

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

1971

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

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



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

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Chapter III

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

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

United Nations General Assembly—twenty-sixth session

1. REPORT OF THE ECONOMIC AND SOCIAL COUNCIL (AGENDA ITEM 12)

Resolution [2856 (XXVI)] adopted by the General Assembly

2856 (XXVI). Declaration on the Rights of Mentally Retarded Persons

The General Assembly,

Mindful of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.
4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.
5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.
6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.
7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

*2027th plenary meeting.
20 December 1971.*

2. **QUESTION OF CHEMICAL AND BACTERIOLOGICAL (BIOLOGICAL) WEAPONS: REPORT OF THE CONFERENCE OF THE COMMITTEE ON DISARMAMENT (AGENDA ITEM 28)**

Resolution [2827 (XXVI)] adopted by the General Assembly

2827 (XXVI). Question of chemical and bacteriological (biological) weapons

A

The General Assembly,

Recalling its resolution 2454 A (XXIII) of 20 December 1968, its resolution 2603 B (XXIV) of 16 December 1969, and in particular its resolution 2662 (XXV) of 7 December 1970 in which it stressed that the prospects for international peace and security, as well as the achievement of the goal of general and complete disarmament under effective international control, would be enhanced if the development, production and stockpiling of chemical and bacteriological (biological) agents for purposes of war were to end and if those agents were eliminated from all military arsenals, and commended the following basic approach for reaching an effective solution to the problem of chemical and bacteriological (biological) methods of warfare:

(a) It is urgent and important to reach agreement on the problem of chemical and bacteriological (biological) methods of warfare,

(b) Both chemical and bacteriological (biological) weapons should continue to be dealt with together in taking steps towards the prohibition of their development, production and stockpiling and their effective elimination from the arsenals of all States,

(c) The issue of verification is important in the field of chemical and bacteriological (biological) weapons, and verification should be based on a combination of appropriate national and international measures, which would complement and supplement each other, thereby providing an acceptable system that would ensure the effective implementation of the prohibition,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Having considered the report of the Conference of the Committee on Disarmament,¹ in particular its work on the draft Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and its efforts towards reaching early agreement also on the elimination of chemical weapons,

Convinced that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction² is a first possible step towards the achievement of early agreement on the effective prohibition of the development, production and stockpiling of chemical weapons and on the elimination of such weapons from military arsenals of all States, and determined to continue negotiations to this end,

Recalling that the General Assembly has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,³

Noting that the Convention provides for the parties to reaffirm their adherence to the principles and objectives of that Protocol and to call upon all States to comply strictly with them,

1. *Notes with satisfaction* that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction contains an affirmation of the recognized objective of effective prohibition of chemical weapons and, to this end, an undertaking to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes;

2. *Requests* the Conference of the Committee on Disarmament to continue, as a matter of high priority, its negotiations with a view to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and for their elimination from the arsenals of all States;

3. *Also requests* the Conference of the Committee on Disarmament to take into account in its further work:

¹ *Official Records of the Disarmament Commission, Supplement for 1971, document DC/234.*

² Reproduced in this *Yearbook*, p. 118.

³ League of Nations, *Treaty Series*, vol. XCIV.

(a) The elements contained in the joint memorandum on the prohibition of the development, production and stockpiling of chemical weapons and on their destruction, submitted on 28 September 1971 to the Conference by Argentina, Brazil, Burma, Egypt, Ethiopia, India, Mexico, Morocco, Nigeria, Pakistan, Sweden and Yugoslavia;⁴

(b) Other proposals, suggestions, working papers and expert views put forward in the Conference and in the First Committee;

4. *Urges* Governments to take all steps that may contribute to a successful outcome of the negotiations of the Conference of the Committee on Disarmament and that could facilitate early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and the elimination of such weapons from the arsenals of all States;

5. *Reaffirms* its resolution 2162 B (XXI) of 5 December 1966 and calls anew for the strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;

6. *Invites* all States that have not already done so to accede to or ratify the Protocol;

7. *Requests* the Conference of the Committee on Disarmament to submit a report on the results achieved to the General Assembly at its twenty-seventh session;

8. *Requests* the Secretary-General to transmit to the Conference of the Committee on Disarmament all documents and records of the First Committee relating to questions connected with the problem of chemical and bacteriological (biological) methods of warfare.

*2022nd plenary meeting,
16 December 1971.*

B

The General Assembly,

Noting that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction contains an undertaking to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and for their destruction,

Believing that it is most desirable that some measures of a preliminary nature be adopted immediately,

Urges all States to undertake, pending agreement on the complete prohibition of the development, production and stockpiling of chemical weapons and their destruction, to refrain from any further development, production or stockpiling of those chemical agents for weapons purposes which, because of their degree of toxicity, have the highest lethal effects and are not usable for peaceful purposes.

*2022nd plenary meeting,
16 December 1971.*

⁴ *Official Records of the Disarmament Commission, Supplement for 1971, document DC/234, annex C, sect. 33.*

3. URGENT NEED FOR SUSPENSION OF NUCLEAR AND THERMONUCLEAR TESTS: REPORT OF THE CONFERENCE OF THE COMMITTEE ON DISARMAMENT (AGENDA ITEM 29)

Resolutions [2828 A and C (XXVI)] adopted by the General Assembly

2828 (XXVI). Urgent need for suspension of nuclear and thermonuclear tests

A

The General Assembly,

Viewing with the utmost apprehension the harmful consequences of nuclear weapon tests for the acceleration of the arms race and for the health of present and future generations of mankind,

Fully conscious that world opinion has, over the years, demanded the immediate and complete cessation of all nuclear weapon tests in all environments,

Recalling that the item on the question of a comprehensive test ban has been included in the agenda of the General Assembly every year since 1957,

Deploring the fact that the General Assembly has not yet succeeded in its aim of achieving a comprehensive test ban, despite eighteen successive resolutions on the subject,

Noting with regret 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 1963,⁵

Deploring the fact that the determination expressed by the original parties to that Treaty to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time has not so far produced the desired results,

Noting with special concern that the continuation of nuclear weapon tests in the atmosphere is a source of growing pollution and that the number and magnitude of underground tests have increased at an alarming rate since 1963,

Having considered the special report submitted by the Conference of the Committee on Disarmament⁶ in response to General Assembly resolution 2663 B (XXV) of 7 December 1970,

Recalling its resolution 1762 A (XVII) of 6 November 1962, whereby all nuclear weapon tests, without exception, were condemned,

Convinced that, whatever may be the differences on the question of verification, there is no valid reason for delaying the conclusion of a comprehensive test ban of the nature contemplated in the preamble to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water,

1. *Reiterates solemnly and most emphatically* its condemnation of all nuclear weapon tests;

2. *Urges* the Governments of nuclear-weapon States to bring to a halt all nuclear weapon tests at the earliest possible date and, in any case, not later than 5 August 1973;

⁵ See *Juridical Yearbook*, 1963, p. 107.

⁶ *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234, sect. III.

3. *Requests* the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-seventh session of any measures they have taken to implement it.

*2022nd plenary meeting,
16 December 1971.*

C

The General Assembly,

Recognizing the urgent need for the cessation of nuclear and thermonuclear weapon tests, including those carried out underground,

Recalling that this subject has been included in the agenda of the General Assembly every year since 1957,

Recalling in particular its resolutions 914 (X) of 16 December 1955, 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965, 2163 (XXI) of 5 December 1966, 2343 (XXII) of 19 December 1967, 2455 (XXIII) of 20 December 1968, 2604 (XXIV) of 16 December 1969 and 2663 (XXV) of 7 December 1970,

Expressing serious concern that the objectives of those resolutions have not been fulfilled,

Noting with regret 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, and that some continue to test in the atmosphere,

Taking into account the determination expressed by the parties to that Treaty to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time,

Noting the appeal for progress on this issue, made by the Secretary-General in the introduction to his report on the work of the Organization,⁷

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

Having considered the special report submitted by the Conference of the Committee on Disarmament⁸ in response to General Assembly resolution 2663 B (XXV),

1. *Stresses anew* the urgency of bringing to a halt all nuclear weapon testing in all environments by all States;

2. *Urges* all States that have not yet done so to adhere without further delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water and meanwhile to refrain from testing in the environments covered by that Treaty;

3. *Calls upon* all Governments that have been conducting nuclear weapon tests, particularly those of parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, immediately to undertake unilateral or negotiated measures of restraint that would suspend nuclear weapon testing or limit or reduce the size and number of nuclear weapon tests, pending the early entry into force of a comprehensive ban on all nuclear weapon tests in all environments by all States;

4. *Urges* Governments to take all possible measures to develop further, and to use more effectively, existing capabilities for the seismological identification of underground nuclear tests, in order to facilitate the monitoring of a comprehensive test ban;

⁷ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 1A (A/8401/Add.1).*

⁸ *Official Records of the Disarmament Commission, Supplement for 1971, document DC/234, sect. III.*

5. *Requests* the Conference of the Committee on Disarmament to continue as a matter of high priority, its deliberations on a treaty banning underground nuclear weapon tests, taking into account the suggestions already made in the Conference as well as the views expressed at the current session of the General Assembly;

6. *Requests particularly* Governments that have been carrying out nuclear tests to take an active and constructive part in developing in the Conference of the Committee on Disarmament, or in any successor body, specific proposals for an underground test ban treaty;

7. *Expresses the hope* that these efforts will enable all States to sign, in the near future, a treaty banning underground nuclear weapon tests.

2022nd plenary meeting,
16 December 1971.

4. STATUS OF THE IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 2666 (XXV) CONCERNING THE SIGNATURE AND RATIFICATION OF ADDITIONAL PROTOCOL II OF THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA (TREATY OF TLATELOLCO): REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 31)

Resolution [2830 (XXVI)] adopted by the General Assembly

2830 (XXVI). Status of the implementation of General Assembly resolution 2666 (XXV) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)

The General Assembly,

Recalling its resolutions 1911 (XVIII) of 27 November 1963, 2286 (XXII) of 5 December 1967, 2456 B (XXIII) of 20 December 1968 and 2666 (XXV) of 7 December 1970,

Recalling in particular that in its resolution 2286 (XXII) it declared that the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)⁹ constituted an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security and that in its resolution 2666 (XXV) it repeated the appeals which on two previous occasions it had addressed to the nuclear-weapon States to sign and ratify Additional Protocol II of the Treaty as soon as possible and urged them to avoid further delay in the fulfilment of such appeals,

1. *Reaffirms its conviction* that, for the maximum effectiveness of any treaty establishing a nuclear-weapon-free zone, the co-operation of the nuclear-weapon States is necessary and that such co-operation should take the form of commitments likewise undertaken in a formal international instrument which is legally binding, such as a treaty, convention or protocol;

2. *Notes with satisfaction* that the United States of America deposited its instrument of ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America on 12 May 1971, thus becoming a State party to the Protocol, as the United Kingdom of Great Britain and Northern Ireland has been since 11 December 1969;

⁹ See *Juridical Yearbook*, 1967, p. 272.

3. *Deplores* the fact that the other nuclear-weapon States have not yet heeded the urgent appeals which the General Assembly has made in three different resolutions and urges them once again to sign and ratify without further delay Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America;

4. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Implementation of General Assembly resolution 2830 (XXVI) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)";

5. *Requests* the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-seventh session of any measure adopted by them in order to implement it.

*2022nd plenary meeting,
16 December 1971.*

5. INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (AGENDA ITEM 33)

Resolution [2776 (XXVI)] adopted by the General Assembly

2776 (XXVI). International co-operation in the peaceful uses of outer space

The General Assembly,

Recalling its resolution 2733 (XXV) of 16 December 1970,

Having considered the report of the Committee on the Peaceful Uses of Outer Space,¹⁰

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

Continuing to believe that the benefits deriving from 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 maximum international co-operation, including the widest possible exchange of information in this field,

Convinced of the need for continued international efforts to promote practical applications of space technology,

1. *Endorses* the report of the Committee on the Peaceful Uses of Outer Space;

2. *Invites* States 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 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;

3. *Reiterates* the importance of the goal of making satellite communications available to States on a worldwide and non-discriminatory basis, as expressed in General Assembly resolution 1721 D (XVI) of 20 December 1961;

4. *Takes note* of the agreements relating to space communications recently concluded between a number of States and of the desirability of keeping the United Nations currently informed concerning activities and developments in this field;

¹⁰ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 20*, (A/8420).

5. *Notes* the action taken by the International Telecommunication Union, through the World Administrative Radio Conference for Space Telecommunications held in June and July 1971, to allocate frequencies and to adopt administrative procedures for all kinds of space communications, and recommends that the Union and its specialized bodies, as well as the members of the Union, should apply these provisions with a view to promoting the use of space communications for the benefit of all countries in accordance with the relevant resolutions of the General Assembly;

6. *Welcomes* the progress achieved by the Committee on the Peaceful Uses of Outer Space in its efforts to encourage international programmes to promote practical applications of space technology for the benefit of all countries and commends to the attention of Member States, specialized agencies and interested United Nations bodies the programme contained in the report of the Scientific and Technical Sub-Committee of the Committee;¹¹

7. *Takes note with appreciation* of the valuable work carried out by the Secretary-General within the framework of the programme for promoting the application of space technology in accordance with the relevant recommendations of the Committee on the Peaceful Uses of Outer Space and resolutions of the General Assembly;

8. *Endorses* the resolution contained in paragraph 15 of the report of the Committee on the Peaceful Uses of Outer Space and recommends the continuation and development of the programme for promoting the practical applications of space technology taking into account the needs of the developing countries;

9. *Welcomes* the efforts of a number of Member States to share with other interested Member States the practical benefits that may be derived from programmes in space technology;

10. *Welcomes* the progress achieved in international co-operation among Member States in space research and exploration, including the exchange and analysis of lunar material on a broad international basis and studies of the development of compatible rendezvous and docking systems for manned spacecraft;

11. *Welcomes also* the action of a number of States and of the Food and Agriculture Organization of the United Nations in promoting international co-operation in education and training in the peaceful uses of outer space and endorses the appeal made to other States by the Committee on the Peaceful Uses of Outer Space for similar contributions to international education and training in this field;

12. *Approves* continuing sponsorship by the United Nations of the Thumba Equatorial Rocket Launching Station in India and the CELPA Mar del Plata Station in Argentina, expresses its satisfaction at the work being carried out at these ranges in relation to the use of sounding rocket facilities for international co-operation and training in the peaceful and scientific exploration of outer space, and recommends that Member States continue to give consideration to the use of these facilities for appropriate space research activities;

13. *Welcomes* the efforts of Member States to keep the Committee on the Peaceful Uses of Outer Space fully informed of their space activities and invites all Member States to do so;

14. *Notes* 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;

15. *Takes note with appreciation* of the activities of the World Meteorological Organization during the past year, as reported to the Committee on the Peaceful Uses of Outer

¹¹ A/AC.105/95 and Corr.1, sect. I.

Space,¹² in particular the measures taken in implementation of General Assembly resolution 2733 D (XXV) recommending that the World Meteorological Organization mobilize technical resources in order to discover ways and means of mitigating the harmful effects and destructive potential of tropical storms;

16. *Takes note* of the programmes currently being undertaken by the United Nations Educational, Scientific and Cultural Organization and the International Telecommunication Union in satellite broadcasting for the purpose of contributing to the advancement of education and training, and draws attention to the fact that questions relating to the legal implications of space communications are also on the agenda of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, with which the two agencies should co-ordinate their activities in this field;

17. *Requests* the specialized agencies and the International Atomic Energy Agency to continue, as appropriate, to provide the Committee on the Peaceful Uses of Outer Space with progress reports on their work relating to the peaceful uses of outer space and to examine and report to the Committee on the particular problems which arise or 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;

18. *Endorses* the recommendations contained in paragraph 38 of the report of the Committee on the Peaceful Uses of Outer Space concerning the future work of its Legal Sub-Committee;

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

*1998th plenary meeting,
29 November 1971.*

6. 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 USE OF THEIR RESOURCES IN THE INTERESTS OF MANKIND, AND CONVENING OF A CONFERENCE ON THE LAW OF THE SEA: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION (AGENDA ITEM 35)

Resolution [2881 (XXVI)] adopted by the General Assembly

2881 (XXVI). 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 use of their resources in the interests of mankind, and convening of a conference on the law of the sea

The General Assembly,

Recalling its resolutions 2340 (XXII) of 18 December 1967, 2467 (XXIII) of 21 December 1968, 2574 (XXIV) of 15 December 1969 and 2750 (XXV) of 17 December 1970,

¹² See A/AC.105/PV.100.

Having considered the report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction,¹³

1. *Notes with satisfaction* the encouraging progress of the preparatory work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction towards a comprehensive conference on the law of the sea, in conformity with its mandate contained in General Assembly resolution 2750 C (XXV), in particular with regard to the elaboration of the international régime and machinery for the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;

2. *Notes also* the consideration by the Committee of the reports submitted by the Secretary-General¹⁴ pursuant to resolutions 2750 A and B (XXV) and of the study of possible methods and criteria for the sharing of benefits derived from the exploitation of the resources of the area,¹⁵ undertaken in accordance with the Committee's request of March 1970;

3. *Decides* to add to the membership of the Committee China and four other members to be appointed by the Chairman of the First Committee in consultation with regional groups, with due regard to the interests of under-represented groups;

4. *Requests* the Committee, in the discharge of its mandate in accordance with resolution 2750 C (XXV), to hold two sessions, one in New York during March and April and one at Geneva during July and August 1972.

*2029th plenary meeting,
21 December 1971.*

7. RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS (a) REPORT OF THE SECRETARY-GENERAL (b) PROTECTION OF JOURNALISTS ENGAGED IN DANGEROUS MISSIONS IN AREAS OF ARMED CONFLICT: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 49)

**Resolutions [2852 (XXVI), 2853 (XXVI) and 2854 (XXVI)]
adopted by the General Assembly**

2852 (XXVI). Respect for human rights in armed conflicts

The General Assembly,

Reaffirming its determination to continue all efforts to eliminate the threat or use of force in international relations, in conformity with the Charter of the United Nations, and to bring about general and complete disarmament under effective international control, and reaffirming its desire to secure full observance of human rights applicable in all armed conflicts pending the earliest possible termination of such conflicts,

Reaffirming that, in order effectively to guarantee human rights, all States should devote their efforts to averting the unleashing of aggressive wars and armed conflicts that violate the Charter and the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

¹³ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421).*

¹⁴ A/AC.138/36 and A/AC.138/37 and Corr.1 and 2.

¹⁵ A/AC.138/38 and Corr.1.

Recalling the successive resolutions that have been adopted by the United Nations relating to human rights in armed conflicts, in particular General Assembly resolutions 2652 (XXV) of 3 December 1970, 2674 (XXV) and 2678 (XXV) of 9 December 1970 and 2707 (XXV) of 14 December 1970, and taking into account relevant resolutions of international conferences of the Red Cross,

Deeply concerned over the terrible suffering that armed conflicts continue to inflict upon combatants and civilians, particularly through the use of cruel means and methods of warfare and through inadequate restraints in defining military objectives,

Desiring to ensure the effective application of all existing rules relating to human rights in armed conflicts, as well as the development of these rules, and aware that progress in this regard will depend upon the political readiness and willingness of Member States,

Conscious that, although negotiations are going on in the field of disarmament concerning general and complete disarmament and the limitation and elimination of nuclear, biological and chemical weapons, those deliberations do not deal with the question of prohibiting or restricting the use of other methods of warfare that are cruel, such as napalm, or that indiscriminately affect civilians and combatants,

Noting the comments by Governments¹⁶ on the reports of the Secretary-General on respect for human rights in armed conflicts,¹⁷

Noting with appreciation the report of the Secretary-General¹⁸ on the comprehensive discussions undertaken at the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross,

Having taken cognizance of the report prepared by the International Committee of the Red Cross on the work of the Conference of Government Experts,¹⁹

Welcoming the decision of the International Committee of the Red Cross to convene in 1972 a second session of the Conference of Government Experts with broader participation to include all the States parties to the Geneva Conventions of 1949²⁰ and to circulate in advance of that session a series of draft protocols,

Stressing the importance of further close co-operation between the United Nations and the International Committee of the Red Cross,

Determined to continue its efforts to achieve better application of existing rules relating to armed conflicts, as well as the reaffirmation and development of these rules,

1. *Calls again upon* all parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907,²¹ the Geneva Protocol of 1925,²² the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts, and invites those States which have not yet done so to adhere to those instruments;

2. *Reaffirms* that persons participating in resistance movements and freedom fighters in southern Africa and in territories under colonial and alien domination and foreign occupa-

¹⁶ A/8313 and Add.1-3.

¹⁷ A/7720 and A/8052.

¹⁸ A/8370 and Add.1.

¹⁹ *Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, August 1971).

²¹ United Nations, *Treaty Series*, vol. 75.

²² Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

²² League of Nations, *Treaty Series*, vol. XCIV.

tion who are struggling for their liberation and self-determination should, in case of arrest, be treated as prisoners of war in accordance with the principles of the Hague Convention of 1907 and the Geneva Conventions of 1949;

3. *Invites* the International Committee of the Red Cross to continue the work that was begun with the assistance of government experts in 1971 and, taking into account all relevant United Nations resolutions on human rights in armed conflicts, to devote special attention, among the questions to be taken up, to the following:

(a) The need to ensure better application of existing rules relating to armed conflicts, particularly the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, including the need for strengthening the system of protecting Powers contained in such instruments;

(b) The need for a reaffirmation and development of relevant rules, as well as other measures to improve the protection of the civilian population during armed conflicts, including legal restraints and restrictions on certain methods of warfare and weapons that have proved particularly perilous to civilians, and also arrangements for humanitarian relief;

(c) The need to evolve norms designed to increase the protection of persons struggling against colonial and alien domination, foreign occupation and racist régimes;

(d) The need for development of the rules concerning the status, protection and humane treatment of combatants in international and non-international armed conflicts and the question of guerrilla warfare;

(e) The need for additional rules regarding the protection of the wounded and the sick;

4. *Expresses the hope* that the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts will result in specific conclusions and recommendations for action at the government level;

5. *Requests* the Secretary-General, in line with paragraph 126 of his report on respect for human rights in armed conflicts submitted to the General Assembly at its twenty-fifth session,²³ to prepare as soon as possible, with the help of qualified governmental consultant experts, a report on napalm and other incendiary weapons and all aspects of their possible use;

6. *Further calls upon* all States to disseminate widely information and to provide instruction concerning human rights in armed conflicts and to take all the necessary measures to ensure full observance by their own armed forces of humanitarian rules applicable in armed conflicts;

7. *Requests* the Secretary-General to encourage the study and teaching of principles of respect for human rights applicable in armed conflicts by the means at his disposal;

8. *Requests* the Secretary-General to report to the General Assembly at its twenty-seventh session on the results of the second session of the Conference of Government Experts and any other relevant developments;

9. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Human rights in armed conflicts" and to consider it in all its aspects.

*2027th plenary meeting,
20 December 1971.*

²³ A/8052.

2853 (XXVI). Respect for human rights in armed conflicts

The General Assembly,

Recalling its resolutions 2674 (XXV), 2675 (XXV), 2676 (XXV) and 2677 (XXV) of 9 December 1970,

Noting also that the twenty-first International Conference of the Red Cross, held at Istanbul in 1969, adopted resolution XIII concerning the reaffirmation and development of the laws and customs applicable in armed conflicts,²⁴

Noting with appreciation the report of the Secretary-General on respect for human rights in armed conflicts,²⁵ concerning in particular the results of the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross, as well as the report of the International Committee on the work of the Conference,²⁶

Emphasizing that effective protection for human rights in situations of armed conflict depends primarily on universal respect for humanitarian rules,

Recognizing that existing humanitarian rules relating to armed conflicts do not in all respects meet the need of contemporary situations and that it is therefore necessary to strengthen the procedure for implementing these rules and to develop their substance,

Welcoming the decision of the International Committee of the Red Cross to convene a second session of the Conference of Government Experts with the task of reaching agreement on the wording of various texts to facilitate discussion at a future diplomatic conference, and noting that all States parties to the Geneva Conventions of 1949²⁷ have been invited to participate,

Affirming that the successful development of humanitarian rules applicable in armed conflicts requires the negotiation of instruments which can be effectively implemented and which command the widest possible support,

Emphasizing the importance of continued close collaboration between the United Nations and the International Committee of the Red Cross,

1. *Reiterates* its call upon all parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907,²⁸ the Geneva Protocol of 1925,²⁹ the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts, and invites those States which have not yet done so to adhere to those instruments;

2. *Welcomes* the progress made by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, as shown in its report, with regard to the following questions:

- (a) Protection of the wounded and the sick;
- (b) Protection of victims of non-international armed conflicts;
- (c) Rules applicable in guerrilla warfare;
- (d) Protection of civilian population against dangers of hostilities;

²⁴ See A/7720, annex I, sect. D.

²⁵ A/8370 and Add.1.

²⁶ *Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, August 1971).

²⁷ United Nations, *Treaty Series*, vol. 75.

²⁸ Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

²⁹ League of Nations, *Treaty Series*, vol. XCIV.

(e) Strengthening of the guarantees afforded by international humanitarian law for non-military civil defence organizations;

(f) Rules relative to the behaviour of combatants;

(g) Measures intended to reinforce the implementation, in armed conflicts, of existing international humanitarian law;

3. *Expresses the hope* that the second session of the Conference of Government Experts will make recommendations for the further development of international humanitarian law in this field, including, as appropriate, draft protocols to the Geneva Conventions of 1949, for subsequent consideration at one or more plenipotentiary diplomatic conferences;

4. *Calls upon* States parties to the existing international instruments to review, as a matter of priority, any reservations they may have made to those instruments;

5. *Requests* the Secretary-General:

(a) To transmit his latest report,³⁰ together with any further observations received from Governments as well as the records of relevant discussions and resolutions of the General Assembly, to the International Committee of the Red Cross for consideration, as appropriate, by the Conference of Government Experts at its second session;

(b) To report to the General Assembly at its twenty-seventh session on the progress made in the implementation of the present resolution;

6. *Decides* to consider this question again, in all its aspects, at its twenty-seventh session.

*2027th plenary meeting,
20 December 1971.*

2854 (XXVI). Protection of journalists engaged in dangerous missions in areas of armed conflict

The General Assembly,

Recalling its resolution 2444 (XXIII) of 19 December 1968 concerning, in particular, the studies to be undertaken by the Secretary-General in consultation with the International Committee of the Red Cross and other appropriate international organizations with regard, *inter alia*, to 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,

Recalling also its resolution 2673 (XXV) of 9 December 1970, in which it expressed its conviction that there was a need for an additional humanitarian international instrument to ensure the better protection of journalists engaged in dangerous missions, particularly in areas where an armed conflict was taking place,

Being aware that the provisions of the humanitarian conventions at present in force do not cover some categories of journalists engaged in dangerous missions and do not correspond to their present needs,

Noting Commission on Human Rights resolution 15 (XXVII) of 24 March 1971,³¹ in which the Commission expressed its conviction that there was an urgent need to examine the question of the protection of journalists engaged in dangerous missions, both on humanitarian grounds and in order to enable journalists with due respect for the law to seek, receive and impart information fully, objectively and faithfully in the spirit of the purposes

³⁰ A/8370 and Add.1.

³¹ See *Official Records of the Economic and Social Council, Fiftieth Session, Supplement No. 4 (E/4949)*, chap. XIX.

and principles of the Charter of the United Nations and the Universal Declaration of Human Rights concerning freedom of information,

Noting Economic and Social Council resolution 1597 (L) of 21 May 1971, in which the Council decided to transmit to the General Assembly the preliminary draft international convention on the protection of journalists engaged in dangerous missions, submitted to it by the Commission on Human Rights, as well as the relevant records of the Commission and of the Council, as a valid basis for the discussion of the Assembly at its twenty-sixth session,

Noting the report of the Secretary-General ³² containing the preliminary draft international convention on the protection of journalists engaged in dangerous missions, the observations received from Governments concerning the preliminary draft and the observations of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross,

Noting with appreciation the report ³³ of the Working Group established by the Secretary-General in accordance with Commission on Human Rights resolution 15 (XXVII), and the annexed draft protocol relating to the composition and functions of the International Professional Committee for the Protection of Journalists Engaged in Dangerous Missions referred to in article 3 of the aforementioned preliminary draft convention,

Having considered the observations submitted by some Member States in accordance with Commission on Human Rights resolution 15 (XXVII) and the observations of the Conference of Government Experts as well as the discussions on the item and the alternate draft convention submitted during the debate at the twenty-sixth session of the General Assembly,

1. *Believes* that it is necessary to adopt a convention providing for the protection of journalists engaged in dangerous missions in areas of armed conflict;

2. *Invites* the Economic and Social Council to request the Commission on Human Rights to consider as a matter of priority at its twenty-eighth session the preliminary draft convention contained in Council resolution 1597 (L), taking into consideration the draft conventions submitted by Australia ³⁴ and by the United States of America, ³⁵ and the observations of Governments, ³⁶ as well as all subsequent documents including the draft protocol ³⁷ prepared by the Working Group in accordance with resolution 15 (XXVII) of the Commission;

3. *Further requests* the Commission on Human Rights to transmit its report on its twenty-eighth session to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts at its second session to be convened in 1972 by the International Committee of the Red Cross, in order that the International Committee may submit its observations to the General Assembly at its twenty-seventh session;

4. *Invites* Governments to transmit their observations on that part of the report of the Commission on Human Rights on its twenty-eighth session relating to this question;

³² A/8371 and Add.1 and 2.

³³ A/8438 and Add.1

³⁴ *Official Records of the General Assembly, Twenty-sixth Session, Annexes*, agenda item 49, document A/8589, para. 26.

³⁵ *Ibid.*, para. 27.

³⁶ A/8371, annex II; A/8371/Add.1 and 2.

³⁷ A/8438, annex.

5. *Requests* the Secretary-General to submit the replies received and an analytic report on those replies to the General Assembly at its twenty-seventh session;

6. *Decides* to examine this question as a matter of the highest priority at its twenty-seventh session, taking into consideration the recommendations transmitted to the General Assembly by the Economic and Social Council.

*2027th plenary meeting,
20 December 1971.*

8. **ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**
(a) INTERNATIONAL YEAR FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (b) REPORT OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (c) STATUS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 54)

Resolution [2783 (XXVI)] adopted by the General Assembly

2783 (XXVI). Report of the Committee on the Elimination of Racial Discrimination

The General Assembly,

Recalling its resolution 2106 (XX) of 21 December 1965 in which it adopted and opened for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination and invited eligible States under article 17 of that Convention to sign and ratify it without delay,

Stressing the significance of the coming into force of the International Convention on the Elimination of All Forms of Racial Discrimination and of the bringing into being of the Committee on the Elimination of Racial Discrimination, and requesting all States parties to the Convention to give full co-operation to that Committee in order that it may fulfil its mandate under the Convention,

Noting the recommendations contained in Economic and Social Council resolution 1588 (L) of 21 May 1971,

Having received the report of the Committee on the Elimination of Racial Discrimination,³⁸ established under the International Convention on the Elimination of All Forms of Racial Discrimination, on the second year of its activities,

Expressing its satisfaction at the ratification of or accession to the Convention by 55 States and at the intention expressed by various other States to ratify or accede to the Convention in the near future,

1. *Urges* all States which are not yet parties to the International Convention on the Elimination of All Forms of Racial Discrimination to ratify or accede to the Convention as soon as possible and requests them to report to the General Assembly on the measures taken by them to this effect, on any obstacles that may have been encountered and on any interim measures that have been taken to comply strictly with the principles set out in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and in the Convention;

³⁸ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 18 (A/8418).*

2. *Takes note with appreciation* of the report of the Committee on the Elimination of Racial Discrimination on the second year of its activities, submitted under article 9 of the Convention;

3. *Draws the attention* of all States to the contents of that report;

4. *Commends* the Committee on the Elimination of Racial Discrimination for its efforts to obtain extensive reports from States parties, as provided in article 9, paragraph 1, of the Convention, as well as information concerning Trust and Non-Self-Governing Territories relating to matters referred to in article 15;

5. *Expresses the view* that the work of the Committee on the Elimination of Racial Discrimination would be facilitated if the reports submitted by States parties conformed with the guidelines laid down by the Committee for that purpose and if the Committee invited States parties to be present at its meetings when their reports are examined;

6. *Recognizes* that the General Assembly's consideration of the reports of the Committee on the Elimination of Racial Discrimination would be facilitated by the inclusion of the criteria used by the Committee when it examines in greater depth the substance of the reports from States parties submitted under article 9 of the Convention;

7. *Draws the attention* of the Trusteeship Council and of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to the report of the Committee on the Elimination of Racial Discrimination and requests them to take appropriate action within their terms of reference in their respective spheres of activity, as expressed in the relevant parts of the report;

8. *Requests* the Secretary-General to transmit to the Committee on the Elimination of Racial Discrimination the records of the discussion on its report at the twenty-sixth session of the General Assembly.

*2001st plenary meeting,
6 December 1971.*

9. **MEASURES TO BE TAKEN AGAINST NAZISM AND OTHER TOTALITARIAN IDEOLOGIES AND PRACTICES BASED ON INCITEMENT TO HATRED AND RACIAL INTOLERANCE (AGENDA ITEM 57)**

Resolution [2839 (XXVI)] adopted by the General Assembly

2839 (XXVI). Measures to be taken against nazism and other totalitarian ideologies and practices based on incitement to hatred and racial intolerance

The General Assembly,

Recognizing that there still exist in the world convinced adherents of nazism and racial intolerance whose activities, if they are not opposed in sufficient time, could bring about a resurgence of those ideologies, which are clearly incompatible with the purposes and principles of the Charter of the United Nations, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination, and that, accordingly, the danger of a revival or a development of new forms of nazism and racial discrimination combined with terrorism cannot be disregarded,

Considering that contemporary manifestations of resurgent nazism, like the earlier ones, combine racial prejudice and discrimination with terrorism, and that in some cases racism has been raised to the level of State policy, as in the case of South Africa,

Believing it essential, in order to remove this threat to the peace and security of peoples and to the realization of basic human rights and fundamental freedoms, to elaborate a series of urgent and effective measures which might be adopted by States with a view to suppressing the revival of nazism and preventing its revival, in any form or manifestation, in the future,

Firmly convinced that the best bulwark against nazism and racial discrimination is the establishment and maintenance of democratic institutions, that the existence of genuine political, social and economic democracy is an effective vaccine and an equally effective antidote against the formation or development of Nazi movements and that a political system which is based on freedom and effective participation by the people in the conduct of public affairs, and under which economic and social conditions are such as to ensure a decent standard of living for the population, makes it impossible for fascism, nazism or other ideologies based on terror to succeed,

Confirming that nazism and other forms of racial intolerance constitute a serious threat to the realization everywhere of human rights and freedoms and the maintenance of international peace and security,

Deeming it essential that the question of measures to be taken to combat nazism and racial intolerance should be kept under constant review by the appropriate United Nations bodies with a view to the timely and immediate adoption of the necessary measures for the complete eradication of nazism from the life of society,

1. *Condemns* all manifestations of the ideology and practice of nazism and racial intolerance, wherever they may occur;

2. *Calls upon* States to take steps to bring to light any evidence of the manifestation and dissemination of the ideology and practice of nazism and racial intolerance and to ensure that they are rigorously suppressed and prohibited;

3. *Invites* all eligible States which have not yet done so to ratify and to accede to the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity as soon as possible, and requests them to report to the General Assembly at its twenty-seventh session on the measures taken by them to comply strictly with the provisions of those Conventions;

4. *Invites* all States Members of the United Nations or members of specialized agencies to review their legislation, in the light of the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, with a view to determining whether, in the light of their circumstances, further legal measures are required to eradicate for all time the danger of a revival of nazism, racial intolerance or other ideologies based on terror;

5. *Urgently calls upon* those States concerned which have not yet done so to take immediate and effective measures, including legislative measures, with due regard to the principles contained in the Universal Declaration of Human Rights, to prevent the activities of Nazi and racist organizations and groups;

6. *Appeals* to all States to prohibit activity by organizations propagating concepts of nazism and racial superiority;

7. *Urges* those States which are unable, for serious constitutional or other reasons, to implement immediately and fully the provisions of article 9 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination—both of which condemn and outlaw all propaganda and all organizations based on ideas or theories of

the superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form—to take measures designed to ensure the speedy disbandment and disappearance of such organizations, these measures to provide, *inter alia*, that:

(a) Such organizations should not be allowed to receive financial subsidies from organs of the State, private companies or individuals;

(b) Such organizations should not be allowed the use of public premises in which to establish their headquarters or conduct meetings of their members, the use of streets and squares in populated areas for holding demonstrations, or the use of public information media for disseminating propaganda;

(c) Such organizations should not be allowed to form militarized detachments on any pretext, and offenders should be subject to prosecution in the courts;

(d) Persons employed by the State, particularly in the armed forces, should not be permitted to belong to such organizations;

and all these measures to be taken only in so far as they are compatible with the principles of the Universal Declaration of Human Rights;

8. *Requests* the United Nations Educational, Scientific and Cultural Organization, the International Labour Organisation and other specialized agencies to consider, within their respective spheres of competence, the question of the danger of a revival of the concepts of nazism and racial intolerance;

9. *Appeals* to regional intergovernmental organizations to consider this question at the regional level;

10. *Calls upon* Governments, particularly those which control mass information media of world or continental scope, the United Nations and its various bodies, specialized agencies and international and national organizations to increase public awareness of the danger of a revival of nazism and racial intolerance, especially among young people, by education, by the preparation and dissemination of information on this subject and by recalling the history of nazism and its crimes and of racial intolerance;

11. *Calls upon* all States to take legislative and administrative measures to prevent activities of any kind in favour of nazism and the concept of racial superiority;

12. *Decides* to place the question of measures to be taken against ideologies and practices based on terror or on incitement to racial discrimination or any other form of group hatred on its agenda and under continuing review, and urges other competent organs of the United Nations to do likewise, so that appropriate measures can be taken promptly as required;

13. *Confirms* the principles of international law with regard to the eradication of nazism, and appeals to all States to act in conformity with those principles.

*2025th plenary meeting,
18 December 1971.*

10. STATUS OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (AGENDA ITEM 63)

Resolution [2788 (XXVI)] adopted by the General Assembly

2788 (XXVI). Status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights

The General Assembly,

Having noted the report of the Secretary-General on the status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights,³⁹

Firmly believing that the entry into force of the International Covenants on Human Rights and the Optional Protocol will greatly enhance the ability of the United Nations to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, and will contribute to the attainment of the purposes and principles of the Charter of the United Nations,

Desirous of making all possible efforts that may be appropriate to assist in hastening the process of ratification and, if possible, in bringing into force those instruments by the twenty-fifth anniversary of the proclamation of the Universal Declaration of Human Rights, in 1973,

1. *Recommends* that Member States should give special attention to possibilities of accelerating as far as possible the internal procedures that would lead to the ratification of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights;

2. *Requests* the Secretary-General, on the basis of communications from Governments, to report to the General Assembly at its twenty-seventh session and at such other times as he may consider appropriate on the progress of the ratification of the Covenants and the Optional Protocol.

*2001st plenary meeting,
6 December 1971.*

³⁹ A/8390.

11. QUESTION OF NAMIBIA (a) REPORT OF THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES (b) REPORT OF THE UNITED NATIONS COUNCIL FOR NAMIBIA (c) UNITED NATIONS FUND FOR NAMIBIA: REPORT OF THE SECRETARY-GENERAL (d) APPOINTMENT OF THE UNITED NATIONS COMMISSIONER FOR NAMIBIA (AGENDA ITEM 66)

Resolution [2871 (XXVI)] adopted by the General Assembly

2871 (XXVI). Question of Namibia

The General Assembly,

Having considered the question of Namibia,

Having examined the report of the United Nations Council for Namibia, ⁴⁰

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, ⁴¹

Having heard the statements of the petitioners ⁴² and bearing in mind the views expressed by the representatives of national liberation movements, ⁴³

Recalling its resolutions 1514 (XV) of 14 December 1960, 2145 (XXI) of 27 October 1966, 2248 (S-V) of 19 May 1967 and subsequent resolutions on the question of Namibia, as well as Security Council resolutions 264 (1969) of 20 March 1969, 269 (1969) of 12 August 1969, 276 (1970) of 30 January 1970 and 283 (1970) of 29 July 1970,

Recalling further the relevant provisions of its resolution 2621 (XXV) of 12 October 1970, containing the programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Bearing in mind the direct responsibility of the United Nations with regard to the Territory of Namibia and its people,

Noting with satisfaction the advisory opinion of the International Court of Justice of 21 June 1971 ⁴⁴ delivered in response to the request addressed to it by the Security Council in its resolution 284 (1970) of 29 July 1970,

Noting also the provisions of Security Council resolution 301 (1971) of 20 October 1971,

Deeply concerned at South Africa's continued occupation of Namibia in defiance of General Assembly resolution 2145 (XXI) and in flagrant violation of its obligations under the Charter of the United Nations,

Deeply concerned also at the use of the Territory of Namibia by South Africa as a base for taking actions which violate the sovereignty and territorial integrity of independent African States,

⁴⁰ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24 (A/8424).*

⁴¹ *Ibid.*, Supplement No. 23 (A/8423/Rev.1), chaps. V and VII.

⁴² *Ibid.*, Twenty-sixth Session, Fourth Committee, 1921st, 1922nd, 1945th-1947th, 1950th and 1954th meetings; A/C.4/738 and Add.1 and A/C.4/740.

⁴³ *Ibid.*, Twenty-sixth Session, Supplement No. 24 (A/8424), paras. 51-58; and *ibid.*, Supplement No. 23 (A/8423/Rev.1), chap. V, annex.

⁴⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.*

Considering that the basic condition for the fulfilment of the responsibility of the United Nations towards Namibia is the removal of South Africa's presence from the Territory,

Mindful of the obligations of all Member States under Article 25 of the Charter,

Mindful also that the direct responsibility of the United Nations for Namibia includes the solemn obligation to protect and safeguard the rights and interests of the people of the Territory pending their exercise of self-determination and attainment of independence,

1. *Reaffirms* the inalienable right of the people of Namibia to self-determination and independence, as recognized in General Assembly resolution 1514 (XV) and subsequent resolutions, and the legitimacy of their struggle by all means against the illegal occupation of their territory by South Africa;

2. *Welcomes* the advisory opinion of the International Court of Justice of 21 June 1971, as expressed in paragraph 133 thereof;

3. *Condemns* the Government of South Africa for its continued refusal to put an end to its illegal occupation and administration of the Territory of Namibia and to comply with the pertinent resolutions of the Security Council and the General Assembly;

4. *Further condemns* the Government of South Africa for its continued extension to the Territory of Namibia of the policies of *apartheid*, and for its policies aimed at destroying the unity of the people and the territorial integrity of Namibia through the establishment of separate "homelands" based on racial and tribal distinctions;

5. *Deplores* any support given by any State to South Africa, and by any financial, economic and other interests operating in Namibia, which enables South Africa to pursue its repressive policies in the Territory, and calls for the termination of all such support;

6. *Calls upon* all States:

(a) To respect strictly the resolutions of the General Assembly and the Security Council concerning Namibia, and the advisory opinion of the International Court of Justice of 21 June 1971;

(b) To refrain from all direct or indirect relations, economic or otherwise, with South Africa, where those relations concern Namibia;

(c) Not to recognize as legally valid any rights or interests in Namibian property or resources purportedly acquired from the South African Government after 27 October 1966;

(d) To take effective economic and other measures designed to ensure the immediate withdrawal of the South African administration from Namibia, thereby making possible the implementation of General Assembly resolutions 2145 (XXI) and 2248 (S-V);

7. *Invites* the Security Council to take effective measures, in conformity with the relevant provisions of the Charter, to secure the withdrawal by South Africa of its illegal administration from Namibia, and the implementation of the resolutions of the General Assembly and the Security Council designed to enable the people of Namibia to exercise their right to self-determination;

8. *Calls once again* upon South Africa to treat Namibians captured during their struggle for freedom as prisoners of war in accordance with the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949,⁴⁵ and to comply with the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949⁴⁶ and, in this regard, invites the International Committee of the Red Cross to exercise its good offices to secure South Africa's compliance with those Conventions;

⁴⁵ United Nations, *Treaty Series*, vol. 75, p. 135.

⁴⁶ United Nations, *Treaty Series*, vol. 75, p. 287.

9. *Requests* all States and the specialized agencies and other organizations within the United Nations system, in co-operation with the Organization of African Unity, to render to the Namibian people all moral and material assistance necessary to continue their struggle for the restoration of their inalienable right to self-determination and independence, and to work out, in active co-operation with the United Nations Council for Namibia and the Organization of African Unity, concrete programmes of assistance to Namibia;

10. *Invites* the specialized agencies to give full publicity, through all media, to the question of Namibia and to the conditions prevailing in the Territory to which their respective spheres of competence are related;

11. *Recommends* the report of the United Nations Council for Namibia ⁴⁷ to all States and to the subsidiary organs of the General Assembly and other competent organs of the United Nations, as well as the specialized agencies and other organizations within the United Nations system, for appropriate action, in conformity with the relevant resolutions of the General Assembly and the Security Council;

12. *Reaffirms* the direct responsibility of the United Nations in regard to the Territory of Namibia and its obligation to lead the Namibian people to self-determination and independence;

13. *Requests* the United Nations Council for Namibia, in accordance with the provisions of the relevant resolutions of the General Assembly, to continue to discharge its functions and responsibilities, and in particular:

(a) To represent Namibia whenever it is required;

(b) To continue its consultations, at United Nations Headquarters, in Africa or elsewhere, with the representatives of the Namibian people and the Organization of African Unity;

(c) To assume responsibility for the urgent establishment of a short-term and long-term co-ordinated programme of technical and financial assistance to Namibia, as explained in the report of the Secretary-General, ⁴⁸ in line with the relevant provisions of General Assembly resolution 2248 (S-V);

14. *Notes with appreciation* the recognition by a large number of States of the identity certificates and travel documents issued to Namibians by the United Nations Council for Namibia ⁴⁹ and once again calls upon all other States which have not yet done so to recognize those documents;

15. *Calls upon* all States to co-operate fully with the United Nations Council for Namibia in its efforts to discharge its responsibilities;

16. *Requests* the Secretary-General, bearing in mind the recommendation of the United Nations Council for Namibia concerning the enlargement of its membership with a view to ensuring broader representation on the Council, ⁵⁰ to hold consultations among the permanent members of the Security Council and other regional groups not represented on the United Nations Council for Namibia and to report thereon to the General Assembly;

17. *Urges* the Secretary-General, in view of the recommendation of the United Nations Council for Namibia, to undertake the necessary consultations to nominate as soon as possible a full-time United Nations Commissioner for Namibia;

⁴⁷ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24 (A/8424).*

⁴⁸ A/8473.

⁴⁹ See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 24 (A/8424), annex I.*

⁵⁰ *Ibid.*, Supplement No. 24 (A/8424), para. 197.

18. *Requests* the Secretary-General to continue to provide the necessary assistance and facilities to the United Nations Council for Namibia and to the United Nations Commissioner for Namibia for the discharge of their respective duties and functions;

19. *Requests* the Secretary-General to take the necessary steps to intensify publicity relating to Namibia, and to issue a series of United Nations commemorative postage stamps to publicize the direct responsibility of the United Nations for Namibia;

20. *Requests* the Secretary-General to transmit the present resolution to the competent subsidiary organs of the General Assembly, other organs of the United Nations, the specialized agencies and other organizations within the United Nations system;

21. *Further requests* the Secretary-General to report to the General Assembly at its twenty-seventh session on the implementation of the present resolution.

2028th plenary meeting,
20 December 1971.

12. STATUS OF THE WORK OF THE INFORMAL JOINT COMMITTEE ON HOST COUNTRY RELATIONS: REPORT OF THE SECRETARY-GENERAL (AGENDA ITEM 86)

SECURITY OF MISSIONS ACCREDITED TO THE UNITED NATIONS AND SAFETY OF THEIR PERSONNEL (AGENDA ITEM 99)

Resolution [2819 (XXVI)] adopted by the General Assembly

2819 (XXVI). Security of missions accredited to the United Nations and safety of their personnel and establishment of the Committee on Relations with the Host Country

The General Assembly,

Having considered the item entitled "Security of missions accredited to the United Nations and safety of their personnel" and the report of the Secretary-General on the work of the Informal Joint Committee on Host Country Relations,⁵¹

Drawing attention to its resolution 2747 (XXV) of 17 December 1970, in which it urges the Government of the host country to make certain that the measures taken to ensure the protection and security of diplomatic missions and their diplomatic personnel are adequate to enable permanent missions to the United Nations to perform properly the functions entrusted to them by their Governments,

Expressing its gratitude to the Secretary-General for his valuable contribution to the work of the Informal Joint Committee on Host Country Relations,

Noting with extreme concern the illegal acts of individuals or groups against the inviolability of various missions accredited to the United Nations involving the commission and the repetition of violent and other criminal acts, including in some cases the use of bombs or firearms, against their premises and the residences of their personnel and also the assaults, the uttering of threats and insults against such personnel, and picketing accompanied by violence,

Expressing its deep sympathy with the missions and their personnel that have become the victims of such acts,

⁵¹ A/8474.

Recalling the responsibilities of the Government of the host country with respect to the United Nations and missions accredited to it and their personnel under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, the Convention on the Privileges and Immunities of the United Nations and general international law,

Taking into account the profound concern expressed by representatives of States at the twenty-sixth session of the General Assembly over the perpetration and repetition of violent and increasingly dangerous attacks against the premises of certain missions accredited to the United Nations, and also over the repeated threats and the hostile and intimidating acts against the personnel of these missions, which indicates a deterioration in the security of missions and the safety of their personnel,

Considering that the problems related to the privileges and immunities of the United Nations and to the status of the diplomatic missions accredited to it are of mutual concern to Member States, including the host country, as well as to the Secretary-General,

1. *Strongly condemns* the acts of violence and other criminal acts against the premises of certain missions accredited to the United Nations and against their personnel as being flagrantly incompatible with their status under international law;

2. *Urges* that the Government of the United States of America, the host country of the United Nations, should take all requisite measures to ensure, in conformity with its international obligations, the protection and security of the United Nations Headquarters, of the missions accredited to it and of their personnel, thereby ensuring normal conditions for the performance of their functions;

3. *Calls upon* the Government of the United States of America, in consultation with the Secretary-General, to take all possible measures, including the use of information and publicity, to ensure a favourable atmosphere for the normal functioning of the United Nations and the missions accredited to it;

4. *Notes with appreciation* the assurances given by the representative of the host country that it will intensify in a diligent and energetic manner its efforts to strengthen the protection and safety of the missions accredited to the United Nations and their personnel;

5. *Decides* to establish a Committee on Relations with the Host Country, composed of the host country and fourteen Member States to be chosen by the President of the General Assembly in consultation with regional groups and taking into consideration equitable geographic representation thereon;

6. *Requests* the Secretary-General to participate actively in the work of the Committee on Relations with the Host Country with a view to ensuring the representation of the interests concerned;

7. *Instructs* the Committee on Relations with the Host Country to deal with the question of the security of missions and the safety of their personnel, as well as all the categories of issues previously considered by the Informal Joint Committee on Host Country Relations; the Committee is authorized to study the Convention on the Privileges and Immunities of the United Nations and shall consider, and advise the host country on, issues arising in connexion with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations;

8. *Authorizes* the Committee on Relations with the Host Country to have summary records of its meetings and to convene on a periodic basis and whenever it is convoked by its Chairman at the request of any State Member of the United Nations or the Secretary-General;

9. *Requests* the Secretary-General to solicit the views of Member States with respect to the measures needed to ensure the future security of missions and the safety of their personnel and to transmit such replies to the Committee on Relations with the Host Country;

10. *Requests* the Secretary-General to bring to the attention of the Committee on Relations with the Host Country, if so requested by missions accredited to the United Nations, cases involving infringements of their status;

11. *Requests* the Secretary-General to furnish all appropriate assistance to the Committee on Relations with the Host Country and to bring to its attention issues of mutual concern relating to the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and the Convention on the Privileges and Immunities of the United Nations;

12. *Requests* the Committee on Relations with the Host Country to submit to the General Assembly at its twenty-seventh session a report on the progress of its work and to make, if it deems it necessary, appropriate recommendations;

13. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Report of the Committee on Relations with the Host Country".

*2019th plenary meeting,
15 December 1971.*

13. REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FOURTH SESSION (AGENDA ITEM 87)

Resolution [2766 (XXVI)] adopted by the General Assembly

2766 (XXVI). 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 fourth session,⁵²

Recalling its resolution 2205 (XXI) of 17 December 1966 establishing the United Nations Commission on International Trade Law and defining the object and terms of reference of the Commission,

Further recalling its resolutions 2421 (XXIII) of 18 December 1968, 2502 (XXIV) of 12 November 1969 and 2635 (XXV) of 12 November 1970 on the reports of the United Nations Commission on International Trade Law on the work of its first, second and third sessions,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all peoples on a basis of equality and, thereby, to their well-being,

Noting that the Trade and Development Board, at its eleventh session, considered the report of the United Nations Commission on International Trade Law on its fourth session

⁵² *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417).*

and expressed satisfaction with the coordination of the work programmes of the Commission and of the United Nations Conference on Trade and Development in the field of international legislation on shipping,⁵³

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its fourth session and commends its members for their contribution to the progress made in the work of the Commission;

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

(a) Continue, in its work, to pay special attention to the topics to which it has decided to give priority, that is, the international sale of goods, international payments, international commercial arbitration and international legislation on shipping;

(b) Accelerate its work on training and assistance in the field of international trade law, with special regard to developing countries;

(c) Continue to collaborate with international organizations active in the field of international trade law;

(d) Continue to give special consideration to the interests of developing countries and to bear in mind the special problems of land-locked countries;

(e) Continue, in its use of working groups and other working methods, to seek to enhance its efficiency and to ensure full consideration of the needs of all regions;

(f) Keep its programme of work under constant review;

3. *Notes with satisfaction* the publication of the first volume of the *Yearbook of the United Nations Commission on International Trade Law*⁵⁴ and the first volume of the *Register of Texts of Conventions and Other Instruments concerning International Trade Law*⁵⁵ and authorizes the Secretary-General to publish the second volume of the *Register of Texts* in accordance with the decision of the Commission contained in paragraph 131 of its report;

4. *Requests* the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions at the twenty-sixth session of the General Assembly on the Commission's report on the work of its fourth session.

*1986th plenary meeting,
17 November 1971.*

14. REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY-THIRD SESSION (AGENDA ITEM 88)

(a) *Report of the Sixth Committee*⁵⁶

*[Original: English/French]
[29 November 1971]*

I. INTRODUCTION

1. At its 1939th plenary meeting, on 25 September 1971, the General Assembly included in the agenda of its twenty-sixth session the item entitled "Report of the International

⁵³ *Ibid.*, Supplement No. 15 (A/8415/Rev.1), part three, paras. 417-420.

⁵⁴ United Nations publication, Sales No. E.71.V.1.

⁵⁵ United Nations publication, Sales No. E.71.V.3.

⁵⁶ Document A/8537, reproduced from *Official Records of the General Assembly, Twenty-sixth Session, Annexes*, agenda item 88.

Law Commission on the work of its twenty-third session" (item 88) and allocated it to the Sixth Committee for consideration and report.

2. The Sixth Committee considered this item at its 1255th to 1265th meetings, held from 8 to 21 October 1971, and at its 1279th and 1280th meetings, held on 11 and 12 November 1971.

3. At the 1255th meeting, on 8 October 1971, Mr. Senjin Tsuruoka, Chairman of the International Law Commission at its twenty-third session, introduced the Commission's report on the work of that session (A/8410). The report was divided into five chapters entitled: I. Organization of the session; II. Relations between States and international organizations; III. Progress of work on topics currently under discussion; IV. Question of treaties concluded between States and international organizations or between two or more international organizations; V. Other decisions and conclusions of the Commission.

4. Chapter II of the report contained final draft articles on the representation of States in their relations with international organizations adopted by the Commission, following the revision, in the light of the observations and comments of Member States, Switzerland and secretariats of various international organizations (A/8410/Add.1 and Add.1/Corr.1 and Add.2) and taking into account the relevant resolutions and debates of the General Assembly, of provisional draft articles on the matter prepared by the Commission at its twentieth,⁵⁷ twenty-first⁵⁸ and twenty-second⁵⁹ sessions. The Sixth Committee had before it a note by the Secretary-General (A/C. 6/L.821) indicating the correspondence between the numbers allocated to the articles in the final and provisional drafts.

5. At the 1279th meeting, on 11 November, the Rapporteur of the Sixth Committee raised the question whether the Sixth Committee wished to include in its report to the General Assembly a summary of views expressed during the debate on the item. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII) of 8 December 1967, 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 main trends of opinions which emerged in the course of the debate.

II. PROPOSALS AND AMENDMENTS

6. Uruguay submitted a draft resolution (A/C. 6/L.825) concerning the problems of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law referred to in chapter V, section D, of the report of the Commission. The draft resolution, which was subsequently withdrawn in favour of the draft resolution referred to in the next paragraph of this report, read as follows:

"The General Assembly,

"Having considered the report of the International Law Commission on the work of its twenty-third session,

"Believing it necessary to continue the 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 United Nations Charter and to enhance the importance of its role in international relations,

⁵⁷ See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 9*, chap. II, sect. E.

⁵⁸ *Ibid.*, *Twenty-fourth Session, Supplement No. 10*, chap. II, sect. B.

⁵⁹ *Ibid.*, *Twenty-fifth Session, Supplement No. 10*, chap. II, sect. B.

"Mindful of the fact that criminal acts are frequently perpetrated against persons enjoying inviolability under international law, thereby affecting the security of the functions performed by such persons and disturbing normal relations between States,

"Recognizing the importance and urgency of adopting suitable measures to prevent and punish such unlawful acts,

"1. *Requests the International Law Commission to consider the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law and to prepare draft articles regarding such crimes as murder, kidnapping and assaults perpetrated against diplomats and other persons entitled to special protection under international law, with a view to submitting such articles to the twenty-seventh session of the General Assembly;*

"2. *Requests the Secretary-General to invite Member States to submit their comments on the question of the protection of diplomats by 15 March 1972 and to transmit those comments to the twenty-fourth session of the International Law Commission".*

7. At the 1279th meeting the representative of Poland introduced a draft resolution (A/C.6/L.826) sponsored by Canada, Cyprus, Finland, Greece, India, Iran, Japan, Poland, Thailand, Turkey, the United States of America, Upper Volta and Uruguay, later joined by the Central African Republic, Egypt and Tunisia. The text of the draft resolution was identical to that recommended by the Sixth Committee (see paragraph 168 below), except that in section I, paragraph 5, of the operative part of the English text the word "should", which appeared between the words "work", and "decide", was later deleted (see para. 166 below).

8. At the 1280th meeting the representative of Afghanistan proposed an oral amendment to draft resolution A/C.6/L.826 with a view to replacing in the English text the word "should" in section I, paragraph 5, of the operative part by the word "may". The representative of Cameroon proposed to delete that word from the English text. The representative of Afghanistan accepted the revision of the amendment made by the representative of Cameroon.

9. At the 1259th meeting the representative of Uruguay submitted to the Sixth Committee for information a working paper (A/C.6/L.822), prepared for transmission to the Commission, containing the text of a draft convention on the prevention and punishment of crimes against persons entitled to special protection under international law.

III. DEBATE

A. GENERAL COMMENTS ON THE WORK OF THE INTERNATIONAL LAW COMMISSION AND THE PROMOTION BY THE UNITED NATIONS OF THE PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

10. Several representatives expressed appreciation of the useful work accomplished by the Commission at its twenty-third session, mainly for having completed the preparation of the draft articles on the representation of States in their relations with international organizations. Although due to lack of time the Commission did not examine in depth during the session the five other questions currently under consideration, the Commission's report reflected also the stage achieved to date by the Commission in its work on those areas, auguring well, generally speaking, for further progress in the codification of those questions in the near future.

11. In continuing its work of codification, the Commission was acting as an innovator in the struggle to strengthen the rule of law, in the interest of the international community. Considerable progress had taken place in international law over the last two decades, thanks largely to the Commission's work. The Commission was a useful workshop for

initiating studies by providing basic drafts on matters of international law, frequently adopted with few alterations when submitted to States in plenipotentiary conferences. The Commission's achievements as a whole were highly impressive and clearly testified to the extent to which it had accomplished its object of promoting the progressive development and codification of international law. Its work on the law of the sea and the law of treaties represented two outstanding examples of that. Emphasis should be placed, in particular, on the vital importance of the Vienna Convention on the Law of Treaties,⁶⁰ which recognized the existence of rules of *jus cogens* in international law and the invalidity of treaties on the grounds of defective consent. It was to be hoped that the firmly established high traditions of the Commission would be maintained in the future.

12. With reference to the Commission's methods of work, it was noted with satisfaction that the Commission had followed courses which the majority of its members approved. The Commission should feel free to adopt its procedures as circumstances required, such as it had done at its twenty-third session by establishing a small working group. However, it was important to maintain the existing basis of work, which assured every member of the Commission the fullest opportunity to state its views on the matter. The Commission's conclusions should be the result of the consideration by all its members of the matter in question. It was also essential for the views of Member States to be taken into account. Even though that could be a time-consuming task, it nevertheless led to satisfactory results in the long run. Some criticism was, however, expressed of the existing methods of work of the Commission, particularly with regard to the duration of the process of codification of a particular topic. Emphasizing the need for speedier procedures, it was said that shorter sessions devoted to a single topic might achieve quicker and more satisfactory results.

13. The question was raised whether the only conceivable manner of codification and progressive development of a given branch of international law was to be the production of draft articles intended to serve as the basis for an international convention to be concluded through a conference of plenipotentiaries or exceptionally through the General Assembly. In this connexion, it was said by certain representatives that a convention set out the law with a precision which, in some cases, might be excessively rigid and prevent the rules of law from evolving in a manner parallel to the evolution of the social, political or even technological structures on which those rules were based. Furthermore, the fact that a convention bound only those States which were parties to it—unless it had gained sufficiently wide acceptance to be considered as part of customary international law—might seriously limit the scope of the rules set out therein, and consequently jeopardized the effectiveness of the Commission's work. As the scope of international law broadened and the urgency of contemporary requirements became more pressing, different techniques would have to be worked out. Thus, in some cases, according to those representatives, it might be preferable to set out the existing law in a code or in some other non-conventional form. There seemed to be a connexion between the choice of future topics for codification and the process by which the codification of a given topic was to be achieved. The Commission and, where appropriate, the Sixth Committee should therefore consider the fundamental problem of the form the final product should take before embarking on the codification of a topic.

14. A number of representatives emphasized the importance of and expressed gratification at the working relationship between the Sixth Committee and the Commission, which explained much of the progress achieved in the codification and progressive development of international law under the auspices of the United Nations. It was incumbent on the Sixth Committee to indicate the long-term priorities in that work and at the same time to offer its guidance in the future activities of the Commission. In this connexion it was recalled,

⁶⁰ See *Juridical Yearbook*, 1969, p. 140.

inter alia, that the idea that the Commission, as a body of independent experts, should not transmit to the Sixth Committee reports on topics of which it had not completed its examination, had been abandoned since 1954-1955, and that since then the Commission's work, even where uncompleted, was annually the subject of thorough discussion in the Committee, which might be regarded as the true guardian of the Commission's interests. Furthermore, many members of the Commission sat on the Sixth Committee as State representatives. The very full reports which the Sixth Committee had traditionally submitted regarding its debate on the Commission's work had become an indispensable working tool for the Commission. The close links between the two bodies should be maintained, and the Committee should spare no effort to that end. If any changes were contemplated in established practices, they should not be the result of arbitrary administrative decisions, but should be fully considered by the Sixth Committee and, if necessary, by the Commission.

15. Referring in particular to the role of the Sixth Committee, some representatives considered that at a time when international law was becoming increasingly important and was assuming even greater prominence in the work of all the Main Committees of the General Assembly, the Sixth Committee had failed to live up to its special responsibilities. During the last few years there had been a proliferation of organs more or less directly concerned with the codification of international law but the Sixth Committee did not occupy the paramount position among them that it should. Instead of merely commenting on the reports presented to it, which covered only a small part of the field of international law, the Sixth Committee would do well to broaden its horizons and contribute to the actual work of codification. In this connexion, it was considered significant by certain representatives that the General Assembly had refrained from entrusting the Sixth Committee and the Commission with the important work of codifying and progressively developing the law on the peaceful uses of outer space and the uses of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

16. Some representatives drew attention to the report of the Joint Inspection Unit on the programme of recurrent publications of the United Nations (A/8362), which proposed radical changes in recurrent publications of immediate concern to the Sixth Committee. In this respect, emphasis was placed on the Sixth Committee's responsibility to provide the Commission with all the tools it needs for its work. Various criticisms had been made in that report concerning the legal publications of the United Nations. It should not be forgotten, however, that most of those publications were used constantly by the Commission in its work; it should be noted that the Commission had recommended in paragraph 91 of its report on the work of its second session ⁶¹ that the General Assembly should authorize the Secretariat to prepare and issue such publications with as wide a distribution as possible; moreover, that recommendation was in line with article 24 of the Statute of the Commission, ⁶² which provided that the Commission should consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law. The matter was of great importance and should be carefully weighed in the light of the interests of the international legal community. The Committee and, if appropriate, the Commission, should be given the opportunity to study the whole matter before changes were authorized. No decision should be made hastily on the basis of purely bureaucratic considerations.

⁶¹ See *Official Records of the General Assembly, Fifth Session, Supplement No. 12*.

⁶² See General Assembly resolution 174 (II), annex.

B. RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS: DRAFT ARTICLES ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS

17. A considerable number of observations were made during the debate with regard to the final draft articles on the representation of States in their relations with international organizations prepared by the Commission. Such observations related to the draft articles as a whole and their specific provisions, as well as to the final phase of the codification of the topic. Most of the representatives who advanced those observations indicated that they were of a general and preliminary character. At an appropriate stage Governments would make known their position in a more detailed and final manner.

1. OBSERVATIONS ON THE DRAFT ARTICLES AS A WHOLE

(a) *Importance and need of the codification of the topic*

18. The representatives who spoke on the subject congratulated the Commission for successfully completing its work on the draft articles on the representation of States in their relations with international organizations. Praise was also due to Mr. Abdullah El-Erian, the Special Rapporteur on the topic, for his efforts. The draft articles, which covered the related aspects of the two types of mission to international organizations (permanent missions and permanent observer missions), delegations to organs and to conferences and, in an annex, observer delegations to organs and to conferences, constituted an initial major step towards the progressive development and codification of diplomatic law in its application to relations between States and international organizations, most of which were currently governed by special conventions and agreements and particular established practices. The draft articles represented, on the political plane, a draft which, once embodied in an international instrument, would be of considerable help in establishing stable co-operation among States having different social systems and ensuring the maintenance of international peace and security and respect for law in the world.

19. The fundamental importance of the draft articles could be explained by the increasing role of multilateral diplomacy in the life of States, the many changes taking place in international relations as a result of scientific and technical development, and the steadily increasing responsibilities of intergovernmental organizations within the international community. They followed the codification of the diplomatic law applicable to bilateral relations between States made by the Vienna Convention on Diplomatic Relations,⁶³ the Vienna Convention on Consular Relations⁶⁴ and the Convention on Special Missions⁶⁵ which had been adopted on the basis of drafts prepared also by the Commission.

20. Multilateral diplomacy was a relatively new field, and the Commission's draft had had to reflect carefully the differences between this new practice and traditional bilateral diplomacy. The increase in the number of international organizations, the expanding areas of activities of those organizations and the span of time that such activities required had led States to appoint permanent representatives to the United Nations and many other international organizations and to send frequently representatives to the meetings of organs of international organizations and of conferences convened by them. By the time the United Nations had been founded, there was no longer any doubt that permanent missions—perma-

⁶³ See United Nations Conference on Diplomatic Intercourse and Immunities, 1961, *Official Records*, Vol. II (United Nations publication, Sales No. 62.X.1), document A/CONF.20/13 and Corr.1, p. 82.

⁶⁴ See *Juridical Yearbook*, 1963, p. 109.

⁶⁵ *Ibid.*, 1969, p. 125.

nent representatives had already been sent to the League of Nations—could be more useful in co-ordinating co-operative efforts within the framework of international organizations.

21. Certain representatives were of the opinion that representatives of States to international organizations should enjoy full diplomatic status, privileges and immunities. Other representatives noted that despite certain similarities, the legal position of representatives of States to international organizations differed from that of representatives of States accredited to another State. Therefore, neither the Vienna Convention on Diplomatic Relations nor the Convention on Special Missions was applicable to the question of the representation of States in their relations with international organizations. On the other hand, it was recalled that the statutes of organizations, as well as existing special conventions and headquarters agreements, were limited to some aspects of the legal status of representatives of States to international organizations. Other aspects were only regulated by established practices evolved within each particular organization or by domestic legislation, particularly of the host States. The inadequacy of that piecemeal system having been demonstrated by the difficulties which had arisen in practice, it therefore became necessary to codify, on a uniform basis, the general diplomatic law applicable to the relations between States and international organizations. Consequently a world-wide codification of the general law on the matter on the basis of the draft articles drawn up by the Commission would be of great practical value towards the smooth functioning of State representation in international organizations and thus of the organizations themselves.

(b) Scope of the draft articles

22. During the debate the question of the scope of the draft articles as a whole was analysed by several representatives from the following main standpoints: the legal status of international organizations and of the privileges and immunities of the organizations and of entities and officials under their authority; the role of the host State; the right of representation; the forms of representation; the representation of entities other than States or international organizations; and the types of organizations covered by the draft articles.

23. Some representatives pointed out that the topic of relations between States and international organizations included two aspects: first, the representation of States to those organizations; and second, the representation of international organizations to States, which covered the legal status of the organizations and the prerogatives and immunities of international organizations and of entities and officials under their authority. The draft articles dealt only with the first of those aspects. Support was expressed for the Commission's decision to concentrate on that aspect and defer consideration of the second aspect, which required a different approach. In the opinion of some representatives the second aspect had been more or less covered by previous conventions. Other representatives, however, considered that the Commission should study in the future the legal status of the organizations and the prerogatives and immunities of international organizations and of entities and officials under their authority.

24. Some representatives regretted that the pre-eminent role of the host State, which was referred to in particular in articles 20 to 41 and 51 to 77, was not reflected in the title of the draft, which would more logically read "Draft articles on the representation of States in their relations with international organizations and host States". The purpose of the draft as a whole was not only to regulate the relations between States and international organizations but also to define the status of missions and delegations of sending States in relation to the host State in whose territory the international organization concerned was situated. It was therefore important to make a clear distinction between the relations between the sending State and the international organization, and the relations derived from the juridical position vis-à-vis the host State of the missions and delegations of the sending State. As

regards the status of the host State as a sending State, some representatives supported the position explained in paragraph 53 of the Commission's report, in particular that the privileges and immunities of members of the mission or delegation of the host State should be decided in accordance with the internal law of that State.

25. The opinion was expressed that, although the draft articles did cover diplomatic law applicable to representation of States in international organizations, and particularly the question of privileges and immunities to be granted to such representations, neither article 2, on the scope of the articles, nor the rest of the draft dealt with every aspect of the matter, particularly the vital question of the right of States to be represented. The title of the draft did not, therefore, correspond exactly to the subject-matter of the draft. Current practice tended to fall back for that question on the relevant rules of the organizations concerned; however, if that approach was accepted, other questions such as privileges and immunities could also fall back on the conventions and agreements concluded between organizations and States, without the necessity for drafting a general convention on the matter. The problem of the right of representation to international organizations and conferences of universal character, which was being raised in the United Nations itself with regard to the representation of certain States, could no longer be postponed. The basis of that right was essentially legal, and the only way of overcoming the present difficulties in international relations was to study it from the legal point of view. Consequently, in order to complete its studies of relations between States and international organizations, the Commission should once more examine the question of the right of representation of States in addition to that of the representation of international organizations to States.

26. In the view of some representatives, although the title of the draft referred to representation of States in their relations with international organizations, the bulk of its provisions dealt with inter-State relations in the strict meaning of the term, albeit in respect of their membership of an organization. The structure of the draft articles took into account the different possible forms of State representation. A State could be represented either permanently or temporarily, as a member, or as an observer. That classification did not, however, include another form of representation in State-organization relationships, namely that of special missions or delegations sent to negotiate with the organization itself. That was a serious gap, since the case often arose in practice.

27. Some representatives expressed regret that the draft articles did not include some provisions on representatives of entities other than States (e.g. representatives of national liberation movements) and disagreed with the view expressed on that point in paragraph 54 of the Commission's report. Such representatives were more akin to representatives of States than to representatives of international organizations. An attempt should be made to devise rules under which representatives of liberation movements could discharge their functions satisfactorily and in safety.

28. Several representatives observed with satisfaction that the Commission included in the draft an article, namely article 79, dealing with non-recognition of States or Governments or absence of diplomatic or consular relations. It was also noted with approval that the Commission had decided it was inadvisable to deal in the draft with the possible effect of armed conflict on the representation of States in view of the extreme complexity of the issue.

29. The limitation of the draft articles to the representation of States in their relations with international organizations of "universal character" was generally endorsed (see also specific comments on article 1, paragraph 1, sub-paragraph (2), in paragraph 52 below). The suggestion was, however, made that the topic of regional organizations should be studied at a later stage by the Commission taking into account that wide latitude should be given to those organizations in determining their relations with Governments.

(c) *The question of the protection of the interests of the sending and host States*⁶⁶

30. A number of representatives expressed the hope that the provisions relating to the host country would be revised, since the draft seemed to give the host State many obligations and few rights; its prior consent for the establishment of a mission or appointment of a representative was not required, nor did it have the possibility of safeguarding its security and the maintenance of order by expelling or declaring *persona non grata* a person who had seriously violated its laws. The interest of host States should be carefully borne in mind so as not to create unnecessary burdens for them. Some representatives considered that the relevant provisions should be made more flexible, in order to establish a just balance between the interests of the host State and the functional needs of the sending State.

31. Other representatives, however, saw no justification for the criticisms of various provisions of the draft on grounds relating to the security of the host State. It should not be forgotten that the host State could exercise real control over the international organization by abusing rights, since it had at its disposal all the legal machinery for repression. In any case it should be noted that the host State voluntarily assumed that role, since a State could refuse to become a host State if it so decided. In the view of some representatives the draft articles established a fair balance between the interests of the sending State and those of the host State, whose responsibilities were offset by the moral and material advantages accruing to a State which served as host to an international organization. The draft tried to preserve the independence of international organizations while safeguarding the security of the host State.

32. It was also said that two essential requirements should be taken into consideration, namely to ensure the unhampered exercise of the functions of the missions and delegations of the sending State and to respect the sovereignty of the host State and non-interference in its domestic affairs as well as its right not to allow those principles to be violated by acts contrary to the diplomatic function.

(d) *Missions and delegations covered by the draft articles and the annex thereto*

33. The inclusion in the draft articles of provisions concerning permanent missions and delegations did not give rise to any objection. Some representatives approved expressly the regulation by the draft articles of the status of permanent missions and delegations to organs and to conferences. The draft thus filled a legal gap which was all the more serious because of the need for a permanent relationship between the organization and its members and the fact that the number of conferences and organs, as also the length of their sessions, was constantly increasing. Different views were, however, expressed with regard to the regulation in the draft and its annex of the status of permanent observer missions and observer delegations.

34. Certain representatives were gratified that a legal basis had been provided for State representation through permanent observer missions by bringing their establishment within the rules applicable to diplomatic relations. This was a matter of particular importance to new States. Besides, until the principle of universality was fully applied, non-member States should be allowed to follow the work of the organization closely. The provisions concerning permanent observer missions would permit truly universal participation in the work of international organizations. In this connexion, the view was expressed that the rule whereby some international organizations did not accept observers was understandable if it was applied on a general basis, but that it was totally unacceptable if it was applied according to a discriminatory principle. It was to avoid such discrimination that article 5,

⁶⁶ See also below comments on facilities, privileges and immunities accorded by the draft articles as a whole and on specific provisions, particularly on articles 75, 81 and 82.

paragraph 2, and article 80 had been included in the draft. The view was also expressed that the institution of permanent observer missions would exist as long as certain States were denied access to international organizations of universal character. Finally, it was pointed out that because of the latitude afforded by article 4, the provisions on permanent observer missions might be ineffectual, since they could be unwelcome to host States. Some representatives noted with gratification that the Commission had not established too clear a distinction between permanent missions and permanent observer missions. However, it would have been preferable to state explicitly in the draft articles that any problems presented by the two types of missions should be approached from the same viewpoint.

35. Some representatives considered that permanent observer missions should enjoy a legal status only if express provision for such status was made in the multilateral instruments applicable to the organization or in the agreement between the organization and the host State. They were not convinced of the need to formulate general rules placing permanent observer missions of non-member States on more or less the same footing as the permanent missions of member States, as had been done in the draft by the consolidation of the provisions relating to both types of mission. The participation of member States was essential to the realization of the objectives of an organization, while the activities of non-member States were not. Certainly, contact between international organizations and non-member States was useful and certain facilities should be accorded to promote such contact, but the basic distinction should be preserved. After all, the maintenance of permanent observer missions was not prevalent outside the United Nations and their status was determined merely by practice. For those reasons consideration might be given to two separate conventions, one dealing with the representation of member States in their relations with international organizations and the other with non-member States. The latter could take the form of an optional protocol. Adoption of that suggestion would obviate the difficulties in question and facilitate the accession of a greater number of States to the proposed convention.

36. Several representatives expressed gratification that the Commission had been able to consider the question of observer delegations to organs and to conferences and to draw up, in accordance with the wishes expressed by certain Governments, a set of rules thereon which had been annexed to the draft articles. The annex, without which the draft would have been incomplete, represented a new and valuable contribution to the codification of international law in the area covered by the draft. Some of those representatives regretted, however, that observer delegations had been relegated merely to an annex and that the Commission had not drawn up more detailed rules on the subject. Other representatives expressed reservations regarding the desirability or necessity of drawing up rules concerning observer delegations. It was indicated in this connexion that many of the comments critical of the draft articles applied with equal force to the provisions of the annex.

37. The representatives who spoke in favour of formulating rules regarding observer delegations indicated that observer delegates, although not belonging to a mission or an embassy, were none the less representatives officially designated by their Governments. In addition, the provisions of the annex had an important role to play in enabling States which were not yet members of international organizations to follow the work of those organizations. Also, the codification of the rules concerning observer delegations was essential in order to enable the representatives of national liberation movements and of peoples that were victims of colonialism, racial discrimination and *apartheid* to participate in international life in an appropriate way.

(e) *Facilities, privileges and immunities accorded by the draft articles*

38. Three main trends emerged, generally speaking, from the debate with regard to the question of the facilities, privileges and immunities of missions and delegations. A

first group approved the standpoint taken by the Commission for the formulation of the corresponding articles of the draft. A second group endorsed that standpoint in general but insisted on the assimilation to the full range of diplomatic privileges and immunities. Lastly, a third group expressed reservations about the Commission's approach by considering that it implied an unjustified departure from the basic criterion of "functional necessity".

39. Some representatives considered that the Commission had been wise in applying, in a selective manner, the principles of "functional necessity" and of "representative character" to the question of the facilities, privileges and immunities of missions and delegations. Thus, a fair balance had been achieved between the functional and the representational approach. There was no theoretical or practical reason for establishing a distinction between the privileges and immunities of representatives of States according to whether their functions were concerned with bilateral or multilateral diplomacy. By following as far as possible the privileges and immunities provided for in the Vienna Convention on Diplomatic Relations and the Convention on Special Missions the draft safeguarded the interests of the sending State. At the same time, the draft provided means by which the host State could exercise the necessary control on foreign agents residing in its territory. Although different from the safeguards offered in the case of bilateral diplomacy, in view of the different nature of the relations between the sending State and the host State in the context of the diplomatic law relating to international organizations, those safeguards were appropriate for securing the protection of the host State. It was also said that the reason why the Convention on Special Missions had not yet come into force was not the extent of the privileges and immunities accorded thereby but rather the very nature of the rules codified by the Convention and its *modus operandi*.

40. Other representatives supported the approach generally followed by the Commission, namely to base in principle the formulation of the facilities, privileges and immunities of missions and delegations to international organizations and conferences on the corresponding articles of the Vienna Convention on Diplomatic Relations and the Convention on Special Missions. They stressed, however, that the representative character and functions of those missions and delegations justified the general trend in contemporary international relations of granting them the full range of diplomatic privileges and immunities, without discrimination and independently of their permanent or temporary nature. Full diplomatic privileges and immunities would help to ensure the undisturbed performance by the missions and delegations of their functions by protecting them against serious breaches of privileges and, therefore, would contribute to the attainment of the objectives of the organization concerned. The host State was required to assume certain responsibilities because it had given its consent to establishing the organization in its territory, but the privileges and immunities of the missions and delegations should be defined in terms of the sending State's relations with the organization.

41. Other representatives considered that the objective criterion of functional necessity, embodied in Article 105 of the Charter of the United Nations, rather than theories based on the representative character or on unjustified parallels, should be the point of departure for according facilities, privileges and immunities to missions and delegations. The formulation of those privileges and immunities should not depart from existing rules and practices of the United Nations and specialized agencies. It was recalled that in the case of multilateral diplomacy the principle of reciprocity could not come into play. The Commission had gone too far in the development of international law in the matter without producing sufficient justification. They felt that the general trend in the international community was to restrict rather than enlarge the categories of persons enjoying privileged treatment and also to limit the extent of privileges and immunities granted. In many countries there was public and parliamentary resistance to the proliferation of organizations and individuals entitled to

special privileges. A realistic approach could not but facilitate the ratification of the proposed convention by many countries. Some representatives considered that it would perhaps be wise to stress the notion of protection and facilities rather than that of privileges and immunities. Lastly, certain representatives questioned the need to lay down a scale of privileges and immunities for international organizations in general.

42. Some representatives welcomed that the draft equated in general the facilities, privileges and immunities of permanent missions to international organizations with those of permanent diplomatic missions codified in the Vienna Convention on Diplomatic Relations. They considered it justified on the basis of the functional necessity and in the light of existing practices and principles underlying international agreements concerning relations between States and international organizations. Certain representatives regretted that the privileges and immunities extended to permanent missions in the draft were somewhat more limited than those generally accorded by diplomatic law to representatives of States. Finally, other representatives considered it sufficient to find a formula which would ensure the independence of the permanent missions without going so far as to grant them diplomatic status. In their view the principal role of permanent missions was to fulfil the functions which the State appointing them exercised, together with other States, within the framework of a given international organization; such functions were not the same as those involved in the relations between two sovereign States.

43. Some representatives expressed misgivings about the scope of facilities, privileges and immunities accorded to permanent observer missions. They pointed out that the draft in most cases granted the same privileges and immunities to permanent missions and permanent observer missions regardless of the differences between the functions of the two types of mission. In their opinion permanent observer missions of non-member States should not be placed on the same footing as permanent missions of member States. They should only enjoy such privileges and immunities as were necessary for their functioning. In support of that point of view it was said that permanent observer missions did not participate in the work of the organization, were not represented in the organization, did not have the same representative capacity as permanent missions and a treatment on a basis of reciprocity could not apply to them. As a possible course of action it was suggested to grant permanent observer missions limited privileges and immunities, leaving anything further to be negotiated between the organization concerned and the host State.

44. Other representatives stressed that permanent observer missions should enjoy similar privileges and immunities to those of permanent missions because it was required by the exercise of their functions. Moreover, in both cases what was involved was representation of the sending State and there was thus no justification for drawing any distinction between the two types of mission. It was also recalled that an appropriate regulation of the status of permanent observer missions would help those newly-independent States which lacked the resources to maintain a wide network of permanent missions. Finally, the view was expressed that the privileges and immunities accorded by the draft to permanent observer missions might appear to be too extensive, but weighty arguments existed in favour of equal treatment for both types of mission. Thus, like permanent missions, permanent observer missions stayed continuously in the host State, and although their representative functions might be lesser, it was important that their relations with the organization should remain undisturbed.

45. The facilities, privileges and immunities granted in the draft to delegations were considered by some representatives as going beyond what was warranted by their functional needs and existing rules and practice on the matter. In their view, the Convention on the Privileges and Immunities of the United Nations ⁶⁷ and the Convention on the Privileges

⁶⁷ See General Assembly resolution 22 A (I).

and Immunities of Specialized Agencies⁶⁸ provided an adequate point of reference and should be regarded, as a general rule, as the maximum standard for privileges and immunities enjoyed by delegations. Other representatives noted with satisfaction that the draft accorded to delegations, in their capacity as representatives of States, the privileges and immunities necessary for the discharge of their functions. Those representatives found no justification for the theory that "permanent missions had a representative character whereas delegations to organs of international organizations, as for instance the General Assembly, or conferences had merely a functional character.

46. Some representatives considered that no distinction should be made between the treatment accorded, on the one hand, to missions and delegations and, on the other, to observer delegations, and criticized the provisions of the annex which made such a distinction to the disadvantage of observer delegations. Other representatives saw no need to grant observer delegations a régime as liberal as that which would be granted under the annex. The proposed privileges and immunities not only exceeded the requirements of observer delegations but were also inconsistent with the practice of international organizations belonging to the United Nations family. Only those features of the annexed draft articles could be endorsed which granted functional facilities, privileges and immunities.

(f) *Structure of the draft articles*

47. A number of representatives expressed agreement with the structure of the draft which, in their opinion, represented a considerable improvement over previous versions. The original number of articles had been appreciably reduced, making it a shorter and clearer draft, and its provisions were set out in a logical and practical manner. Several representatives approved in particular the consolidation of the provisions concerning permanent missions and permanent observer missions, which had made the draft a remarkably concise text. It was also noted with approval that the draft articles followed *mutatis mutandis* the same arrangement for all the representatives of States with which it dealt.

48. Some representatives, however, considered that the structure of the draft articles was susceptible of improvement. Thus, reservations were expressed by certain representatives as regards the consolidation of the provisions concerning permanent missions and permanent observer missions, since it had obscured the essential differences between the obligations and functions, and consequently the needs, of the two kinds of missions. It was also said that some work would still have to be done on the draft articles to make them more precise, by defining more clearly the scope of some of those articles, to eliminate needless duplication and redundancy and to harmonize the legal terminology in related provisions of various articles. For instance, it was observed that a certain amount of repetition still seemed to remain in parts II and III of the draft in respect of provisions relating to immunities and privileges. It was also said that it should be possible to consolidate further the two sets of those provisions while retaining only a limited number of articles to allow for the differences. If it was finally decided to incorporate the annex concerning observer delegations into the draft articles, an additional drafting effort should be made so as to avoid repetitions wherever possible.

49. Some representatives endorsed the initiative taken by the Commission in dividing the draft into parts, sections and articles and giving headings to them. It was, however, observed that the structure of the draft articles could be organized differently, namely according to the specific role played by each article within the internal logical structure of the draft as a whole. Thus, it was indicated from that standpoint, the articles might be divided into three major parts. The first part would include all the articles dealing with

⁶⁸ See General Assembly resolution 179 (II).

rights—privileges and immunities—and obligations of the sending States and the rights and obligations of the host State. The second part would comprise the articles relating to the application of the instrument, establishing its scope, as did articles 2, 3 and 4, and machinery for its effective application, such as that in articles 81 and 82. The third and last part would bring together the articles relating to the functions of missions and delegations.

2. COMMENTS ON SPECIFIC PROVISIONS OF THE DRAFT ARTICLES

50. A certain number of tentative comments were made during the debate on particular articles of parts I-IV of the draft. Some representatives agreed expressly with the Commission's decision to delete certain provisions which had been included in the provisional draft, particularly as regards single representation and the establishment of offices of missions elsewhere than in the host State. No comments were advanced on the provisions of the annex (Observer delegations to organs and to conferences), except occasionally and in connexion with similar terms used or provisions included in the draft articles themselves.

Part I. Introduction

Article 1 (Use of terms)

51. Certain representatives considered that the definition of the expression "international organization of universal character" could be improved by making it more specific. Some observed that a mission or delegation to an international organization which did not have the characteristics mentioned in article 1, paragraph 1, subparagraph (2) could not avail itself of the status envisaged in the draft articles. It was also added that that status should be granted not to missions or delegations to all existing world organizations but solely to missions or delegations to organizations of universal character whose activities were of great importance for the world community and of such a nature that the functions of the missions or delegations required that they should have such status.

52. Others were in favour of widening the scope of the definition of the expression "international organization of universal character" given in article 1, paragraph 1, subparagraph (2), or, at least, of avoiding restrictive interpretations of such a definition. Thus, it was mentioned that it might be advisable to consider whether the word "universal", which should include all States and could admit of no exceptions, would be actually applicable to any international organization in existence—independently of the fact that some of them potentially could admit all States to membership—and, consequently, whether it might not be preferable either to substitute a different word or approach the definition in a different way altogether. It was also suggested to depart from purely geographical criteria and to lay more stress on the general nature of the functions carried out by the States members of the organization concerned. In this connexion, it was pointed out that in the light of the present definition of the expression it was not clear whether the draft articles were supposed to apply to the United Nations Office at Geneva, the regional economic commissions and the various regional offices of specialized agencies. Finally, the view was also expressed that universality was the essential element of the definition and that therefore article 1, paragraph 1, subparagraph (2), should stress it by indicating that international organizations of a universal character were open to all States without discrimination, in the exercise of their right to participate in international co-operation.

53. With regard to the term "organ", it was noted that the definition in article 1, paragraph 1, subparagraph (4), included the exceptional case where an organ had both States and individuals as members. Certain representatives indicated that the definition of the term "organ" should also cover the case of organs where members were elected by States, but served in their individual capacity.

54. Finally, the definition of the expression "members of the diplomatic staff" was considered particularly important by certain representatives. They recalled that a definition similar to that embodied in article 1, paragraph 1, subparagraph (22), of the draft articles had been added by the Sixth Committee to the Convention on Special Missions in order to make diplomatic treatment applicable to advisers and experts who, while not holding a rank established by the traditional classification of diplomatic personnel, nevertheless performed functions of a kind justifying such treatment. Opposition was also expressed to any enlargement of the notion of "diplomatic staff" and of the privileges and immunities accorded thereto.

Article 2 (Scope of the present articles)

55. As to the scope of application of the draft articles, it was generally agreed that the formula worked out by the Commission was satisfactory in so far as it would make the draft applicable to the representation of States in their relations with international organizations of universal character and to their representation at conferences convened by or under the auspices of such organizations but, at the same time, left it open to States to decide to apply the provision of the draft in respect of international organizations of non-universal or regional character and to conferences convened by or under the auspices of such organizations.

56. Considering that the meaning of the concept "international law" referred to in article 2, paragraphs 2 and 3, was unclear, it was said that those paragraphs should be deleted from the article. It was also indicated that in article 2 the expression "international organizations with universal concerns" should be used instead of the expression "international organizations of universal character". Such a change would entail a corresponding modification in article 1, paragraph 1, subparagraph (2), of the draft articles.

Article 3 (Relationship between the present articles and the relevant rules of international organizations or conferences) and article 4 (Relationship between the present articles and other international agreements)

57. Some representatives underlined that articles 3 and 4 gave a certain flexibility to the application of the uniform régime established in the draft and welcomed the fact that, as drafted, the provisions of those articles would safeguard the relevant rules of particular international organizations or conferences as well as existing or future international agreements between States or between States and international organizations of universal character. Others stated that if the convention to be elaborated on the basis of the draft articles was to be really effective it must become the law in the relations between States and international organizations and should take precedence over the rules and agreements that existed when it came into force.

58. With regard to article 3, certain representatives expressly endorsed the approach of the Commission to the matter as well as its understanding that the expression "relevant rules of the Organization" should include all relevant rules and established practices. Recalling that the statutes and other basic instruments of certain international organizations made their rules incapable of derogation by extraneous agreements, those representatives considered that each organization should be free to establish and develop its own rules according to its functional needs and context. Others pointed out that the relevant rules of international organizations of universal character should be applicable only to the extent to which they did not contravene the principle of universality and the obligation to ensure equal rights of representation, without any discrimination, for all States.

59. Several representatives noted with satisfaction that, as provided for in article 4, the draft articles were without prejudice to existing international agreements and did not preclude the conclusions of future agreements on the same subject-matter. However,

the view was also expressed by others that by reserving existing international agreements, particularly headquarters agreements and conventions on privileges and immunities of international organizations, article 4 left actually only questions of secondary or academic importance to be governed by the proposed convention.

60. Certain representatives said that problems of incompatibility between the rules laid down in existing agreements and the draft articles might arise unless steps were taken to define the latter as precisely as possible. In this regard, the view was expressed that the proposed convention should supplement agreements already in force only to the extent that the convention would be made applicable to any given organization by virtue of a special agreement. On the other hand, it was observed that until the proposed convention came into effect universally, the rights and obligations of the States Parties to earlier international agreements in force and to the new convention should be governed by the rules relating to the application of successive treaties relating to the same subject-matter, as provided for in article 30 of the Vienna Convention on the Law of Treaties.⁶⁹

Part II. Missions to international organizations

Article 5 (Establishment of missions)

61. It was generally considered that the provisions of article 5 would promote international co-operation. Some representatives underlined that according to paragraphs 1 and 2 of the article neither type of mission, namely permanent missions of member States and permanent observer missions of non-member States, could be established as of right, but only if and to the extent that the organization consented to it in accordance with its rules. This was particularly welcomed by certain representatives with regard to permanent observer missions. Stressing that every non-member State had a right to establish a permanent observer mission to an international organization of universal character, certain representatives said that paragraph 2 of the article could be improved by providing that any non-member State might establish a permanent observer mission to an international organization of universal character if the member States had the right to have permanent missions.

Article 6 (Functions of the permanent mission) and article 7 (Functions of the permanent observer mission)

62. Some representatives expressed satisfaction at the fact that the draft had two separate articles on the respective functions of the permanent missions and of the permanent observer missions and agreed generally with the present drafting of articles 6 and 7. Certain representatives considered that those articles did not solve adequately all the problems involved in the matter they covered and that the formulation of some of the functions enumerated therein should be improved.

63. So far as article 6 was concerned, the functions of ensuring the representation of the sending State to the organization (subparagraph (a)), negotiating with or in the organization (subparagraph (c)) and promoting co-operation for the realization of the purposes and principles of the organization (subparagraph (e)) were singled out by some representatives as particularly important. The view was expressed that subparagraph (a) of the article did not clearly define the representative function of a permanent mission in all the complexity it might involve in the case of representation in an international organization. When exercised in an international organization, the representative function was not uniform in nature as in bilateral diplomacy. An international organization might be considered as a single entity with which the State established a series of relations of a bilateral nature, or as

⁶⁹ See foot-note 60.

the outcome of joint action by all the member States of which it was made up, in which case the State was not represented, in the strict sense, in the organization but was in fact a part of it. In other cases a State was represented in an organization through persons who did not act as representatives of the State but as members or officers of an organ at the service of the organization. Finally, it was added that the omission of the function of diplomatic protection should also be reconsidered.

64. So far as article 7 was concerned, certain representatives pointed out that the article rightly emphasized the representative nature of such missions, while others were opposed to any tendency to confuse the status of representatives with that of observer, for example, by the use of the word "representation" in subparagraph (a) of the article. Doubts were expressed by others concerning the wisdom of distinguishing between the negotiating function of both types of missions by providing in subparagraph (c) that a permanent observer mission could negotiate "with" the organization and not "with or in" the organization as in subparagraph (c) of article 6. In their view, non-member States needed to negotiate with member States just as much as the latter needed to negotiate with each other. It was said that the words "when required" in subparagraph (c) of article 7 were unnecessary in the light of articles 3 and 4 of the draft. Finally, certain representatives underlined the importance of article 7 for its implied recognition of the principle of universality in the activities of international organizations of universal character.

Article 8 (Multiple accreditation or appointment)

65. It was said that the future convention on the representation of States in their relations with international organizations should be a self-contained and autonomous unit and that, therefore, it would be preferable to make mention in article 8 of concurrent accreditation in respect of diplomatic missions to States, or of a consular post, and missions to organizations although the performance by diplomatic agents and consular officers of representative functions to or in an international organization had already been regulated by the Vienna Conventions on Diplomatic Relations and on Consular Relations, as explained by the Commission in the commentary to article 74.

Article 9 (Appointment of the members of the mission)

66. The view was expressed that the freedom of sending States to select the members of their missions, like all other freedoms, could not be absolute. A host State could not tolerate, for example, that a member of a diplomatic mission expelled from his territory as *persona non grata* for being engaged in espionage activities could return shortly after as a member of the mission of his country to an international organization. The same observation would apply to article 43 (Appointment of the members of the delegation) and article 76 (Entry into the territory of the host State).

Article 11 (Accreditation to organs of the organization)

67. It was said that the expression "observer delegate" in article 11, paragraph 3, seemed, at first sight, a contradiction in terms.⁷⁰

Article 15 (Notifications)

68. It was considered surprising that article 15, paragraph 1 (b), required the sending State to notify the organization of the arrival and final departure of "any person belonging to the family of a member of the mission" and not only of those members of his family who enjoyed privileges and immunities, namely those forming part of his household.

⁷⁰ The expression "observer delegate" is used in article A (Use of terms) of the draft articles on observer delegations to organs and to conferences annexed to the Commission's report.

Article 16 (Chargé d'affaires ad interim)

69. Certain representatives considered that to introduce the concept of chargé d'affaires *ad interim*, a well-established notion in bilateral diplomacy, into the realm of multilateral diplomacy might lead to confusion. Noting that the corresponding article of part III of the draft, namely article 48, by using the term "acting head of the delegation" adhered more closely to the terminology normally used in multilateral diplomacy, they indicated that perhaps it would be more appropriate to follow *mutatis mutandis* the same terminological approach for missions in article 16.

Article 17 (Precedence)

70. It was said that article 17 did not serve any useful purpose and was therefore unnecessary.

Article 19 (Use of flag and emblem) and article 20 (General facilities)

71. On the basis of their respective functional needs the above articles establish a distinction between the treatment accorded to permanent representatives and permanent observers (article 19, paragraphs 1 and 2) and to permanent missions and permanent observer missions (article 20, paragraph 1). Certain representatives criticized such a distinction, while others approved it. (See also comments on article 51 in paragraph 88 below.)

Article 21 (Premises and accommodation)

72. It was suggested to amend article 21, paragraph 1, to read: "The host State shall facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for the mission."

Article 22 (Assistance by the organization in respect of privileges and immunities)

73. Stressing that the obligation of the organization to assist the sending State, the mission and the members of the mission was fairly obvious and that article 20, paragraph 2, attached no reservation to that obligation, it was considered that the words "where necessary" should be deleted from article 22.

Article 23 (Inviolability of the premises)

74. Some representatives expressed serious reservations with regard to the last sentence of article 23, paragraph 1. In their view that paragraph should be brought into line with the corresponding provision of the Vienna Convention on Diplomatic Relations of 1961. The notion of assumed consent in case of fire or other disaster that seriously endangers public safety was subject to the subjective evaluation of the host State and, therefore, it opened the way to abuses which might result in the very negation of the principle of inviolability of the premises of the mission. Similar reservations were expressed by those representatives with regard to article 54 and article N of the annex concerning the inviolability of the premises of the delegation and of the observer delegation.

75. Considering that it was necessary to provide specifically for cases where public safety was threatened, other representatives supported the inclusion of a sentence that, like the last sentence of article 23, paragraph 1, was modelled on the corresponding provision of the Convention on Special Missions. The comment was also made that the wording of that sentence was perhaps too restrictive of the presumption of consent; it was suggested to broaden it by including the criterion that "a reasonable effort had been made to obtain the consent of the head of mission".

76. The need to implement strictly the "special duty" of the host State to protect the premises of the mission, provided for in article 23, paragraph 2, was underlined by certain

representatives. In this connexion, it was said that the "special duty" should be regarded as evidence of customary law and that the obligation to make reparation where it had been breached should be recognized.

Article 24 (Exemption of the premises from taxation)

77. It was suggested that the words "and other property" be inserted after the words "The premises" in article 24, paragraph 1.

Article 26 (Freedom of movement)

78. Recalling that the freedom of movement had been abused in the past, it was stated that article 26 should provide, as article 57 did for delegations, that the host State ensured to all members of the mission such freedom of movement and travel in its territory as is necessary for the performance of the tasks of the mission. In this connexion, the observation was made that the freedom of movement granted to members of missions was already subject to the laws and regulations of the host State relating to zones prohibited for reasons of national security.

Article 28 (Personal inviolability)

79. It was suggested that a second paragraph be added to article 28 reading:

"This principle does not exclude either measures of self-defence, or in exceptional circumstances, measures to prevent the head of mission and members of the diplomatic staff of the mission from committing a serious crime or offence."

(See also comments on article 36 in paragraph 83 below.)

Article 30 (Immunity from jurisdiction)

80. Some representatives noted with satisfaction the inclusion in article 30, paragraph 1 (d), as an exception to the principle of immunity from civil and administrative jurisdiction, the case of an action for damages arising out of an accident caused by a vehicle used by the person in question outside the exercise of the functions of the mission where those damages are not recoverable from insurance. It was said that that subparagraph, as the corresponding provision of article 61 relating to the immunity from jurisdiction of members of delegations, would fill a gap in existing practice and would help to eliminate the risk of friction between the host State and the sending State. Certain representatives indicated that they would be prepared to accept a stronger provision on the matter requiring members of missions to insure their vehicles against third party liability. Other representatives criticized paragraph 1 (d) because in their view it would establish an unacceptable analogy between permanent and special missions.

Article 31 (Waiver of immunity)

81. Certain representatives considered that article 31, paragraph 5, as the corresponding provision of article 62 concerning delegations, was a regression from article 34 of the provisional draft,⁷¹ which made it obligatory for the sending State to waive immunity for its nationals in appropriate instances, as was the case in section 14 of the Convention on the Privileges and Immunities of the United Nations. It was also said by others that the importance of paragraph 5 should not be underestimated, since it imposed on the sending State the duty to "use its best endeavours to bring about a just settlement" where immunity from jurisdiction was not waived. Reference was also made to the requirement that the waiver must always be expressed (paragraph 2) and to the necessity for separate waiver in respect of the execution of the judgement (paragraph 4).

⁷¹ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, p. 10.

Article 33 (Exemption from dues and taxes)

82. With regard to this article, as well as the corresponding article 64 on delegations, it was said that the added value tax was an indirect tax incorporated in the price of goods offered on the market, the nature of which was not affected by the fact that it could be separated from the prices of goods.

Article 36 (Privileges and immunities of other persons)

83. Reservations were expressed concerning the extension of the privileges and immunities accorded in article 36, paragraphs 1 and 2, to members of the family of the head of mission and members of the family of a member of the diplomatic staff of the mission as well as to members of the administrative and technical staff of missions and members of their families. Thus, for instance, it was said that article 36, paragraph 1, extended the personal inviolability of the head of mission and the members of the diplomatic staff of the mission, as provided for in article 28, to members of their respective families with the result that the host State would be required to assume the same obligations in regard to the personal inviolability of the head of a mission and the personal inviolability of a member of the family of a member of the diplomatic staff of a mission. In this connexion, it was also said that in some cases the functional criterion would be difficult to apply, particularly to the families of members of a mission.

Part III. Delegations to organs and to conferences

Article 43 (Appointment of the members of the delegation)

84. (See comments on article 9 in paragraph 66 above.)

Article 46 (Size of the delegation)

85. The observation was made that article 46 would not be used by the host State so as to impede those taking part in the work of conferences and organs of organizations or the activities of the conferences and organs themselves.

Article 48 (Acting head of the delegation)

86. (See comments on article 16 in paragraph 69 above.)

Article 50 (Status of the Head of State and persons of high rank)

87. The suggestion was made that in article 50, paragraph 1, the word "general" should be inserted before "international law". With regard to paragraph 2 of the article it was said that the expression "persons of high rank" was ambiguous and that international law did not accord any especial status to such persons in international relations.

Article 51 (General facilities)

88. Article 51, like the corresponding provision for a permanent mission in article 20, paragraph 1 (a), referred to "all facilities", whereas the parallel article (article H) of the annex referred to "the facilities required". In this connexion, it was pointed out that such a substantive distinction was unjustified and that "all facilities" should also be accorded to an "observer delegation".

Article 53 (Assistance in respect of privileges and immunities)

89. The view was expressed that in conformity with present-day practice it was not for the organization or conference but rather for the host State to assist the sending State, its delegation and the members of the delegation in securing the enjoyment of such privileges and immunities as were necessary for the discharge of their functions.

Article 54 (Inviolability of the premises)

90. It was said that the inviolability of the premises of the delegation should not apply to hotel rooms. (See also comments on article 23 in paragraph 74 to 76 above.)

Article 57 (Freedom of movement)

91. It was suggested to delete the words “as is necessary for the performance of the tasks of the delegation” because they might be interpreted in an unduly restrictive manner. (See also comment on article 26 in paragraph 78 above.)

Article 61 (Immunity from jurisdiction)

92. Certain representatives regretted that, despite the criticisms that had been voiced with regard to the scope of the proposed privileges and immunities, the Commission had retained in article 61 alternative A of article 100 of the provisional draft,⁷² namely the version which was the most far-reaching in scope. In their view the matter should be approached from a strictly functional standpoint, along the lines of the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies. Other representatives approved the text proposed by the Commission for article 61 as well as the explanations given on the subject in paragraph (4) of the commentary on the article. (See also comments on article 30 in paragraph 80 above.)

Article 62 (Waiver of immunity)

93. (See comments on article 31 in paragraph 81 above.)

Article 64 (Exemption from dues and taxes)

94. Reservations were expressed on the argument advanced in paragraph (2) of the commentary on article 64 in regard to exemption of the members of the delegations from sales taxes. (See also comments on article 33 in paragraph 82 above.)

Part IV. General provisions

Article 75 (Respect for the laws and regulations of the host State)

95. Stressing the importance of article 75, some representatives underlined that careful consideration should be given to it. Different views were expressed on the present formulation of the article. Some considered that the article established a proper balance between the interests involved, while others wondered whether its provisions went far enough to secure the protection of host State or to avoid conflicts between the sending and the host States.

96. The provisions of paragraph 1 according to which all persons enjoying privileges and immunities had the duty to respect the laws and regulations of the host State and not to interfere in the internal affairs of that State received general support.

97. With regard to paragraph 2, certain representatives were of the opinion that although it did provide that the sending State was under the obligation to recall a person enjoying immunity from jurisdiction, terminate his functions or secure his departure where the person concerned committed a “grave and manifest violation of the criminal law of the host State”, the host State, if a dispute arose concerning the nature of the violation, had no recourse except the consultation and conciliation procedures laid down in articles 81 and 82. Because those procedures might be slow to ensure protection, it was said that it would be advisable

⁷² *Ibid.*, Twenty-fifth Session, Supplement No. 10, p. 24.

to add a provision allowing the host State to require the departure of a person guilty of abusing his privileges, subject to the necessary safeguards. That was the precedent of section 13 (b) of the Headquarters Agreement between the United Nations and the United States⁷³ and of section 25, paragraph 1, of the Convention on the Privileges and Immunities of the Specialized Agencies.⁷⁴ It was also noted that this Agreement and this Convention covered all cases of abuse of residence, while article 75, paragraph 2, was confined to "grave and manifest violation of the criminal law of the host State", failing therefore to carry over fully into its provisions the duty to respect all the laws and regulations of the host State provided for in paragraph 1. In connexion with those views, it was said that the fears of the host States might be dispelled if a provision was added making it an obligation on the part of the sending State not to abuse the rights, privileges and immunities granted to members of missions or delegations and if the procedure of settlement of disputes was strengthened.

98. It was also considered that the provisions of article 75, paragraph 2, might be interpreted in a way that would not only limit the scope of the draft articles but might also be a permanent source of conflict between States, particularly because the paragraph did not specify how it could be established that there had been a "grave and manifest violation of the criminal law of the host State" in cases where the sending State would not waive the immunity of the person concerned.

99. Other representatives stated that article 75, paragraph 2, wisely stipulated that the recall of the person concerned or the termination of his functions or his departure should be decided by the sending State itself and that, in case of a dispute, the consultation and conciliation procedures of articles 81 and 82 offered appropriate safeguards to secure the protection of the host State. It was recalled, in this connexion, that the declaration of *persona non grata* was a procedure alien to the relations between States and international organizations. In the opinion of some of those representatives article 75 went as far as possible in ensuring the protection of the host State. This protection could not be exceeded without jeopardizing the independence of the organizations and their members.

100. Doubts were also expressed with regard to the meaning of the last sentence of paragraph 2 of the article. Certain representatives considered that it introduced a far-reaching exception to the provisions of that paragraph. A grave and manifest violation of criminal law or interference in the internal affairs of the host State could not possibly fall within the "functions of the mission or the tasks of the delegation". Furthermore, the sentence introduced a subjective element that could cause difficulties, since an accused person would only have to show that the action in question had been taken on instructions from a sending State in order to escape the operation of the provisions of paragraph 2.

101. Lastly, it was observed that the application of article 75 might be complicated by the lack in the draft of a definition or enumeration of the functions of a delegation. Differences of opinion between the sending State and the host State concerning the operation of the provisions of article 75, particularly of paragraph 2, could be avoided by a clear definition of the function of the delegations.

Article 76 (Entry into the territory of the host State)

102. (See comments on article 9 in paragraph 66 above.)

Article 79 (Non-recognition of States or governments or absence of diplomatic or consular relations)

103. Some representatives considered that the provisions of this new article were all necessary and well drafted. The view was expressed that the article as a whole was a signifi-

⁷³ See General Assembly resolution 169 (II).

⁷⁴ See General Assembly resolution 179 (II).

cant contribution and reflected adequately existing law and practice. By providing that the rights and obligations of the host State and of the sending State should not be affected by non-recognition of the one by the other nor by the severance of diplomatic or consular relations between them, article 79 protected the independent position of the organization and safeguarded the interests of both the host and the sending State.

Article 80 (Non-discrimination)

104. Considering that it reflected the fundamental principle of sovereign equality of States, some representatives endorsed the rule of non-discrimination embodied in article 80. It was said that article 80 was an essential corollary to article 79. It was also emphasized that the provision of the article should be applicable to all the draft articles, including article 5, and that the article should specify the exact scope of application of its provision. Lastly, it was added that the unsatisfactory wording of the article might open the door to discriminatory measures indirectly through the means necessary for the implementation of the rule, as could be seen from paragraph (7) of the commentary.

Article 81 (Consultations between the sending State, the host State and the organization) and article 82 (Conciliation)

105. Certain representatives approved the procedures established in articles 81 and 82 because in their view they provided for a flexible system adapted to the needs of international organizations. If a dispute proved to be incapable of settlement by the consultation procedure of article 81, it might be brought before a conciliation commission established in accordance with article 82. In exceptionally difficult cases, the conciliation commission could request, in accordance with article 82, paragraph 5, an advisory opinion from the International Court of Justice regarding the interpretation and application of the proposed convention. Without giving an absolute guarantee of solving disputes, those procedures would considerably increase the possibility of reaching an acceptable result for all the parties concerned.

106. Other representatives likewise supported the procedures laid down in the draft for the settlement of disputes and welcomed, as an improvement, the addition of article 82 on conciliation. Considering, however, that the whole system could be strengthened, they regretted that the draft did not provide for a mandatory procedure for the settlement of disputes by the International Court of Justice, on the pattern of section 30 of the Convention on the Privileges and Immunities of the United Nations.

107. Some representatives felt that the *bona fide* application of the provisions of the proposed convention would ensure the elimination of most of the differences that might arise in the application and interpretation of its provisions. They accepted article 81 as in line with existing practice but considered that the conciliation procedure provided for in article 82 was cumbersome and complex and of a doubtful practical value. It was also said that it would have been sufficient to refer to the means of settlement of disputes provided for in Article 33 of the Charter of the United Nations.

108. Certain representatives underlined the need to examine very closely the procedures embodied in articles 81 and 82 before trying to express a definitive opinion thereon. Thus, it would be necessary to study further—in connexion with article 82—questions such as the scope of paragraph 1, which referred to all procedures applicable to the settlement of disputes established in the organization, the powers vested in the organization, in the chief administrative officer of the organization and in the conciliation commission itself, and the option of the conciliation commission to request an advisory opinion from the International Court of Justice. Reservations were also expressed regarding the usefulness and effectiveness of the system of consultations provided for in article 81, in the light *inter alia* of the discourag-

ing results obtained from that type of consultations, within the framework of the Informal Joint Committee on Host Country Relations.

109. It was also observed that greater attention should be given to the fact that the disputes dealt with were disputes between States and that, therefore, the role of the organization, under those articles, should be defined more precisely, particularly regarding the proposed conciliation procedure of article 82, in order to avoid that an organization could be both judge and party in a dispute.

110. Finally, the following additional comments were made on the provisions of article 82: firstly, it was noted that the time-limit set in paragraph 1 might create confusion, since the rules of the organization might indicate a different period; secondly, it was pointed out that the term "chief administrative officer" used in paragraph 3 might not have an equivalence in all organizations and that, therefore, it might be wise to seek a more appropriate term; and, thirdly, it was mentioned that the provision in paragraph 5 allowing the conciliation commission, if so authorized, to request an advisory opinion from the International Court of Justice would give the Court a more active role in international relations, by expanding the list of bodies with the right to request such opinions, referred to in Article 96 of the Charter.

3. FINAL PHASE OF CODIFICATION OF THE TOPIC

111. In paragraph 57 of its report, the Commission recorded the decision it took, in conformity with article 23, paragraph 1 (d) of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles and to conclude a convention on the subject.

Form to be given to the codification of the topic

112. As regards the form, most representatives supported the Commission's recommendation: they considered that the draft articles constituted an excellent basis for the conclusion and adoption of a convention rather than an expository code. This was so especially in so far as they laid down a régime which would not prejudice existing international agreements or preclude the further development of law on the subject. Besides, a convention had been the form chosen for all the other instruments prepared by the Commission in the field of diplomatic law and it would open an opportunity to all new States to participate directly in the formulation of its text. Some representatives, however, indicated their preference for an expository code. It was said in this respect that articles 3 and 4 made the draft convention fairly similar to such a code.

(b) Participation in the elaboration of a future convention on the topic

113. Some representatives considered that all States should be able to participate in the elaboration of the future convention. In particular, it was said that all principal host States should be full participants in the final phase of codification of the topic. Also, some representatives shared the hope expressed in paragraph 58 of the Commission's report regarding the association of the United Nations itself, the specialized agencies and the International Atomic Energy Agency in the final phase. Certain questions arose regarding the assumption of obligations by international organizations to which the new convention would apply. It seemed clear that an organization would be directly charged with certain rights and obligations under the convention. Accordingly, it would be advantageous if the organization in respect of which States proposed to apply the convention could participate in the preparatory work. This question should be dealt with in the light of past experience and the United Nations Conference on the Law of the Sea of 1958 might provide a suitable

precedent. However, as had been observed by the International Bank for Reconstruction and Development (see A/8410/Add.1 and Add.1/Corr.1, paragraph 4 of its observations), it might not be feasible to devise a mechanism allowing the organizations to vote. In this connexion, it was said that a conference would be in a better position to settle the question of the participation of subjects of international law other than States. The question was also raised whether the conference of plenipotentiaries envisaged in the Commission's report would be the kind of international gathering which would best serve the purpose. International organizations, which as entities were distinguished from their membership, should be given a recognized status at a conference where an important aspect of their affairs was to be dealt with.

(c) *Body to be entrusted with the task of elaborating a future convention on the topic*

114. As regards the procedure to be followed in the final phase of codification of the topic, aimed at concluding a convention, different views were expressed. A number of representatives considered that the draft articles should be submitted to the Sixth Committee, which would be entrusted with the task of preparing a final draft convention to be adopted by the General Assembly. A number of reasons were given in support of this position. It was said that the Sixth Committee, which was composed of experts representing all States Members of the United Nations, had the experience to carry out the task required, as it had been already successfully proved in connexion with the Convention on Special Missions. There was a strong possibility that an international conference might not be any more representative than the Sixth Committee, especially if, as was feared, some States insisted on the Vienna formula being applied. An international conference would involve additional expenditure for the United Nations, which would constitute an undue burden on the budget of the Organization at a time of an extremely difficult financial situation and would entail considerable expenses for participating Governments. There was already too great a number of diplomatic conferences scheduled for 1972 and 1973 and an additional conference would therefore place a heavy burden on representatives of small States and developing nations, particularly for those attending regularly the Sixth Committee and other legal special committees or bodies or being members of the Commission. If the study and adoption of the proposed convention were entrusted to the Sixth Committee, the prestige and role of that organ would be enhanced. Besides, its future work programme was not particularly heavy and it could perform its task without adverse consequences to the other items on the agenda. Finally, the draft articles could be considered in the Sixth Committee at the greatest possible length whereas international conferences were limited by time. It was also pointed out that when the Sixth Committee had had to adopt the Convention on Special Missions in 1968 and 1969, it had been overburdened with a heavy agenda and doubts had been raised as to the advisability of having the Committee adopt the Convention. Furthermore, since Governments were encouraged to send legal experts to the General Assembly, they could usefully comment on draft conventions dealing with legal matters; it was to be hoped that in future years it would be possible for the Sixth Committee to deal with draft articles if its agenda was not too full.

115. On the other hand, several representatives supported the Commission's recommendation to convene an international conference of plenipotentiaries. In this respect it was said that the draft articles could be studied in all their political, administrative and technical aspects only at a diplomatic conference. A conference would provide the coherence and uniformity indispensable to a constructive study of so complex a draft, and would be in a better position than the General Assembly to study the draft articles in detail and without interruption. The interruption caused by the involvement of the Sixth Committee in the adoption of the Convention on Special Missions in 1968 and 1969 seemed in fact to have been

prejudicial. The task of codifying law required concentrated attention, and the Sixth Committee had to deal with a variety of issues. One obvious advantage of a conference was that it would allow countries that were not Members of the United Nations to participate. Some of those countries were host States to a great number of international organizations and their participation would help ensure the viability of the future convention. Also, it would certainly be inconvenient for countries with small delegations if the convention were to be drawn up in the Sixth Committee. The recent experience when the Sixth Committee had prepared the Convention on Special Missions had overburdened many delegations. The cost of a conference, if higher, would be justified by keeping it to a minimum and if the outcome was to be a convention obtaining signatures and ratifications by the largest possible number of Governments. Unlike the question of special missions, the representation of States to international organizations was not governed by customary international law. A certain practice had developed in that respect, but the harmonization of that practice would require careful consideration. As to the place where the conference might meet, some representatives favoured the United Nations Headquarters or even a neighbouring city, in order to reduce expenses to the minimum. On his part, the representative of Austria stated that his Government would be prepared to act as host to such a conference on the same conditions as had applied to the Vienna Conferences on Diplomatic Intercourse and Immunities, Consular Relations, and the Law of Treaties.

116. Some representatives, while appreciating the reasons advanced in favour of entrusting the Sixth Committee with the task, indicated that they would be prepared to agree to convening an international conference. A number of representatives indicated that they had not made up their minds definitely on the subject and would revert to it after hearing the views and suggestions that might be put forward by other representatives. Some of those representatives expressed their readiness to support the position of the majority.

117. Irrespective of their position on the question of procedure, or not having pronounced themselves on it, a number of representatives were of the view that a final decision on the question, based on a proper balance of the considerations of necessity, convenience and economy, should best be left to the next session of the General Assembly. As had been done in the case of other final drafts of the Commission, the draft articles should in the meantime be referred to Governments and international organizations for further comments.

(d) *Request for comments from Governments and international organizations*

118. Several representatives were of the opinion that Governments and international organizations should be given adequate time to comment on the draft articles and to consider the observations already made thereon so as to ensure that the future convention commanded the maximum acceptance. In the view of some representatives comments should be invited not only on the substance of the draft articles but also on the most appropriate procedure for the elaboration and adoption of the convention. Such a course had been followed with the Commission's draft articles on diplomatic intercourse and immunities in 1958 and 1959 and could be adopted with advantage in the present case.

(e) *Timing for the elaboration of a convention on the topic*

119. Some representatives considered that it would be preferable to take up the question of the representation of States in their relations with international organizations only after the Commission had completed its study of the topic of relations between States and international organizations by considering the representation of organizations to States and in particular the question of the privileges and immunities of the organizations themselves and of their officials. The question of granting privileges and immunities to permanent missions

and permanent observer missions within the meaning of article 1, as well as to delegations to organs and conferences, was intimately linked to the legal status of those organizations. The work of the Commission would thus form a whole and States would be able to state their views in full knowledge of all the facts; the two complementary questions could be dealt with in a single instrument.

120. On the other hand, it was considered that any such arguments could only be a pretext for perpetuating situations which were jeopardizing the independence of international organizations. The Commission currently had five topics under discussion, as set forth in chapters III and IV of its report. That would keep it occupied for several years, bearing in mind that the Commission met once a year for a short period of 10 weeks. The draft articles should therefore not be set aside until all the other aspects of the question of relations between States and international organizations had been studied.

121. Some representatives who spoke in favour of convening a conference considered that it should take place not before 1973, and preferably in 1974. It would be unrealistic to convene it at an earlier date in view of the fact that a major conference had already been scheduled for 1972 and of the preparations which were under way for a third conference on the law of the sea. Besides, in view of the importance of the subject, Governments and international organizations would need time to examine the draft in depth before proceeding to prepare and adopt a definitive text. The view was also expressed that if preparations for a proposed convention on the protection of diplomats (see paragraphs 145-152 below) had made satisfactory progress, an international conference might examine both drafts simultaneously in 1974.

(f) *Participation in the convention to be adopted on the topic*

122. Some representatives considered that the future convention should be open for signature to all States without discrimination. Also, in view of the fact that the convention would create rights and impose obligations for international organizations, some representatives deemed it advisable for those organizations to become associated through the instrument to States parties to the convention. As to the manner in which that association could be effected, it was stated that article X of the Convention on the Privileges and Immunities of the Specialized Agencies of 1947, which had stood the test of time and operation, might serve as a useful model.

C. SUCCESSION OF STATES

1. OBSERVATIONS ON THE TOPIC AS A WHOLE

123. Several representatives referred to the importance attached by their respective Governments to the codification and progressive development of the rules of international law relating to succession of States. The hope was expressed that at its next session the Commission would be able to make further progress towards the completion of the work on the topic.

124. Some representatives stressed the need, in the codification of the different aspects of State succession, for due consideration to be given to the practice of States which had attained independence as a result of the struggle against colonialism. The political and economic independence of the new States should be duly protected. The codification of the topic should therefore be undertaken in the light of the new progressive principles of international law, particularly of the principles of self-determination, sovereign equality, equal rights and permanent sovereignty over natural resources, and there should be no question of any automatic transmission to the new States of obligations contracted by the former administering Powers.

125. Other representatives considered that many issues in the law of State succession were uncertain. State practices and decisions of international courts did not give complete guidance on the matter. In this connexion, it was said that any right established in relation to a third State by the former sovereign should be recognized as valid by the new State, unless it was contrary to international law.

2. OBSERVATIONS ON SUCCESSION IN RESPECT OF TREATIES

126. It was noted with satisfaction that the Commission intended to complete at its next session the first reading of all the draft articles on succession of States in respect of treaties on the basis of a comprehensive report to be submitted by Sir Humphrey Waldock, Special Rapporteur, consolidating the texts of draft articles contained in his first four reports and covering all the main elements of this aspect of State succession.

127. No objection was raised to the conclusion of the Commission that succession in respect of treaties should be dealt with as a particular topic within the framework of the law of treaties. However, certain representatives reiterated that this aspect of State succession should be studied in conjunction with succession in respect of matters other than treaties, so as to facilitate the formulation of general rules on succession based on the practice of States which had recently attained independence as a result of the decolonization process. It was also said that careful consideration should be given to the co-ordination of the scope, language and provisions of the future draft articles on succession in respect of treaties with those of the Vienna Convention on the Law of Treaties of 1969.

128. With regard to the question of the origins and types of succession, it was pointed out that cases of succession resulting from the separation of part of the metropolitan territory of an existing State and cases of succession resulting from the emergence of a former dependent territory to independence should be dealt with separately, because the situations derived from those two kinds of cases were not identical. Certain representatives expressly endorsed the Special Rapporteur's approach that for the purpose of studying the subject it was essential first to identify the principles applicable to "new States" in their purest form before considering the possible effects of special factors in particular cases of succession.

129. The need to take into consideration the different types of treaties, particularly the distinction between multilateral treaties and bilateral treaties, was also referred to during the discussion. Thus, it was said that multilateral treaties constituted, generally speaking, a homogeneous category susceptible of a certain uniform treatment. Bilateral treaties, on the other hand, regulated a variety of situations and were concluded by the parties for attaining different purposes.

130. Tentative observations were also advanced on the provisions of some of the draft articles contained in the first four reports submitted by the Special Rapporteur. Pending a full examination of the subject, certain representatives accepted the definitions of terms in draft article 1,⁷⁵ particularly the definition of the term "succession" in sub-paragraph (a) of that article. It was felt that the provision proposed in draft article 2 (Areas of territory passing from one State to another)⁷⁵ might rise difficulties in regard to problems of sovereignty and territorial integrity and that its inclusion in the context of the introductory articles should be reconsidered. Reference was made with approval to the underlying principles embodied in draft articles 3 (Agreements for the devolution of treaty obligations of rights upon a succession)⁷⁵ and 4 (Unilateral declaration by a successor State).⁷⁵ It was noted that devolution agreements should be considered *res inter alios acta* for the purpose of relations between the successor State and third States. In respect of the unilateral declarations

⁷⁵ See *Yearbook of the International Law Commission 1969*, vol. II (United Nations publication, Sales No.: E.70.V.8) document A/CN.4/214 and Add.1 and 2, p. 45.

of succession made by new States, it was observed that the declarations provided a legal basis for the continuity of treaty relations between the new State and a third State party but the legal effect of such declarations with regard to the maintenance in force of a given treaty would also depend on the express or tacit acceptance by the third State of the provisional or permanent application of the treaty. The two elements of declaration and acceptance, taken together, were a convenient method of maintaining the treaty relationships.

131. Support was expressed for the provision proposed in draft article 6 (General rule regarding a new State's obligations in respect of its predecessor's treaties).⁷⁶ In this connexion, it was reiterated that a successor State could not be held or be obliged to become a party to a treaty concluded by the predecessor State by reason only of the fact that such a treaty was in force in respect of the territory of the successor State at the date of the succession. Different views were expressed concerning "dispositive", "territorial" or "localized" treaties as a possible exception to that general rule. On one hand, it was stated that "dispositive", "territorial" or "localized" treaties were binding on the successor State and that, therefore, the general rule of draft article 6 should be supplemented with appropriate exceptions concerning that category of treaties. On the other hand, it was said that "dispositive", "territorial" or "localized" treaties should fall likewise under the general rule of draft article 6 and that any idea of automatic succession to those treaties should be rejected. With regard to boundary treaties, the view was expressed that the Commission should avoid giving legal endorsement to situations created by old treaties relating to colonial boundaries, which had been drawn with the strategic and economic interests of the former administering Powers in mind, since that would be contrary to General Assembly resolutions 1514 (XV), 1654 (XVI) and 2621 (XXV). In such cases, succession should not take place without the freely expressed consent of all the parties and peoples concerned. The notion of the permanent validity of those boundary treaties ran counter to the fundamental principle of self-determination and the doctrine of revindication, under which a country could reclaim something which it had once held as a right.

132. Reference was made with approval to the principle embodied in draft article 7 (Right of a new State to notify its succession in respect of multilateral treaties).⁷⁶ The right provided for in the article, it was said, had been tacitly accepted by the parties to multilateral treaties and the new States themselves had so far proceeded on the assumption that they possessed that right. Recalling that the basis for such a right was the existence of a legal nexus formerly established by the predecessor State between the treaty and the territory of the successor State, the view was expressed that the successor State had the right to notify its succession to "all" treaties applicable to its territory at the date of the succession and that, therefore, the exceptions provided in draft article 7 did not seem justified.

133. On the subject-matter of draft article 9 (Succession in respect of reservations to multilateral treaties),⁷⁶ it was said that where a State had given notice to the depositary of its succession to a treaty and at the same time notified reservations of its own, without alluding to those formulated by its predecessor, the predecessor State's reservations no longer applied to the successor State.

134. Lastly, on draft article 13 (Consent to consider a bilateral treaty as continuing in force)⁷⁷ certain representatives agreed that the continuance in force of bilateral agreements was a matter of express or implied consent between the new State and the other State party. This view, however, was not shared by all the representatives who referred to the matter. Draft article 13 was criticized on the grounds that it did not take duly into account the legal nexus established prior to the date of succession between the treaty and the territory of the

⁷⁶ See A/CN.4/224.

⁷⁷ See A/CN.4/249.

successor State. According to this view the right of a new State to notify its succession, provided for multilateral treaties in draft article 7, existed likewise in respect of bilateral treaties (see comments in paragraph 132 above).

3. OBSERVATIONS ON SUCCESSION IN RESPECT OF MATTERS OTHER THAN TREATIES

135. The need for making progress in the consideration of this important aspect of State succession was also underlined during the debate. In this connexion, it was said that the codification of the rules relating to succession in respect of matters other than treaties should be based on equitable principles and disregard practices detrimental to new States formerly under colonial rule.

136. Some representatives considered that the treatment of the subject by Mr. Bedjaoui, Special Rapporteur,⁷⁸ would seem generally satisfactory and commended him for his endeavours to formulate appropriate rules, particularly with regard to the question of defining and determining public property and what is transmissible public property. Recalling the principle *nemo plus juris transferre potest quam ipse habet*, disagreement was expressed, however, with the attempt made by the Special Rapporteur to divide State property into the private domain and the public domain.

D. STATE RESPONSIBILITY

137. The need to proceed more rapidly to the codification and progressive development of the rules relating to State responsibility was reiterated by some representatives. The third report submitted by Mr. Ago, Special Rapporteur,⁷⁹ was considered a valuable contribution conducive to facilitating the work of the Commission on the topic and speeding up the preparation of draft articles on the subject.

138. Certain representatives stressed the particular importance of a codification of the rules governing State responsibility and its significance for the maintenance of international peace and security. Those representatives considered that special attention should be given to State responsibility for the violations of the fundamental principles and rules of contemporary international law, such as crimes against peace, aggression, colonialism, the suppression of national liberation movements, crimes against humanity, genocide and *apartheid*. It was added that the codification of the rules relating to State responsibility would contribute to the strengthening of international law, world peace and security to the extent that it would comply with the need to promote the rights of peoples to live in peace, without foreign interference, and to eliminate the use or threat of force and all forms of pressure and coercion in international relations.

E. THE MOST-FAVoured-NATION CLAUSE

139. Certain representatives stated that their Governments were particularly interested in the study of the most-favoured-nation clause undertaken by the Commission. They recalled that the subject was of special importance for the developing countries and would help the promotion of international economic relations.

140. The suggestion was made that although the General Assembly had requested the Commission to undertake the study of the clause, if further consideration of the topic revealed that it was more relevant to the terms of reference of the United Nations Commission on International Trade Law, the International Law Commission should inform the General

⁷⁸ See A/CN.4/247 and Add.1.

⁷⁹ A/CN.4/246 and Add.1-3.

Assembly accordingly. The representative who made the suggestion indicated that it was based on the characteristics of the clause and other relevant factors. In the first place, the clause was peculiar to commercial treaties; secondly, its main purpose was to achieve equal trading opportunities and a self-propelling extension of freedom of investment and favourable tariff arrangements. There was yet a third factor, that of the close connexion between the most-favoured-nation clause and some of the important provisions and the practical application of the General Agreement on Tariffs and Trade. Furthermore, the functions of the United Nations Commission on International Trade Law, in the general area of the harmonization and unification of the law of international trade included those of preparing or promoting the adoption of new international conventions and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices. In reply to that suggestion, it was emphasized that the question of the most-favoured-nation clause relates particularly to public international law and it was recalled that the International Law Commission had already begun important work on the matter. It would be regrettable to refer the question to the United Nations Commission on International Trade Law, whose programme of work was already very heavy.

F. THE QUESTION OF TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

141. Several representatives welcomed the appointment of Mr. Reuter as Special Rapporteur for the topic. They also endorsed, generally speaking, the conclusions set forth in the report of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations adopted by the International Law Commission. Among those conclusions the following were specifically mentioned: that the study of the topic should be confined to treaties in written form; that the Vienna Convention on the Law of Treaties provided a firm basis for research; that nothing should be done which could directly or indirectly weaken the effect of the provisions laid down in the Vienna Convention; and that the Special Rapporteur should look for the relevant questions of principle governing the topic which the Vienna Convention did not have to take into account. It was also observed that it would not be easy to transplant the provisions of the Vienna Convention to treaties concluded between States and international organizations or between two or more international organizations, academic opinions to the contrary notwithstanding.

G. OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

1. PROGRESSIVE DEVELOPMENT AND CODIFICATION OF THE RULES OF INTERNATIONAL LAW RELATING TO INTERNATIONAL WATERCOURSES

142. Certain representatives emphasized the particular importance of the topic for their respective countries and the international community as a whole and welcomed the decision of the Commission to include a question entitled "Non-navigational uses of international watercourses" in its general programme of work, as recommended by the General Assembly in resolution 2669 (XXV). Some of these representatives considered that the Commission should give priority treatment to the study of that question. It was also said that the topic called for the formulation of rules of a general nature which would ensure equitable utilization of the resources of international rivers and thus help to remove a source of friction between States.

143. Reservations regarding the codification of the topic at this stage were reiterated, however, by certain representatives. They felt that the inherent suitability of the topic for

a world-wide codification through the process of the Commission had not yet been demonstrated. It was added that the problems arising from the utilization of international watercourses should be settled through treaties concluded between the riparian States themselves.

144. Operative paragraph 5 of section I of the draft resolution adopted by the Sixth Committee (see text in paragraph 168 below) embodied the consensus reached upon the question of the priority to be given by the Commission to the study of the non-navigational uses of international watercourses.

2. THE QUESTION OF THE PROTECTION AND INVIOABILITY OF DIPLOMATIC AGENTS AND OTHER PERSONS ENTITLED TO SPECIAL PROTECTION UNDER INTERNATIONAL LAW

145. In section D of chapter V of its report, concerning the problem of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, the Commission recorded its decision that, if the General Assembly requested it to do so, it would prepare at its 1972 session a set of draft articles on that important subject with the view to submitting such articles to the General Assembly at its twenty-seventh session.

146. A number of representatives referred to the question thus raised and one of them submitted a working paper containing the text of a draft convention on the subject (A/C.6/L.822) for transmission to the Commission.

147. Some representatives recognized the importance and urgency of the problem. Diplomatic agents and other persons entitled to special protection under international law are increasingly becoming the victims of such crimes as murder, kidnapping and assaults. While in some instances these might be common law attacks they were, in the main, politically inspired; in fact, such new forms of a personal violence had recently emerged as a tool of subversion. The numerous kidnappings of diplomatic agents which had been committed in recent years had been used for the purpose of blackmail or in order to put pressure on the receiving State or on certain groups within that State. As had been pointed out in a letter addressed to the President of the Security Council by the Permanent Representative of the Netherlands to the United Nations, reproduced in the report of the Commission on the work of its twenty-second session,⁸⁰ attacks on diplomats could lead to situations which might give rise to a dispute and as such could even endanger the maintenance of international peace and security. There existed international norms conferring a specially protected status on certain individuals, in particular article 29 of the Vienna Convention on Diplomatic Relations and article 40 of the Vienna Convention on Consular Relations, and the relevant provisions of the agreements relating to the privileges and immunities of international organizations. However, some representatives considered that from the viewpoint of the interpretation of those texts, the host State's duty to provide special protection did not constitute an unrestricted obligation; the most widespread theory of diplomatic law in fact acknowledged the existence of certain limitations in that regard, deriving particularly from the principle of the separation of powers. No legal system could agree to yield, in virtue of the obligation of special protection, to all the demands that kidnappers might make in exchange for their hostages. This position was shared by important mouthpieces of world public opinion. The only solution to be adopted in the case of political kidnapping was a concerted refusal by all Governments to yield to blackmail. Consideration of the problem should not be further postponed; the Sixth Committee should adopt a resolution requesting the General Assembly to take action.

⁸⁰ See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 10*, para. 11, annex.

148. As regards the manner in which the problem should be dealt with, a number of representatives welcomed and supported the Commission's proposal referred to in paragraph 145 above. The topic should be dealt with by the Commission as an *ad hoc* topic and should be given priority treatment. Indeed, it was unfortunate that the Commission had not undertaken such a task at its twenty-third session. The draft articles might constitute the basis for a convention, to be adopted under the auspices of the United Nations. One such instrument had already been adopted by the Organization of American States on 2 February 1971. It was also recalled that as a result of the adoption of General Assembly resolution 2645 (XXV) condemning aerial hijacking or interference with civil air travel, the Diplomatic Conference convened at The Hague in December 1970 had adopted the Convention for the Suppression of Unlawful Seizure of Aircraft which would constitute an effective instrument for international co-operation in the prevention and suppression of such unlawful acts.

149. Some representatives who favoured the Commission's recommendation nevertheless pointed out that the elaboration of a draft convention would not be without difficulties as various complex questions were involved. In considering the desirability and the possible contents of a further international instrument on the subject, it should be decided whether it was justifiable to single out diplomats for special protection, and if so how to define the class to be protected and the crimes against which protection was to be given. Consideration would have to be paid to the relationship between any proposals on the subject and the general law of extradition, including the question of discretion to refuse extradition for political offences. Principles such as non-interference and institutions such as the right of asylum must be respected. In the view of some representatives it was debatable whether an instrument of the kind envisaged would act as a significant deterrent against the practice it was designed to combat. Member States should have an opportunity to submit written observations on the issues involved before the Commission embarked on the preparation of draft articles.

150. Some representatives, while doubtful of the need for or possibility of draft articles on the subject, nevertheless considered that the Commission should study the problem. It was true that the protection of diplomatic agents and government officials was already provided for in international law, but recent events seemed likely to erode the relevant rules; there was an unfortunate lack of measures for strengthening the existing conventions and of penalties for offences against the persons in question. The measures could take the form of international co-operation to suppress such violations. It was doubtful whether it would be possible to prepare draft articles which would have any real practical value, but an unequivocal declaration by the international community expressing its firm determination to punish offenders would have value as a deterrent.

151. Regret was also expressed that the Commission could not tackle the problem within the context of its work on State responsibility, since in view of the highly political issues involved the preparation of a convention on the subject might fail to produce any practical results, for States would probably be reluctant to ratify it. In any event Governments should be given time to reflect on the need for yet another set of draft articles.

152. Some representatives opposed the idea of preparing draft articles on the matter. The protection of diplomatic and consular officers was adequately defined by existing international law; basic legal instruments, already in existence, were adequate to deal with the problem; what was needed was not a further international instrument but the effective implementation of existing penal law. The proliferation of legal texts, far from resolving such a delicate problem, might have the opposite effect by depriving Governments of the necessary freedom of action. The several international conventions concerned with the inviolability of diplomatic agents placed the responsibility on the host State for protecting diplomatic agents accredited to it. A new convention providing merely for repressive

measures was no reply to the economic, social and political causes underlying the kind of violence it was proposed to eliminate. The proposed new convention would in the long run have a harmful effect, since its repressive nature would stimulate rather than suppress violence, and at the same time it would be ineffective, since States would have difficulty in accepting it. Some States were reluctant to interfere with the right of asylum, which they considered justified, and others were anxious that their domestic jurisdiction should not be whittled away. A new convention would likewise be altogether incapable of staying the tide of revolutionary violence which was causing havoc to the Establishment in many countries, unless a peace force was set up. At best, the new convention could only serve as an instrument of political propaganda or a pretext for increasing repression, without in any way solving the problem. As regards the question of priorities, the opinion was expressed that the priority examination of the question of protection of diplomats would be tantamount to postponing still further the questions of State succession and State responsibility.

3. REVIEW OF THE COMMISSION'S LONG-TERM PROGRAMME OF WORK

153. A number of representatives noted with satisfaction the intention of the Commission to undertake, in its new composition, a review of its long-term programme of work, as well as its decision to place on the provisional agenda of its next session an item entitled "Review of the Commission's long-term programme of work: 'Survey of International Law' prepared by the Secretary-General" (see section I, paragraph 3, of the operative part of the draft resolution adopted by the Sixth Committee in paragraph 168 below).

154. Some representatives recalled that the work of the Commission and of special or *ad hoc* committees established by the General Assembly to deal with particular topics, for instance the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, had already produced important results. They emphasized that it was essential to speed up the process of codification and progressive development of international law in the light of the fundamental changes which have occurred in international relations during the last years and the impact of the scientific and technological revolution on their development. In the opinion of those representatives the Commission should take into account those changes and factors in determining the current needs of the international community when reviewing its long-term programme of work. The view was also expressed that the Commission should not be asked to codify questions of an essentially political nature and should concentrate its efforts on the legal aspects of the topics considered.

155. Many representatives congratulated the Codification Division of the Office of Legal Affairs of the United Nations Secretariat for the preparation of the remarkable working paper entitled "Survey of International Law".⁸¹ The "Survey" was considered a most valuable and useful document for the Commission as well as for Governments, the Sixth Committee, other bodies engaged in the codification of international law, and professional and academic circles in general. Several representatives shared the view of the Commission that the "Survey" should be given as wide a circulation and distribution as possible by issuing it as a separate publication in addition to its inclusion in the *Yearbook of the International Law Commission*.

156. With regard to the sources used in the preparation of the "Survey", it was pointed out that the question arose as to what standing the resolutions and declarations of the United Nations organs, particularly the General Assembly, might have in a strictly legal sense. It was also said that it would be useful to specify whether treaties or conventions

⁸¹ A/CN.4/245.

had already entered into force or not. Lastly, it was thought that the "Survey" did not take sufficient account of the distinction, regarded as important in legal theory, between non-recognition arising from the lack of diplomatic recognition and non-recognition resulting from the application of a sanction for an international offence.

157. It was generally agreed that the "Survey" provided an excellent basis for the review by the Commission of its long-term programme of work. The Commission should retain or add to its long-term programme the topics which deserved consideration and discard those which were no longer suitable for treatment. In this connexion, it was said that the Commission's task would be facilitated if, at the appropriate stage, Governments were invited to submit their observations on both the choice of subjects and the most suitable way of completing the codification of the different topics.

158. Attention was drawn during the debate to subjects or topics of international law such as rights and duties of States in the light of the purposes of the United Nations and of new developments in international law; legal rules relating to the peaceful means for settlement of international disputes within the framework of the Charter; questions concerning the law relating to economic development; recognition of States and Governments; jurisdictional immunities of foreign States and of their organs, agencies and property; exercise of jurisdiction by a State in matters having an extra-territorial element; unilateral acts; historical waters, including historic bays; the law of the sea-bed; the law relating to international organizations; and the law relating to armed conflicts.

159. Finally, the hope was expressed that in reviewing its long-term programme, the Commission should also consider the question of the order of priority for the study of the topics selected as well as ways and means of expediting its work in the many fields still to be codified and developed.

4. ORGANIZATION OF FUTURE WORK

160. The organization of work planned by the Commission for its next session was generally approved. The representatives who spoke on the matter supported the view that the Commission should continue its work on State succession with a view to completing in 1972 the first reading of draft articles on succession of States in respect of treaties and making progress in the consideration of succession of States in respect of matters other than treaties. It was agreed that the Commission should likewise continue its work on State responsibility in order to make substantial progress in the preparation of draft articles on the topic. In addition, it was considered that the Commission should continue its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations and the most-favoured-nation clause. For reasons recorded in paragraph 140 above, reservations were however expressed by certain representatives regarding the study of the most-favoured-nation clause by the Commission. The recommendations of the Sixth Committee concerning the organization of work planned for the next session of the Commission were embodied in section I, paragraph 4, of the operative part of the draft resolution adopted by the Sixth Committee (see paragraph 168 below).

5. CO-OPERATION WITH OTHER BODIES

161. Several representatives welcomed the Commission's continuing co-operation with regional bodies with responsibilities in the legal field such as the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Inter-American Juridical Committee, the latter of which had, following the entry into force of the Protocol of Amendment to the Charter of the Organization of American States, done at Buenos Aires in 1967, become one of the main organs of that organization. Gratification was

expressed at the presence of observers from those bodies at the twenty-third session of the Commission. It was also said that the occasional participation by members of the Commission in important meetings of those bodies should be encouraged, since in the field of codification it augured well for the harmonization of regional approaches to specific areas of international law. The close co-operation established between the Commission and those regional legal bodies was all the more useful in that it enabled the interests of members of the international community to be served in the most economical way.

6. GILBERTO AMADO MEMORIAL LECTURE

162. Several representatives expressed satisfaction at the Commission's decision concerning the establishment of a memorial lecture honouring the late Gilberto Amado, the illustrious Brazilian jurist, a former member of the Commission. In so doing, the Commission had found a very dignified way to keep his memory alive.

163. Some representatives commended also the Brazilian Government for its contribution to the organization of the Memorial Lecture. In this connexion, the hope was expressed that substantial sums would be added to the initial sum establishing a trust fund for the purpose of the Memorial Lecture, and that the members of the advisory committee set up by the Commission would organize the annual lecture in keeping with the high purpose it was intended to serve.

7. SEMINAR ON INTERNATIONAL LAW

164. Several representatives expressed gratification at the success of the seventh session of the Seminar on International Law. Thanks were given to the specialists who had participated as lecturers in the Seminar and to those Governments whose financial support had made possible the attendance of many participants from developing countries, some of which were acting as representatives on the Sixth Committee at the present session of the General Assembly. Also, it was noted with satisfaction that Spanish had been adopted as a working language at that session.

165. Support was expressed for the continuation of the Seminar, which was an established feature of the United Nations Office at Geneva and which had proved to be of importance to the developing countries. It was hoped that Governments would continue to donate generously so that developing countries could be effectively represented by an expanded number of their nationals. In this connexion, it was noted with gratification that the Geneva Office had been able to establish a trust fund out of the voluntary contributions made to the Seminar fellowships. Five representatives announced that their Governments would again make financial contributions to enable nationals of developing countries to attend the forthcoming session of the Seminar.

IV. VOTING

166. At its 1280th meeting held on 12 November 1971, the Sixth Committee proceeded to vote on draft resolution A/C.6/L.826 and the revised oral amendment to the English text of the draft resolution referred to in paragraph 8 above, as follows:

(a) The Committee adopted, without objection, the oral amendment of Afghanistan, as revised, deleting in the English text the word "should" from section I, paragraph 5, of the draft resolution;

(b) By a separate vote taken at the request of Jamaica, the Committee adopted by 76 votes to none, with 7 abstentions, section I, paragraph 4 (c), of the draft resolution;

(c) By a separate vote taken at the request of Cuba, and the United Republic of Tanzania and Uruguay and by roll call requested by the latter, the Committee adopted by 70 votes to 1, with 13 abstentions, section III of the draft resolution. The voting was as follows:

In favour: Afghanistan, Australia, Austria, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Greece, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Khmer Republic, Kuwait, Laos, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Malawi, Malaysia, Mexico, Nepal, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Sierra Leone, Spain, Sweden, Thailand, Togo, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela.

Against: Cuba.

Abstaining: Argentina, Brazil, Ghana, Guatemala, Guinea, Mali, Mongolia, Morocco, Singapore, Uganda, United Republic of Tanzania, Yugoslavia, Zambia.

(d) Lastly, by 82 votes to none, the Committee adopted the draft resolution as a whole, as amended.

167. At the same meeting the representatives of Argentina, Brazil, Cuba, France, India, Jamaica, the United Republic of Tanzania and Uruguay made statements in explanation of vote.

Recommendation of the Sixth Committee

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

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

(b) Resolution adopted by the General Assembly

At its 1999th plenary meeting, on 3 December 1971, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 168 above). For the final text, see resolution 2780 (XXVI) below.

2780 (XXVI). Report of the International Law Commission

The General Assembly,

Having considered the report of the International Law Commission on the work of its twenty-third session,⁸²

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,

⁸² *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10 (A/8410/Rev.1).*

Recalling the recommendations it made in resolution 2634 (XXV) of 12 November 1970 concerning the codification and progressive development of the rules of international law governing the representation of States in their relations with international organizations, succession of States, State responsibility, the most-favoured-nation clause and the question of treaties concluded between States and international organizations or between two or more international organizations,

Noting with satisfaction that at its twenty-third session, in 1971, the International Law Commission, in the light of the observations and comments of Member States, Switzerland and the secretariats of various international organizations and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on the representation of States in their relations with international organizations, prepared at its twentieth, twenty-first and twenty-second sessions, and finally adopted the draft articles as the basis of a convention,

Believing that the Vienna Convention on Diplomatic Relations,⁸³ the Vienna Convention on Consular Relations⁸⁴ and the Convention on Special Missions⁸⁵ constitute instruments the purpose of which is to contribute to the fostering of friendly relations among nations, irrespective of their constitutional and social systems, and that it is desirable to conclude a convention on the representation of States in their relations with international organizations,

Recognizing the views expressed by the International Law Commission in paragraphs 133 and 134 of its report, in particular those on the importance and urgency of dealing with the problem of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law,

Noting with appreciation that the United Nations Office at Geneva organized, during the twenty-third session of the International Law Commission, a seventh session of the Seminar on International Law,

I

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

2. *Expresses its appreciation* to the International Law Commission for the work it accomplished at its twenty-third session;

3. *Approves* the programme and organization of work of the twenty-fourth session of the International Law Commission to be held in 1972, including the decision to place on the provisional agenda of that session an item entitled "Review of the Commission's long-term programme of work: 'Survey of International Law' prepared by the Secretary-General";

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

(a) Continue its work on succession of States, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963, with a view to completing in 1972 the first reading of draft articles on succession of States in respect of treaties and making progress in the consideration of succession of States in respect of matters other than treaties;

(b) Continue its work on State responsibility, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) of 20 November 1962,

⁸³ United Nations, *Treaty Series*, vol. 500, p. 95.

⁸⁴ See *Juridical Yearbook*, 1963, p. 109.

⁸⁵ *Ibid.*, 1969, p. 125.

1902 (XVIII) of 18 November 1963 and 2400 (XXIII) of 11 December 1968, with a view to making in 1972 substantial progress in the preparation of draft articles on the topic;

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

(d) Continue its consideration of the question of treaties concluded between States and international organizations or between two or more international organizations;

5. *Recommends further* that the International Law Commission, in the light of its scheduled programme of work, decide upon the priority to be given to the topic of the law of the non-navigational uses of international watercourses;

6. *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 jurists of developing countries;

7. *Requests* the Secretary-General to forward to the International Law Commission the records of the discussion on the report of the Commission at the twenty-sixth session of the General Assembly;

II

1. *Expresses its appreciation* to the International Law Commission for its valuable work on the question of representation of States in their relations with international organizations and to the Special Rapporteur on the topic for his contribution to this work;

2. *Invites* Member States and Switzerland as a host State to submit, not later than 1 June 1972, their written comments and observations on the draft articles on representation of States in their relations with international organizations, and on the procedure to be adopted for the elaboration and conclusion of a convention on the subject;

3. *Invites also* the Secretary-General and the executive heads of the specialized agencies and the International Atomic Energy Agency to submit within the same period their written comments and observations on the said draft articles;

4. *Requests* the Secretary-General to circulate, before the twenty-seventh session of the General Assembly, the comments and observations submitted in accordance with paragraphs 2 and 3 above;

5. *Expresses its desire* that an international convention be elaborated and concluded expeditiously on the basis of the draft articles adopted by the International Law Commission and in the light of the comments and observations submitted in accordance with paragraphs 2 and 3 above;

6. *Decides* to include in the provisional agenda of its twenty-seventh session an item entitled "Representation of States in their relations with international organizations";

III

1. *Requests* the Secretary-General to invite comments from Member States before 1 April 1972 on the question of the protection of diplomats and to transmit them to the International Law Commission at its twenty-fourth session;

2. *Requests* the International Law Commission to study as soon as possible, in the light of the comments of Member States, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, with a view to preparing a set of draft articles dealing with offences committed against diplomats and other persons entitled to special protection under international law for

submission to the General Assembly at the earliest date which the Commission considers appropriate.

1999th plenary meeting,
3 December 1971.

**B. Decisions, recommendations and reports of a legal character
by intergovernmental organizations related to the United Nations**

**1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND
CULTURAL ORGANIZATION**

Participation of China in the execution of the Programme (88 EX/48 and Add.1 and 2 and 88 EX/49)—Resolution adopted by the Executive Board on 29 October 1971 in the course of its eighty-eighth session ⁸⁶

The Executive Board,

1. *Taking into account* the resolution adopted by the United Nations General Assembly on 25 October 1971, ⁸⁷ whereby the representatives of the People's Republic of China were recognized as the only lawful representatives of China to the United Nations,

2. *Recalling* resolution 396 adopted by the United Nations General Assembly at its fifth regular session on 14 December 1950 recommending that "the attitude adopted by the General Assembly" on the question of the representation of a Member State "should be taken into account in other organs of the United Nations and in the specialized agencies",

3. *Decides* that, from today onwards, the Government of the People's Republic of China is the only legitimate representative of China in UNESCO and *invites* the Director-General to act accordingly.

**2. FOOD AND AGRICULTURE ORGANIZATION OF THE
UNITED NATIONS**

Resolution 33/71 adopted by the Conference on 25 November 1971 ⁸⁸

People's Republic of China

The Conference,

Recalling that China, after having participated in the Hot Springs Conference in 1943, became a founding Member of FAO in 1945 by accepting the Constitution of the Organization,

Recalling further that, after its establishment in 1949, the Government of the People's Republic of China in a telegram to the Director-General of FAO dated 12 May 1950 affirmed that it was the only legal government representing the Chinese people,

Considering resolution 2758 (XXVI) of 25 October 1971, by which the General Assembly of the United Nations decided to restore all its rights to the People's Republic of China

⁸⁶ Document 88 EX/Decisions.

⁸⁷ General Assembly resolution 2758 (XXVI).

⁸⁸ Reproduced from C.71/REP.

and to recognize the representatives of its Government as the only legitimate representatives of China in the United Nations and "in all the Organizations related to it",

Considering further that the General Assembly of the United Nations, in its resolution 396 (V) of 15 December 1950, recommended that the attitude adopted by the General Assembly concerning the representation of a Member State should be taken into account by the Specialized Agencies,

Noting the exchange of telegrams between the Director-General of FAO and the Government of the People's Republic of China dated respectively 2 November and 23 November 1971,

Pursuant to resolution 2758 (XXVI) of the General Assembly of the United Nations,

1. *Authorizes* the Director-General, when the People's Republic of China manifests the wish to resume its place in the Organization, to take all appropriate measures to bring into effect the resumption by China of its place in the Organization;

2. *Authorizes further* the Director-General to take all necessary measures concerning financial questions, taking into account any action that may be taken by the United Nations in this respect and after consultation with the competent organs of FAO;

3. *Requests* the Director-General to transmit the text of the resolution to the Government of the People's Republic of China.

3. UNIVERSAL POSTAL UNION

Resolution CE 4 adopted by the Executive Council at its 1971 session—Reservations to the Acts of the Union

The Executive Council,

In view of Tokyo Congress resolution C44⁸⁹ entrusting it with a study on reservations, and of the discussions held in this connection at Tokyo (Committee 5, 16th meeting);

Taking into account the study undertaken on this subject by the International Bureau (CE/C.3—Doc.19);⁹⁰

Recalling the work already done in this connection and ratified by the Tokyo Congress in regard to postal parcels and insured letters and boxes;

Invites the various Committees of the Executive Council:

a. to consider, each in regard to the Acts coming within its purview, the possible transfer to the Convention and Agreements of the reservations appearing in the Final Protocols to those Acts, in the light of the considerations contained in paragraphs 22-29 of the International Bureau's study and of the comments by Italy (CE/C.3—Doc.19/Add.1);

b. to put forward proposals on the matter to Committee 3, for coordination, with a view to subsequent submission to the Executive Council and, if appropriate, to the 17th Congress.

⁸⁹ See *Juridical Yearbook*, 1969, p. 121.

⁹⁰ Reproduced in this *Yearbook*, p. 230.

4. WORLD METEOROLOGICAL ORGANIZATION

Excerpt from the General Summary of the Abridged Report with Resolutions of the Sixth World Meteorological Congress. Geneva. 5-30 April 1971⁹¹

5. General and legal questions (Agenda item 5)

5.1 Questions concerning the Convention (Agenda item 5.1)

5.1.1 Congress examined the proposals concerning Article 28 of the Convention submitted by the Executive Committee⁹² following its study of the opinion prepared by the Legal Counsel of the United Nations.⁹³ In a preliminary general discussion it agreed that there were certain aspects of the matter which could be clarified by means of interpretations; some other aspects could be treated only by an amendment of the Article.

5.1.2 Accordingly, Congress decided to record the following as its agreed interpretation of certain provisions of Article 28 of the Convention:

(a) In the course of its consideration, as required by the provisions of Article 28, of a draft amendment to the Convention, Congress may receive, discuss and, if it so decides, adopt any proposal for modifying this draft, provided that the proposed modification would not result in a change in the basic intent of the draft amendment or in the introduction of a new subject. If any modification is proposed which does not satisfy either of these conditions, it must be proposed as a separate new amendment to the Convention in accordance with the provisions of Article 28 (a);

(b) The two-thirds majority required for the approval by Congress of an amendment under Article 28 (b) shall be two-thirds of the Members which are States, present and voting for or against;

(c) If a draft amendment to the Convention being treated in accordance with the provisions of Article 28 (c) is accepted in Congress by a two-thirds majority of the Members which are States voting for and against, but the number of affirmative votes is less than the required two-thirds majority of all Members which are States, the same draft amendment shall be submitted to the next Congress for a new vote if Congress so decides.

5.1.3 Congress also decided, in agreement with the position taken by Third Congress, that an amendment being treated under the provisions of Article 28 (c) shall not be submitted to a vote by correspondence for the purpose of securing approval by the necessary two-thirds majority of Members which are States.

5.1.4 Congress further decided:

(a) To accept the recommendation of the Executive Committee that it is not desirable at this time to amend or interpret Article 28 for the purpose of providing that amendments to the Convention which are approved in accordance with the provisions of Article 28 (b) shall enter into force for all Members;

(b) To take no action regarding the proposal for a fusion of Article 28 (b) and 28 (c) of the Convention to provide for only one category of amendments.

5.1.5 Certain Members took exception to the decision recorded in paragraph 5.1.2 (b).

⁹¹ WMO Publication No. 292 (1971), pp. 56 and 57.

⁹² Cg-VI/Doc.3.

⁹³ Reproduced in the *Juridical Yearbook*, 1967, p. 338.

5. INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Amendment procedures in conventions for which IMCO is depositary—
Resolution A. 249 (VII) adopted by the Assembly on 15 October 1971

The Assembly,

Being aware of the need for a procedure for the revision of Conventions for which IMCO is depositary which is more in keeping with the development of technological advances and social needs and which will expedite the adoption of amendments,

Considers that a thorough study should be undertaken by the appropriate organs of IMCO on the basis of document A VII/12 submitted by the Secretariat,

Requests Council therefore to invite the Legal Committee and the Maritime Safety Committee to prepare for the eighth regular session of the IMCO Assembly draft proposals for accelerating the bringing into force of amendments to Conventions for which IMCO is depositary,

Instructs the Secretary-General to seek information meanwhile from Member States or from Contracting Governments, as the case may be, on the difficulties which they may have experienced in considering acceptance of any of the said Conventions or amendments thereto,

Further instructs the Secretary-General to report the results of these inquiries to the Assembly and, as appropriate, to Council, the Maritime Safety Committee and the Legal Committee.
