dependent on other nations to satisfy their needs; ideas and propaganda are being disseminated throughout the world at great speed by means of constantly improved techniques. In the social field, the world has witnessed what Ortega called "the revolt of the masses", a direct product of industrialization; in the political field, the concept of democracy is respected, if only in a formal sense, and the decisions of Governments are affected by world public opinion. The world is witnessing the increasingly rapid disintegration of the colonial system, and the developing countries, in view of the widening gap between them and the industrialized nations, are seeking financial and technical assistance from their wealthier neighbours, in order to attain a decent standard of living. Lastly, weapons methods of warfare have become so destructive that we live in constant terror that the human race may disappear from the face of the earth.

As was to be expected, nineteenth century international law was not able to respond to those new situations and new needs. It is therefore necessary, in the light of these complexities, to draw up a balance-sheet for the purpose of determining the areas in which international law has developed, clarifying the areas in which international law has developed, clarifying or establishing doctrinal concepts or regulating new areas.

To begin with, international law no longer serves exclusively to regulate the conduct of States. As Jenks points out, it is coming to include in its purview relations between individuals, international organizations and States.

In the field of human rights, international law has invaded areas from which it was barred a century ago. A first step has been taken which will ultimately make it possible to ensure complete international protection of the economic, social and political rights of the individual.

In addition to making these changes in basic concepts, international law has begun to regulate new developments resulting from technological progress. For example, rules have

been formulated to govern international air traffic, the exploration of outer space, atomic energy, radio broadcasting and the exploitation of the petroleum resources of the continental shelf. Studies are being started concerning the legal problems arising from the exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

The emergence of a great many international organizations, particularly the League of Nations and the United Nations, has also served to accelerate the formulation of a set of rules governing certain highly important aspects of international political relations.

Perhaps the most significant progress has been made in the matter of working out a legal definition of war. The Covenant of the League of Nations and the Kellogg-Briand Pact were the first instruments to brand war as an unlawful act, but there were basic defects in the security system they advocated. With the adoption and ratification of the United Nations Charter, an effort was made to eliminate those defects and, for the first time, the right to use force was vested in an international organization, under Article 2 (4) of the Charter.

What conclusions can be drawn from the foregoing review of present-day international law and its recent development?

We believe that international law has not remained static or different to changes in contemporary realities or to developments in various areas of international life during the past fifty years. On the contrary, its rules apply to new areas with each passing day as international relations become more ramified.

Not only is the scope of international law becoming broader, but its institutions are being improved drastically and it is acquiring the characteristics of a highly developed body of law comparably to such older branches of private law as civil law, or of public law as criminal law.

It is against the background of this dynamic and recent trend of international law that the achievements of the International Law Commission must be viewed.

The League of Nations did everything in its power to promote the codification of international law, despite the fact that codification had not been envisaged as one of its tasks. Six long years of painstaking preparation preceded the Conference for the Codification of International Law which was attended by forty-eight States in March and April 1930. Despite this careful preparatory work, which is noteworthy for its high quality, the Conference was not very successful. It drew up a convention on certain questions relating to the conflict of laws on nationality and three protocols on the same topic. No real progress was made in two other areas: the territorial sea and State responsibility for injury to the person or property of aliens in its territory.

Sir James Brierly summed up the prevailing situation very well in a paper published in the *British Yearbook of International Law* in 1931: "Disappointment at the results of the Codification Conference of 1930, though it may vary in degree in different persons, is very general among all who are interested in the subject, and is certainly justified."

In 1946, when new efforts were about to be made to advance the cause of codification, Sir Cecil Hurst, in a memorable address before the Grotius Society entitled "A plea for codification of international law on new lines", stated that: "A second failure would not only prevent any further efforts in the same direction but it would render it almost impossible to persuade what we call the man in the street that international law is a legal system capable of constituting the foundation of the law and order on which the new world is to be based."

It was under these conditions, and at a time when the political climate was unfavourable—and it grew even less favourable during the 1950s—that the International Law Commission began its work twenty years ago, in implementation of the functions assigned to the General Assembly in Article 13 (1 a) of the Charter.

The results of its efforts over this long period of time may, I believe, be analysed in two stages. The first consists of a purely objective appraisal, i.e. a review of what has been achieved in order to see how far some of those achievements have been translated into positive law. In the second stage, we might draw the conclusions necessary to understand the principal characteristics of the codification process, in its broad sense, as it has evolved within the Commission itself.

To fail to appreciate the magnitude of the International Law Commission's accomplishments is to refuse to recognize the facts. Although everyone is familiar with them, it would be useful briefly to enumerate each topic with which the Commission has dealt.

The Commission has submitted final reports on fifteen topics:

1. In 1949 at, its first session, it submitted to the General Assembly a draft Declaration on Rights and Duties of States. By resolution 375 (IV) of 6 December 1949, the General Assembly commended the draft Declaration to the continuing attention of Member States and of jurists and decided to request the comments of Member States on the draft Declaration.

2. In 1950, at its second session, the International Law Commission drafted a report on ways and means for making the evidence of customary international law more readily available, which has served as the basis for many efforts in the field by the Secretary-General and Governments.

3. In 1950, in conformity with General Assembly resolution 177 (II) of 21 November 1947, the International Law Commission formulated seven "principles of international law recognized in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal". By resolution 488 (V) of 12 December 1950, the General Assembly transmitted the principles to Governments for comments.

4. In 1950, pursuant to General Assembly resolution 260 B (III) of 9 December 1948, the International Law Commission at its second session prepared a report on the question of international criminal jurisdiction. The report was the basic working document of a committee of States set up to prepare the statute of an international criminal court. The General Assembly considered this question to be related to the question of defining aggression and the draft code of offences against the peace and security of mankind, and deferred discussion of the topic in 1954 and again in 1957.

5. In 1951, pursuant to General Assembly resolution 478 (V) of 16 December 1950, the Commission submitted a report on the problems arising from certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. The question was taken up again during the general discussion of the law of treaties.

6. In 1951, at its third session, the Commission studied the question of defining aggression which had been referred to it under resolution 378 (V) of 17 November 1950. However, its efforts were not successful.

7. The General Assembly resolution of 1947, which requested the International Law Commission to formulate the Nuremberg Principles, also instructed it to prepare a code of offences against the peace and security of mankind. The Commission considered the matter and in 1951 prepared a first draft code, followed in 1953 and 1954 by a second draft code. After discussing various alternatives, the Assembly finally decided in 1957 to defer consideration of the draft until the question of defining aggression was taken up again.

8. In 1954, at its fifth session, the Commission prepared two conventions relating to nationality, including statelessness: one on the elimination of statelessness, and the other on the reduction of future statelessness. At the Conferences of Plenipotentiaries held in 1959 and 1961 and attended by representatives of thirty-five and thirty States respectively, the Convention on the Reduction of Statelessness was adopted. In 1954, the Commission

adopted seven articles with commentaries relating to existing cases of statelessness as part of its final report on nationality and statelessness. Although drafted as articles, they were meant to be considered solely as suggestions.

9. The law of the sea is a topic which has in a special way engaged the attention of the International Law Commission since its establishment, particularly the régime of the high seas and the régime of the territorial sea and the continental shelf. The final report on this topic was submitted in 1956 and was used as the basis for the 1958 Geneva Conference of Plenipotentiaries in which eighty-six States took part. The Conference adopted the Convention of the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas and the Convention on the Continental Shelf.

10. At its fifth session in 1953, the International Law Commission adopted the final draft on arbitral procedure and requested the Assembly to commend it Member States with a view to the conclusion of a Convention. The Assembly considered the draft in 1953 and 1955 and criticized it, particularly the references to the conclusion of a Convention. In 1957, at the request of the Assembly, the International Law Commission decided to consider the draft again and came to the conclusion that it was more suitable as a model for bilateral or multilateral arbitration agreements or for *ad hoc* arbitration in disputes than for a general arbitration treaty. Accordingly, at its tenth session (1958), the International Law Commission drew up a set of "Model Rules on Arbitral Procedure". After considering the report of the International Law Commission, the Assembly decided by resolution 1262 (XIII) of 14 November 1958 to bring the draft articles to the attention of Member States for their use in drawing up treaties of arbitration or *compromis*.

11. The final report on diplomatic intercourse and immunities was completed in 1958. The draft articles dealt only with permanent diplomatic missions. The item was discussed in the Assembly during the thirteenth and fourteenth sessions (1958 and 1959). Finally it was decided to convene a Conference of Plenipotentiaries, which met in Vienna in 1961, with eighty-one countries taking part. The Conference adopted the Vienna Convention on Diplomatic Relations.

12. In 1955 the International Law Commission began its consideration of the item "Consular Intercourse and Immunities". In 1961, the final draft articles were submitted to the Assembly which convened another Conference of Plenipotentiaries in Vienna in 1963, in which ninety-five States took part. On the basis of the Commission's work, the Conference adopted the Vienna Convention on Consular Relations.

13. In its report for 1962 and in connexion with its study of the law of treaties, the Commission drew the Assembly's attention to the question of the participation of new States in general multilateral treaties concluded under the auspices of the League of Nations, which by their terms authorized the Council of the League of Nations to invite additional States to become parties, but which excluded States which had not been invited to become parties by the Council before the dissolution of the League of Nations. In accordance with General Assembly resolution 1766 (XVII), the International Law Commission considered the problem and, on the basis of its recommendations, the Assembly satisfactorily solved the problem by the adoption of resolution 1903 (XVIII) of 18 November 1963.

14. The topic which has probably been the subject of more studies, reports and debates in the International Law Commission than any other is the law of treaties. All this work culminated in the Commission's final report, the basic draft considered at the Conference of Vienna convened by resolution 2166 (XXI) of 5 November 1966. The Conference has just successfully completed its first session, which proved to be promising, and will continue in the spring of 1969.

15. Lastly, in 1967 the International Law Commission completed its work on special missions, and the draft articles on that topic are now being discussed by this Sixth Committee with a view to the conclusion of a convention.

This is the list of the fifteen topics on which the Commission has completed work. Work has also proceeded on "State responsibility", "Succession of States and Governments", "Relations between States and intergovernmental organizations" and the "most-favoured-nation clause".

As the result of the Commission's work, the following Conventions are now in force: Convention on the Territorial Sea and the Contiguous Zone, with 36 ratifications, Convention on the High Seas (43 ratifications), Convention on Fishing and Conservation of the Living Resources of the High Seas (27 ratifications) and Convention on the Continental Shelf (39 ratifications). The Convention on Diplomatic Relations has been ratified by eighty-two States and the Convention on Consular Relations by thirty-three States. As it has been signed by five States and ratified by only one, the Convention on the Reduction of Statelessness has not yet come into force.

The Commission has completed its consideration of seven of the fourteen topics it selected at its first session—all of which are important and warrant extensive study—and has begun work on three of them. Some of the remaining topics have become less relevant or, in my opinion, should be considered under another heading. This is one of the reasons why it was suggested in the Commission's report on its last session that the Commission, in 1970 or 1971, could draw up a list of topics that were ripe for codification, taking into account General Assembly recommendations and the international community's current needs, and discarding those topics on the 1949 list which were no longer suitable for treatment.

In addition to working on the topics which it had originally selected, the International Law Commission has dedicated a good part of its time to the topics recommended by the General Assembly and, occasionally, by the Economic and Social Council.

When we consider that the International Law Commission meets only for a relatively short period each year, we must recognize that its work has unquestionably been far-reaching, important and influential. Clearly, an evaluation should not be made mathematically on the basis of the scope or number of the topics studied. We should also draw conclusions from the codification process in its broad sense, and, as I said earlier, try to establish which have been the main reasons for the success of the International Law Commission's work.

In the first place, the Commission has never consented to sacrifice quality to speed. Some criticism has been made concerning its rate of progress, but this has petered out over the years. In the process of progressive development and codification, no criteria should take precedence over the quality of the reports. The Commission has never taken a hasty decision; its decisions have always been the product of exhaustive debate and extensive study. One may agree or disagree with the decisions, they may even be wrong, but no one could seriously accuse the Commission of having taken its decisions lightly. The overriding consideration in our deliberations has been quality and maturity.

The Commission has had the advantage, given the nature of its work, of being made up of experts acting in a purely personal capacity. This has enabled its members to act freely without concerning themselves with immediate political aims. Although their training has been acquired in different legal systems, they are all very well aware that the paramount consideration to be borne in mind is the common interest, the interest of the international community as a whole. With this aim in view, it should be pointed out that the work of the International Law Commission has in no way been hampered by bringing together expert from different legal systems in the same forum; on the contrary, it has provided a stimulus for a profound and fruitful meeting of minds.

With regard to its methods of work, the Commission has always given evidence of a high degree of flexibility within the framework of its terms of reference and of the United Nations Charter.

The distinction established by legal doctrine between codification and progressive development—which was so controversial at the outset—has never been an obstacle in the Commission's work. The Commission has interpreted this distinction liberally, so that it has been able to study in greater depth the specific content of each principle of law without being diverted by sterile procedural considerations.

The nature of the topics with which the Commission has dealt has also considerably influenced its work. For example, with respect to such questions as diplomatic intercourse and immunities, which are regulated by deep-rooted practices or established rules of customary law, States have accepted more readily the rules prepared by the Commission, which were subsequently embodied in conventions. This indicates that the topics for consideration should be selected with care, so that the work of codification can proceed on the soundest possible basis.

With regard to the selection of topics, I think that the practice followed in the early years of the United Nations, which has now fortunately been abandoned, clearly showed that problems which in appearance are juridical but which have a high political content should not be referred to the International Law Commission. The Commission has done good work, for the benefit of all concerned, from the moment it could devote all its energies to topics of great importance, but which are not matters of current political controversy.

The great merit of the Commission's slow but sure work over the last twenty years has been the creation of a climate favourable to codification. As has been its practice during the last few years, the Commission should continue to produce from time to time instruments which are acceptable to the community. Nor should any favourable opportunity be lost. Today codification is necessary for the maintenance of stable, lasting and firmly based international relations. This can be seen from the large number of States which attended recent conferences of plenipotentiaries.

The experience of the past twenty years has also shown that the most effective means of obtaining definite and acceptable results is to prepare conventions which, without entering into elaborate arguments as to whether they represent the progressive development or the codification of international law, embody clear and precise principles consistent with those contained in other instruments, which strengthen the law. This does not mean that customary law is to be completely disregarded; on the contrary, it should be reaffirmed in order to provide a sound basis for the conventions.

With regard to the content and substance of the Commission's achievements, it has been amply demonstrated that the acceptability of the rules drawn up depends in large measure on the extent to which they take into account the characteristics of the contemporary era. Law which fails to take into account such processes as decolonization and its corollary, the creation of new States, or technological and social development and the need for greater interdependence between countries, will collapse. These factors have been very carefully weighed by the Commission during its work.

Lastly, the most important factor is the co-operation by the States themselves in the process of codification, for it is their conduct that we are basically attempting to regulate. Without this co-operation, no codification will be possible. It is undeniable that the work of preparing and concluding general conventions codifying international law has made great headway. But the same cannot be said of the ratification of those conventions or the accession thereto by States.

In conclusion, I should like to quote the words spoken recently by the Secretary-General, U Thant, at a meeting of the International Bar Association at Dublin in July 1968. He said:

“In the end, it is the confidence of peoples and of nations in the rule of law that can bring to international law its greatest strength.”

(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 ³⁶

[Original text: English and Spanish]

[18 December 1968]

I. Introduction

1. At its 1676th plenary meeting, on 27 September 1968, 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: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States”, in the agenda of its twenty-third session and to allocate it to the Sixth Committee. In accordance with General Assembly resolution 2327 (XXII) of 18 December 1967, the item had previously been included in the provisional agenda of the session.

2. The item was considered by the Sixth Committee at its 1086th, 1090th to 1096th and 1099th meetings, held on 4, 9 to 13 and 17 December 1968, respectively.

3. The Committee had before it, as a basis for its consideration of the item, the report on the 1968 session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/7326). ³⁷ The report was introduced in the Committee at its 1086th meeting by the Rapporteur of the Special Committee.

4. The report on the 1968 session of the Special Committee was divided into the following three chapters: I. Introduction; II. Consideration of the two principles mentioned in operative paragraph 4 of General Assembly resolution 2327 (XXII), 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; and the principle of equal rights and self-determination of peoples); and III. Consideration of proposals compatible with General Assembly resolution 2131 (XX) on the principle concerning the duty not to intervene in matters within the domestic jurisdiction

³⁶ Document A/7429 reproduced from *Official Records of the General Assembly, Twenty-third session, Annexes*, agenda item 87.

³⁷ For an account of the historical background of the item, see also *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 87, document A/6955.

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.

5. At the 1099th meeting, on 17 December 1968, the Rapporteur of the Sixth Committee, pursuant to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on the item, and brought to the attention of the Committee the financial implications of that question. At the same meeting, the Committee decided that, in view of the nature of the subject matter of the item, the report should contain a summary of the legal trends which had emerged during the debate.

II. Proposal

6. Afghanistan, Algeria, Austria, Burma, Cameroon, Canada, Ceylon, Chile, the Democratic Republic of the Congo, Czechoslovakia, Dahomey, Ecuador, El Salvador, Ethiopia, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Jamaica, Japan, Kenya, Kuwait, Lebanon, Libya, Madagascar, Mexico, Mongolia, the Netherlands, Nigeria, Pakistan, Panama, Peru, the Philippines, Poland, Romania, Saudi Arabia, Somalia, Sudan, Syria, Uganda, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Uruguay, Venezuela, Yugoslavia and Zambia submitted a draft resolution (A/C.6/L.740). Liberia and Tunisia subsequently became co-sponsors of the draft resolution (A/C.6/L.740/Add.1). The fifty-two-Power draft resolution reads 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, 2181 (XXI) of 12 December 1966 and 2327 (XXII) of 18 December 1967, 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 improvement of the international situation,

“Considering further that the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

“Bearing in mind its resolution 2131 (XX) of 21 December 1965,

“Convinced of the significance of continuing the effort to achieve general agreement in the process of 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 (A/7326), which met at New York from 9 to 30 September 1968,

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

“2. Expresses its appreciation to the Special Committee for the valuable work it has performed;

“3. Decides to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to meet in 1969 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue and complete its work;

“4. Requests the Special Committee, in the light of the debate which took place in the Sixth Committee during the previous and present sessions of the General Assembly and in the 1964, 1966, 1967, and 1968 sessions of the Special Committee, to endeavour to resolve, in the light of General Assembly resolution 2327 (XXII), all relevant questions relating to the formulation of the seven principles, in order to complete its work as far as possible, and to submit a comprehensive report to the General Assembly at its twenty-fourth session;

“5. 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;

“6. 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;

“7. Decides to include in the provisional agenda of its twenty-fourth 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.”

7. At the 1099th meeting, on 17 December 1968, the Secretary of the Committee made a statement regarding the financial implications of the above draft resolution.

III. Debate

A. GENERAL COMMENTS ON THE WORK DONE BY THE SPECIAL COMMITTEE IN 1968 AND ON THE AIMS OF THE WORK

8. A number of representatives were of the opinion that the 1968 session of the Special Committee had represented a further significant step towards the codification and progressive development of the principles entrusted to it for study, but considered that the results achieved, although laudable, were incomplete. Of the three principles referred to it by General Assembly resolution 2327 (XXII), 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, the Special Committee had only had time to study the first two, and its Drafting Committee had only been able to make a thorough study of the principle prohibiting the threat or use of force. The Special Committee had in fact concentrated its efforts at its 1968 session on this latter principle, on which considerable progress had been made, although it had

still not been possible to complete its formulation. Some representatives pointed out that the work of the Special Committee in 1968 had made possible a considerable rapprochement of basic positions on various important questions and the achievement of broad agreement on objectives and methods of work.

9. In general, the representatives who spoke in the debate expressed the view that the over-all results achieved so far did not justify a pessimistic attitude and reaffirmed that their respective countries would continue to lend their support to the codification and progressive development of the principles, whether in the Special Committee or in the Sixth Committee of the General Assembly. The work done had served to reaffirm the universal validity and peremptory character of the seven principles listed by the Assembly in resolution 1815 (XVII) of 18 December 1962 and had contributed towards their more precise definition. The points of agreement which had been established represented an important contribution to the development of international law and the maintenance of international peace and security. Moreover, the exchange of views had been beneficial, as could be seen from a comparison of the successive reports of the Special Committee. Some representatives considered that the partial nature of the results achieved so far was due to methodological or technical factors, such as the procedure of consensus followed by the Special Committee or the relatively short duration of its sessions. The majority, however, attributed it either to the actual nature of the task undertaken or to reasons of a political nature.

10. Those representatives who referred to the difficulties inherent in the nature of the work emphasized that an attempt was being made to formulate rules of international law, i.e., legal obligations, relating to Charter principles which constituted the nucleus of the international legal order. These representatives felt that the slowness of the process should not lead to the abandonment of the search for legal formulations or to their replacement by texts which constituted expressions of political will or mere statements of particular philosophies, because the result of the work would then have less relevance for the regulation of the conduct of States. It was also added that, in view of the quasi-legislative nature of the process, undue pressures might have a negative effect on the quality of the formulation and hence on its applicability. One of these representatives said that the difference between the verbal acceptance of obligations and real life had recently been made evident and that the ultimate goal of the work undertaken should be to bring home to Governments the importance of respect for international legality and morality.

11. Others considered that the present state of the Special Committee's work was the fault of those who refused to accept the changes which had occurred in international society since the adoption of the Charter in 1945 and maintained that proposals reflecting those changes lacked legal validity, despite the fact that, in international relations, legal considerations could not be dissociated from political, economic or social factors. The delay was therefore the result of a deliberate policy of obstruction being followed by circles which were pursuing imperialist and colonialist policies and supporting racist régimes practising *apartheid*.

12. Several representatives reaffirmed the great importance of the codification and progressive development of the principles for the promotion of the rule of law in international relations, the maintenance of international peace and security, and the development of peaceful co-operation and coexistence among nations. Although those principles were stated in the Charter, further work on them was justified by the need to affirm them, further define them and adapt them to current needs. A General Assembly declaration on the principles would make a powerful contribution to the attainment of the purposes of the United Nations and would thereby strengthen the Organization. It was stated in that connexion that the efforts of the Sixth Committee and the Special Committee were proof

that the principles were deeply rooted in the conscience of nations and that the international community was determined to affirm them and ensure their observance. All States, large and small, should therefore co-operate in the work in hand.

13. Some representatives stated that discussion of the principles did not involve an attempt to amend the Charter, the procedure for which was laid down in Article 108 of the Charter itself, but merely to re-examine it in the light of two decades of interpretative action by the United Nations and to draft, on that basis, rules which might reasonably be regarded as deriving from certain principles of the Charter and their application. Even if it was not always easy to draw the line between elaboration of the Charter and amendments to it, the distinction had to be respected, since it was a distinction which protected every Member State.

14. Other representatives expressed the view that the codification and progressive development of the principles, by introducing an element of precision into rules of law, represented a guarantee for all countries, particularly small and developing countries. It was essential, however, that States should genuinely intend to base their international conduct on the principles and comply in good faith with the obligations they had assumed. The principles were universally applicable principles of the Charter which no State might violate on any pretext whatsoever. In that connexion, some representatives pointed out that precision in rules of law was all the more necessary when circumstances were unfavourable to their observance, inasmuch as they might exert greater influence on decision-makers and put public opinion in a better position to judge those who flouted them.

15. It was also stated that the solution to the problems of co-operation among States having different political, economic and social systems and at different levels of economic development required a climate of peace based on respect for national sovereignty and independence, equality of States' rights, non-interference and mutual advantage. Some representatives, noting that the codification and progressive development of the principles was one of the objectives of the countries of the Third World, as proclaimed in 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 1964,³⁸ stressed that the process of codification and development should reflect the experience and requirements of the developing countries.

16. It was also pointed out by certain representatives that the work of the Special Committee would enable new States which had not taken part in the San Francisco Conference of 1945 and had been unable to contribute to the application of the Charter by organs of the Organization during its early years to participate in a review of the basic principles of the Charter and the development of international law. One of those representatives stated that the fact of having been unable to participate in the establishment of the rules of law encountered on gaining independence was, in fact, one of the reasons for the new States' lack of confidence in the compulsory jurisdiction of the International Court of Justice.

17. Finally, several representatives emphasized that the principles were closely inter-related, both conceptually and from the standpoint of their application in international life. In the formulation of each individual principle, it was essential not to lose sight of the whole of which it was a part; to do otherwise would be to run the risk that the declaration ultimately adopted would give a distorted or unbalanced picture of the principles. One of those representatives stressed that the preamble or general provisions of the future declaration should contain an explicit statement that the principles were interrelated and that each of them was to be interpreted in the context of the others.

³⁸ See A/5763 (mimeographed).

B. COMMENTS ON THE PRINCIPLES ENTRUSTED TO THE SPECIAL COMMITTEE
FOR STUDY IN 1968 UNDER GENERAL ASSEMBLY RESOLUTION 2327 (XXII)

18. In the course of the debate, some representatives refrained from repeating the comments made on previous occasions on behalf of their respective countries concerning the principles entrusted to the Special Committee in 1968. Others, however, commented once again on general aspects of those principles and on their scope, content and formulation. These comments are summarized below.

1. *Principles mentioned in operative paragraph 4
of General Assembly resolution 2327 (XXII)*

(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*

19. A large number of representatives considered that at its 1968 session the Special Committee had made real progress, described by some as considerable or important, with regard to the formulation of this principle. Although several representatives regretted the fact that a complete text of the principle had not yet been adopted, it was generally recognized that the progress made by the Special Committee in 1968 had prepared the ground for a formulation of the principle in the near future. The points on which agreement had been reached in 1968 widened the area of agreement achieved in 1967 in the Working Group established by the Drafting Committee and had been approved by the Special Committee itself. In addition, existing areas of disagreement had been reduced and new bases of discussion had been found for future negotiations. Nevertheless, as some representatives emphasized, there were a number of difficult points still to be solved on essential issues, which would require new and serious efforts on the part of the members of the Special Committee, including, *inter alia*, those relating to the definition of the term "force", territorial disputes, the inviolability of State territory and non-recognition of situations brought about by the use of force, as well as those relating to the duty not to intervene in matters within the domestic jurisdiction of any State and to the exercise of the right of self-determination of peoples.

20. Stressing the paramount importance of this principle, the corner-stone of international law, several representatives emphasized the need to complete its formulation as soon as possible, since, despite the fact that it was clearly stated in Article 2, paragraph 4, of the Charter, the history of international relations was filled with frequent violations of the principle. Some added that the formulation to be adopted should be a progressive development of the content of the principle in the light of the events which had occurred since the adoption of the Charter and should strengthen the economic, social and political sovereignty of peoples. It was also said that, at its next session, the Special Committee should give priority to the consideration of the principles of equal rights and self-determination and non-intervention, so as to be in a position to arrive at a formulation of the principle prohibiting the threat or use of force.

21. Certain representatives emphasized the relationship between this principle and the principle of the peaceful settlement of disputes. For those representatives, as the development of international law reduced the possibility of the legitimate use of force by States, the urgency of the need for international machinery capable of centralizing the application of the law increased. From that standpoint, some of these representatives thought the agreed text on the duty of States to settle their international disputes by peaceful means was not very satisfactory. It was pointed out, in that connexion, that States Members

and organs of the United Nations should make fuller use of the possibilities offered by Chapter VI of the Charter.

22. There follows below a summary of the different views and comments put forward on the scope, content and formulation of the different aspects of the principle. These views and comments have been grouped in accordance with the headings of the report of the Drafting Committee (see A/7326, para. 111), which was adopted by the Special Committee at its 96th meeting, on 30 September 1968 (*ibid.*, para. 134).

(i) General prohibition of force

23. Many representatives expressed satisfaction with the agreement reached on the statement concerning the general prohibition of force and, in particular, with the fact that the second paragraph stated that such a threat or use of force “constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues”.

(ii) Consequences and corollaries of the prohibition
of the threat or use of force

24. Several representatives welcomed the statements of agreement on wars of aggression and propaganda for such wars. With reference to the statement on wars of aggression, mention was made of the provisions of the Charter of the Nürnberg Tribunal³⁹ and of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal,⁴⁰ and the draft Code of Offences against the Peace and Security of Mankind,⁴¹ prepared by the International Law Commission.

25. Some representatives expressed the view that the statement of agreement on wars of aggression could be amplified to the effect that the planning and preparation of a war of aggression were also crimes against peace, that the threat of a war of aggression involved liability under international law and that individuals who committed such crimes against peace were criminally liable. The idea of the criminal liability of individuals guilty of a crime against peace should not be interpreted, in the view of one representative, in such a way as to justify the collective punishment of soldiers and civilians who had participated in the war effort. It was also stated that the statement of agreement should be understood to mean that not only declared wars of aggression but also aggressive hostilities in general constituted a crime against peace. Finally, other representatives observed that the results achieved in the Special Committee on the Question of Defining Aggression would be important for a correct interpretation of the statement of agreement on wars of aggression.

26. With regard to war propaganda, certain representatives argued that the domestic law of each State should prohibit such propaganda, punish those who engaged in it and abolish any constitutional limitations there might be in that connexion. Others supported the statement of agreement because they considered that it did not restrict the right of opposition to the established authorities, a fundamental freedom of citizens which was constitutionally guaranteed. It was also said that study of the question should continue with a view to arriving at a statement which would relate that corollary to the duty to encourage the free exchange of information and ideas.

³⁹ See *The Charter and Judgment of the Nürnberg Tribunal* (United Nations publication, Sales No.: 49.V.7).

⁴⁰ See *Official Records of the General Assembly, Fifth Session, Supplement No. 12*, part III.

⁴¹ *Ibid.*, Ninth Session, Supplement No. 9, chapter III.

(iii) Use of force in territorial disputes and boundary problems

27. The agreement in principle on the duty of every State to refrain from the threat or use of force to violate the existing frontiers of a State or as a means of settling territorial disputes and boundary problems was expressly supported by several representatives.

28. Several representatives, stressing the importance and complexity that "international lines of demarcation" had acquired, said that it was necessary to include a reference to them in the formulation. It was not a question of perpetuating such lines, but of stating the duty of States to refrain from using force in order to violate them by virtue of the principle prohibiting the threat or use of force and the principles of fulfilment of obligations in good faith and the peaceful settlement of disputes. In their view, the difficulties that the inclusion of such a reference created might be avoided by indicating that the international lines in question were ones which were agreed or which had been established by an international agreement or a decision of the Security Council or in accordance with such an agreement or decision and by wording the reference in such a way that the claims or positions of interested parties were safeguarded. It was also said that the risk of perpetuating any illegal situations might be avoided if the formulation of the principle included a statement concerning the non-recognition of situations brought about by the illegal threat or use of force. Finally, some representatives referred to the need to bear in mind the particular features of the various actual cases in formulating any statement on "international lines of demarcation".

(iv) Acts of reprisal

29. The statement of agreement on the duty of States to refrain from acts of reprisal involving the use of force was supported by the representatives who referred to the question, who considered it consistent with the relevant provisions of the Charter. Certain representatives said that reprisals were an act of vengeance contrary to the Charter, as the Security Council itself had recognized in one of its resolutions, and that accordingly they could not be equated with self-defence. Others said that it would have been preferable if the statement had been more clearly worded, in order to remove any doubts about the prohibition of reprisals not involving the use of armed force. In this connexion, others expressed the view that the word "force" in the statement should be interpreted to mean "armed" or "physical" force and that an act of non-armed reprisal could be a legitimate means of redress against an illegal act by another State. It was also said that abuses would be avoided if non-armed reprisals were recognized as a legal institution and if the conditions governing them were strictly regulated. Finally, others added that the statement on acts of reprisal had to be considered in relation to those on the duty to refrain from violating existing frontiers, organizing or encouraging armed bands and instigating civil strife and terrorist acts.

(v) Organization of armed bands *and*

(vi) Instigation of civil strife and terrorist acts

30. Several representatives expressed satisfaction at the statement of agreement concerning the prohibition of the organization of armed bands and the agreement in principle concerning the prohibition of instigation of civil strife and terrorist acts. Others, however, had reservations, in that they felt that due account had not been taken of the relationship between those questions and the exercise by the peoples of dependent territories of their right to self-determination. They felt that a distinction must be made between the types of activities covered by those questions and assistance to colonial peoples in their legitimate struggle against the repression to which they were being subjected. One of them added that he could not agree to provisions concerning such activities unless recognition was given to the colonial peoples' rights of self-defence against the use of force by the Powers which

were denying them the right of self-determination. It was also said that the victims of subversive and terrorist activities should be permitted to take measures of individual or collective self-defence. It was, however, emphasized that, whatever the reasons, there should not be any departure from the text of Article 51 of the Charter, which spoke of "armed attack". Finally, it was observed that the currently accepted view was that third States should not interfere in civil strife, at least by military means, even if the legitimate Government requested them to do so.

31. With regard to the inclusion of the provisions relating to these two questions under the principle prohibiting the threat or use of force and under the principle of non-intervention, those representatives who supported the provisions were for the most part in favour of including them under both principles, although some felt that the best procedure would have been to include them only under the principle of non-intervention.

(vii) Military occupation and non-recognition of situations brought about by the illegal threat or use of force

32. A number of representatives expressed regret that there had been no agreement on the inclusion of a provision affirming that the territory of a State could not be subjected to military occupation or other measures of force for any reason whatsoever and proclaiming the non-recognition of situations brought about by the illegal threat or use of force. Some stated that a provision of that nature would be a barrier to territorial ambitions and would accordingly protect the inviolability of the territory and the territorial integrity of States. Certain representatives felt that the formula proposed as a basis for discussion was useful and could serve as a point of departure in reaching agreement on the question under consideration. Others, however, regarded the formula as excessively rigid, while still others rejected it on the ground that it was insufficiently comprehensive and specific. It was also suggested that, in order to facilitate agreement, the wording finally adopted could make an exception in the case of situations resulting from decisions taken at the end of the Second World War.

33. Some representatives were of the opinion that, since it was already provided in the Charter that the use of force in international relations was unlawful, what was now needed was a formulation of the legal consequences and corollaries of that fact. They held that non-recognition was the penalty that was imposed, since the unlawful use of force could not confer rights. Accordingly, the statement of the principle should clearly affirm the non-recognition of the situations in question. It was pointed out that the principle of non-recognition had been formulated for the first time at the First International Conference of American States, held at Washington in 1889 and 1890, and had been embodied in the Charter of the Organization of American States. Some representatives, on the other hand, felt that, while the non-recognition of situations brought about by the illegal use of force was morally desirable, it was difficult from a strictly legal point of view to deny the existence of certain specific situations which had their origin in the unlawful use of force. One of those representatives added that he would, however, have no difficulty in agreeing to the basic principle that any enlargement of the territory of a State through the use of force was completely inadmissible under the Charter.

(viii) Armed force or repressive measures against colonial peoples, the position of territories under colonial rule, and the Charter obligations with respect to dependent territories

34. Some representatives expressed regret that there had been no agreement on the inclusion of a provision relating to the duty of States to refrain from the use of force against dependent peoples. It was pointed out, in that connexion, that the use of force to perpetuate colonial situations was a violation of General Assembly resolution 1514 (XV). The thesis

that the territory of colonies formed part of the metropolitan territory of the colonial Power was also rejected. Some representatives contended that the principle could not be invoked in the case of territories or frontiers which were the result of colonial rule or of political agreements concluded between colonial Powers. One representative was of the opinion that there was nothing to prevent third States from offering their good offices with a view to facilitating the exercise of the right of self-determination by dependent peoples. It was added that an agreement on those questions would facilitate the formulation of the principle of equal rights and self-determination of peoples. Other representatives stated that colonial situations did not properly belong within the debate on a principle which related to the prohibition of the use of force in international relations, but rather concerned Chapters XI to XIII of the Charter.

(ix) Economic, political and other forms of pressure

35. Several representatives stated that the duty to refrain from the threat or use of "force" implied a duty to refrain from economic, political and other forms of pressure against the political independence or territorial integrity of a State, and urged that the Special Committee should continue making efforts to reach agreement on a broad definition of the term "force". Some referred in this connexion to the draft declaration adopted by the Committee of the Whole of the United Nations Conference on the Law of Treaties at the first session of the Conference at Vienna in 1968.⁴²

36. Other representatives argued that it was impossible to accept proposals that the term "force" in Article 2, paragraph 4, of the Charter, should be given a broad sense. They condemned the use of coercive measures, whether political or economic, in order to impose one State's will on another, but considered that in Article 2, paragraph 4, the term "force" meant solely "armed force". Some said that it might perhaps be better to try to solve the difficulties involved in the question by considering it in relation to the principle of non-intervention instead of the principle prohibiting the threat or use of force. Others considered that efforts might be made to thwart economic, political and other forms of pressure by adopting special rules of an appropriate kind. Finally, some representatives, without taking a final position on the matter, stated that, in the consideration of the question, the necessity of continuing to interpret Article 51 of the Charter restrictively should nevertheless be borne in mind.

(x) Agreement for general and complete disarmament
under effective international control

37. The representatives who mentioned this point supported the agreement to include the concept of general and complete disarmament under effective international control as a corollary of the principle prohibiting the threat or use of force. The desirability of formulating this corollary on the basis of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons⁴³ was stressed by some representatives.

(xi) Making the United Nations security system more effective

38. Some representatives expressed satisfaction with the statement of agreement concerning this question, considering that its inclusion in the formulation of the principle prohibiting the threat or use of force would help to strengthen the application of the principle. They stressed the need for all States to comply in good faith with the obligations they had undertaken with respect to the maintenance of international peace and security and to endeavour to make the United Nations security system more effective.

⁴² See A/CONF.39/C.1/L.370/Add.7.

⁴³ Reproduced in this *Yearbook*, p. 156.

(xii) Legal use of force

39. Representatives who referred to this question were agreed that nothing in the provisions of the principle prohibiting the threat or use of force would affect the provisions of the Charter concerning the lawful use of force. Some took the view that a flexible approach should be adopted in formulating the statement relating to this question. Others argued that the lawful uses of force should be clearly spelt out, because they were exceptions to the principle. With regard to the right of individual or collective self-defence provided for in Article 51 of the Charter, some said that the right existed solely in the event of "armed attack" and that the defensive reaction should be immediate and proportionate to the unlawful act giving rise to it. Pointing out that the Charter centralized the use of force in the United Nations, other representatives emphasized that regional organizations could not lawfully use force without the express authorization of the Security Council, in accordance with Article 53 of the Charter.

40. Several representatives maintained that the use of force by the peoples of dependent territories in self-defence against colonial domination and in exercise of their right of self-determination constituted a lawful use of force under the Charter and that that should be indicated in the formulation of the principle. It was stated, in that connexion, that colonialism was a permanent act of aggression and that oppressed peoples therefore had an inalienable right of self-defence against that form of aggression. Referring to the illegality of colonialism and the obligation of all States to help colonial peoples in their struggle to exercise their right of self-determination, some representatives asserted that national liberation movements were lawful and were in conformity with General Assembly resolution 1514 (XV). Finally, it was added that the perpetuation of specific colonial situations was not only unlawful and immoral but could also lead to breaches of the peace such as the Charter sought to avoid.

41. In the opinion of other representatives, it would be undesirable to sanction, as an exception to the principle, the right to use force in colonial matters, because that might result in serious threats to international peace and security. They pointed out that Article 2, paragraph 4, of the Charter prohibited the use of force in "international relations" and that the right of rebellion was not provided for in Article 51 of the Charter. In their view, questions relating to dependent territories were covered by Chapters XI to XIII of the Charter and not by Article 2, paragraph 4, or Chapter VII.

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

42. Several representatives expressed regret that at its 1968 session the Special Committee had made no progress towards the formulation of the principle of equal rights and self-determination of peoples, having adopted a report of its Drafting Committee stating that, owing to the lack of time, it had not been able to carry out a study in depth of the proposals concerning the principle. In the opinion of some representatives, it was discouraging to see that after three sessions of the Special Committee the attempts to formulate the principle had not met with the same degree of success as the attempts to formulate other principles. In the view of certain representatives, much more work had to be done before anything like a comparable stage was reached and a satisfactory text emerged. It was said that that situation was perhaps due to the fact that a common basis had yet to be found for the consideration of the principle, as well as to the consensus procedure followed by the Special Committee. Other representatives considered that it might result from the difficulties inherent in one of the areas of international relations in which law and politics were more closely interrelated. However, some other representatives were of the opinion that the

successive drafts submitted to the Special Committee in the course of the years indicated that a rapprochement had taken place, which augured well for the future.

43. A number of representatives emphasized the need for the Special Committee to continue its efforts with a view to the formulation of the principle. In this connexion, some representatives made an appeal to those who had so far demonstrated a hesitant attitude to reconsider their position, so that a formulation could be arrived at which reflected the experience and the present-day needs of the world. Various representatives expressed support for the recommendation of the Drafting Committee, adopted by the Special Committee, that due priority should continue to be given to the consideration of the proposals concerning the principle (see A/7326, para. 193).

44. A number of representatives referred to the historical, philosophical and political origins of the principle. It was recalled that it had been the corner-stone of the Declaration of Independence of the United States of America in 1776, of the French Revolution of 1789 and the October Socialist Revolution of 1917 in Russia. It was also stated that it had played a fundamental role in the constitution of the Latin American States and that it now formed the basis of the activities of various national liberation movements in Asia and Africa. Reference was also made to the important contribution of the Spanish jurists and theologians of the sixteenth and seventeenth centuries.

45. Several representatives recalled that the principle was embodied in the Charter, explicitly in Article 1, paragraph 2, and Article 55, and implicitly in Chapters XI, XII and XIII, and that it had been reaffirmed in resolutions of the General Assembly, in particular resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and in the International Covenants on Human Rights. In the opinion of certain representatives, the reference to the principle in Articles 1 and 55 of the Charter was only indirect. It was also said that the principle had been applied in international life, as was proved by the recent process of decolonization, which had enabled a large number of countries to achieve independence and sovereignty and to become Members of the United Nations; this constituted one of the greatest accomplishments of the world Organization. Some representatives declared that the principle continued to be of the greatest value to the peoples still under colonial domination.

46. Various representatives stressed that the principle could not be regarded merely as a moral or political postulate but as a natural and inalienable right which constituted one of the foundations of the United Nations and an established rule of international law. Some representatives considered that it was at the basis of the maintenance of international peace and security and the development of friendly relations and co-operation among States.

47. A number of representatives held the view that the principle should be formulated in its widest sense. They reaffirmed the right of peoples to choose freely, without any form of foreign interference, their own political, social and economic system. Reference was also made to the exercise of sovereignty in external affairs and the right of any State to dispose freely of its natural wealth and resources. In the opinion of some representatives, the two elements which constituted the principle were closely linked; the meaning and scope of the right to self-determination should be defined in the light of the principle of equal rights. That meant that international relations should be based on the idea of co-operation and not of subordination. Stress was also laid on the close relationship between the principle of equal and self-determination of peoples and the principles of sovereign equality of States and non-intervention.

48. It was said that, since the struggle waged by oppressed peoples for their national liberation, in the legitimate exercise of the right of self-determination, had the backing of the Charter, the problem was of universal interest and the aims of those peoples were endorsed by the international community, even if they were pursued by revolutionary means.

Other representatives, however, considered that the so-called right of rebellion had of necessity to be extra-legal.

49. In the opinion of various representatives, the formulation of the principle should be based on the proposals submitted so far and those which might be submitted in the future. In this connexion, some representatives expressed general support for certain of the proposals before the Special Committee. Reference was also made to the relevant resolutions of the General Assembly and in particular to resolution 1514 (XV), whose second preambular paragraph and operative paragraph 2 contained, in the view of one representative, the most appropriate statement of law on the principle. Other representatives emphasized in this regard article 1 of the International Covenants on Human Rights. In the opinion of some representatives, the formulation would be incomplete unless it included an affirmative statement of the existence of an inherent right of peoples to equal rights and self-determination, a clear imposition of a general duty on all States to respect that right, and a statement of particular duties of States to facilitate its attainment and perform specific acts or refrain from performing specific acts which in any way might hinder its exercise. It was also emphasized that the right of self-determination was not only an individual but also a collective right.

50. A number of representatives referred to the difference of views concerning the applicability of the principle; while some considered that it should be applied to all peoples, others maintained that it could only apply to peoples under colonial rule. In the opinion of some representatives, however, the principle applied equally to peoples occupying an independent State and to peoples occupying a geographical area which, but for foreign domination, could have formed an independent and sovereign State. Nevertheless, certain representatives deemed it necessary to specify that the principle applied to peoples in territories under military occupation. While recognizing that the application of the principle was most important in the field of colonialism, universal applicability was supported by certain representatives on the grounds that it was not in the field of colonialism alone that the lack of observance of the principle threatened peace and security and friendly relations and that the Charter used the word "people" in a broad sense. It was also said that paragraph 6 of General Assembly resolution 1514 (XV) reassured those who feared that the universal application of the principle would encourage secessionist movements in sovereign, independent States.

51. The opinion was expressed that, without questioning the sovereignty of States, the applicability of the principle to peoples which were denied the enjoyment of equal rights by being excluded from participation in the life of their own States should be recognized. One representative considered that the terms "colonial" and "dependent" needed to be legally defined. In his view, a possible definition might state that a people was dependent when its territory was occupied by another State in contravention of international agreements or the resolutions of the Security Council and when its right to determine its own future status was expressly recognized either in General Assembly resolution 1514 (XV) or in the resolutions of the Security Council. Other representatives affirmed that the term "peoples" implied their relationship to a territory, even though they might have been unjustly expelled from it and replaced by an artificial population. It was also said that, in the case of entities which did not meet the requirements for becoming subjects of international law, it would be doubtful whether the concept of self-determination comprised a right to constitute themselves as sovereign and independent States.

52. Some representatives considered that there was a large measure of agreement as regards the prohibition of actions aimed at the partial or total disruption of the national unity or territorial integrity of States.

53. In the view of some representatives, colonialism, which had been deplored by all freedom-loving nations, and which was without basis in international law, remained the most serious violation of the principle of equal rights and self-determination of peoples, as exemplified by a number of cases in Africa. In their view, the liquidation of colonialism was an obligation of States under the Charter. All States should therefore render assistance to the United Nations in carrying out its responsibilities to put an end to colonialism, to set up the necessary machinery for the structural change where none existed and to return all powers to subject peoples. It was also considered that colonial territories or other Non-Self-Governing Territories could not constitute an integral part of the territory of the States exercising colonial rule over them or of the administering States. The view was further expressed that armed action or repressive measures against colonial peoples should be prohibited.

54. A number of representatives considered that the right of dependent peoples to struggle, by whatever means they chose, for their freedom and independence from the colonial yoke, was a legitimate exercise of the right of self-defence and could not be interpreted as violating the provisions of the Charter. In their opinion, those peoples might receive assistance from other States in virtue of that right. Other representatives, however, were unable to accept the so-called right of self-defence against colonial domination. In the view of certain representatives, the use of force in self-defence against colonial domination should be considered in the context of Chapter XI and not of Article 2, paragraph 4, of the Charter. Other representatives considered that the exercise of such a right invited the intervention of big Powers in the internal affairs of smaller States, thus endangering peace and security.

2. *The principle set forth in operative paragraph 5 of General Assembly resolution 2327 (XXII): the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

55. Several representatives expressed regret that, owing to the lack of time at its 1968 session, the Special Committee had been unable to comply with the terms of reference given to it by the General Assembly in paragraph 5 of resolution 2327 (XXII), namely, to consider proposals compatible with 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, with the aim of widening the area of agreement already expressed in that resolution.

56. In the view of several representatives, General Assembly resolution 2131 (XX) was the expression of a universal juridical conviction and a valid and complete formulation of international law on the principle of non-intervention. They stressed that the resolution embodied a principle which had been recognized in many international instruments for over a century and that it had been adopted without opposition. They also recalled that at its 1966 session, the Special Committee had itself decided to “abide by General Assembly resolution 2131 (XX)”. Other representatives considered the resolution as a significant political statement rather than a declaration of the legal principle involved. They recalled that it was not the only resolution relevant to the work of the Special Committee; many others, including Assembly resolutions 1514 (XV) and 2160 (XXI) had a similar relevance for the Special Committee’s work. It was also significant that resolution 2131 (XX) had been adopted by the General Assembly at the same session at which the Assembly, by resolution 2103A (XX), had decided to include the principle of non-intervention among the seven principles to be formulated by the Special Committee.

57. In the opinion of some representatives, to argue that resolution 2131 (XX) was a mere political statement and therefore had no legal validity was fallacious, since it implied that the terms "political" and "legal" were mutually exclusive, an assertion which could only be interpreted as an attempt to make law the handmaid of politics. Even though the text of the resolution might be improved, as was also the case with any other legal instrument, including the Charter, it had to be admitted that documents resulting from negotiation and compromise were bound to show drafting imperfections. Furthermore, the difficulties of interpretation to which resolution 2131 (XX) might give rise could not be regarded as unique or greater than those confronting daily the national or international organs entrusted with the application of juridical norms.

58. Some representatives expressed the hope that members of the Special Committee would make serious efforts to reconcile the conflicting views existing on General Assembly resolution 2131 (XX), in order to reach a satisfactory statement on the principle of non-intervention. This was thought possible by some representatives, in view of the large measure of agreement evidenced in resolution 2131 (XX) and because this resolution contained most of the necessary elements to be included in a formulation of the principle.

59. In the opinion of several representatives, the Special Committee's task as regards the principle of non-intervention should be the consideration of proposals compatible with resolution 2131 (XX), with a view to widening the area of agreement expressed in that resolution. Proposals such as those submitted to the Special Committee in 1967 were deemed unacceptable, in that they had tended to restrict or ignore that area of agreement. Any new terms of reference to be given to the Special Committee should not detract from the relevant decisions taken by the Special Committee at its 1966 session and by the General Assembly at its twenty-second session. In the view of one representative, the re-examination by the Special Committee of the content or form of resolution 2131 (XX), or the consideration of any proposals on the principle, did not seem to be the method best suited for narrowing the existing divergences of opinion.

60. Several representatives stressed the importance of the principle of non-intervention as the corner-stone of respect for the sovereignty and independence of States, particularly in view of the long and painful experience of intervention in all forms, not only in the States which some of them represented but also in the continent of which those States formed part. It was considered that the principle was a major foundation for the development of friendly relations and co-operation among States, as well as an essential element for peaceful coexistence. It was further recognized that the principle was closely related to the maintenance and strengthening of international peace and security and was one of the foundations of contemporary international law.

61. The view was also expressed that the principle had been proclaimed by the Charter of the United Nations. Article 2, paragraph 1, embodying the fundamental principle of sovereign equality of States, implied respect for the personality of the State and its political independence, with which intervention was incompatible; intervention was likewise contrary to the purpose enunciated in Article 1, paragraph 2; the principle was also a consequence of the prohibition of the threat or use of force set forth in Article 2, paragraph 4, since those were the more characteristic and serious forms of intervention; finally, the provisions of Article 2, paragraph 7, applied *a fortiori* to States, since the Charter could not permit States to do what it prevented the Organization from doing.

62. Some representatives considered that the principle was an inseparable part of the system of principles of international law concerning friendly relations and co-operation among States. In the view of certain representatives, the principle did not prohibit assistance to colonial peoples struggling for their independence in exercise of their right of self-determination. It was said that intervention in the internal affairs of a State affected the

principle of equal rights and self-determination of peoples. It was also stated that questions which had given rise to doubts in the work undertaken on the principle prohibiting the threat or use of force might be clarified in the context of the principle of non-intervention.

63. Several representatives emphasized the contribution of Latin America to the development and strengthening of the principle since the early nineteenth century, as a defence of their independence and sovereignty against the policies of the Holy Alliance and the abuses resulting from doctrines which arbitrarily distinguished between "legal" and "illegal" acts of intervention. It was recalled that, as had been pointed out at the Special Committee's 1967 session, the principle—which reflected the profound convictions of Latin America—had been proclaimed in the 1933 Montevideo Convention on Rights and Duties of States, the Additional Protocol relative to Non-intervention adopted by the 1936 Inter-American Conference for the Maintenance of Peace, the 1938 Declaration of the Principles of the Solidarity of America, the Charter of the Organization of American States signed at Bogotá in 1948 and at the Third Special Inter-American Conference held at Buenos Aires in 1967.⁴⁴ It was also said that, as a result of the long process of development and consolidation of the principle of non-intervention, fruitful co-operation among States with different interests had been made possible.

C. OBSERVATIONS CONCERNING FUTURE WORK AND METHODS OF WORK

1. *Convening and terms of reference of the Special Committee in 1969*

64. It was agreed that consideration of the principles should be continued with a view to their formulation and that the best means by which the General Assembly could complete its work on the item as soon as possible was once again to invite the Special Committee, as reconstituted by General Assembly resolution 2103 A (XX) of 20 December 1965, to continue its work in 1969. The general agreement in that regard was embodied in operative paragraph 3 of the draft resolution introduced in the Sixth Committee (see para. 6 above).

65. During the general debate, various views were expressed concerning the Special Committee's terms of reference for its 1969 session, including the priority to be given to the consideration of each principle, with a view to completing the Special Committee's work at an early date in the light of the objective of General Assembly resolution 1815 (XVII) of 18 December 1962, i.e., the preparation of a Draft declaration on the seven principles of international law concerning friendly relations and co-operation among States. The general agreement reached on that point was embodied in operative paragraph 4 of the draft resolution and in the statement made by the Chairman of the Sixth Committee (see para. 71 below) before the draft resolution was adopted.

2. *The Special Committee's method of work and the organization of its future work*

66. Certain representatives stated that, while the Special Committee should try to arrive at a consensus, that procedure must not have the effect of causing its work to be obstructed by intransigent minorities. The effort to reach a consensus, although desirable, should not become a dogma which would enable certain minorities to paralyse the Special Committee's work or bring about the adoption of excessively vague formulations which did not meet the requirements of the existing situation or which served to perpetuate the *status quo*. In such cases, the vote was the only democratic method of arriving at solutions which

⁴⁴ See *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 87, document A/6799, para. 319.

were satisfactory to the international community as a whole. When a given proposal was supported by a large majority, it would be intolerable for a minority to prevent a decision from being taken. In such cases, the course which should be adopted was that provided for in the rules of procedure of the General Assembly, i.e., the taking of a vote.

67. Other representatives emphasized that it was desirable for the Special Committee to continue to work on the basis of consensus, which was the best guarantee that it would be successful in carrying out its task. It was essential that the work of the Special Committee should reflect the general practice of States and that, once completed, it should win the approval of a large majority in the General Assembly. Although the representatives in question acknowledged that the consensus method could give rise to abuses or lead to the adoption of excessively vague or broad formulations, they felt that it was the only appropriate method of carrying out the Special Committee's task. The formulation of legal norms and their incorporation into a General Assembly declaration required a broad base of agreement, since majority votes in the Assembly did not, in themselves, create legal norms nor did they facilitate the rapid establishment of such norms.

68. Some representatives felt that at its next session the Special Committee should concentrate its efforts and initiate discussions as soon as possible on the questions which had not yet been settled. General debate on questions concerning which a certain measure of agreement had already been reached should be avoided. Some representatives felt that the time had come to consolidate the results of the Special Committee's work and undertake a general review of the progress that had been made on each principle. In that connexion, some expressed the view that the texts embodying the agreements which had been reached should be submitted to the General Assembly in a comprehensive rather than a fragmentary form. Finally, other representatives, after drawing attention to the interrelationship among all the principles, cautioned the Special Committee regarding the disadvantages of the method of considering each principle separately.

3. Preparatory consultations

69. A number of representatives thought it advisable to hold preparatory consultations among the States concerned before the Special Committee's 1969 session and were in favour of including in the draft resolution to be recommended to the General Assembly a provision similar to that contained in operative paragraph 6 of resolution 2327 (XXII). Such consultations had proved useful and indeed valuable during the period between the Special Committee's 1967 and 1968 sessions. In the course of the consultations, it was observed by some representatives, it might even be possible to prepare working papers on controversial questions or draft texts accompanied by commentaries. Operative paragraph 5 of the draft resolution embodied the views expressed on this matter.

4. Completion of work on the item and observance of the twenty-fifth anniversary of the United Nations

70. A number of representatives expressed the hope that, if all delegations continued to adopt a constructive attitude, the Special Committee would be able to complete its work on the item within a reasonable period of time; they further stated that the adoption in 1970 of a declaration embodying the codification and progressive development of the principles of international law concerning friendly relations and co-operation among States would be an important contribution to the observance of the twenty-fifth anniversary of the United Nations.

IV. Voting and statement by the Chairman of the Sixth Committee

71. At the 1099th meeting, on 17 December 1968, the Sixth Committee adopted unanimously the fifty-two-Power draft resolution (A/C.6/L.740 and Add.1) (see para. 6 above). Before the adoption of the draft resolution, the Chairman of the Sixth Committee made the following statement:

“If the Sixth Committee approves this draft resolution, it is on the understanding that there is consensus in the Committee on the following:

“First, the Special Committee should devote itself to completing the work on the formulations of the principle prohibiting the threat or use of force and the principle of equal rights and self-determination of peoples;

“Secondly, if any time is left, it should address itself to other work relating to other principles;

“Thirdly, the above understanding is wholly without prejudice to the positions of any delegations that have been taken with regard to any particular principle concerning friendly relations.”

72. At the same meeting, the representatives of Israel, France, Italy and the Union of Soviet Socialist Republics gave explanations of their votes.

Recommendation of the Sixth Committee

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

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

[*Text adopted by the General Assembly without change. See “Resolution adopted by the General Assembly” below.*]

(b) Resolution adopted by the General Assembly

At its 1751st plenary meeting, on 20 December 1968, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 73 above). For the final text, see resolution 2463 (XXIII) below.

2463 (XXIII). 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, 2181 (XXI) of 12 December 1966 and 2327 (XXII) of 18 December 1967, 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 the principles of international law concerning friendly relations and co-operation among States, so as to secure their more effective application, would promote the realization of the purposes of the United Nations,

Bearing in mind its resolution 2131 (XX) of 21 December 1965,

Convinced of the significance of continuing the effort to achieve general agreement in the process of 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,⁴⁵ which met in New York from 9 to 30 September 1968,

1. *Takes note* of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;
2. *Expresses its appreciation* to the Special Committee for the valuable work it has performed;
3. *Decides* to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to meet in 1969 in New York, Geneva or any other suitable place for which the Secretary-General receives an invitation, in order to continue and complete its work;
4. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the previous and present sessions of the General Assembly and in the 1964, 1966, 1967 and 1968 sessions of the Special Committee, to endeavour to resolve, in the light of General Assembly resolution 2327 (XXII), all relevant questions relating to the formulation of the seven principles, in order to complete its work as far as possible, and to submit a comprehensive report to the General Assembly at its twenty-fourth session;
5. *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;
6. *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;
7. *Decides* to include in the provisional agenda of its twenty-fourth 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".

*1751st plenary meeting
20 December 1968*

⁴⁵ *Official Records of the General Assembly, Twenty-third Session, agenda item 87, document A/7326.*

(11) REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FIRST SESSION
(AGENDA ITEM 88)

(a) Report of the Sixth Committee ⁴⁶

[Original text English and French]
[13 December 1968]

I. INTRODUCTION

1. At its 1676th plenary meeting, on 27 September 1968, the General Assembly included as item 88 in the agenda of its twenty-third session, and allocated to the Sixth Committee for consideration and report, the item entitled "Report of the United Nations Commission on International Trade Law on the work of its first session".

2. The Sixth Committee considered this item at its 1082nd to 1085th meetings, held from 27 November to 3 December 1968 and at its 1096th and 1097th meetings, held on 13 and 14 December 1968.

3. At the 1082nd meeting, on 27 November 1968, Mr. Dadzie (Ghana), Chairman of the United Nations Commission on International Trade Law at its first session, at the invitation of the Chairman, introduced the Commission's report on the work of that session (A/7216). At the 1096th meeting, on 13 December 1968, after hearing a statement by the representative of the Secretary-General on financial implications, the Committee decided that in the future the Commission's annual report should be introduced to the General Assembly by the Chairman of the Commission, or by another officer to be designated by him.

4. At the 1097th meeting, on 14 December 1968, the Rapporteur of the Sixth Committee raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on agenda item 88. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject-matter, the report on agenda item 88 should include a summary of the representative trends of opinion and not of the individual views of all delegations.

5. The report of the United Nations Commission on International Trade Law on the work of its first session, which was before the Sixth Committee, is divided into seven chapters as follows:

- I. Establishment and terms of reference of the Commission;
- II. Organization of the first session;
- III. General debate;
- IV. Programme of work of the Commission;
- V. Establishment within the Secretariat of a register of organizations and a register of texts;
- VI. Training and assistance in the field of international trade law;
- VII. Other decisions and conclusions of the Commission.

⁴⁶ Document A/7408, reproduced from *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 88.

II. PROPOSALS

6. At the 1096th meeting, on 13 December 1968, the representative of Ghana introduced a draft resolution sponsored by Argentina, Cameroon, Chile, Congo (Democratic Republic of), El Salvador, Ghana, Hungary, India, Japan, Netherlands, Nigeria, Pakistan, Romania, Spain, Syria, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and Zambia (A/C.6/L.738/Rev.1 and Add, 1-3), which read as follows:

“The General Assembly,

“Having considered the report of the United Nations Commission on International Trade Law on the work of its first session (A/7216),

“Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law and defined its object and terms of reference,

“Noting the chapter of the report of the Trade and Development Board on its seventh session (A/7214, part two, chapter VII) concerning the report of the United Nations Commission on International Trade Law on the work of its first session, and noting further that the Board expressed its appreciation of the Commission’s report and commended the Commission for its programme of work,

“Endorsing the statement of the Trade and Development Board (*ibid.*, para. 165) emphasizing that the needs of developing countries should receive adequate attention in the programme of work of the United Nations Commission on International Trade Law and stressing the importance of co-operation between the United Nations Conference on Trade and Development and the Commission at the intergovernmental and secretariat levels,

“Bearing in mind the wish expressed by many members of the Trade and Development Board at its seventh session that the United Nations Commission on International Trade Law should add international shipping legislation to its list of priority topics (A/7214, para. 74), and bearing also in mind the activities of other agencies active in this field,

“Noting with satisfaction that the United Nations Commission on International Trade Law intends to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law, and that such co-operation has already been initiated,

“Convinced that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well-being,

“Having considered the report of the Secretary-General concerning the financial and administrative implications of the establishment of a register of organizations and a register of texts in the field of international trade law (A/C.6/L.648 and Add.1),

“1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its first session;

“2. Notes with approval the programme of work established by the United Nations Commission on International Trade Law;

“3. Authorizes the Secretary-General to establish a register of organizations in accordance with directives laid down by the United Nations Commission on International Trade Law;

“4. *Approves in principle* the proposal to establish a register of the international instruments and other documents referred to in chapter V of the report of the United Nations Commission on International Trade Law, and requests that the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General (*ibid.*) and the discussions at the twenty-third session of the General Assembly;

“5. *Authorizes* the Secretary-General to establish the register referred to in paragraph 4 above in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session;

“6. *Recommends* that the United Nations Commission on International Trade Law should:

“(a) Continue its work on the topics to which it decided to give priority, that is, the international sale of goods, international payments and international commercial arbitration;

“(b) Consider the inclusion of international shipping legislation among the priority topics in its work programme;

“(c) Consider opportunities for training and assistance in the field of international trade law in the light of relevant reports of the Secretary-General;

“(d) Keep its programme of work under constant review, bearing in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade;

“(e) Consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them;

“(f) Consider, when appropriate, the possibility of issuing a yearbook which would make its work more widely known and more readily available;

“7. *Requests* the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussion on the Commission’s report at the twenty-third session of the General Assembly.”

III. DEBATE

7. The main trends of the Sixth Committee’s debate on agenda item 88 are summarized in the following seven sections. The first section concerns the observations which were made on the role and the work of the Commission in general. The other six sections contain a summary of the observations relating more particularly to the report of the Commission on the work of its first session and are set out under the following headings: programme of work of the Commission, international shipping legislation, establishment within the Secretariat of a register of organizations and a register of texts, training and assistance in the field of international trade law, collaboration with other organizations, and publication of a yearbook.

A. *The role and the work of the Commission in general*

8. Several representatives characterized the Commission as the principal organ responsible for the progressive development of international trade law and for the co-ordination of the unification activities of other governmental and non-governmental organizations. Some of those representatives expressed the opinion that the task of the Commission should not be merely to encourage and co-ordinate work carried out elsewhere, but also to undertake

work of its own in order to reduce and remove legal obstacles to the flow of international trade. In doing so, the Commission should ensure the full participation of developing countries which, until now, had not taken an active part in the development and formulation of international trade law.

9. Many representatives commended the Commission for having obtained tangible results during its first session. It was noted with approval that it had decided to take its decisions as far as possible by consensus. This would permit the Commission, whose members were States with different social-economic systems, different levels of development, and different legal systems and historical traditions, to base its work on careful regard for proposals submitted and respect for mutual interests. Some representatives, while agreeing with the principle of consensus, nevertheless observed that consensus should not be ensured at all costs as if this were the essential objective of the Commission's discussions, nor should its purpose be merely to satisfy a dissident minority. In appropriate circumstances, decisions should be made by vote.

10. A number of representatives stressed the importance of Governments doing their utmost to support the Commission in its work, *inter alia*, by responding promptly to requests for information and comments on topics on its agenda and by seeing to it that it remained foremost a body of experts. The view was expressed that the Commission should also have invited States other than its own members to submit studies on certain subjects, so as to enable it to work on a sufficiently broad basis. According to another view, owing to the universal character of the Commission's work, documents and inquiries emanating from the Commission should be transmitted to all States, whether or not they were Members of the United Nations or members of its specialized agencies.

11. One representative observed that, in electing the members of the Commission, the General Assembly had regrettably neglected to ensure representation of the Chinese legal system.

12. A number of representatives expressed approval that the Commission had not felt it necessary, at this stage of its work, to formulate a definition of international trade law and were of the opinion that it had acted wisely in taking practical considerations into account when drawing up its programme. It was observed by others, however, that it was unfortunate that the Commission had been unable to agree on a definition of international trade law: the Commission should not limit its work to the consideration only of questions of private law, since a significant number of the questions of international trade law which were of cardinal importance to all countries would then lie outside its field of activity.

13. Some representatives stressed the particular importance of the Commission's work for the developing countries. That work should fully reflect the principles governing international trade relations and trade policies conducive to development, adopted at the first session of the United Nations Conference on Trade and Development.⁴⁷ Other representatives, however, emphasized the community of interest which both developed and developing countries had in the work of the Commission and cautioned against introducing into that work notions of a dichotomy of interest drawn from related but different contexts.

B. *Programme of work of the Commission*

14. Most representatives commended the Commission for its selection of priority topics, which covered three important fields of international trade law, i.e., the international sale of goods, international payments and international commercial arbitration. Some

⁴⁷ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), annex A.I.1, p. 18.

representatives expressed the wish that the Commission maintain a certain degree of flexibility in its programme of work, which should be revised from time to time to meet the requirements of the international community.

15. One representative questioned the choice of international commercial arbitration as a priority topic and deemed it preferable first to make a census of existing international instruments on the subject. It was also observed that the Commission could derive great advantage from the establishment of a collection of important arbitral awards handed down in the field of international trade.

16. The suggestion was made that other items, such as the question of the most-favoured-nation clause, the promotion of participation in the Convention on Transit Trade of Land-locked States and, as a matter of priority, the elimination of discrimination in laws affecting international trade, should also be considered by the Commission. However, some representatives, referring to the political implications which the consideration of the question of discrimination in laws affecting international trade might possibly involve, questioned the expediency of suggesting to the Commission that it should take up that item.

C. International shipping legislation

17. With regard to international shipping legislation, reference was made to the recommendation made by many members of the Trade and Development Board at its seventh session to the effect that the United Nations Commission on International Trade Law should take the necessary measures to deal, as a matter of priority, with international shipping legislation (see A/7214, part two, para. 74). Most of the representatives who spoke on this subject favoured an active involvement on the part of the Commission and said that they would welcome the inclusion of shipping legislation among the priority items. Some representatives, while agreeing that the Commission should consider the law of shipping, deemed nevertheless advisable for it to defer its work on that subject until the Committee on Shipping of the Trade and Development Board had considered the scope of international shipping legislation and made its recommendations to the Commission. Other representatives drew attention to the activities of the United Nations Conference on Trade and Development and the Inter-Governmental Maritime Consultative Organization in the matter of international shipping legislation and emphasized, in this connexion, that it was of increasing importance that the Commission should co-ordinate the various efforts made in this field so as to avoid, as far as possible, duplication of work.

D. Establishment within the Secretariat of a register of organizations and a register of texts

18. There was general recognition of the importance of a register of organizations, containing a survey of their activities, and a register of international instruments in certain fields of international trade law. The view was expressed that this would permit the Commission to keep abreast of the latest developments and collect the information necessary for its work. It was also stated that such registers would no doubt be useful to Governments and other organizations. Several representatives, however, expressed their hesitation in view of the financial implications and were of the opinion that the Commission should consider further the scope of the register of texts at its second session, taking into account the report of the Secretary-General on the administrative and financial implications of the registers (A/C.6/L.648 and Add.1) and the observations made thereon during the debates in the Sixth Committee. Some representatives were of the opinion that the aim pursued by the Commission could perhaps also be achieved by other means, such as by publishing a list of the titles and sources of the various instruments and documents, without reproducing the

texts thereof. One representative entered a strong protest at the omission of Chinese from the list of official languages in which the registers were to be published.

E. Training and assistance in the field of international trade law

19. Many representatives supported the Commission's proposals concerning training and assistance in the field of international trade law (see A/7216, chapter VI). It was noted with approval that the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law had recommended that an appropriate place should be given to the activities concerning international trade law within the framework of the activities conducted under the Programme. It was suggested that the Commission, at its second session, should give careful consideration to training and assistance in international trade law on the basis of the report to be submitted by the Secretary-General. Some representatives urged that the Commission should take suitable steps to increase the opportunities for training experts, particularly in the developing countries, and to place at the disposal of the international community the juridical means of stimulating trade.

F. Collaboration with other organizations

20. A number of representatives referred to the problem of the waste of effort and the confusion caused by the existence of competing agencies in the work of unification. It was stressed, in this connexion, that the remedy would seem to lie in the Commission's functioning as a rallying-ground for unificatory activities and in its co-ordination and supervision of such activities. Some representatives stressed that the Commission should be the main co-ordinating and law-making international organ in the field of international trade law and that it should maintain close co-operation with the specialized agencies and the intergovernmental and non-governmental organizations concerned. Other representatives emphasized that the work of the Commission should be complementary to the efforts that had been made and were being made by such organizations and that stimulating wider interest in, and particular work by, existing institutions was among the significant contributions that the Commission could make.

G. Yearbook

21. Several representatives deemed it desirable that the Commission should issue a yearbook similar to that of the International Law Commission. Most representatives, however, agreed that there was no need for the Sixth Committee to take a decision on the matter at this time and that it was for the United Nations Commission on International Trade Law to determine the desirability of such a step.

IV. VOTING

22. At the 1097th meeting of the Sixth Committee, held on 14 December 1968, it was decided, at the request of some representatives, to vote separately on paragraphs 4 and 5 of the draft resolution (A/C.6/L.738/Rev.1 and Add.1-3). Paragraph 4 was adopted by 70 votes to 1, with 8 abstentions. Paragraph 5 was adopted by 60 votes to 4, with 16 abstentions. The draft resolution as a whole was adopted by 77 votes to none, with 2 abstentions. Explanations of vote were given by the representatives of Australia, Bulgaria, Canada, China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Recommendation of the Sixth Committee

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

REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

[*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 1746th meeting, on 18 December 1968, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 23 above). For the final text see resolution 2421 (XXIII) below.

2421 (XXIII). Report of the United Nations Commission on International Trade Law

The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its first session,⁴⁸

Recalling its resolution 2205 (XXI) of 17 December 1966 by which it established the United Nations Commission on International Trade Law and defined its object and terms of reference,

Noting the chapter of the report of the Trade and Development Board on its seventh session⁴⁹ concerning the report of the United Nations Commission on International Trade Law on the work of its first session, and noting further that the Board expressed its appreciation of the Commission's report and commended the Commission for its programme of work,

Endorsing the statement in which the Trade and Development Board⁵⁰ emphasized that the needs of developing countries should receive adequate attention in the programme of work of the United Nations Commission on International Trade Law and stressed the importance of co-operation between the United Nations Conference on Trade and Development and the Commission at the intergovernmental and secretariat levels,

Bearing in mind the wish expressed by many members of the Trade and Development Board at its seventh session that the United Nations Commission on International Trade Law should add international shipping legislation to its list of priority topics⁵¹ and also bearing in mind the activities of other agencies active in this field,

Noting with satisfaction that the United Nations Commission on International Trade Law intends to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law and that such co-operation has already been initiated,

⁴⁸ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*

⁴⁹ *Ibid.*, Supplement No. 14 (A/7214), part two, chapter VII.

⁵⁰ *Ibid.*, para. 165.

⁵¹ *Ibid.*, para. 74.

Convinced that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well-being,

Having considered the report of the Secretary-General concerning the financial and administrative implications of the establishment of a register of organizations and a register of texts in the field of international trade law,⁵²

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its first session;

2. *Notes with approval* the programme of work established by the United Nations Commission on International Trade Law;

3. *Authorizes* the Secretary-General to establish a register of organizations in accordance with directives laid down by the United Nations Commission on International Trade Law;

4. *Approves* in principle the proposal to establish a register of the international instruments and other documents referred to in chapter V of the report of the United Nations Commission on International Trade Law and requests that the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General and the discussions on the registers at the twenty-third session of the General Assembly;

5. *Authorizes* the Secretary-General to establish the register referred to in paragraph 4 above in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session;

6. *Recommends* that the United Nations Commission on International Trade Law should:

(a) Continue its work on the topics to which it decided to give priority, that is, the international sale of goods, international payments and international commercial arbitration;

(b) Consider the inclusion of international shipping legislation among the priority topics in its work programme;

(c) Consider opportunities for training and assistance in the field of international trade law, in the light of relevant reports of the Secretary-General;

(d) Keep its programme of work under constant review, bearing in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade;

(e) Consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them;

(f) Consider, when appropriate, the possibility of issuing a yearbook which would make its work more readily available;

7. *Requests* the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions on the Commission's report at the twenty-third session of the General Assembly.

*1746th plenary meeting
18 December 1968*

⁵² *Ibid.*, *Twenty-third Session, Annexes*, agenda item 88, document A/C.6/L.648; A/C.6/I.648/Add.1.

(12) CONFERENCE OF NON-NUCLEAR WEAPON STATES: FINAL
DOCUMENT OF THE CONFERENCE (AGENDA ITEM 96)

Resolution [2456 B (XXIII)] adopted by the General Assembly

2456 (XXIII). Conference of Non-Nuclear-Weapon States

B

The General Assembly,

Having examined the Final Document of the Conference of Non-Nuclear-Weapon States,⁵³

Considering that the establishment of zones free from nuclear weapons, on the initiative of the States situated within each zone concerned, is one of the measures which can contribute most effectively to halting the proliferation of those instruments of mass destruction and to promoting progress towards nuclear disarmament,

Observing that the Treaty for the Prohibition of Nuclear Weapons in Latin America,⁵⁴ opened for signature on 14 February 1967, has already established a nuclear weapon-free zone comprising territories densely populated by man,

Reiterates the recommendation contained in resolution B of the Conference of Non-Nuclear-Weapon States, concerning the establishment of nuclear-weapon-free zones, and especially the urgent appeal for full compliance by the nuclear-weapon Powers with paragraph 4 of General Assembly resolution 2286 (XXII) of 5 December 1967, in which the Assembly invited Powers possessing nuclear weapons to sign and ratify as soon as possible Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

*1750th plenary meeting
20 December 1968*

**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**

(a) UNESCO's contribution to peace and UNESCO's tasks with respect to the elimination of colonialism and racialism: resolutions adopted by the General Conference on 15 November 1968 during its fifteenth session

(i) Resolution 9.11

The General Conference,

Having considered item 11.1 of the agenda: "Implementation of the resolutions of the fourteenth session of the General Conference regarding UNESCO's contribution to peace

⁵³ *Official Records of the General Assembly, Twenty-third Session, agenda item 96, document A/7277 and Corr. 1 and 2.*

⁵⁴ See *Juridical Yearbook*, 1967, p. 272.

and UNESCO's tasks in the light of the resolutions adopted by the General Assembly of the United Nations at its twentieth session on questions relating to the elimination of colonialism and racialism" and item 11.2: "Application by UNESCO of resolution 2311(XXII) of the United Nations General Assembly on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the Specialized Agencies and the international institutions associated with the United Nations",

Bearing in mind the responsibilities placed on UNESCO by its Constitution and the resolutions adopted by the General Conference at successive sessions for the elimination of colonialism and racialism and for the promotion of peace, international co-operation and security of peoples through education, science and culture,

Recalling that, in accordance with the provisions of its Constitution, UNESCO aims at promoting the consolidation of international peace and security through the educational scientific and cultural co-operation of all peoples,

Stressing the importance of a full and appropriate implementation of resolution 10 on UNESCO's contribution to peace adopted by the General Conference at its fourteenth session (1966),

Noting with approval the report by the Director-General on the implementation of resolution 11 adopted by the General Conference at its fourteenth session (doc. 15C/49) and his proposals to intensify the activities of the organization in the service of peace, international co-operation and security of peoples (doc. 15C/50), as well as the measures taken by the Executive Board in this regard,

Realizing the significance of the contribution which the Organization and the Member States may make to the furthering of international peace and security and reiterating the supreme importance and urgency of building real and lasting peace based on the principles of justice and amity and the overriding role of UNESCO in implementing significant and practical measures for advancing peace and development,

1. *Confirms* resolution 6.21 adopted by the General Conference at its thirteenth session (1964), calling upon Member States to be guided in their relations with one another by the principles of living peacefully together and peaceful co-operation, and resolution 10 adopted at its fourteenth session (1966), the texts of which are annexed to the present resolution;

2. *Appeals* to all Member States to take appropriate measures to advance these objectives;

3. *Invites* the Director-General to continue, under the 1969-1970 programme, measures which aim at securing the Organization's maximum contribution to peace, and ensuring that all States will live peacefully together and co-operate irrespective of their socio-economic systems, degree of development and type of civilization;

4. *Invites* the Director-General to arrange for a special chapter on UNESCO's contribution to peace in the Organization's long-term plan of activities;

5. *Invites* the Director-General to submit to the Executive Board at its 83rd session a report on the implementation of this resolution, together with specific proposals for elaborating and implementing a long-term plan of integrated action for the advancement of peace and development in the fields of UNESCO's competence, taking into account the principles and suggestions outlined in document 15C/50, and to submit this plan to the General Conference at its sixteenth session;

6. *Considers* that UNESCO, in its work for peace, could with advantage call to a greater extent for support on international non-governmental organizations, and especially the United Towns Organization, which mobilizes public support in communes for under-

standing and international co-operation; and invites the Director-General to submit to the Executive Board proposals regarding measures which might be taken to this end.

ANNEXES

Annex A

Resolution 6.21 adopted by the General Conference as its thirteenth session (1964)

UNESCO'S TASKS IN CONTRIBUTING TO PEACE, PEACEFUL CO-OPERATION AND LIVING PEACEFULLY TOGETHER, AMONG STATES WITH DIFFERENT ECONOMIC AND SOCIAL SYSTEMS

The General Conference,

Guided by the provisions of UNESCO's Constitution proclaiming that the basic purpose of the Organization is to "contribute to peace and security by promoting collaboration among the nations through education, science and culture",

Recognizing that for the development of science, culture and education, as well as for international collaboration in these fields, conditions of peaceful and good-neighbourly relations among States are necessary,

Considering that UNESCO, by its own means and efforts and within the sphere of its competence, while contributing directly to improving the well-being of the peoples and making an important contribution to the easing of international tensions, the securing of universal peace and the promotion of good-neighbourly relations, can and should develop its activities in this direction to the fullest possible extent,

Recalling resolution 3.51 adopted at its ninth session, inviting Member States to direct their attention to gaining recognition for the ideas of living peacefully together, and resolution 8.1, on "Peaceful and neighbourly relations", adopted at its eleventh session,

Calls upon Member States to be guided in their relations with one another by the principles of living peacefully together and peaceful co-operation, having regard to mutual respect and benefit, non-aggression, respect for each other's sovereignty, equality and territorial integrity, non-intervention in one another's internal affairs, the broadening of international co-operation, the reducing of tensions and the settling of differences and disputes among States by peaceful means, as expressed in resolution 1236(XII) of the General Assembly of the United Nations;

Requests that the Director-General and the Executive Board, in the carrying out by all Departments of the Secretariat of their activities with respect to education, science and culture, and the International Co-operation Year, should be guided by the spirit of this resolution and assist in the application of the principles stated above, which will help to eliminate the threat of world war, secure the final abolition of colonialism, improve the well-being of the peoples and create more favourable conditions for the development of education, science and culture as well as international collaboration in these fields.

Annex B

Resolution 10 adopted by the General Conference at its fourteenth session (1966)

CONSIDERATION, ON THE ORGANIZATION'S TWENTIETH ANNIVERSARY, OF UNESCO'S CONTRIBUTION TO PEACE

The General Conference,

Taking into consideration that the United Nations bears the primary responsibility for the maintenance of international peace and security, and that all organizations within the United Nations system discharging responsibilities within their own spheres of activities should contribute to the creation and maintenance of the conditions of peace and international co-operation,

Bearing in mind the principles of the UNESCO Constitution proclaiming that the basic purpose of the Organization is "to contribute to peace and security by promoting collaboration among the nations through education, science and culture",

Desiring to co-ordinate UNESCO's work with related activities being carried out by other agencies of the United Nations system,

Noting with satisfaction that certain activities undertaken by UNESCO during the last twenty years in its field of competence have, taken as a whole, helped to build up and to strengthen the foundations of peace.

Attaching great importance to the implementation of previous decisions of the General Conference and the Executive Board directed towards the strengthening of peace and in particular the resolution 8.1, adopted by the General Conference at its eleventh session, concerning "peaceful and neighbourly relations", the resolution 9.3 adopted by the Executive Board at its 66th session concerning "UNESCO's tasks in helping to achieve general and complete disarmament in connexion with the signing of the treaty banning nuclear weapon tests in the atmosphere, in outer space and under water",⁵⁵ and resolution 6.21 adopted by the General Conference at its thirteenth session, concerning "UNESCO's tasks in contributing to peace, peaceful co-operation and living peacefully together, among States with different economic and social systems",

Considering that the Secretary-General of the United Nations in his message to the General Conference referred to UNESCO's "efforts to disseminate the truth that war is no longer a possible solution to man's problems"; expressed his belief that "in the past twenty years, the very progress of science and technology has brought new, terrible and ever-present dangers to mankind as a whole, the dangers inherent in the new weapons of mass destruction", that "UNESCO can effectively supplement the efforts of the United Nations to contain and reduce these grave dangers" and expressed his "profound hope that it will do so"; stated his desire that the Organization "bring home, at all times, to all peoples and governments in all parts of the world, what war means today" and, lastly, that it "remind them of the solemn obligation to renounce war as an instrument of national policy, assumed under the Charter by all Members of UNESCO who are also Members of the United Nations",

Taking note of the report of the Director-General on the views communicated to him by Member States on the occasion of UNESCO's twentieth anniversary concerning the Organization's contribution to peace,

Noting also with appreciation the work of the Bellagio Meeting and of the Round Table Conference on UNESCO's Contribution to Peace and thanking the eminent persons who participated in these meetings for their co-operative efforts,

Convinced that in the light of the United Nations Charter, UNESCO's Constitution, the appropriate decisions of the governing bodies of these organizations, and the results of the work referred to in paragraph 8, all Member States should:

- (a) reject war once and for all as an instrument of their national policy and condemn all forms of direct or indirect aggression and of interference in the domestic affairs of States;
- (b) renounce all recourse to violence in the settlement of their differences;
- (c) respect the right of all nations to self-determination and independence, and freedom to choose their political, economic, social and cultural systems;
- (d) take all necessary action to contribute to the agreement on general and complete disarmament under international control;
- (e) associate themselves more closely by all possible means with the constructive work for peace through education, science, culture and mass communications with which UNESCO is directly charged,

Convinced that the full effectiveness of the Organization depends above all upon its universality and upon the active and loyal participation of all countries willing to respect and implement the principles of its Constitution,

Mindful that General Assembly resolution 2105(XX) affirms 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", and expressing the view that the continuation of all these is in contradiction with UNESCO's Constitution,

⁵⁵ See *Juridical Yearbook*, 1963, p. 107.

Recognizing the importance of the contribution that the Member States could make towards the implementation of the ideals of peace and the relevant programmes of UNESCO, the necessity of gaining still greater support in this direction and considering as desirable to undertake with this aim a thorough evaluation of the past experience,

Emphasizing that greater efforts need to be made to implement the decisions mentioned in paragraph 5 and other decisions of the governing bodies of UNESCO, including resolution 5.202 adopted by the General Conference at its eleventh session concerning the utilization of information media for the purpose of strengthening peace and mutual understanding and decisions on the same subject adopted at subsequent sessions,

1. *Invites* the Director-General, in executing the Organization's programme, to take full account of the decisions adopted by the governing bodies of UNESCO providing for the maximum contribution by the Organization to peace, living peacefully together and peaceful co-operation, among States with different economic and social systems;

2. *Requests* the Director-General to submit to the 77th or the 78th session of the Executive Board, after consultation with the governments of Member States and with the Secretary-General of the United Nations and taking into account the suggestions of the Member States, of the Bellagio Meeting and of the Round Table on Peace, proposals concerning a concrete plan of activity for the next one or two budgetary periods which UNESCO could successfully undertake alone or in co-operation with other United Nations agencies to reinforce the contribution of the Organization to peace, international co-operation and security of peoples through education, science and culture;

3. *Invites* Member States to submit their proposals and recommendations to be included in this plan;

4. *Requests* the Director-General in such consultations, as well as in the preparation of the above-mentioned plan to take into account the convening, among other concrete measures, of international meetings and symposia of persons competent in the fields of education, science and culture as such themes as "Education, science and culture in the defence of peace", and "The social and economic development of mankind and problems of peace";

5. *Requests* the Executive Board to examine at its 77th or 78th session the proposals of the Director-General concerning this subject and to submit such proposals together with its recommendations to the General Conference at its fifteenth session.

(ii) Resolution 9.12

The General Conference,

Considering that, in view of the UNESCO Constitution and the Charter of the United Nations, the Organization and its Member States must take all necessary measures to ensure the effective implementation of the decision of the United Nations General Assembly regarding the liquidation of colonialism and racialism,

Guided by the principles laid down in the 1960 Declaration of the United Nations General Assembly regarding the granting of independence to colonial countries and peoples,

Considering resolutions 2105 and 2311 adopted by the United Nations General Assembly at its twentieth (1965) and twenty-second (1967) sessions respectively regarding the liquidation of colonialism and racialism, and the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recalling resolutions 8.2 and 6.3 adopted by the General Conference at its eleventh (1960), twelfth (1962) and thirteenth (1964) sessions on the role of UNESCO in contributing to the attainment of independence by colonial countries and peoples, and resolution 11 adopted at its fourteenth session (1966) on UNESCO's tasks in the light of the resolutions adopted by the General Assembly of the United Nations at its twentieth session on questions relating to the liquidation of colonialism and racialism,

Noting with deep concern that many peoples and territories are still under colonial domination,

Considering that the continued existence of colonial régimes, the practice of apartheid, the rebirth of fascism and all forms of racial discrimination constitute a threat to international peace and security, and a crime against humanity,

1. *Resolutely reaffirms* its condemnation of all forms and manifestations of colonialism and racialism;

2. *Urges* all States to contribute actively to the implementation of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, and to take appropriate measures to advance these objectives;

3. *Calls* the attention of the Executive Board and the Director-General to the necessity of a further intensification of UNESCO activities, within its own terms of reference, with a view to rendering comprehensive assistance to peoples fighting for their liberation from colonial domination, to eliminating all the consequences of colonialism and to drawing up, in co-operation with the Organization of African Unity and, through its intermediary, with the national liberation movements, concrete programmes to this end;

4. *Invites* the Director-General to take steps in close co-operation with the United Nations and other Specialized Agencies, under the 1969-1970 and future programmes, to implement the decisions of the United Nations General Assembly and UNESCO General Conference regarding the liquidation of colonialism and racialism;

5. *Reaffirms* its decision to withhold assistance from the governments of Portugal, the Republic of South Africa and the illegal régime of Rhodesia in matters relating to education, science and culture, and not to invite them to attend conferences or take part in other UNESCO activities, until such time as the authorities of these countries abandon their policy of colonial domination and racial discrimination.

(iii) Resolution 9.13

The General Conference,

Considering the urgent need to safeguard human rights and the development of education for peoples in territories under foreign occupation,

Recalling the decision of the United Nations to declare 1968 International Year for Human Rights,⁵⁶ and to convene an International Conference on Human Rights in 1968 in Teheran,⁵⁷

1. *Invites* all Member States to ensure the strictest respect for the resolutions adopted at the Teheran Conference on Human Rights, and particularly resolution I concerning respect for, and implementation of, human rights in occupied territories (A/CONF.32/41);

2. *Instructs* the Director-General to report on this subject to the sixteenth session of the UNESCO General Conference.

(iv) Resolution 9.14

The General Conference,

Mindful of the aims set forth in the United Nations Charter, the Constitution of UNESCO and the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the United Nations General Assembly in 1960,

⁵⁶ General Assembly resolution 1961 (XVIII) of 12 December 1963.

⁵⁷ General Assembly resolution 2081 (XX) of 20 December 1965.

Noting with distress that eight years after the adoption of the 1960 Declaration, many territories are still under the colonial domination of Portugal,

Considering the policy of genocide and racial extermination followed by Portugal in territories under its domination, and the acts of aggression constantly committed by its troops on the frontiers of many African countries,

Considering that Portugal, by aggravating its crimes, is downrightly challenging the conscience of the world and the international community,

Considering that 1968 has been declared Human Rights Year,

Considering the fact that Portugal has constantly objected to the dispatch of a commission to investigate the problems of education in territories under its domination,

Reaffirming the terms of resolution 11 adopted by the General Conference at its fourteenth session (1966), more particularly paragraph 2(d), and recalling resolution 20 adopted at the same session,

1. *Solemnly condemns* Portugal's attitude, which is in contradiction with UNESCO's ideals as they appear in the Organization's Constitution;

2. *Invites* Member States to suspend all co-operation with Portugal in the fields of education, science and culture;

3. *Requests* the Director-General to grant increased aid and assistance, within the framework of the Programme and Budget for 1969-1970 and, if need be, by means of extra-budgetary resources, to the African refugees from countries and territories still under Portuguese domination;

4. *Invites* the General Conference to re-examine the question at its sixteenth session and to make such further provisions as the situation may require.

(b) Recommendation concerning the Preservation of Cultural Property endangered by Public or Private Works ⁵⁸

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 15 October to 20 November 1968, at its fifteenth session,

Considering that contemporary civilization and its future evolution rest upon, among other elements, the cultural traditions of the peoples of the world, their creative force and their social and economic development,

Considering that cultural property is the product and witness of the different traditions and of the spiritual achievements of the past and thus is an essential element in the personality of the peoples of the world,

Considering that it is indispensable to preserve it as much as possible, according to its historical and artistic importance, so that the significance and message of cultural property become a part of the spirit of peoples who thereby may gain consciousness of their own dignity,

Considering that preserving cultural property and rendering it accessible constitute in the spirit of the Declaration of the Principles of International Cultural Co-operation ⁵⁹ adopted on 4 November 1966 in the course of its fourteenth session, means of encouraging mutual understanding among peoples and thereby serve the cause of peace,

⁵⁸ Adopted by the General Conference on 19 November 1968 during its fifteenth session.

⁵⁹ See *Juridical Yearbook*, 1966, p. 150.

Considering also that the well-being of all peoples depends, *inter alia*, upon the existence of a favourable and stimulating environment and that the preservation of cultural property of all periods of history contributes directly to such an environment,

Recognizing on the other hand the role that industrialization, towards which world civilization is moving, plays in the development of peoples and their spiritual and national fulfilment,

Considering, however, that the prehistoric, protohistoric and historic monuments and remains, as well as numerous recent structures having artistic, historic or scientific importance are increasingly threatened by public and private works resulting from industrial development and urbanization,

Considering that it is the duty of governments to ensure the protection and the preservation of the cultural heritage of mankind, as much as to promote social and economic development,

Considering in consequence that it is urgent to harmonize the preservation of the cultural heritage with the changes which follow from social and economic development, making serious efforts to meet both requirements in a broad spirit of understanding, and with reference to appropriate planning,

Considering equally that adequate preservation and accessibility of cultural property constitute a major contribution to the social and economic development of countries and regions which possess such treasures of mankind by means of promoting national and international tourism,

Considering finally that the surest guarantee for the preservation of cultural property rests in the respect and the attachment felt for it by the people themselves, and persuaded that such feelings may be greatly strengthened by adequate measures carried out by Member States,

Having before it proposals concerning the preservation of cultural property endangered by public or private works, which constitute item 16 on the agenda of the session,

Having decided at its thirteenth session that proposals on this item should be the subject of an international instrument in the form of a recommendation to Member States,

Adopts on this nineteenth day of November 1968 this recommendation.

The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect within their respective territories to the norms and principles set forth in this recommendation.

The General Conference recommends that Member States should bring this recommendation to the attention of the authorities or services responsible for public or private works as well as to the bodies responsible for the conservation and the protection of monuments and historic, artistic, archaeological and scientific sites. It recommends that authorities and bodies which plan programmes for education and the development of tourism be equally informed.

The General Conference recommends that Member States should report to it, on the dates and in a manner to be determined by it, on the action they have taken to give effect to this recommendation.

I. Definition

1. For the purpose of this recommendation, the term "cultural property" applies to:
 - (a) Immovables, such as archaeological and historic or scientific sites, structures or other features of historic, scientific, artistic or architectural value, whether religious

or secular, including groups of traditional structures, historic quarters in urban or rural built-up areas and the ethnological structures of previous cultures still extant in valid form. It applies to such immovables constituting ruins existing above the earth as well as to archaeological or historic remains found within the earth. The term cultural property also includes the setting of such property;

(b) Movable property of cultural importance including that existing in or recovered from immovable property and that concealed in the earth, which may be found in archaeological or historical sites or elsewhere.

2. The term "cultural property" includes not only the established and scheduled architectural, archaeological and historic sites and structures, but also the unscheduled or unclassified vestiges of the past as well as artistically or historically important recent sites and structures.

II. General principles

3. Measures to preserve cultural property should extend to the whole territory of the State and should not be confined to certain monuments and sites.

4. Protective inventories of important cultural property, whether scheduled or unscheduled, should be maintained. Where such inventories do not exist, priority should be given in their establishment to the thorough survey of cultural property in areas where such property is endangered by public or private works.

5. Due account should be taken of the relative significance of the cultural property concerned when determining measures required for the:

(a) Preservation of an entire site, structure, or other forms of immovable cultural property from the effects of private or public works;

(b) Salvage or rescue of cultural property if the area in which it is found is to be transformed by public or private works, and the whole or a part of the property in question is to be preserved and removed.

6. Measures should vary according to the character, size and location of the cultural property and the nature of the dangers with which it is threatened.

7. Measures for the preservation or salvage of cultural property should be preventive and corrective.

8. Preventive and corrective measures should be aimed at protecting or saving cultural property from public or private works likely to damage and destroy it, such as:

(a) Urban expansion and renewal projects, although they may retain scheduled monuments while sometimes removing less important structures, with the result that historical relations and the setting of historic quarters are destroyed;

(b) Similar projects in areas where groups of traditional structures having cultural value as a whole risk being destroyed for the lack of a scheduled individual monument;

(c) Injudicious modifications and repair of individual historic buildings;

(d) The construction or alteration of highways which are a particular danger to sites or to historically important structures or groups of structures;

(e) The construction of dams for irrigation, hydro-electric power or flood control;

(f) The construction of pipelines and of power and transmission lines of electricity;

(g) Farming operations including deep ploughing, drainage and irrigation operations, the clearing and levelling of land and afforestation;

(h) Works required by the growth of industry and the technological progress of industrialized societies such as airfields, mining and quarrying operations and dredging and reclamation of channels and harbours.

9. Member States should give due priority to measures required for the preservation *in situ* of cultural property endangered by public or private works in order to preserve historical associations and continuity. When overriding economic or social conditions require that cultural property be transferred, abandoned or destroyed, the salvage or rescue operations should always include careful study of the cultural property involved and the preparations of detailed records.

10. The results of studies having scientific or historic value carried out in connexion with salvage operations, particularly when all or much of the immovable cultural property has been abandoned or destroyed, should be published or otherwise made available for future research.

11. Important structures and other monuments which have been transferred in order to save them from destruction by public or private works should be placed on a site or in a setting which resembles their former position and natural, historic or artistic associations.

12. Important movable cultural property, including representative samples of objects recovered from archaeological excavations, obtained from salvage operations should be preserved for study or placed on exhibition in institutions such as museums, including site museums, or universities.

III. Preservation and salvage measures

13. The preservation or salvage of cultural property endangered by public or private works should be ensured through the means mentioned below, the precise measures to be determined by the legislation and organizational system of the State: (a) Legislation; (b) Finance; (c) Administrative measures; (d) Procedures to preserve and to salvage cultural property; (e) Penalties; (f) Repairs; (g) Awards; (h) Advice; (i) Educational programmes.

LEGISLATION

14. Member States should enact or maintain on the national as well as on the local level the legislative measures necessary to ensure the preservation or salvage of cultural property endangered by public or private works in accordance with the norms and principles embodied in this recommendation.

FINANCE

15. Member States should ensure that adequate budgets are available for the preservation or salvage of cultural property endangered by public or private works. Although differences in legal systems and traditions as well as disparity in resources preclude the adoption of uniform measures, the following should be considered:

(a) The national or local authorities responsible for the safeguarding of cultural property should have adequate budgets to undertake the preservation or salvage of cultural property endangered by public or private works; or

(b) The costs of preserving or salvaging cultural property endangered by public or private works, including preliminary archaeological research, should form part of the budget of construction costs; or

(c) The possibility of combining the two methods mentioned in sub-paragraphs (a) and (b) above should be provided for.

16. In the event of unusual costs due to the size and complexity of the operations required, there should be possibilities of obtaining additional funds through enabling legislation, special subventions, a national fund for monuments or other appropriate means. The services responsible for the safeguarding of cultural property should be empowered to administer or to utilize these extra-budgetary contributions required for the preservation or salvage of cultural property endangered by public or private works.

17. Member States should encourage proprietors of artistically or historically important structures, including structures forming part of a traditional group, or residents in a historic quarter in urban or rural built-up areas to preserve the character and aesthetic qualities of their cultural property which would otherwise be endangered by public or private works, through:

(a) Favourable tax rates; or

(b) The establishment, through appropriate legislation, of a budget to assist, by grants, loans or other measures, local authorities, institutions and private owners of artistically, architecturally, scientifically or historically important structures including groups of traditional structures to maintain or to adapt them suitably for functions which would meet the needs of contemporary society; or

(c) The possibility of combining the two methods mentioned in sub-paragraphs (a) and (b) above should be provided for.

18. If the cultural property is not scheduled or otherwise protected it should be possible for the owner to request such assistance from the appropriate authorities.

19. National or local authorities, as well as private owners, when budgeting for the preservation of cultural property endangered by public or private works, should take into account the intrinsic value of cultural property and also the contribution it can make to the economy as a tourist attraction.

ADMINISTRATIVE MEASURES

20. Responsibility for the preservation or salvage of cultural property endangered by public or private works should be entrusted to appropriate official bodies. Whenever official bodies or services already exist for the protection of cultural property, these bodies or services should be given responsibility for the preservation of cultural property against the dangers caused by public or private works. If such services do not exist, special bodies or services should be created for the purpose of the preservation of cultural property endangered by public or private works; and although differences of constitutional provisions and traditions preclude the adoption of a uniform system, certain common principles should be adopted.

(a) There should be a co-ordinating or consultative body, composed of representatives of the authorities responsible for the safeguarding of cultural property, for public and private works, for town planning, and of research and educational institutions, which should be competent to advise on the preservation of cultural property endangered by public or private works and, in particular, on conflicts of interest between requirements for public or private works and the preservation or salvage of cultural property.

(b) Provincial, municipal or other forms of local government should also have services responsible for the preservation or salvage of cultural property endangered by public or private works. These services should be able to call upon the assistance of national services or other appropriate bodies in accordance with their capabilities and requirements.

(c) The services responsible for the safeguarding of cultural property should be adequately staffed with the specialists required for the preservation or salvage of cultural property endangered by public or private works, such as architects, urbanists, archaeologists, historians, inspectors and other specialists and technicians.

(d) Administrative measures should be taken to co-ordinate the work of the different services responsible for the safeguarding of cultural property with that of other services responsible for public and private works and that of any other department or service whose responsibilities touch upon the problem of the preservation or salvage of cultural property endangered by public or private works.

(e) Administrative measures should be taken to establish an authority or commission in charge of urban development programmes in all communities having scheduled or unscheduled historic quarters, sites and monuments which need to be preserved against public and private construction.

21. At the preliminary survey stage of any project involving construction in a locality recognized as being of cultural interest or likely to contain objects of archaeological or historical importance, several variants of the project should be prepared, at regional or municipal level, before a decision is taken. The choice between these variants should be made on the basis of a comprehensive comparative analysis, in order that the most advantageous solution, both economically and from the point of view of preserving or salvaging cultural property, may be adopted.

PROCEDURES TO PRESERVE AND TO SALVAGE CULTURAL PROPERTY

22. Thorough surveys should be carried out well in advance of any public or private works which might endanger cultural property to determine:

(a) The measures to be taken to preserve important cultural property *in situ*;

(b) The amount of salvage operations which would be required such as the selection of archaeological sites to be excavated, structures to be transferred and movable cultural property salvaged, etc.

23. Measures for the preservation or salvage of cultural property should be carried out well in advance of public or private works. In areas of archaeological or cultural importance, such as historic towns, villages, sites and districts, which should be protected by the legislation of every country, the starting of new work should be made conditional upon the execution of preliminary archaeological excavations. If necessary, work should be delayed to ensure that adequate measures are taken for the preservation or salvage of the cultural property concerned.

24. Important archaeological sites, and, in particular, prehistoric sites as they are difficult to recognize, historic quarters in urban or rural areas, groups of traditional structures, ethnological structures of previous cultures and other immovable cultural property which would otherwise be endangered by public or private works should be protected by zoning or scheduling:

(a) Archaeological reserves should be zoned or scheduled and, if necessary, immovable property purchased, to permit thorough excavation or the preservation of the ruins found at the site.

(b) Historic quarters in urban or rural centres and groups of traditional structures should be zoned and appropriate regulations adopted to preserve their setting and character, such as the imposition of controls on the degree to which historically or artistically important structures can be renovated and the type and design of new structures which can be introduced. The preservation of monuments should be an absolute

requirement of any well-designed plan for urban redevelopment especially in historic cities or districts. Similar regulations should cover the area surrounding a scheduled monument or site and its setting to preserve its association and character. Due allowance should be made for the modification of ordinary regulations applicable to new construction; these should be placed in abeyance when new structures are introduced into an historical zone. Ordinary types of commercial advertising by means of posters and illuminated announcements should be forbidden, but commercial establishments could be allowed to indicate their presence by means of judiciously presented signs.

25. Member States should make it obligatory for persons finding archaeological remains in the course of public or private works to declare them at the earliest possible moment to the competent service. Careful examination should be carried out by the service concerned and, if the site is important, construction should be deferred to permit thorough excavation, due allowance or compensation being made for the delays incurred.

26. Member States should have provisions for the acquisition, through purchase, by national or local governments and other appropriate bodies of important cultural property endangered by public or private works. When necessary, it should be possible to effect such acquisition through expropriation.

PENALTIES

27. Member States should take steps to ensure that offences, through intent or negligence, against the preservation or salvage of cultural property endangered by public or private works are severely punished by their Penal Code, which should provide for fines or imprisonment or both.

In addition, the following measures could be applied:

(a) Whenever possible, restoration of the site or structure at the expense of those responsible for the damage to it;

(b) In the case of a chance archaeological find, payment of damages to the State when immovable cultural property has been damaged, destroyed or neglected; confiscation without compensation when a movable object has been concealed.

REPAIRS

28. Member States should, when the nature of the property so allows, adopt the necessary measures to ensure the repair, restoration or reconstruction of cultural property damaged by public or private works. They should also foresee the possibility of requiring local authorities and private owners of important cultural property to carry out repairs or restorations, with technical and financial assistance if necessary.

AWARDS

29. Member States should encourage individuals, associations and municipalities to take part in programmes for the preservation or salvage of cultural property endangered by public or private works. Measures to that effect could include:

(a) *Ex gratia* payments to individuals reporting or surrendering hidden archaeological finds;

(b) Awards of certificates, medals or other forms of recognition to individuals, even if they belong to government service, associations, institutions or municipalities which have carried out outstanding projects for the preservation or salvage of cultural property endangered by public or private works.

ADVICE

30. Member States should provide individuals, associations or municipalities lacking the required experience or staff with technical advice or supervision to maintain adequate standards for the preservation or salvage of cultural property endangered by public or private works.

EDUCATIONAL PROGRAMMES

31. In a spirit of international collaboration, Member States should take steps to stimulate and develop among their nationals interest in, and respect for, the cultural heritage of the past of their own and other traditions in order to preserve or to salvage cultural property endangered by public or private works.

32. Specialized publications, articles in the press and radio and television broadcasts should publicize the nature of the dangers to cultural property arising from ill-conceived public or private works as well as cases where cultural property has been successfully preserved or salvaged.

33. Educational institutions, historical and cultural associations, public bodies concerned with the tourist industry and associations for popular education should have programmes to publicize the dangers to cultural property arising from short-sighted public or private works, and to underline the fact that projects to preserve cultural property contribute to international understanding.

34. Museums and educational institutions and other interested organizations should prepare special exhibitions on the dangers to cultural property arising from uncontrolled public or private works and on the measures which have been used to preserve or to salvage cultural property which has been endangered.

The foregoing is the authentic text of the recommendation duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its fifteenth session, which was held in Paris and declared closed the twentieth day of November 1968.

IN FAITH WHEREOF WE have appended our signatures this twenty-second day of November 1968.

The President of the General Conference

William A. ETEKI-MBOUMOUA

The Director-General

René MAHEU

- (c) Transfer to UNESCO of the resources and responsibilities of other international organizations
 - (i) International Bureau of Education: resolution 14.1 adopted by the General Conference on 16 November 1968 during its fifteenth session

The General Conference,

Considering that Article XI, paragraph 2, of the Constitution provides that: "Whenever the General Conference of this Organization and the competent authorities of any other specialized intergovernmental organizations or agencies whose purpose and functions lie within the competence of this Organization, deem it desirable to effect a transfer of their resources and activities to this Organization, the Director-General, subject to the approval of the Conference, may enter into mutually acceptable arrangements for this purpose",

Considering that the Council of the International Bureau of Education, meeting in extraordinary session from 13 to 15 December 1967, adopted a resolution under which it decided to “seek for the International Bureau of Education a new relationship with UNESCO whereby the International Bureau of Education would become an international centre of comparative education within the framework of UNESCO. . .”,

Having regard to resolution 7.5 adopted by the Executive Board at its 78th session,

Having examined the draft agreement between UNESCO and the International Bureau of Education prepared by the secretariats of the two organizations,

Considering that this draft agreement was unanimously approved by the Council of the International Bureau of Education at its thirty-fourth meeting held in Geneva on 11 and 12 July 1968,

1. *Approves* the draft agreement, set out in full in Annex II of document 15C/83;
2. *Authorizes* the Director-General to sign this Agreement on behalf of the United Nations Educational, Scientific and Cultural Organization;
3. *Approves*, in execution of this Agreement, the Statutes of the International Bureau of Education annexed to this resolution;
4. *Invites* the Director-General to negotiate and conclude with the competent Swiss authorities an agreement defining the privileges and immunities that UNESCO will enjoy in Switzerland as well as the facilities to be extended to UNESCO concerning the premises of the International Bureau of Education;
5. *Requests* the Director-General to make all efforts to obtain payment by the members concerned of arrears in their contributions to the International Bureau of Education and to report to the Executive Board.

ANNEX

Statutes of the International Bureau of Education

[Not reproduced]

- (ii) International Relief Union: Resolution 15 adopted by the General Conference on 16 November 1968 during its fifteenth session

The General Conference,

Considering that Article XI, paragraph 2 of the Constitution provides that:

“Whenever the General Conference of this Organization and the competent authorities of any other specialized intergovernmental organizations or agencies whose purpose and functions lie within the competence of this Organization, deem it desirable to effect a transfer of their resources and activities to this Organization, the Director-General, subject to the approval of the Conference, may enter into mutually acceptable arrangements for this purpose,”

Having regard to the resolution adopted on 15 December 1965 by the Executive Committee of the International Relief Union,

Having regard to the resolution adopted by the Economic and Social Council of the United Nations at its 43rd session,

Having regard to resolutions 6.6 and 7.8 adopted by the Executive Board at its 77th and 78th sessions,

Having examined the draft agreement between UNESCO and the International Relief Union, drawn up by the Secretariats of the two organizations,

Considering that the draft agreement has been approved by the Executive Committee of the Union which met in Geneva on 16 July 1968,

Approves the draft agreement set out in Annex II of document 15C/85;

Authorizes the Director-General to sign that agreement on behalf of the United Nations Educational, Scientific and Cultural Organization.

- - - - -

2. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Resolution C.44 (XXI) adopted by the Council of IMCO at its twenty-first session, on 29 November 1968

Activities in the Field of Maritime Law

The Council,

Recalling the provisions of Articles 1 and 3 of the IMCO Convention as well as resolution 46 (VII) of the seventh session of the Trade and Development Board and the terms of reference of UNCITRAL, as set out in resolution 2205 (XXI) of the twenty-first session of the General Assembly,

Cognizant of the complexities in the field of maritime law and of its many facets,

Recognizing the need for progressive harmonization and unification of all aspects of international law in the maritime field and the fact that co-ordination of efforts between the Organizations of the United Nations family appears indispensable in order to elucidate the fields in which international law must be prepared,

Noting with appreciation the work undertaken by the Legal Committee of the Organization,

Cognizant of the valuable part which IMCO has already played and will continue to play in the preparation of conventions relating to maritime law and the need to avoid duplication of effort in this field,

(1) *Indicates* its desire that IMCO exercise its full competence by taking part as appropriate in the legal work in the maritime field being undertaken under the United Nations system;

(2) *Endorses* the view expressed by the Legal Committee that it can play an effective part in promoting the establishment of law in the maritime field whether such be initiated from within the Organization or referred to it by other bodies competent in associated fields, as appropriate;

(3) *Requests* the Secretary-General to draw the attention of the Secretariat of the United Nations Commission on International Trade Law, the United Nations Office of Legal Affairs, the Secretary-General of UNCTAD and other relevant United Nations bodies to the activities already undertaken by IMCO in the field of maritime law;

(4) *Further requests* the Secretary-General to report to the Council at its twenty-second session on the outcome of his discussions with other members of the United Nations family, with particular emphasis on the degree of agreement achieved in delineating IMCO's role in this field, including steps necessary to avoid areas of possible duplication as well as an estimation of the degree of reinforcement of the Secretariat required during the next biennium to ensure that the Organization is equipped to play its part fully in this field.