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1966

Part Two. Legal activities of the United Nations and related inter-governmental organizations

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

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Chapter III

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

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

United Nations General Assembly—twenty-first session

1. NON-PROLIFERATION OF NUCLEAR WEAPONS: REPORT OF THE CONFERENCE OF THE EIGHTEEN-NATION COMMITTEE ON DISARMAMENT (AGENDA ITEM 26)

Resolution [2153(XXI)] adopted by the General Assembly

2153 (XXI). Non-proliferation of nuclear weapons

A

The General Assembly,

Having discussed the report of the Conference of the Eighteen-Nation Committee on Disarmament on the non-proliferation of nuclear weapons,[1]

Noting that it has not yet been possible to reach agreement on an international treaty to prevent the proliferation of nuclear weapons,

Viewing with apprehension the possibility that such a situation may lead not only to an increase of nuclear arsenals and to a spread of nuclear weapons over the world but also to an increase in the number of nuclear-weapon Powers,

Believing that if such a situation persists it may lead to the aggravation of tensions between States and the risk of a nuclear war,

Believing further that the remaining differences between all concerned should be resolved quickly so as to prevent any further delay in the conclusion of an international treaty on the non-proliferation of nuclear weapons,

Convinced, therefore, that it is imperative to make further efforts to bring to a conclusion a treaty which reflects the mandate given by the General Assembly in its resolution 2028 (XX) of 19 November 1965 and which is acceptable to all concerned and satisfactory to the international community,

1. *Reaffirms* its resolution 2028 (XX);

2. *Urges* all States to take all the necessary steps conducive to the earliest conclusion of a treaty on the non-proliferation of nuclear weapons;

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[1] *Official Records of the Disarmament Commission, Supplement for 1966*, document DC/228.

3. *Calls upon* all nuclear-weapon Powers to refrain from the use, or the threat of use, of nuclear weapons against States which may conclude treaties of the nature defined in paragraph 2 (*e*) of General Assembly resolution 2028 (XX);

4. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to consider urgently the proposal that the nuclear-weapon Powers should give an assurance that they will not use, or threaten to use, nuclear weapons against non-nuclear-weapon States without nuclear weapons on their territories, and any other proposals that have been or may be made for the solution of this problem;

5. *Calls upon* all States to adhere strictly to the principles laid down in its resolution 2028 (XX) for the negotiation of the above-mentioned treaty;

6. *Calls upon* the Conference of the Eighteen-Nation Committee on Disarmament to give high priority to the question of the non-proliferation of nuclear weapons in accordance with the mandate contained in General Assembly resolution 2028 (XX);

7. *Transmits* the records of the First Committee relating to the discussion of the item entitled "Non-proliferation of nuclear weapons", together with all other relevant documents, to the Conference of the Eighteen-Nation Committee on Disarmament;

8. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to submit to the General Assembly at an early date a report on the results of its work on the question of the non-proliferation of nuclear weapons.

1469th plenary meeting
17 November 1966

B

The General Assembly,

Recalling previous resolutions on the non-proliferation of nuclear weapons,

Considering that the further spread of nuclear weapons would endanger the peace and security of all States,

Convinced that the emergence of additional nuclear-weapon Powers would provoke an uncontrollable nuclear arms race,

Reiterating that the prevention of further proliferation of nuclear weapons is a matter of the highest priority demanding the unceasing attention of both nuclear-weapon and non-nuclear-weapon Powers,

Believing that a conference of non-nuclear-weapon Powers would contribute to the conclusion of arrangements designed to safeguard the security of those States,

1. *Decides* to convene a conference of non-nuclear-weapon States to meet not later than July 1968 to consider the following and other related questions:

"(*a*) How can the security of the non-nuclear States best be assured?

"(*b*) How may non-nuclear Powers co-operate among themselves in preventing the proliferation of nuclear weapons?

"(*c*) How can nuclear devices be used for exclusively peaceful purposes?";

2. *Requests* the President of the General Assembly immediately to set up a preparatory committee, widely representative of the non-nuclear-weapon States, to make appropriate arrangements for convening the conference and to consider the question of the association of nuclear States with the work of the conference and report thereon to the General Assembly at its twenty-second session.

1469th plenary meeting
17 November 1966

2. QUESTION OF GENERAL AND COMPLETE DISARMAMENT: REPORT OF THE CONFERENCE OF THE EIGHTEEN-NATION COMMITTEE ON DISARMAMENT (AGENDA ITEM 27)

Resolution [2162B (XXI)] adopted by the General Assembly

2162B (XXI) Question of general and complete disarmament

The General Assembly,

Guided by the principles of the Charter of the United Nations and of international law,

Considering that weapons of mass destruction constitute a danger to all mankind and are incompatible with the accepted norms of civilization,

Affirming that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining these standards of civilization,

Recalling that the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of 17 June 1925, [2] has been signed and adopted and is recognized by many States,

Noting that the Conference of the Eighteen-Nation Committee on Disarmament has the task of seeking an agreement on the cessation of the development and production of chemical and bacteriological weapons and other weapons of mass destruction, and on the elimination of all such weapons from national arsenals, as called for in the draft proposals on general and complete disarmament now before the Conference,

1. *Calls for* 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, signed at Geneva on 17 June 1925, and condemns all actions contrary to those objectives;

2. *Invites* all States to accede to the Geneva Protocol of 17 June 1925.

1484th plenary meeting
5 December 1966

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

Resolution [2163 (XXI)] adopted by the General Assembly

2163 (XXI). Urgent need for suspension of nuclear and thermonuclear tests

The General Assembly,

Having considered the question of the cessation of nuclear and thermonuclear weapon tests and the report of the Conference of the Eighteen-Nation Committee on Disarmament, [3]

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

Recalling further the joint memorandum on a comprehensive test ban treaty submitted by Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic

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[2] League of Nations, *Treaty Series*, vol. XCIV, 1929, No. 2138.

[3] *Official Records of the Disarmament Commission, Supplement for 1966*, document DC/228.

and annexed to the report of the Conference of the Eighteen-Nation Committee on Disarmament,[4] and in particular the concrete suggestions contained therein,

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

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

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

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

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

1. *Urges* all States which have not done so to adhere to the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;

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

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

4. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to elaborate without any further delay a treaty banning underground nuclear weapon tests.

1484th plenary meeting
5 December 1966

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4. INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (AGENDA ITEM 30)

CONCLUSION OF AN INTERNATIONAL TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES (AGENDA ITEM 89)

TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE INCLUDING THE MOON AND OTHER CELESTIAL BODIES (AGENDA ITEM 91)

Resolution [2222 (XXI)] adopted by the General Assembly

2222 (XXI). Treaty on Principles Governing the Activities of States on the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies

The General Assembly,

Having considered the report of the Committee on the Peaceful Uses of Outer Space covering its work during 1966,[6] and in particular the work accomplished by the Legal Sub-

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[4] *Ibid*, annex 1, sect. O.

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

[6] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda items 30, 89 and 91, document A/6431.

Committee during its fifth session, held at Geneva from 12 July to 4 August and at New York from 12 September to 16 September,

Noting further the progress achieved through subsequent consultations among States Members of the United Nations,

Reaffirming the importance of international co-operation in the field of activities in the peaceful exploration and use of outer space, including the Moon and other celestial bodies, and the importance of developing the rule of law in this new area of human endeavour,

1. *Commends* the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the text of which is annexed to the present resolution;

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

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

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

(*a*) To continue its work on the elaboration of an agreement on liability for damages caused by the launching of objects into outer space and an agreement on assistance to and return of astronauts and space vehicles, which are on the agenda of the Committee;

(*b*) To begin at the same time the study of questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including the various implications of space communications;

(*c*) To report on the progress of its work to the General Assembly at its twenty-second session.

1499th plenary meeting
19 December 1966

ANNEX

[Text of the Treaty, reproduced in this *Yearbook*, pp. 166-170]

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5. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (AGENDA ITEM 45)

Resolution [2158 (XXI)] adopted by the General Assembly

2158 (XXI). Permanent sovereignty over natural resources

The General Assembly,

Recalling its resolutions 523 (VI) of 12 January 1952, 626 (VII) of 21 December 1952 and 1515 (XV) of 15 December 1960,

Recalling further its resolution 1803 (XVII) of 14 December 1962 on permanent sovereignty over natural resources,

Recognizing that the natural resources of the developing countries constitute a basis of their economic development in general and of their industrial progress in particular,

Bearing in mind that natural resources are limited and in many cases exhaustible and that their proper exploitation determines the conditions of the economic development of the developing countries both at present and in the future,

Considering that, in order to safeguard the exercise of permanent sovereignty over natural resources, it is essential that their exploitation and marketing should be aimed at securing the highest possible rate of growth of the developing countries,

Considering further that this aim can better be achieved if the developing countries are in a position to undertake themselves the exploitation and marketing of their natural resources so that they may exercise their freedom of choice in the various fields related to the utilization of natural resources under the most favourable conditions,

Taking into account the fact that foreign capital, whether public or private, forthcoming at the request of the developing countries, can play an important role inasmuch as it supplements the efforts undertaken by them in the exploitation and development of their natural resources, provided that there is government supervision over the activity of foreign capital to ensure that it is used in the interests of national development,

I

1. *Reaffirms* the inalienable right of all countries to exercise permanent sovereignty over their natural resources in the interest of their national development, in conformity with the spirit and principles of the Charter of the United Nations and as recognized in General Assembly resolution 1803 (XVII);

2. *Declares*, therefore, that the United Nations should undertake a maximum concerted effort to channel its activities so as to enable all countries to exercise that right fully;

3. *States* that such an effort should help in achieving the maximum possible development of the natural resources of the developing countries and in strengthening their ability to undertake this development themselves, so that they might effectively exercise their choice in deciding the manner in which the exploitation and marketing of their natural resources should be carried out;

4. *Confirms* that the exploitation of natural resources in each country shall always be conducted in accordance with its national laws and regulations;

5. *Recognizes* the right of all countries, and in particular of the developing countries, to secure and increase their share in the administration of enterprises which are fully or partly operated by foreign capital and to have a greater share in the advantages and profits derived therefrom on an equitable basis, with due regard to the development needs and objectives of the peoples concerned and to mutually acceptable contractual practices, and calls upon the countries from which such capital originates to refrain from any action which would hinder the exercise of that right;

6. *Considers* that, when natural resources of the developing countries are exploited by foreign investors, the latter should undertake proper and accelerated training of national personnel at all levels and in all fields connected with such exploitation;

7. *Calls upon* the developed countries to make available to the developing countries, at their request, assistance, including capital goods and know-how, for the exploitation and marketing of their natural resources in order to accelerate their economic development, and to refrain from placing on the world market non-commercial reserves of primary commodities which may have an adverse effect on the foreign exchange earnings of the developing countries;

8. *Recognizes* that national and international organizations set up by the developing countries for the development and marketing of their natural resources play a significant role in ensuring the exercise of the permanent sovereignty of those countries in this field and should on that account be encouraged;

9. *Recommends* to the Economic Commission for Asia and the Far East, the Economic Commission for Latin America, the Economic Commission for Africa and the United

Nations Economic and Social Office in Beirut that, in the execution of their functions, they should keep under review the question of permanent sovereignty over natural resources in the countries of the regions concerned, and the problem of the economic utilization of these resources in the national interests of their peoples;

II

Requests the Secretary-General:

(*a*) To co-ordinate the activities of the Secretariat in the field of natural resources with those of other United Nations organs and programmes, including the United Nations Conference on Trade and Development, the United Nations Development Programme, the regional economic commissions, the United Nations Economic and Social Office in Beirut, the specialized agencies and the International Atomic Energy Agency, and in particular with those of the United Nations Industrial Development Organization;

(*b*) To take the necessary steps to facilitate, through the work of the Centre for Development Planning, Projections and Policies, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization and the Advisory Committee on the Application of Science and Technology to Development, the inclusion of the exploitation of the natural resources of the developing countries in programmes for their accelerated economic growth;

(*c*) To submit to the General Assembly at its twenty-third session a progress report on the implementation of the present resolution.

1478th plenary meeting
25 November 1966

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6. DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS (AGENDA ITEM 62)

Resolution [2200 (XXI)] adopted by the General Assembly

2200 (XXI). International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights

A

The General Assembly,

Considering that one of the purposes of the United Nations, as stated in Articles 1 and 55 of the Charter, is to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering that in Article 56 of the Charter all Members of the United Nations have pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of that purpose,

Recalling the proclamation by the General Assembly on 10 December 1948 of the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations,

Having considered since its ninth session the draft International Covenants on Human Rights prepared by the Commission on Human Rights and transmitted to it by Economic

and Social Council resolution 545 B (XVIII) of 29 July 1954, and having completed the elaboration of the Covenants at its twenty-first session,

1. *Adopts* and opens for signature, ratification and accession the following international instruments, the texts of which are annexed to the present resolution:

(*a*) The International Covenant on Economic, Social and Cultural Rights;

(*b*) The International Covenant on Civil and Political Rights;

(*c*) The Optional Protocol to the International Covenant on Civil and Political Rights;

2. *Expresses the hope* that the Covenants and the Optional Protocol will be signed and ratified or acceded to without delay and come into force at an early date;

3. *Requests* the Secretary-General to submit to the General Assembly at its future sessions reports concerning the state of ratifications of the Covenants and of the Optional Protocol which the Assembly will consider as a separate agenda item.

1496th plenary meeting
16 December 1966

ANNEX

[Text of the Covenants and of the Optional Protocol, reproduced in this *Yearbook*, pp. 170-195]

B

The General Assembly,

Considering that the text of the International Covenant on Economic, Social and Cultural Rights, the text of the International Covenant on Civil and Political Rights and the text of the Optional Protocol to the International Covenant on Civil and Political Rights should be made known throughout the world,

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

2. *Requests* the Secretary-General to ensure the immediate and wide circulation of these instruments and, to that end, to publish and distribute the text thereof.

1496th plenary meeting
16 December 1966

C

The General Assembly,

Considering the advisability of the proposals for the establishment of national commissions on human rights or the designation of other appropriate institutions to perform certain functions pertaining to the observance of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

1. *Invites* the Economic and Social Council to request the Commission on Human Rights to examine the question in all its aspects and to report, through the Council, to the General Assembly;

2. *Requests* the Secretary-General to invite Member States to submit their comments on the question, in order that the Commission on Human Rights may take these comments into account when considering the proposals.

1496th plenary meeting
16 December 1966

7. QUESTION OF SOUTH WEST AFRICA: 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 (AGENDA ITEM 65)

Resolution [2145 (XXI)] adopted by the General Assembly

2145 (XXI). Question of South West Africa

The General Assembly,

Reaffirming the inalienable right of the people of South West Africa to freedom and independence in accordance with the Charter of the United Nations, General Assembly resolution 1514 (XV) of 14 December 1960 and earlier Assembly resolutions concerning the Mandated Territory of South West Africa,

Recalling the advisory opinion of the International Court of Justice of 11 July 1950,[7] accepted by the General Assembly in its resolution 449 A (V) of 13 December 1950, and the advisory opinions of 7 June 1955[8] and 1 June 1956[9] as well as the judgement of 21 December 1962,[10] which have established the fact that South Africa continues to have obligations under the Mandate which was entrusted to it on 17 December 1920 and that the United Nations as the successor to the League of Nations has supervisory powers in respect of South West Africa,

Gravely concerned at the situation in the Mandated Territory, which has seriously deteriorated following the judgement of the International Court of Justice of 18 July 1966,[11]

Having studied the reports of the various committees which had been established to exercise the supervisory functions of the United Nations over the administration of the Mandated Territory of South West Africa,

Convinced that the administration of the Mandated Territory by South Africa has been conducted in a manner contrary to the Mandate, the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming its resolution 2074 (XX) of 17 December 1965, in particular paragraph 4 thereof which condemned the policies of apartheid and racial discrimination practised by the Government of South Africa in South West Africa as constituting a crime against humanity,

Emphasizing that the problem of South West Africa is an issue falling within the terms of General Assembly resolution 1514 (XV),

Considering that all the efforts of the United Nations to induce the Government of South Africa to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the well-being and security of the indigenous inhabitants have been of no avail,

Mindful of the obligations of the United Nations towards the people of South West Africa,

Noting with deep concern the explosive situation which exists in the southern region of Africa,

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[7] *International status of South West Africa, Advisory Opinion: I.C.J. Reports 1950*, p. 128.

[8] *South West Africa—Voting procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955*, p. 67.

[9] *Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956*, p. 23.

[10] *South West Africa Cases (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962*, p. 319.

[11] *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, p. 6.

Affirming its right to take appropriate action in the matter, including the right to revert to itself the administration of the Mandated Territory,

1. *Reaffirms* that the provisions of General Assembly resolution 1514 (XV) are fully applicable to the people of the Mandated Territory of South West Africa and that, therefore, the people of South West Africa have the inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations;

2. *Reaffirms further* that South West Africa is a territory having international status and that it shall maintain this status until it achieves independence;

3. *Declares* that South Africa has failed to fulfil its obligations in respect of the administration of the Mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa and has, in fact, disavowed the Mandate;

4. *Decides* that the Mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations;

5. *Resolves* that in these circumstances the United Nations must discharge those responsibilities with respect to South West Africa;

6. *Establishes* an *Ad Hoc* Committee for South West Africa—composed of fourteen Member States to be designated by the President of the General Assembly—to recommend practical means by which South West Africa should be administered, so as to enable the people of the Territory to exercise the right of self-determination and to achieve independence, and to report to the General Assembly at a special session as soon as possible and in any event not later than April 1967;

7. *Calls upon* the Government of South Africa forthwith to refrain and desist from any action, constitutional, administrative, political or otherwise, which will in any manner whatsoever alter or tend to alter the present international status of South West Africa;

8. *Calls the attention* of the Security Council to the present resolution;

9. *Requests* all States to extend their whole-hearted co-operation and to render assistance in the implementation of the present resolution;

10. *Requests* the Secretary-General to provide all the assistance necessary to implement the present resolution and to enable the *Ad Hoc* Committee for South West Africa to perform its duties.

1454th plenary meeting
27 October 1966

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8. REPORTS OF THE INTERNATIONAL LAW COMMISSION ON THE SECOND PART OF ITS SEVENTEENTH SESSION AND ON ITS EIGHTEENTH SESSION (AGENDA ITEM 84)

(*a*) Report of the Sixth Committee[12]

[*Original text: English/Spanish*]
[*21 November 1966*]

I. Introduction

1. At its 1415th plenary meeting, on 24 September 1966, the General Assembly decided to include the item entitled "Reports of the International Law Commission on the second

[12] Document A/6516, reproduced from *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 84.

part of its seventeenth session and on its eighteenth session" in the agenda of its twenty-first session and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this item from its 902nd to its 919th meetings, from 3 to 26 October 1966.

3. At the 902nd meeting, the Chairman welcomed Mr. Mustafa Kamil Yasseen, Chairman of the International Law Commission at its eighteenth session, on behalf of the Sixth Committee, and invited him to introduce the Commission's report on the work of that session (A/6309/Rev.1). At the 914th meeting, on 19 October, Mr. Yasseen replied to the general comments made by the representatives who had spoken during the debate, and at the 918th meeting, on 25 October, he congratulated the Sixth Committee on the action taken on the recommendations made by the International Law Commission in its report.

4. The report of the International Law Commission on the second part of its seventeenth session, held in the Principality of Monaco from 3 to 28 January 1966, in accordance with General Assembly resolution 2045 (XX) of 8 December 1965, consisted of the following sections: (*a*) Introduction; (*b*) Membership and attendance; (*c*) Officers; (*d*) Agenda and meetings; (*e*) Law of treaties; (*f*) Resolution of thanks to the Government of Monaco; (*g*) Organization and duration of the eighteenth session; (*h*) Co-operation with other bodies; (*i*) Seminar on International Law.

5. The report of the International Law Commission on its eighteenth session, held at Geneva from 4 May to 19 July 1966, consisted of the following four chapters: (*a*) Organization of the session; (*b*) Law of treaties; (*c*) Special missions; (*d*) Other decisions and conclusions of the Commission. It also reproduced in an annex the comments of Governments on parts I, II and III of the draft articles on the law of treaties drawn up by the Commission at its fourteenth, fifteenth and sixteenth sessions. In chapter II of the report, the Commission submitted to the General Assembly the final text of the draft articles on the law of treaties with commentaries, together with a recommendation concerning the convening of an international conference on the law of treaties.

6. The final text of the draft articles on the law of treaties adopted by the International Law Commission on 18 and 19 July 1966 was also reproduced in document A/6348 and Corr. 1 in accordance with the provisions of paragraph 5 (*b*) of General Assembly resolution 2045 (XX) of 8 December 1965.

7. The Sixth Committee also had before it a memorandum (A/C.6/371)[13] on the procedural and organizational problems involved in a possible diplomatic conference on the law of treaties, prepared by the Secretariat after informal consultations with the International Law Commission, in accordance with the request of the Sixth Committee at the twentieth session of the General Assembly, set forth in paragraphs 64 and 65 of its report on the agenda item "Reports of the International Law Commission on the work of its sixteenth and seventeenth sessions".[14]

II. Proposals and amendments

A. International conference of plenipotentiaries on the law of treaties

8. Uruguay submitted a draft resolution (A/C.6/L.595), under which the General Assembly would (1) express its great satisfaction with the work of codification carried out by the International Law Commission and its gratitude to the Commission and to the Special Rapporteurs for the efforts they had made; (2) urge Governments to communicate their observations on the draft articles not later than 1 September 1967 to the Secretariat, which

[13] Reproduced in this *Yearbook*, p. 248.

[14] See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 87, document A/6090.

would circulate them to Governments after that date; (3) recommend the Secretariat to convene an international conference of plenipotentiaries, open to all States, to study the draft articles and to conclude a convention on international treaties; (4) request the Secretariat to organize the conference in question on the following basis: (*a*) date, first half of 1968; (*b*) place, Geneva; (*c*) duration, ten weeks, in one consecutive period, two working committees to be set up to draft the text; (*d*) procedure, as for the Conference on the Law of the Sea and the Vienna Conferences on Diplomatic and Consular Relations; (*e*) participants, invitations to be extended to all Governments; (*f*) safeguards, each provision to be approved by two thirds of the votes of participating States; (5) instruct the Secretariat to bring the basic rules and regulations of the conference to the notice of the General Assembly at its next session. This draft resolution was subsequently withdrawn by its sponsor, who became a sponsor of draft resolution A/C.6/L.596 and Add.1.

9. The draft resolution (A/C.6/L.596 and Corr.1 and Add.1), submitted by Argentina, Canada, Ghana, Iran, Japan, Nigeria, the United Kingdom of Great Britain and Northern Ireland and Uruguay, proposed that the General Assembly should: (1) express its appreciation to the International Law Commission for its valuable work on the law of treaties, and to the Special Rapporteurs for their contribution to that work; (2) decide that an international conference of plenipotentiaries should be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate; (3) request the Secretary-General to convoke the conference early in 1968 at ... [place] ... and, if it was necessary, to convoke a second session of the conference early in 1969 at ...; (4) invite States Members of the United Nations, States members of the specialized agencies, States parties to the Statute of the International Court of Justice and States that the General Assembly decided specially to invite to participate in the conference, to send delegations of sufficient size to ensure representation in two main committees of the conference and to include among their representatives experts competent in the field to be considered; (5) invite the specialized agencies and the interested inter-governmental organizations to send observers to the conference; (6) refer to the conference the draft articles in chapter II of the report of the International Law Commission covering the work of its eighteenth session as the basic proposal for its consideration; (7) request the Secretary-General to present to the conference all relevant documentation and recommendations relating to its methods of work and procedures, and to arrange for the necessary staff and facilities which would be required for the conference including such experts as might be necessary; (8) request the International Law Commission to recommend to the conference what portions of the draft articles should be referred to its First Committee, and what portions to its Second Committee; (9) invite Member States to submit their written comments and observations on the final draft articles concerning the law of treaties prepared by the International Law Commission not later than 1 July 1967; (10) request the Secretary-General to circulate such comments so as to facilitate the discussion of the subject at the twenty-second session of the General Assembly; (11) decide to include an item entitled "Law of Treaties" in the provisional agenda of its twenty-second session with a view to further discussion of the draft articles in order to facilitate the conclusion of a convention on the law of treaties at the plenipotentiaries' conference convened by the present resolution.

10. Czechoslovakia, Poland and the Union of Soviet Socialist Republics submitted an amendment (A/C.6/L.598) to draft resolution A/C.6/L.596 and Corr.1 and Add.1 with a view to rewording operative paragraph 4 of the draft resolution to read as follows: "4. *Invites* all States to send delegations to participate in the work of the conference". This amendment was made applicable to the successive revised texts of the draft resolution (A/C.6/L.596 and Corr.1 and Add.1) which were subsequently submitted by its sponsors.

11. The sponsors of draft resolution A/C.6/L.596 and Corr.1 and Add.1 submitted a first revision of the draft (A/C.6/L.596/Rev.1), in which operative paragraphs 3 and 4 of the original text were altered to read as follows: "(3) *Requests* the Secretary-General to convoke

the conference early in 1968 at ... [place] ... and to convoke a second session of the conference early in 1969 at ...; (4) *Invites* States Members of the United Nations, States members of the specialized agencies, States parties to the Statute of the International Court of Justice, and States that the General Assembly decided specially to invite, to participate in the conference; (5) *Invites* the States referred to in paragraph 4 above to send delegations of sufficient size to ensure representation in two main committees of the conference and to include among their representatives experts competent in the field to be considered;". As a result, operative paragraphs 5, 6, 7, 8, 9, 10 and 11 of the original draft became respectively paragraphs 6, 7, 8, 9, 10, 11 and 12 of the revised draft resolution (A/C.6/L.596/Rev.1).

12. Hungary and the Ukrainian Soviet Socialist Republic submitted an amendment (A/C.6/L.601) to the revised draft resolution (A/C.6/L.596/Rev.1) proposing the addition of the following new paragraph at the end of the preamble: "*Bearing in mind* its resolutions 1665 (XVI), 1910 (XVIII), 2028 (XX), 2032 (XX) and 2077 (XX), which dealt with questions concerning the conclusion of various international agreements, participation in such agreements and the fulfilment of obligations arising from them, and which were addressed to *all* States". This amendment was also made applicable to the second revision of the draft resolution (A/C.6/L.596/Rev.2), which was subsequently submitted by the sponsors. As a result of the vote taken on amendment A/C.6/L.598, amendment A/C.6/L.601 was subsequently withdrawn by its sponsors.

13. Two amendments were submitted to operative paragraph 3 of the revised draft resolution (A/C.6/L.596/Rev.1). One of them (A/C.6/L.602), submitted by Cameroon, sought to change that paragraph to read as follows: "3. *Requests* the Secretary-General to convoke the conference early in 1968 at Geneva or at any other suitable place where an express invitation by a State Member of the United Nations is received". The other (A/C.6/L.603), submitted by Lebanon, worded that paragraph as follows: "3. *Requests* the Secretary-General to convoke, at Geneva or at any other suitable place for which an invitation is received by the Secretary-General before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969".

14. The amendment of Cameroon (A/C.6/L.602) was withdrawn by its sponsor at the 918th meeting. The content of the amendment of Lebanon (A/C.6/L.603) was incorporated in the text of a second revision of the draft resolution (A/C.6/L.596/Rev.2) submitted by the sponsors of draft resolution A/C.6/L.596/Rev.1, together with Bolivia and Chile. The operative part of the second revision of the draft resolution (A/C.6/L.596/Rev.2) read as follows:

"*The General Assembly*,

"...

"1. *Expresses its appreciation* to the International Law Commission for its valuable work on the law of treaties, and to the Special Rapporteurs for their contribution to this work;

"2. *Decides* that an international conference of plenipotentiaries shall be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

"3. *Requests* the Secretary-General to convoke, at Geneva or at any other suitable place for which an invitation is received by the Secretary-General before the twenty-second session of the General Assembly, the first session of the Conference early in 1968 and the second session early in 1969;

"4. *Invites* States Members of the United Nations, States members of the specialized agencies, States parties to the Statute of the International Court of Justice, and States that the General Assembly decides specially to invite, to participate in the conference;

"5. *Invites* the States referred to in paragraph 4 above to include so far as possible among their representatives experts competent in the field to be considered;

"6. *Invites* the specialized agencies and the interested inter-governmental organizations to send observers to the conference;

"7. *Refers* to the conference the draft articles in chapter II of the report of the International Law Commission covering the work of its eighteenth session as the basic proposal for its consideration;

"8. *Requests* the Secretary-General to present to the conference all relevant documentation and recommendations relating to its methods of work and procedures, and to arrange for the necessary staff and facilities which will be required for the conference including such experts as may be necessary;

"9. *Invites* Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit their written comments and observations on the final draft articles concerning the law of treaties prepared by the International Law Commission not later than 1 July 1967;

"10. *Requests* the Secretary-General to circulate such comments so as to facilitate the discussion of the subject at the twenty-second session of the General Assembly;

"11. *Decides* to include an item entitled "Law of Treaties" in the provisional agenda of its twenty-second session with a view to further discussion of the draft articles in order to facilitate the conclusion of a convention on the law of treaties at the plenipotentiaries, conference convened by the present resolution."

15. At the 918th meeting, Niger submitted an oral amendment to operative paragraph 3 of revised draft resolution A/C.6/L.596/Rev.2, which sought to replace that paragraph with the following text: "3. *Requests* the Secretary-General to convoke the conference early in 1969 at Geneva or at any other suitable place for which an invitation is received by the Secretary-General before the twenty-second session of the General Assembly". This amendment was withdrawn later in the same meeting.

16. The Secretary-General submitted a note (A/C.6/L.600) containing preliminary estimates of the financial implications of a conference on the law of treaties prepared on the basis of the possibilities set forth in the memorandum on procedural and organizational problems involved in a possible diplomatic conference on the law of treaties, mentioned in paragraph 7 of this report.

B. Reports of the International Law Commission

17. Uruguay submitted a draft resolution (A/C.6/L.594) whereby, after noting the reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session, the General Assembly would: (1) express: (*a*) its satisfaction and appreciation of the effective action taken to promote the codification of international law and collaboration among the various technical organs; (*b*) its satisfaction at the support given to the Seminar and the principles indicated for its further development; (*c*) its agreement with the decisions adopted in regard to the topic "Special Missions"; (2) recommend the International Law Commission: (*a*) to continue its work in connexion with the "Special Missions" and to give constant attention to the following topics: "State Responsibility", "Succession of States and Governments", "Relations between States and Inter-governmental Organizations"; (*b*) to take account of the work being carried out by the European Committee on Legal Co-operation and the Inter-American Juridical Committee in order to promote the universality of juridical solutions; (*c*) to encourage the progressive development of the Seminar on International Law; (3) urge States to give their support to the Seminar, welcoming the scholarships offered by the Governments of Israel and Sweden;

(4) request the Secretary-General: (*a*) to invite Governments to make any pertinent comments on the "Special Missions" by 1 March 1967, and to bring such comments to the notice of the International Law Commission and communicate them to Governments; (*b*) to transmit to the International Law Commission the records of the debates at the twenty-first session of the General Assembly on the reports of the Sixth Committee.

18. The sponsor of the draft resolution subsequently submitted a revised version (A/C.6/L.594/Rev.1), in which paragraph 2 (*b*) read: "(*b*) to take account of the work being carried out by the European Committee on Legal Co-operation, the Inter-American Juridical Committee and the Asian-African Legal Consultative Committee in order to promote the universality of juridical solutions;". This draft resolution (A/C.6/L.594/Rev.1) was ultimately withdrawn by its sponsor who became a sponsor of draft resolution A/C.6/L.597 and Add.1.

19. The last preambular paragraph and the operative part of the draft resolution submitted by Brazil, Canada, Chile, India, Mexico, Nigeria, Uruguay and Yugoslavia (A/C.6/L.597 and Add.1) read as follows:

"*The General Assembly*,

"...

"*Noting further with appreciation* that the Office of the United Nations at Geneva organized in May 1966, during the eighteenth session of the International Law Commission, a second session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law and that the Seminar, which was made possible by the generous contribution of members of the Commission, was well organized and functioned to the satisfaction of all,

"1. *Takes note* of the report of the International Law Commission on the second part of its seventeenth session and of chapters I, III and IV of the report on its eighteenth session;

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

"3. *Notes with approval* the programme of work for 1967 proposed by the Commission in chapter IV of the report on its eighteenth session;

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

"(*a*) Continue the work of codification and progressive development of the international law relating to special missions, taking into account the views expressed at the twenty-first session of the General Assembly and the comments which may be submitted by Governments, with the object of presenting a final draft on the topic in the report on the work of its nineteenth session;

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

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

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

20. At the 915th meeting, the sponsors of the draft resolution (A/C.6/L.597 and Add.1) orally proposed as its title "Reports of the International Law Commission". They also accepted orally, at the same meeting, the Israel representative's suggestion that the word "contribution" in the last preambular paragraph should be replaced by the word "collaboration".

III. Debate

21. The representatives who took part in the debate on this subject congratulated the International Law Commission on the work it had done at the second part of its seventeenth session and at its eighteenth session, especially for having submitted final draft articles on the law of treaties and for the progress made on other topics and particularly in the codification of the rules concerning special missions. It was stressed that the Commission's work was having an increasing influence on the theory and practice of international law; emphasis was placed once again on the great importance of the codification and progressive development of international law as a means of strengthening the rule of law in international life, maintaining international peace and security in accordance with the purposes and principles of the United Nations Charter and encouraging coexistence and peaceful co-operation among all States regardless of their political, economic and social systems. Some representatives stressed the important part which the General Assembly, and in particular the Sixth Committee, played in that process through the recommendations which it regularly made to the International Law Commission and the decisions which it adopted with regard to the final drafts which the Commission submitted to it.

22. In conformity with the practice followed in similar cases, some representatives suggested, and the Sixth Committee agreed, that the best way of concluding the consideration of the item would be to recommend to the General Assembly two draft resolutions, one taking note of the reports of the International Law Commission and dealing with the Commission's future work and other matters mentioned in those reports, and the other dealing exclusively with questions related to the convening of an international conference of plenipotentiaries on the law of treaties to adopt a convention on the subject based on the final draft articles submitted by the Commission.

A. Law of treaties

23. The representatives who spoke in the debate paid a warm tribute, on behalf of their respective delegations, to the International Law Commission for the successful conclusion, during its eighteenth session, of its work on the law of treaties by the adoption and submission to the General Assembly of seventy-five final draft articles on that topic. Many representatives especially congratulated Sir Humphrey Waldock, the Special Rapporteur for the topic, on his invaluable contribution to the work of the Commission.

24. Some representatives stressed the fact that the Commission owed its success in the codification of the law of treaties largely to the spirit of co-operation which prevailed in the Commission and to the working methods it had adopted in conformity with its statute. The International Law Commission, on which the basic legal systems of the world and the chief forms of civilization were represented, could work harmoniously and in close association with the States to whose observations and comments it gave due consideration when revising its preliminary drafts.

25. Many representatives stressed the fundamental importance of the codification of the law of treaties for ensuring legality and the stability of the international legal order. That codification was important because by means of treaties States established, modified or terminated their mutual rights and duties and because treaties, in particular multilateral conventions, had become the primary or main source of international law. On the other

hand treaties had steadily increased in number in recent years, ranging over increasingly varied and technical subjects. Consequently, many representatives stressed that the codification of the law of treaties was the Commission's *magnum opus*. The differing philosophies of international law involved in the law of treaties, the complexity and diversity of practice, court decisions and doctrine on the subject, the inherent difficulties of the topic and the far-reaching consequences that codification might entail were cited by those representatives as other factors which made the Commission's accomplishment, after years of constant and patient efforts, doubly praiseworthy. All those representatives regarded the results achieved in the codification of the law of treaties as a very significant landmark in the movement towards the codification and progressive development of international law, and considered therefore that the next steps should be taken very carefully so as not to impair those results. As some representatives pointed out, the failure of the codification of the law of treaties in its final stages would have the gravest consequences in regard to the whole future work of the United Nations directed at the codification and progressive development of international law and would adversely affect the cause of peaceful co-operation among States.

26. It was emphasized in the debate that now that the Commission had submitted final draft articles on the law of treaties, the principal task of the Sixth Committee was to see that that codification was promptly and effectively translated into international legislation, by recommending that the General Assembly should bring the work of codification and progressive development of the law of treaties to its logical conclusion by the most appropriate procedure for the adoption of a multilateral convention on the law of treaties which would give binding force to the principles and rules proposed by the Commission in its draft.

27. Consequently, the representatives who spoke in the debate said that, in view of the recommendation made by the Commission, in conformity with article 23, paragraph 1, of its statute (see A/6309/Rev.1, part II, para. 36), an international conference of plenipotentiaries should be convened to draw up and adopt a multilateral convention on the law of treaties, based on the draft articles prepared by the Commission, to which States could become parties. That new convention on the law of treaties would, like the Geneva Conventions on the Law of the Sea and the Vienna Conventions on Diplomatic Relations and Consular Relations, contribute to the strengthening of legality in international relations and solidarity among States.

28. The opinions expressed in the debate on the law of treaties are set out below in two main sections. The first contains a summary of the observations concerning the draft articles on the law of treaties prepared by the Commission, and the second the views expressed and the conclusions reached with regard to the convening of an international conference of plenipotentiaries on the law of treaties.

1. *Draft articles on the law of treaties*

29. In the debate some representatives did not consider it useful, for the time being, to comment on the substance of the draft articles on the law of treaties (A/6309/Rev.1, part II) since their Governments wished to study them in detail and, moreover, the Sixth Committee would have an opportunity at the twenty-second session of the General Assembly to consider the draft articles again before the proposed conference met. Others, on the contrary, asserted that the Sixth Committee could and should consider the substance of the draft articles at once, and, while reserving the final position of their Governments, they made preliminary comments on the general economy and scope of the draft articles and on some of their specific provisions. Lastly, some representatives, thought that the Sixth Committee should also consider particular aspects of the law of treaties which were not embodied in the Commission's draft articles or on which the draft articles, for lack of agreement, offered no solution, so that the opinions expressed might be taken into consideration by the future international conference of plenipotentiaries.

(a) *General economy of the draft*

30. Most of the representatives thought that the draft articles prepared by the International Law Commission were, as a whole, a satisfactory basic proposal for a conference of plenipotentiaries on the law of treaties. Being inspired by logic and the criterion of general acceptability, the draft reflected and recognized the existence of certain essential elements of the international legal order but, at the same time, was founded on respect for the free consent of the parties. Nevertheless, some representatives thought that the draft omitted some points which should have been included and that certain particular provisions were not all that might be desired because they did not fully reflect important principles of contemporary international law, contained purely descriptive propositions, could be simplified, were not sufficiently precise, could create domestic constitutional problems, were based on controversial ideas or upset the general balance of the text. In that connexion, some representatives stressed that the draft articles were closely integrated and that each provision must be considered on its intrinsic merits in its context in the articles as a whole and in the light of the requirements of contemporary international society, and not on the basis of preconceived notions of what the law was or purely idealistic conceptions of what it ought to be.

31. Some representatives, recalling that at previous sessions of the General Assembly a majority of the representatives in the Sixth Committee had spoken in favour of giving the codification of the law of treaties the form of a convention, expressed their satisfaction that the International Law Commission had maintained its decision of 1961 and accordingly had given the final draft articles on the law of treaties the form of a single convention. In that way, the new States which had recently become members of the international community would be able to participate directly in the formulation of the law of treaties, thereby placing the law of treaties on a wider and more secure foundation.

32. A number of representatives welcomed the fact that the draft articles presented a judicious combination of elements *de lege lata* and *de lege ferenda*, progressively developing the law of treaties when and where it was justified and necessary and not merely codifying customary norms. At the same time, some representatives stressed that the draft referred to problems of fundamental importance not only for the law of treaties but for all international law (prohibition of the threat or use of force; *jus cogens*; expression and validity of consent to be bound; relationship of treaties with customary law; loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty, etc.). Others considered that the codification of the law of treaties proposed in the draft would, if embodied in a convention, serve to prevent a treaty from legalizing gross differences between a party's obligations and its rights in disregard of justice and of the principle of the sovereign equality of States.

33. Many representatives expressed satisfaction at the fact that the draft was based on the fundamental principles of modern international law explicitly or implicitly embodied in the United Nations Charter. Some representatives stressed that the draft explicitly recognized the primacy of the Charter in some of its provisions, for example articles 26, 49, 50, 62 and 70, and added that the position of their respective Governments with regard to particular provisions correctly reflected the fundamental principles of modern international law, especially those set forth in the United Nations Charter. Among those fundamental principles the following were enumerated: the prohibition of the threat or use of force; the sovereign equality of States; non-intervention in the internal affairs of States; the equality of rights and self-determination of peoples; respect for the territorial integrity and political independence of States: good faith in international relations; the peaceful settlement of disputes; the universality of international law.

34. Among the provisions embodying rules or current trends of international law, mention was made of those relating to reservations, consent relating to a part of a treaty,

jus cogens, fundamental change of circumstances, interpretation, coercion and the consequence of the case of an aggressor State in treaty law. Articles 5, 25, 30, 33, 48 and 49 were cited as examples of provisions concerning the sovereign equality of States: articles 11, 12, 13, 25, 30 and 45-49, as examples of provisions concerning the free consent of the parties; articles 15, 23, 27 and 43 as examples of provisions concerning good faith; and articles 16-20 as examples of provisions concerning the universality of international law.

35. A number of representatives commended the draft for having allowed for the mutability of legal phenomena and having adopted a dynamic attitude which took account of the interests of a continously evolving international community. That attitude was reflected, for example, in the provision relating to a fundamental change of circumstances, in the definition of the term "treaty", which in the draft encompassed the so-called "treaties in simplified form", and in the recognition of the growing role of multilateral conventions as an important or main source of international law which objectivized the will of the parties and gave their consent effects more consistent with the interests of States and of the contemporary international community.

36. The draft was also praised for its efforts to overcome the technical difficulties of treaty law which sometimes arose from the lack of uniformity in State practice in such matters, for example, as full powers, signature, registration and publication, and for having set forth the rules to be applied if the parties to a treaty deliberately or involuntarily omitted certain clauses, such as those relating to ratification, accession, termination or revision, thus making it possible to avoid legal disputes which might affect the effectiveness and real value of treaties.

37. Some representatives said that the draft contained rules of unequal importance which could be grouped in separate categories. For example, one representative drew a distinction between technical rules (articles 62, 63 and 71-75) and logical rules (article 26, paragraphs 2, 3 and 4, and article 31), as well as between rules concerning the consent of the State to be bound (articles 10, 11, 12, 15-20, 24, 25, 32, 42 and 45-48) and "community" rules of modern international law (articles 43, 49, 50 and 59), which came within the purview of the progressive development of treaty law rather than of its codification. With regard to the rules concerning the consent of the State to be bound, that representative pointed out that while some rules were referred to on proved consent or on the lack of such consent (articles 10, 11, 12, 15-20 and 45-48), other rules presumed the consent of the parties (articles 24, 25, 32 and 53, paragraph 1), or established irrebuttable presumptions (article 17, paragraph 5, and article 42). Another representative considered that the draft indirectly established a hierarchy of rules: first, the peremptory norms of general international law from which derogation was permitted only under a subsequent norm of general international law having the same character *(jus cogens)*; secondly, the rules of international law based on international custom or on multilateral treaties, from which derogation was permitted by changing customary law or by concluding new treaties, and lastly, the purely contractual rules of conventional law. Other representatives, on the other hand, considered it premature to divide the articles into categories and attach to them epithets having a doctrinal nuance, for that might easily divert attention from the real issues that the articles raised.

38. Certain representatives also pointed out that some of the draft articles, including those relating to reservations, *jus cogens*, interpretation and fundamental change of circumstances, were controversial and should be examined very carefully before a final decision was taken on their formulation or their inclusion in the future convention on the law of treaties.

39. Some representatives stressed the need to provide for an independent body to adjudicate disputes to which certain draft articles might give rise, particularly in connexion with the articles involving the progessive development of treaty law rather than its codification proper. Those representatives felt that the procedure which the International Law

Commission had formulated in the draft, defining and strictly limiting the conditions in which certain articles could be invoked, seemed inadequate, particularly if it was borne in mind that many provisions referred to concepts which were difficult to evaluate, such as good faith or *jus cogens*. According to some of those representatives, the introduction of new principles lending themselves to subjective interpretation, or of imprecise rules and concepts, should be accompanied by satisfactory procedural guarantees. One representative considered that if means of ensuring objective solutions could not be devised it would be preferable to remove from the draft any ideas or provisions which might upset the balance of the whole or introduce an element of uncertainty, leaving the application and interpretation of those ideas and provisions to customary law and State practice.

40. Another representative thought that the draft did not take sufficient account of the influence of the time factor on the effects of the obligations deriving from treaties, and did not always take into account the fact that in many cases treaties, in addition to embodying the will of the parties, set forth principles or rules of general international law. In that representative's view, those questions should be studied more thoroughly in connexion with the codification of treaty law.

41. Some representatives said that States should study carefully the possible implications which the draft articles on the law of treaties might have for their respective constitutional systems and that their views should be taken into account when the articles of the future convention on the law of treaties were being definitively formulated.

42. Lastly, some representatives felt that the basic principles governing international relations and treaty law should be included in the preamble to the future convention on the law of treaties; in that connexion they mentioned the rule *pacta sunt servanda* and the principles of the independence and sovereignty of States, equality of rights, and non-intervention in the internal affairs of other States. One representative considered that it would be advisable for the future convention on the law of treaties to establish a special system of reservations rather than apply the rule laid down in the draft for cases where a treaty contained no provisions on that subject. Another representative thought that it would be appropriate to comply with the International Law Commission's recommendation that the titles it had given to the parts, sections and articles of its draft should be retained in any convention on the law of treaties which might be concluded, subject perhaps to including in the convention itself or in the final act of the conference a saving clause indicating that the titles were merely indicative and should not be taken into consideration when interpreting the text of the convention.

(b) *Scope of the draft*

43. During the debate, various views were expressed on the scope of the draft articles prepared by the International Law Commission, as explained in paragraphs 28-35 of the report on its eighteenth session (A/6309/Rev. 1, part II). Some representatives thought that the Commission had acted wisely in excluding questions which would have been difficult to treat with the thoroughness they deserved within the framework of the codification of treaty law. In addition, it was pointed out that the International Law Commission was or would soon be studying some of those questions in connexion with other items on its programme of work. Nevertheless, many representatives, while appreciating the reasons adduced by the Commission, considered that it had been unwise to exclude from the draft certain aspects of treaty law which in their view should and must be codified if the stability of treaty relationships was to be ensured.

44. Some representatives stressed the need to undertake at the earliest opportunity the codification and progressive development of those aspects of the responsibility of States and State succession which were closely and directly related to treaty law, and criticized the

draft articles on the law of treaties because they did not include rules on that subject and merely stated in article 69 that their provisions "were without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State". A number of representatives said that the draft should have provided for sanctions in cases of non-fulfilment or violation of treaties.

45. Many speakers emphasized the special interest of the new States in the consideration of the effects of the succession of States on conventional relations established by treaties. As some of those representatives pointed out, new States frequently found themselves involved in conventional relationships deriving from treaties concluded on their behalf by the colonial Powers before they had attained their independence, which often imposed upon them obligations contrary to their real interests. According to those representatives, it would therefore be advisable for the International Law Commission to express an opinion on the legal value of such agreements for new States, which could be done by adding provisions on the succession of States to the draft articles on the law of treaties. Some representatives added that the draft should have unequivocally declared null and void those treaties or agreements which were unequal, unjust or leonine, in many cases as the result of colonial rule, as, for example, certain agreements concluded by the colonial Powers during colonial domination without regard for the interests of the territories for which they were intended, as the price for the independence of those territories or before the new States had been able to acquire genuine economic independence. According to those representatives, those agreements could not be protected by the rule *pacta sunt servanda*, since the populations of those former colonial territories were not invited to give their free consent to them, and many of the agreements in question were adversely affecting the political and economic structure of new States and developing countries.

46. Other representatives recognized the concern of the new States that the rules governing the succession of States with respect to treaties should be defined as soon as possible, but took the view that they should be codified in connexion with the topic "Succession of States and Governments" rather than as a part of the general law of treaties, as the International Law Commission had decided in 1963, in the light of the recommendation made by the Sub-Committee established in 1962 to study the scope of that topic and the procedure to be followed in studying it. It was also brought out that in codifying that subject, the Commission could not depart from the method of work laid down in its statute, whereby provisional drafts were submitted to Governments for study and comment before being revised and finally adopted, a process which naturally took time, so that it would be physically impossible for a final set of draft articles on the succession of States in respect of treaties to be ready before the meeting of the future conference on the law of treaties.

47. Some representatives also referred to the International Law Commission's decision to exclude from the draft articles any provisions concerning the effects of the outbreak of hostilities upon treaties, and concerning the most-favoured-nation clause and the application of treaties providing for obligations or rights to be performed or enjoyed by private persons, and were of the opinion that these matters should be the subject of careful study. With respect to the most-favoured-nation clause, certain representatives suggested that the question should be considered in the Sixth Committee or at the future conference of plenipotentiaries on the law of treaties. Others were prepared to support any proposal that the Commission should study the most-favoured-nation clause without linking it to the general codification of the law of treaties. In their opinion, the adoption of a convention on the law of treaties would facilitate the study by the International Law Commission of the problems arising in connexion with that clause.

48. The comments made with regard to the limitation of the draft to treaties concluded between States in written form only are set out in the section of this report concerning comments on specific provisions of the draft articles.

49. One representative pointed out that although it was true that some of the subjects which had been excluded from the draft articles on the law of treaties would be discussed by the International Law Commission at its next session, other topics, such as oral agreements, the effect of the outbreak of hostilities upon treaties, the application of treaties providing for obligations or rights to be performed or enjoyed by private persons, the most-favoured-nation clause, and treaty law in relation to insurgent communities, were not included in the Commission's programme or work. The Sixth Committee should therefore consider all those questions and make such recommendations concerning them as it deemed appropriate.

(c) *Specific provisions of the draft and commentaries*

50. An account of the comments made during the debate on specific provisions of the draft and the accompanying commentaries is given below. These comments have been arranged according to the various parts into which the draft articles are divided and are set forth in the order in which those parts appear in the draft.

Part I. Introduction (articles 1-4)

51. A number of representatives commented on the scope of the draft as it was defined in articles 1 (Scope of the present articles), 2 (Use of terms), and 3 (International agreements not within the scope of the present articles). The limitation of the draft to treaties concluded between States in written form only was approved by some representatives who felt that oral agreements and treaties concluded between States and other subjects of international law, or between those other subjects of international law, presented special features which fully justified the view that the International Law Commission should not consider them in the context of its draft articles. Otherwise, it was claimed, it would have been difficult to reach general agreement on many of the draft articles, or else they would have had to be adapted and revised in such a way that they would have lost some of their clarity and effectiveness.

52. Other representatives, however, regretted that the draft articles were limited solely to treaties concluded between States. In particular, it was emphasized that treaties concluded between States and international inter-governmental organizations, or between the latter, were playing an increasingly important role in the life of the international community today, and were of great importance, above all, to the developing countries. The inclusion of that type of treaty in the draft would have avoided the difficulties and inconveniences to which the adoption of a new convention on it would one day give rise. Some representatives suggested that the International Law Commission should prepare a draft on treaties concluded with international organizations in time for the future conference on the law of treaties to be able to consider that category of treaties also. In view of the time available before the convening of the conference, others considered that impossible. Lastly, some speakers urged that the International Law Commission should proceed as soon as possible to study that category of treaties in connexion with its agenda item "Relations between States and inter-governmental organizations".

53. While some representatives considered the definition of "treaty" in article 2, sub-paragraph 1 (*a*), satisfactory, others felt that in its present wording it might create serious constitutional problems for certain States which it would be better to avoid. The use of the word "treaty" as a generic term might give rise to problems in connexion with certain agreements, e.g., agreements in simplified form or so-called executive agreements, which in respect of their conclusion and entry into force, were in many constitutional systems the exclusive prerogative of the chief executive, in the exercise of which no participation by the legislature was necessary.

54. Another representative, on the other hand, said that in his opinion the fears expressed about the use and definition of the term "treaty" in the draft were groundless, since

article 2, paragraph 1, explicitly stated that the terms used were defined only "for the purposes of the present articles" and paragraph 2 of that article stated that "The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State".

55. In the opinion of one representative, the draft provided no criterion for determining when an international agreement was or was not "governed by international law" and he suggested that the criterion should be the intention of the parties, or, perhaps, the "manifested" intention of the parties. Another representative considered that the draft did not make it clear, as it should have done, that the expression "governed by international law" also covered "mixed" treaties, i.e. treaties which though coming under international law were also subject to the national law of one party or a third State.

56. Another representative thought that the definition of "treaty" given in article 2, sub-paragraph 1 (*a*) was incomplete. In his opinion, it was essential to add that the treaty should be intended to produce certain juridical effects, i.e., to create, modify or extinguish a legal situation. A statement which did no more than express common purposes of a non-compulsory kind and laid down no rights or obligations for the parties making the statement, could not be considered a treaty, although such a statement would come within the definition of "treaty" given in the draft articles.

57. With respect to the terminology used, one representative observed that the expression "treaties concluded between States" in article 1 (Scope of the present articles) seemed to include in the concept of "conclusion" the whole treaty-drafting process, whereas, on the other hand, in Part II of the draft, a distinction was made between the "conclusion of treaties" (section 1) and their "entry into force" (section 3). In that representative's view, it would be better to keep to a single interpretation, rather than to two interpretations, one general and the other restricted, of what was meant by "conclusion", in order to avoid possible difficulties of interpretation.

Part II. Conclusion and entry into force of treaties (articles 5-22)

58. Some representatives said they were gratified that article 5, paragraph 1, of the draft provided that "Every State possesses capacity to conclude treaties" and maintained that it was essential that the future convention on the law of treaties should contain a similar provision. In their view, such a provision was a natural corollary of the principle of the sovereign equality of States, irrespective of differences in their economic, social and political systems, a principle which had been proclaimed in Article 2 of the Charter. The principle in question had been unanimously affirmed by the 1966 Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States.

59. Some representatives expressed approval of the International Law Commission's observation, in paragraph 4 of its commentary on article 5, that the term "State" was used in paragraph 1 of that article with the same meaning as in the United Nations Charter and the Statute of the International Court of Justice, i.e., it meant a State for the purposes of international law. One representative considered that it made little sense to make the possession of legal personality a prerequisite to the conclusion of treaties, as draft article 5 purported to do, since cases were known in international law, such as those of the Dominions of the British Commonwealth of Nations at the time of the League of Nations, in which treaty-making capacity had been developed through the very process of entering into international agreements.

60. Some representatives alluded in their statements to the solution given in the draft to the problem of determining when the consent of a State to be bound by a treaty could be expressed merely by signature (article 10), or required subsequent ratification (article 11).

Certain representatives, holding that ratification was an optional procedure, approved the fact that the Commission had made the question whether consent to be bound could be expressed by signature or required ratification depend on the intention, explicit or not, of the States which had participated in the negotiations, and had confined itself to specifying how that intention should be determined. Others, however, expressed concern lest the system adopted might reverse the traditional rule relating to ratification, inasmuch as under draft article 11 a treaty did not require ratification in order to bind States unless that requirement was expressly provided for in the treaty itself or the intention to require ratification could be deduced by reference to some of the criteria indicated in that article. One representative said that the rule laid down in article 11 concerning ratification might create difficulties for certain States, since sub-paragraph 2 (*c*) of article 6 (Full powers to represent the State in the conclusion of treaties) provided that representatives accredited by States to an international conference or to an organ of an international organization "for the purpose of the adoption of the text of a treaty in that conference or organ" were to be considered as representing a State "in virtue of their functions and without having to produce full powers".

61. In connexion with article 12 (Consent to be bound by a treaty expressed by accession), one representative expressed his satisfaction at the fact that the International Law Commission had not made accession to a treaty dependent on its entry into force.

62. A number of representatives criticized the fact that the International Law Commission had not included in its final draft articles on the law of treaties a clause affirming the universality of general multilateral treaties, or at least a rule similar to that laid down in article 8 of its preliminary draft of 1962. In the view of those representatives, the future international conference on the law of treaties should remedy the gap in the Commission's draft articles on that point. General multilateral treaties, they held, should be open to all States concerned, since they regulated matters of interest to all States and the international community and were intended to proclaim or develop principles and rules of international law binding on all States. To limit participation in general multilateral treaties would be equivalent, in their view, to violating the universality of international law and the principle of sovereign equality; it would be contrary to the very nature of those treaties and would adversely affect peaceful co-operation among nations and the progressive development and codification of international law. It was observed that when there were serious problems at issue, States had been wise enough to settle them on the basis of the principle of universality, and the Moscow Treaty prohibiting nuclear tests and the various General Assembly resolutions addressing themselves and appealing to all States were cited as familiar examples. In the view of those representatives, the principle of the universality of general multilateral treaties did not affect the question of the recognition of States or Governments, nor did it limit a State's freedom to conclude multilateral conventions to which only a certain number of States were parties. It was also pointed out by other representatives that the capacity of all States to conclude treaties recognized in draft article 5 was to be understood as meaning that all States possessed the capacity to accede to general multilateral treaties dealing with matters affecting their legitimate interests.

63. Other representatives pointed out that the question of including in the draft articles provisions relating to participation in general multilateral treaties was a controversial one, since it had not yet proved possible to find a formula acceptable to all States; and in view of that fact they felt that the International Law Commission had acted wisely in not making a proposal to that effect in its draft.

64. In the course of the debate, several representatives expressed satisfaction at the fact that in formulating draft articles 16-20 relating to reservations to multilateral treaties the International Law Commission had taken into account the need to encourage the participation of the greatest possible number of States in multilateral treaties, especially those governing matter involving the legitimate interests of all States and the international commu-

nity as a whole. Those representatives welcomed the rejection of the traditional rule or practice of unanimity in favour of a flexible system more in harmony with requirements of the contemporary international community as a positive contribution to the cause of international co-operation. One representative pointed out that that change was the logical corollary of the acceptance of the principle of majority voting at international conferences.

65. Certain representatives, on the other hand, while acknowledging that international practice and judicial precedents were today more flexible with respect to reservations to multilateral treaties, said that in the final formulation of the relevant articles an effort should be made to keep recourse to them to a minimum, since they were prejudicial to the unity of international law and the real value of treaties.

66. Other representatives held that the Commission should have drawn all the conclusions implicit in the fundamental principles on which its articles on reservations were based. The effect of an objection to a reservation should be limited to the provision or provisions which were the subject of the reservation, all the other provisions of the treaty remaining in force between the two States concerned. One of the representatives in question expressed the view that sub-paragraph 4 (*b*) of article 17 should be reversed to provide that the treaty should "enter into force" between the reserving State and the objecting State, unless the latter expressed a contrary intention. Another representative said that paragraph 3 of article 19 was still not entirely satisfactory, since the binding force of the treaty was made contingent on the agreement of the objecting State.

67. Lastly, one representative stressed the fact that the draft did not eliminate all the doubts which might arise in connexion with reservations. He observed that in practice some difficulties might be caused by the use of such expressions as "the reservation is incompatible with the object and purpose of the treaty" (article 16, sub-para. (*c*)) "a reservation... impliedly authorized by the treaty" (article 17, para. 1) and "the limited number of the negotiating States" (article 17, para. 2) and that the provisions relating to the legal effect of a reservation when there was an objection to it but the objecting State agreed to consider the rest of the treaty in force between itself and the reserving State (articles 17 and 19) would result in the same effect as an accepted reservation.

Part III. Observance, application and interpretation of treaties (articles 23-34)

68. Representatives who referred in their statements to the rule *pacta sunt servanda* laid down in article 23 of the draft, under which "Every treaty in force is binding upon the parties to it and must be performed by them in good faith", claimed that it was not only a fundamental rule of the law of treaties but also the corner-stone of international law as a whole. Some representatives pointed out that the basis for the rule *pacta sunt servanda* was nothing but the principle of good faith which ought to govern international relations, as had been expressly stated in the Preamble and in Article 2, paragraph 2, of the Charter. One representative said that the final formulation of the rule *pacta sunt servanda* should be drafted in the light of the results of the study of the principle of good faith currently being carried out by the General Assembly in connexion with the item "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". It was also said by some representatives that good faith in the law of treaties was indivisible, and that therefore if it was lacking at the moment when conventional obligations were created, the rule *pacta sunt servanda* could not subsequently be invoked to call for the fulfilment of those obligations.

69. Some representatives asserted that the strict and rigorous observance of treaties was a matter of necessity, and stressed that it was not enough to proclaim the rule *pacta sunt servanda* if it was subsequently ignored in the realities of international life. Observing that the violation of obligations flowing from treaties had been and still was the cause of

many serious international conflicts, those representatives emphasized that if the rule *pacta sunt servanda* was in fact robbed of its substance, the very existence of international law, co-operation and peaceful coexistence among States would be placed in jeopardy. It would be useful and advisable to strengthen the rule *pacta sunt servanda* by drawing up juridical declarations which would encourage the strict observance of treaties by all States, large and small.

70. Other representatives said that the rule *pacta sunt servanda* could only be considered binding and be invoked in connexion with treaties "in force"; it was not applicable in the case of treaties which were void *ab initio*. Consequently, the rule *pacta sunt servanda* should be applied in the light of the rules of treaty law which determined when a treaty was "in force" and when it was not, especially those relating to the conclusion, invalidity, termination and suspension of treaties. One of those representatives observed that the peremptory norms of international law, especially those embodied in the Charter and those which set forth the constitutional precepts on which the international community was founded, limited the effects of the rule *pacta sunt servanda*, for the latter could not redeem a treaty which ignored or violated such norms. Lastly, it was argued that the application and interpretation of the rule *pacta sunt servanda* must sometimes be modified by the rule *rebus sic stantibus* when that was called for by equity, justice and the interests of a continuously evolving international community.

71. With regard to draft article 25 (Application of treaties to territory), some representatives considered that treaties applied only to the territories of the parties; they feared that in its present form the provision might result in treaties being applied, without the consent of the population, to territories which had not yet attained their independence. Other representatives were gratified that in article 25 the International Law Commission had avoided any allusion which might associate it with the so-called "colonial clause". With regard to article 26 (Application of successive treaties relating to the same subject-matter), some representatives expressed approval of the fact that the proposed text recognized the primacy of the Charter, in accordance with Article 103 of that instrument.

72. As to the interpretation of treaties (draft articles 27-29), it was pointed out that the International Law Commission had acted correctly in introducing the principle of good faith and at the same time basing interpretation on the will of the parties expressed objectively. One representative also emphasized that sub-paragraph 3 (*c*) of article 27 wisely provided that "any relevant rules of international law applicable in the relations between the parties" should be taken into account, together with the context. Lastly, another representative said that unless interpretation served to integrate treaties in the process of historical evolution they would have no real effect.

73. With regard to the provisions relating to treaties and third States (articles 30-34), some representatives expressed satisfaction that the International Law Commission had recognized that a treaty did not create either obligations or rights for a third State without its consent (article 30). Those representatives considered that the maxim *pacta tertiis nec nocent nec prosunt* was based on the concepts of the independence and sovereign equality of States. In that connexion, some representatives referred to the situation of the colonized peoples, which were sometimes bound by treaties in whose conclusion they had not participated. One representative commended the wording of article 32 (Treaties providing for rights for third States), which, in his view, provided that a right in favour of a third State could only be created through a second collateral agreement, but at the same time stipulated that the third State's assent should be presumed so long as the contrary was not indicated. Another representative felt that in the text of article 34 (Rules in a treaty becoming binding through international custom) it should be expressly stated, as in the commentary to the article, that the customary rules referred to were those formulated in a treaty which third States recognize as binding customary law.

Part IV. Amendment and modification of treaties (articles 35-38)

74. No special comments were made on the articles in this part of the draft.

Part V. Invalidity, termination and suspension of operation of treaties (articles 39-68)

75. The only general provisions in section 1 of this part mentioned during the debate were articles 41 (Separability of treaty provisions) and 42 (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty). With regard to paragraph 3 of article 41, one representative considered that the definition of the conditions which could be invoked as a ground for invalidating, terminating, withdrawing from or suspending the operation solely of particular clauses of a treaty should be accompanied by a procedural rule which would facilitate their practical application. The recognition in article 42 of the rule concerning loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty was welcomed as an additional proof of the importance which the International Law Commission had attached to the principle of good faith throughout the draft.

76. Some representatives approved the fundamental principles on which the provisions relating to the invalidity of treaties (articles 43-50) were based, and thought that the International Law Commission had acted correctly in protecting the authentic expression of the consent of the parties and embodying it in the system of fundamental principles of modern international law. Other representatives, on the other hand, felt that some of the provisions relating to the invalidity of treaties might introduce uncertainty or insecurity in conventional relations, and suggested that they be revised or deleted.

77. One representative praised the formulation of article 43 (Provisions of internal law regarding competence to conclude a treaty), since no State was entitled to intervene in the internal affairs of other States in order to ascertain whether or not there had been compliance with the constitutional requirements for declaring the will of that State.

78. One representative said that the International Law Commission should have devoted more attention to the time element in connexion with articles such as those relating to error (article 45), fraud (article 46) or coercion of a State by the threat or use of force (article 49). Another representative held that defects such as error (article 45), fraud (article 46) or corruption (article 47) could not be remedied, and consequently felt that in such cases a treaty should have been declared void *ab initio*. Some representatives considered that the International Law Commission had acted wisely in providing in the draft for the corruption of a representative of the State (article 47).

79. A number of representatives commended the draft for establishing, in conformity with contemporary international law, that the coercion of a State by the threat or use of force (article 49) and the coercion of a representative of the State (article 48) vitiated consent and invalidated any treaty. It was also considered highly appropriate that the principles of the United Nations Charter should be mentioned in article 49.

80. One representative observed that under draft article 49 not only "the threat or use of force" but also "violation of the principles of the Charter of the United Nations" must have occurred in order to invalidate a treaty. He recalled the development and evolution of international law with regard to the prohibition of the threat or use of force in international relations, beginning with Articles 10-15 of the Covenant of the League of Nations and the Briand-Kellogg Pact, and pointed out that Article 2, paragraph 4, of the Charter prohibited not only war but any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

81. A number of representatives regretted that the present text of article 49 referred only to the "threat or use of force" without expressly mentioning other forms of coercion of a political or economic nature which vitiated consent. Some of those representatives said that the word "force" in article 49 should be interpreted as including all forms of political and economic coercion, so as to provide special protection for the newly independent States.

82. Other representatives thought that the International Law Commission had been wrong in dismissing, in its commentary on article 49, the retroactivity of the provision formulated in that article. They considered it inadmissible for the rule not to apply to treaties whose conclusion had been procured by the threat or use of force before the entry into force of the Charter and said that that would conflict with Article 103 of the Charter, which made no distinction between treaties concluded before and those concluded after its entry into force. One representative stressed that any treaty imposed by the threat or use of force in violation of the principles of the Charter was absolutely void *ab initio*, for a defect vitiating consent was involved which violated a constitutional principle of the Charter.

83. The provisions of the draft relating to peremptory norms of general international law (*jus cogens*) as grounds for the nullity (article 50) or termination (article 61) of treaties and to the legal consequences of that nullity or termination (article 67) were viewed as very important and significant by the representatives who referred to them in the debate. The nature of *jus cogens*, its basis, content and effects, and the desirability and objectives, in terms of the draft as a whole, of the provisions dealing with it were the subject of many varied comments.

84. Some representatives said that the provisions of the draft articles referring to *jus cogens* reflected a modern conception of international law and that the Commission had done well to make *jus cogens* part of the law of treaties. In their opinion, the principle of the consent of the parties was no longer of itself sufficient for a treaty to be valid if the treaty was contrary to the norms of international law having the character of *jus cogens*. That implied, according to them, a considerable strengthening of the rule of law in the international legal order; an effort should be made to strengthen that trend still further so as to prevent the real significance of *jus cogens* from being adulterated or limited. States could no longer modify their relations with one another by violating the principles binding on all States or turn forbidden practices into rules of international law.

85. According to some representatives, the norms of *jus cogens* were already an integral part of the body of norms which constituted the law of nations. The justification for the norms of *jus cogens* was to be sought in the fact that the existence of a harmonious international legal order was in the interest of the international community, a point recognized, it was recalled, in the commentary on article 50. They were intended mainly to prevent the use of treaties as a screen to conceal actions conflicting with the principles of contemporary international law. Those representatives thought that the content of *jus cogens* should be defined by reference to the law of the United Nations Charter, the predominance of which was proclaimed in Article 103, and especially to those important Charter principles which had the character of basic norms of contemporary international law, for example, the principle of the prohibition of the threat or use of force, the principle of the peaceful settlement of disputes, the duty not to intervene in matters within the domestic jurisdiction of any State, the principle of sovereign equality of States, and the principle of equal rights and self-determination of peoples. Those representatives were opposed to drawing up a restrictive list of norms of *jus cogens*, since as international law evolved new norms of *jus cogens* would gradually be added to the existing ones; they favoured the idea of a statement in general terms, as in the draft.

86. In this connexion certain representatives considered that the norms of *jus cogens* limited the rule *pacta sunt servanda*, since by virtue of those norms not all treaties were

protected by international law. They maintained that treaties imposed by force in violation of the principles of the United Nations Charter and unjust or leonine treaties were contrary to existing norms of *jus cogens* and hence void.

87. Other representatives recognized that the very idea of *jus cogens* reflected and recorded an emergent public order of the international community, but that it had still not been accepted by all as *lex lata* and its content was disputed. In the view of those representatives, the basic question was to identify such peremptory norms having the character of *jus cogens* as already existed, and to determine how new norms of *jus cogens* might come into existence, become established and secure recognition as such. Those representatives, raising the question whether the Purposes and Principles proclaimed in Chapter I of the Charter could be regarded in their entirety as *jus cogens*, stressed that the International Law Commission in its commentary on article 50 had singled out only one, namely, the principle concerning the use of force, as "a conspicuous example" of a peremptory norm of general international law. That commentary stated, moreover, that the majority of the rules of international law did not have that character. It added that, although Article 103 of the Charter stipulated that obligations under the Charter "should prevail", the basic idea in that Article was not so much the invalidity of a treaty *ab initio*, as where a norm of *jus cogens* was involved, but rather the question of a conflict between two groups of obligations when it came time for performance. Because of those difficulties, it was noted, the Commission had been satisfied to formulate the doctrine of *jus cogens* in general terms in the draft, leaving its content "to be worked out in State practice and in the jurisprudence of international tribunals".

88. Other representatives considered that an enumeration such as that in the commentary on article 50 could not take the place of a precise definition and that consequently the article in question would be difficult to accept. Otherwise, States would bind themselves without knowing fully the scope of the obligations assumed, and that would inevitably give rise to differences of interpretation. The question could be solved by providing in the draft for compulsory jurisdiction to determine whether a specific norm of international law had the legal status of *jus cogens*, but article 62 of the draft did not establish such jurisdiction.

89. Other representatives said that the commentaries on articles 50, 61 and 67 made it possible to determine with reasonable accuracy whether a given rule of international law constituted *jus cogens*. In that connexion, one representative indicated that treaties violating human rights or the principle of self-determination, treaties favouring the slave trade, piracy or genocide, and treaties contemplating an unlawful use of force contrary to the principles of the Charter would violate norms of general international law having the character of *jus cogens* and would therefore be void. Another representative stressed that, in draft article 50, the International Law Commission gave a formal definition of peremptory norms (*jus cogens*) but not a definition of the nature of such norms. Given the examples cited in the commentary on that article, however, it could be asked, in that representative's view, whether the draft itself did not contain one or more norms of *jus cogens*, for example the norms stated in article 23 (*pacta sunt servanda*) and in article 50 itself.

90. In the opinion of one representative, it seemed inappropriate, in the commentary on article 50, for the International Law Commission to assert the non-retroactive character of the norm stated in that article, whereas another representative, on the other hand, found it hard to accept the idea that the emergence of a new peremptory norm of general international law should necessarily have the effect of annulling not only future but also existing treaties.

91. In the light of draft articles 50, 61 and 67 and the relevant commentaries, one representative considered that there were two kinds of peremptory norms of general international law which could be overridden only by another peremptory norm of the same char-

acter: the general principles of law on which any legal order must rest and the general principles of international law; and the rules and principles which represented as it were a "constitution of the international community". In that representative's opinion, the idea of an international constitution clarified the notion of peremptory norms although even that idea did not make it possible to define the nature of such norms, because the international community had as yet no procedure for creating such norms and because international conferences had never declared that a specific article of a convention was a peremptory norm. Accordingly, that representative thought that the forthcoming conference of plenipotentiaries on the law of treaties should endeavour to define some of the rules which it would lay down in the convention as rules of *jus cogens*, since it would have the authority to do so.

92. Lastly, one representative thought that the work of the General Assembly on principles of international law concerning friendly relations and co-operation among States in accordance with the Charter might prove very helpful by clarifying points of consensus and disagreement on the idea of *jus cogens* and thus prepare the ground for general understanding of the content of that idea.

93. The formulation of articles 51 to 60 in part V, section 3 of the draft dealing with the termination and suspension of the operation of treaties was approved in general terms by certain representatives. Nevertheless, one representative considered that article 55 (Temporary suspension of a multilateral treaty by consent between certain of the parties only) involved risks and did not seem to be entirely in accord with the practice of States. Another representative suggested the addition of a sentence, for example in article 58 (Supervening impossibility of performance) providing for the automatic termination of treaties as the result of the fulfilment of all the obligations assumed in it by the parties. According to still another representative, the present wording of paragraph 1 of article 53 (Denunciation of a treaty containing no provision regarding termination) contained a subjective element which was difficult to evaluate and article 56 (Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty) should provide for the possibility of regarding the earlier treaty as still being applicable with respect to those matters not covered by the new treaty.

94. Stressing the importance in international law of the rule *rebus sic stantibus*, one representative thought a new clause (*c*) should be added to paragraph 3 of article 57 (Termination or suspension of the operation of a treaty as a consequence of its breach) with a view to extending the provisions of that article to "changes of the circumstances which have not been foreseen by the parties but which have been deliberately brought about or created by one of the parties to the treaty", and that a paragraph should be added to article 58 (Supervening impossibility of performance) which would read as follows: "A party to a treaty may not plead impossibility of performance if such alleged impossibility is based on a change of circumstances deliberately brought about by that party. Such a party should restore the *status quo* and carry out its obligations under the treaty."

95. Certain representatives said that the doctrine of *rebus sic stantibus* was aptly introduced and stated in draft article 59 (Fundamental change of circumstances). It was asserted that that doctrine was particularly important for the purpose of counterbalancing the principle of *pacta sunt servanda*, and that, if properly circumscribed and regulated, it would provide a safety-valve enabling the law of treaties to be adapted to the dynamics of international life. One representative emphasized that according to article 59 there must be not only "a fundamental change of circumstances" but, in addition, the existence of those circumstances should constitute an essential basis of the consent of the parties to be bound by the treaty, and that even then, that change could not be invoked in the case of a treaty establishing boundaries or if the fundamental change was the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty. Another representative thought that article 59 could be invoked to

terminate a treaty if one of the parties unreasonably opposed the conclusion of a new agreement to terminate it. With reference to the present wording of the article, still another representative observed that it would be preferable to draft paragraph 1 in positive terms and to retain the negative form only in paragraph 2.

96. Some representatives, on the contrary, said that they found it difficult to accept draft article 59 because it laid down imprecise rules, to which important juridical consequences were attributed, without surrounding them with the necessary procedural safeguards, and because it might jeopardize the stability of treaty relations. One representative criticized the fact that in drafting article 59, the Commission had not given due consideration to the time factor and, therefore, failed to take into account the distinction between treaties immediately executed (*a tracto cumplido*) and treaties to be executed in the future (*a tracto futuro*).

97. Some representatives regretted that, owing to the current divergence of opinion on the international level, the International Law Commission had not made provision in draft article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) for a binding judicial solution, especially with regard to the draft articles falling within the purview of the progressive development of international law or containing new or imprecise concepts. Those representatives felt that the provision in paragraph 3 of article 62, under which the parties should "seek a solution through the means indicated in Article 33 of the Charter of the United Nations" if objection had been raised by any other party, did not appear to be enough to ensure the objective settlement of conflicts which might be caused by the application or the interpretation of those articles or concepts. Consequently, some representatives advocated deleting some provisions from the draft, one of those representatives specifically referring to the provisions in articles 45, 46, 49, 50, 59, 61, 67 and 70.

Part VI. Miscellaneous provisions (articles 69 and 70)

98. With regard to article 69 (Cases of State succession and State responsibility), a number of representatives said that they would have liked the draft to regulate those aspects of State succession and State responsibility which concerned treaty law, as indicated in the section of this report dealing with the scope of the draft, paragraphs 45 and 46 above. Some representatives considered article 70 (Case of an aggressor State) particularly important, because its application would help to strengthen international legality. According to those representatives, it constituted an exception to the rule that consent was required for a State to be bound by a treaty; by virtue of that exception it would be legally possible through a treaty to impose obligations on a State guilty of the initiation and conduct of aggressive war. One representative considered that the article was not precisely formulated or accompanied by adequate guarantees regarding its application and interpretation.

Part VII. Depositaries, notifications, corrections and registration (articles 71-75)

99. One representative suggested that the wording of the first sentence of article 75 (Registration and publication of treaties) should be amended, because in his view those words, at least in the Spanish version, seemed to give the impression that treaties were being entered into by means of the draft articles themselves.

2. International conference of plenipotentiaries on the law of treaties

100. As is indicated in paragraph 27 of this report, the representatives who took part in the discussion endorsed the International Law Commission's recommendation that an international conference of plenipotentiaries on the law of treaties should be convened to

study the final text of the Commission's draft articles and incorporate the results of its work in a single convention on the law of treaties. There was also general agreement that the Commission's draft articles, contained in chapter II of the report on its eighteenth session, should be referred to the conference as the "basic proposal" for its consideration, without prejudice, of course, to the right of any State participating in the conference to submit such amendments to the "basic proposal" as it might deem appropriate.

101. Various views were expressed concerning arrangements for the conference, procedural and organizational problems, the question of participation, and other administrative and budgetary matters. The discussion of all those questions dealt at first with the various possibilities suggested in the memorandum prepared by the Secretariat on procedural and organizational problems involved in a possible diplomatic conference on the law of treaties (A/C.6/371), and later centred on the suggestions put forward during the discussion and on the relevant draft resolutions (A/C.6/L.595, A/C.6/L.596 and Corr.1 and Add.1, A/C.6/L.596/Rev.1 and Add.1, and A/C.6/L.596/Rev.2) and amendments (A/C.6/L.598, and A/C.6/L.601-603). The Secretariat was thanked by many delegations for helping to deal with the problems involved in convening the conference by preparing the above-mentioned memorandum, which some regarded as an important development in the techniques of codification that should become standard practice in the future. During the discussion, the Committee had before it a set of preliminary estimates of the financial implications of the various possible methods of organizing the conference (A/C.6/L.600).

(a) *Preparation for the conference*

102. Many delegations, pointing out the importance of the proposed conference on the law of treaties, stressed the need to make careful preparations, from the political, legal and administrative standpoints, so as to ensure its success. It was considered essential for Governments to have a reasonable amount of time, before the conference opened, in which to study the substance and implications of the draft articles submitted by the International Law Commission, to express and exchange their views on the articles and even to begin negotiations with a view to reconciling or removing any differences of opinion. That would make it much easier to reach agreement at the conference and might help to shorten the conference, with a resultant financial saving.

103. In order to ensure that proper preparations were made for the conference, it was felt that it would be most useful to have written comments from the Governments of Member States on the final draft articles and even, if possible, specific amendments during the preparatory phase. It was also proposed that written comments should be requested from the Secretary-General of the United Nations and the Directors-General of those specialized agencies which acted as depositaries of treaties. Those views were reflected in draft resolution A/C.6/L.596 and its revised versions and were ultimately embodied in operative paragraph 9 of the draft resolution adopted by the Committee (A/C.6/L.596/Rev.2). One representative, however, expressed fear that the procedure of written comments would lead to a hardening rather than a reconciliation of positions. Another representative felt that it would be preferable to invite comments from all States, even if some did not subsequently attend the conference.

104. At the same time, it was decided to include an item entitled "Law of treaties" in the provisional agenda of the twenty-second session of the General Assembly so that the Sixth Committee could discuss the substance of the draft articles before the conference was convened. Since it was thought advisable to have the requested written comments available in time for that discussion, Member States, the Secretary-General of the United Nations and the Directors-General of the above-mentioned specialized agencies were invited to submit their comments not later than 1 July 1967, and the Secretary-General was requested to circulate them as soon as possible in order to facilitate the Committee's work. Those

decisions are embodied in operative paragraphs 9, 10 and 11 of the draft resolution adopted by the Committee (A/C.6/L.596/Rev.2).

105. Some representatives thought that it would be very useful for Sir Humphrey Waldock, the International Law Commission's Special Rapporteur on the law of treaties, to be present during the Sixth Committee's discussion of the item "Law of treaties". One representative proposed that the Committee should discuss that item first at the twenty-second session of the General Assembly so that Governments would have time to study the remarks made in the discussion before the conference opened. He also suggested that verbatim records of the discussion might be useful.

106. Lastly, some representatives felt that consultations could be held during the period of preparation for the conference in order to explore the possibilities of agreement and compromise on various issues on which controversy would otherwise be likely to arise at the conference. One representative expressed the view that "regional" consultations would be most appropriate.

(b) *Division of the conference*

107. During the discussion, a number of representatives expressed themselves in favour of dividing the conference into two parts, with an interval between them. It was argued that that would give Governments time to analyse the results achieved during the first phase and resolve their differences, that it would encourage participation in the two phases of the conference by highly qualified representatives, and that it would make it possible to avoid setting up two main committees and thus bring about a saving in personnel and costs. Some of the representatives in question thought it desirable that States should try to send the same representatives to the two parts of the conference, that the interval between the two parts should not be longer than one year, and that the first part should be devoted primarily to committee work and the second part to the discussion and adoption in plenary of the texts adopted in committee. One representative felt that, at the end of the first part of the conference, the drafting committee should remain in session for a number of days longer than the main committee or committees so that Governments could have its recommendations on the results of the work in committee. It was also thought essential for the records of the first part of the conference to be made rapidly available to Governments.

108. Other representatives were opposed, in principle, to a division of the conference into two parts on the ground that the disadvantages of that procedure outweighed the possible advantages. They felt that a two-part conference would make greater demands in terms of money and staff, which would be particularly difficult for the developing countries to bear, and that it would prevent work from progressing smoothly, would delay compromise solutions of controversial problems and would carry with it the risk that issues apparently settled during the first part of the conference would be reopened during the second.

109. Some representatives felt that the possibility of completing the conference in a single session should not be excluded beforehand but that appropriate decisions should be adopted at the present time so that it would be possible to hold a second session if necessary.

110. Finally, in view of the decision taken on the question of division of the draft articles between two main committees and on the opening date of the conference, most representatives agreed to the idea of dividing the conference into two parts, with an interval of one year between them, and chose a formula which would remove any uncertainty in that regard so as not to complicate the task of planning the conference. That position was embodied in operative paragraph 3 of the draft resolution adopted by the Committee (A/C.6/L.596/Rev.2). However, some representatives expressed reservations concerning the matter in view of the increased costs involved and the difficulty some Governments would have in sending a sufficient number of specialists to the conference in two successive years.

(c) *Division of the draft articles between two main committees*

111. Some representatives were in favour of dividing the draft articles between two main committees because they thought that that would make for a shorter conference. In that respect, certain representatives considered that the allocation of the articles suggested by the Secretariat in paragraph 16 of the memorandum (A/C.6/371) was, in principle, logical. Others felt that if that method was adopted the allocation of the articles would need to be more closely studied and they suggested that the International Law Commission should be consulted on the subject and that the question should be discussed in the Sixth Committee the following year. There were certain representatives, too, who felt that the final decision should be left to the conference itself. All those representatives stressed the important co-ordinating role that the drafting committee of the conference would have to play in the event of the draft articles being divided between two main committees. Some of those opinions were embodied in operative paragraphs 4 and 8 of the original draft resolution (A/C.6/L.596) and in operative paragraphs 5 and 9 of the first revised text (A/C.6/L.596/Rev.1).

112. There were other representatives who did not share that view and who stressed the close connexion between all the draft articles, the element of arbitrariness inherent in any division, the increased expenditure that it would entail and the difficulties that the small delegations and the developing countries would have in ensuring representation in two committees. Some of those representatives did not preclude the possibility that the conference itself might in certain particular cases decide to set up sub-committees or working groups.

113. In the end, the advocates of two main committees did not press their point of view but decided in favour of setting up a single committee of the whole. The sponsors of the revised draft resolution (A/C.6/L.596/Rev.1) left out all references to the division of the draft articles between two main committees in the second revised text of the draft resolution (A/C.6/L.596/Rev.2), which was approved by the Sixth Committee.

(d) *Date of the conference*

114. Most of the representatives who spoke in the debate agreed that Governments and the Sixth Committee should be given time to examine the draft articles and that the Secretariat should have time to prepare the documentation for the conference, but at the same time they stated that the momentum that the International Law Commission had given to the codification of the law of treaties should not be lost. Those representatives considered that the conference should be held early in 1968.

115. Other representatives emphasized the need to take into account the general calendar of conferences of the United Nations before taking any decision on the date of the conference. They pointed out that the calendar for 1968 would be a heavy one, since there was to be an international conference on human rights, an international conference to replace the Convention on Road Traffic and the Protocol on Road Signs and Signals, a conference of ministers responsible for social welfare and perhaps a meeting of the United Nations Conference on Trade and Development, too; they therefore thought that it would be better to postpone the conference on the law of treaties until 1969. Those representatives pointed out that under paragraph 5 of General Assembly resolution 2116 (XX) of 21 December 1965 not more than one "major special conference" should be scheduled in any one year and they declared that the Sixth Committee should bear that resolution in mind in deciding the date of the conference on the law of treaties. At the 915th and 917th meetings, the Legal Counsel, referring to the rule established in paragraph 5 of resolution 2116 (XX), stated that there was as yet no criterion for determining what constituted a "major" conference. He also told the Committee that, according to the information available, there were no conferences scheduled for January, February or March 1968.

116. The Committee decided that the first session of the conference should be convened early in 1968 and the second session early in 1969, as stated in operative paragraph 3 of the draft resolution adopted by the Committee (A/C.6/L.596/Rev.2). The sponsors of the draft resolution said that the date of the proposed conference would of course have to be determined in relation to the over-all United Nations conference schedule and that it would consequently be for the appropriate United Nations organs to determine, within the framework of General Assembly resolution 2116 (XX), the order of priority of the various conferences proposed for 1968.

(e) *Place of the conference*

117. Most of the representatives who referred to this question opted for the United Nations Office at Geneva, for technical, practical or financial reasons, although certain representatives expressed a preference for United Nations Headquarters in New York.

118. It was decided that the conference would be held "at Geneva or at any other suitable place for which an invitation is received by the Secretary-General before the twenty-second session of the General Assembly", as stated in operative paragraph 3 of the draft resolution adopted by the Sixth Committee (A/C.6/L.596/Rev.2). At the 918th meeting the Legal Counsel explained that if the Secretary-General were to receive an invitation he would decide upon it on the basis of operative paragraph 2 (*h*) of General Assembly resolution 2116 (XX), i.e., if the host Government agreed to defray all the additional costs entailed. In that case the estimates of the additional costs would be based on the estimated cost of holding the conference at Geneva. He added that in deciding whether the place to which the conference was invited was "suitable" the Secretary-General would take into consideration the general interest of all those attending the conference, the financial arrangements proposed by the host Government, the privileges and immunities to be extended, the facilities and installations offered and the possibilities in the way of accommodation, means of transport and communication, etc. If more than one invitation was received, the most "suitable" place would be determined in the light of those criteria. If any problem arose, the Secretary-General would consult the General Assembly at the twenty-second session.

(f) *Participation in the conference*

119. Some representatives proposed that all States should be invited to take part in the conference. The participation of all States in the conference would be of advantage for the codification of the law of treaties and in accordance with the principles of universality and the sovereign equality of States set forth in the United Nations Charter. All sovereign States that so wished would have the right to take part in the conference, or should be able to do so, since the law of treaties was of indisputable interest to all States and to the whole international community and its codification should be established on a universal basis. It was also said that participation in international conferences was not to be confused with recognition of a State. The position of those States was reflected in the amendments (A/C.6/L.598 and A/C.6/L.601).

120. Other representatives argued that the universality prescribed in the Charter applied only to its purposes and principles, that there was no universally recognized definition of a "State" and that it was a fact of international life that there were States or entities that were recognized as such by some States and not by others.

121. Some representatives proposed that, in addition to the categories of States traditionally invited to codification conferences, namely, States Members of the United Nations, States members of specialized agencies and States parties to the Statute of the International Court of Justice, there should be a new category of "States that the General Assembly decides specially to invite to participate in the conference". That formula was

included in the draft resolution (A/C.6/L.596) and in its two subsequent revised texts. According to those representatives, the "all States" formula would place upon the Secretary-General the political responsibility of deciding which entities were States that should be invited, a responsibility which he had declined on similar occasions in the past on the ground that it was a question for decision by the General Assembly itself. At the 918th meeting, the Legal Counsel told the Committee that the Secretary-General adhered to the position he had expressed on 18 November 1963 in the General Assembly,[15] and that consequently, if the "all States" formula was adopted, the Secretary-General would immediately ask the Sixth Committee and the General Assembly for a list of the States covered by the formula other than Members of the United Nations, members of the specialized agencies and parties to the Statute of the Court.

122. Those in favour of inviting all States considered that the new formula proposed was still discriminatory, and opposed its adoption. They felt that the principle of universality should not be obscured by alleged practical difficulties. They pointed out that, while there were no great difficulties over inviting observers from the specialized agencies and from inter-governmental organizations and even experts or specialists, representatives of a certain group of States were being excluded from the conference for purely political motives. It was added that the practical difficulties to which the "all States" formula allegedly gave rise had not prevented the General Assembly on important occasions from adopting resolutions addressed to all States in connexion with certain international agreements.

123. Other representatives, however, considered that the new formula was not discriminatory because the General Assembly could invite to the conference those States which it saw fit to invite; the proposed wording represented an advance over the traditional formula since it introduced an element of flexibility and avoided the technical difficulties to which the "all States" formula gave rise. In the opinion of some of those representatives, the adoption of the "all States" formula would have no practical value since, in the final analysis, the General Assembly, in that case too, would be called upon to give instructions to the Secretary-General. It was added that the resolutions which the General Assembly had addressed to all States were appeals or exhortations which it could make without having to prejudge the statehood of any party concerned.

124. One representative sought to overcome the practical difficulties invoked against the "all States" formula by suggesting that "all States parties to treaties registered with the United Nations" should be invited. Another representative asserted that such a formula would not solve the problem either because parties to registered treaties were not always States, so that the Secretary-General would again face the problem of defining the word "State". At the 916th meeting, the Legal Counsel, as requested, made a statement concerning the parties to treaties registered with the United Nations which were not Members of the United Nations nor members of the specialized agencies nor parties to the Statute of the International Court of Justice nor international organizations.

125. Finally, the Sixth Committee approved operative paragraph 4 of the draft resolution (A/AC.6/L.596/Rev.2) inviting to the conference on the law of treaties States Members of the United Nations, States members of the specialized agencies, States parties to the Statute of the International Court of Justice, and States that the General Assembly decides specially to invite, to participate in the conference.

(g) *Observers from specialized agencies and inter-governmental organizations*

126. Certain representatives explicitly favoured inviting to the conference observers from specialized agencies and from other interested inter-governmental organizations.

[15] See *Official Records of the General Assembly, Eighteenth Session, Plenary Meetings*, 1258th meeting, paras. 99-101.

That view, embodied in operative paragraph 6 of the resolution (A/C.6/L.596/Rev.2), was approved by the Sixth Committee.

127. At the 918th meeting, the Legal Counsel, in response to a request, explained that the "interested" inter-governmental organizations invited to send observers would be organizations which in addition to being interested in attending were engaged in the preparation of treaties, had treaty matters as a substantial part of their work, or were involved in the study of the law of treaties; it was doubtful whether collective security organizations would come within the formula. One representative proposed that the possibility of inviting the International Commission on Civil Status should be studied.

(h) *Inclusion of competent experts among the representatives sent by States to participate in the conference*

128. Certain representatives considered it extremely important to include experts competent in the law of treaties among the representatives of States participating in the conference; they advocated explicit mention of that view in the draft resolution recommended to the General Assembly. Other representatives felt that it was unfortunate, superfluous or inelegant to refer to that matter in the resolution to be adopted. Consequently, the sponsors of the revised draft resolution (A/C.6/L.596/Rev.1) inserted the phrase "so far as possible" in operative paragraph 5 of the second revised version (A/C.6/L.596/Rev.2). That paragraph, as amended, was approved by a majority of the Sixth Committee.

(i) *Experts from the Secretariat to service the conference*

129. Some representatives requested that the Secretary-General should obtain the services of experts qualified in the law of treaties because of the assistance that they could give in the work of the conference. Many representatives stressed that the conference should have the technical advice of Sir Humphrey Waldock, Special Rapporteur of the International Law Commission on the law of treaties, and suggested that he should be invited as an expert to the conference. Operative paragraph 8 of the draft resolution approved by the Sixth Committee (A/C.6/L.596/Rev.2) expressly authorizes the Secretary-General to include experts among the staff servicing the conference.

(j) *Draft rules of procedure*

130. Many representatives felt that the Secretariat should prepare draft rules of procedure for the conference on the law of treaties based on the rules of procedure of the Geneva Conferences on the Law of the Sea and the Vienna Conferences on Diplomatic Intercourse and Immunities and on Consular Relations and taking into account the nature of the work entrusted to the conference on the law of treaties. Once the draft rules had been approved by the conference, with the amendments considered appropriate, they would become the rules of procedure of the conference.

131. A number of representatives considered it essential for the conference to adopt the final texts by substantial majorities. In their view, the rule governing voting in the rules of procedure of the Conferences on the Law of the Sea and the Conferences on Diplomatic Intercourse and Immunities and on Consular Relations should be maintained. Under that rule, decisions in plenary session on questions of substance should be taken by a two-thirds majority of those present and voting and decisions on questions of procedure should be taken by a simple majority while in the committees and sub-committees all decisions should be taken by a simple majority of such representatives, except in the case of motions for reconsideration. One representative stressed that the rules of procedure should distinguish clearly between questions of substance and questions of procedure. Some representatives were in favour of deleting the rule limiting the number of speakers that could speak on a

motion for division, as suggested in paragraph 50 of the memorandum by the Secretary-General (A/C.6/371). One representative pointed out that the two-thirds majority for the adoption of motions for reconsideration was perhaps too rigid, especially at the committee stage, and suggested that the Secretariat should also study the question of amending that rule.

132. Operative paragraph 8 of the draft resolution approved by the Sixth Committee (A/C.6/L.596/Rev.2) requests the Secretary-General to present to the conference recommendations relating to its methods of work and procedures.

(k) *Documentation*

133. Some representatives pointed out that the Secretariat should centralize the preparation of all the documents for the conference. One representative expressed the hope that the reference guide to the legislative history of the draft articles being prepared by the Secretariat would be made available as soon as possible, together with the volumes of the *Yearbook of the International Law Commission* for 1966. Operative paragraph 8 of the draft resolution approved by the Sixth Committee (A/C.6/L.596/Rev.2) requests the Secretary-General to present to the conference all relevant documentation.

B. Special missions

134. In the debate some representatives stressed the importance and necessity of proceeding immediately with the codification of the international law governing special missions in a period of increasing contacts and relations among the members of the international community. Those representatives, recalling General Assembly resolution 2045 (XX) of 8 December 1965, took the view that, now that the final draft articles on the law of treaties had been adopted and submitted to the General Assembly, the International Law Commission should try to complete its work on special missions as soon as practicable, and if possible at its nineteenth session, so that the draft articles on the topic might be considered during the twenty-second session of the General Assembly. That view was expressed in sub-paragraph 4 (*a*) of the draft resolution (A/C.6/L.597), subsequently approved by the Sixth Committee. In that connexion stress was laid on the importance of the written comments of Governments to enable the Commission to put forward appropriate solutions to the problems posed by the codification of special missions, and approval was given to the Commission's decision, as indicated in paragraph 71 of its report on its eighteenth session, once again to request Governments to forward comments on its preliminary draft on special missions. Some representatives noted that their Governments were studying the draft articles and would submit such comments as they considered relevant in due course.

135. Certain representatives approved in general terms the decisions adopted with respect to the draft articles on special missions at the International Law Commission's eighteenth session and the recommendations made to the Special Rapporteur on special missions with a view to the continuation of the work on the subject. One representative endorsed, in particular, the recommendations concerning the nature of the provisions relating to special missions, the distinction between the different kinds of special missions and the inclusion of an introductory article at the beginning of the draft.

136. One representative considered that the codification of special missions should be embodied in an instrument separate from the Vienna Conventions on Diplomatic and Consular Relations, although care should be taken to ensure that the terminology employed for special missions was consistent with that used in those Conventions. Another representative thought that it was too soon to decide whether the draft articles on special missions should be in the form of a draft protocol to the 1961 Vienna Convention on Diplomatic Relations, or of a separate draft convention.

137. With reference to the general structure of the draft articles on special missions, one representative said that the draft should contain the fewest possible number of concisely drafted articles, and that the International Law Commission should adopt the final recommendations which would accompany the draft after taking due account of the practical implications of their implementation. Another representative approved the omission from the draft of the question of delegates to international congresses and conferences, but favoured the inclusion in the draft of provisions concerning so-called high-level special missions.

138. Concerning the formulation of the provisions to be included in the draft articles on special missions, it was noted that the International Law Commission still had to resolve matters of some difficulty before its work would be completed, such as the nature of the various kinds of special missions and the extent of the privileges and immunities which were accorded to those missions. One representative said that those privileges and immunities should not be too freely granted. Another representative stated specifically that articles 1, 7 and 18 of the preliminary draft could benefit from some revision.

C. Other decisions and conclusions of the International Law Commission

1. *Organization of future work*

139. Many representatives said that at its next session the International Law Commission, in addition to trying to adopt final draft articles on special missions as mentioned in paragraph 134 of this report, should also continue its work on succession of States and Governments, State responsibility and relations between States and inter-governmental organizations, and in that connexion should take such steps as it deemed advisable to advance the study of those topics as far as possible. Some representatives expressly approved the decision set out in paragraph 72 to 75 of the Commission's report on its eighteenth session, to propose to the new Commission, which would be elected at the present session of the General Assembly, a provisional programme of work for 1967 including those topics. Those views were reflected in operative paragraphs 3 and 4 of draft resolution A/C.6/L.597 and subsequently received the unanimous support of the Sixth Committee.

140. Certain representatives said that, while the drawing up of the Commission's programme of work was a matter for the Commission itself, the General Assembly and the Sixth Committee might helpfully give some indication of the relative importance which was assigned to the subjects to be studied, and consequently of the priority which should be given to them. In that connexion and with respect to the main subjects on the Commission's programme, many representatives favoured giving priority to the consideration of succession of States and Governments and, in particular, to those aspects of succession closely related to the law of treaties, because of the importance which that question had for the States which had recently become independent. Nevertheless, there were some who expressed an interest in the question of State responsibility also being taken up immediately, in view of that topic's implications for the developing countries, given the importance of foreign capital investments to their economies. One representative questioned whether the topic of State responsibility was really ripe for codification.

141. Other representatives said that they hoped that the Commission would be able to complete its work on the topic of relations between States and inter-governmental organizations within a reasonable period of time and that the study of that topic might cover treaties concluded between States and international organizations or between such organizations, with a view to completing the draft articles on the law of treaties between States.

142. Lastly, one representative, without making a formal suggestion to that effect, said he hoped that the Commission would be asked to continue its work on the codification

and progressive development of the law of treaties, in the light of the debate in the Sixth Committee and the written comments of Governments concerning the draft articles approved by the Commission at its eighteenth session. In that representative's opinion, those draft articles had not given sufficient consideration to the sociological context which determined the creation of treaties or to the higher principles which contributed to their formation, and they should therefore be duly revised and completed.

2. *Co-operation with other bodies*

143. The representatives who referred to this question in the debate expressed their gratification at the co-operation between the Commission and the Asian-African Legal Consultative Committee, the Inter-American Council of Jurists and its standing organ the Inter-American Juridical Committee, and the European Committee on Legal Co-operation. Affirming that such co-operation helped to strengthen the universality of international law, those representatives urged that such co-operation should be developed and some expressed the hope that in future it would be broadened with a view to including other bodies as well. Some representatives suggested that the Commission might go into more detail in its reports about the methods and results of its co-operation with those regional bodies. One representative stressed that the work being done by those bodies included questions, such as reservations to multilateral treaties, the law of treaties in general, and coexistence, which had great interest and importance for the work being done by the Commission and the General Assembly in the codification and progressive development of international law.

3. *Seminar on international law*

144. Recalling General Assembly resolution 2045 (XX) of 8 December 1965 and the views expressed in the Sixth Committee at the twentieth session of the General Assembly, many representatives expressed satisfaction at the holding of the second session of the Seminar on International Law for advanced students of the subject and young government officials responsible in their respective countries for dealing with questions of international law. Those representatives were in favour of continuing to hold the Seminars in the future. The United Nations Office at Geneva was commended for the planning and conduct of the Seminar and the execution of its programme. These views, embodied in the last preambular paragraph and operative paragraph 5 of draft resolution A/C.6/L.597, were subsequently approved unanimously by the Sixth Committee.

145. It was emphasized that the Seminars helped to spread a knowledge of international law and the work of the International Law Commission, and to strengthen the bonds between the members of the Commission and students of international law throughout the world. Stress was also laid on the particular importance of the Seminars for students and young officials of the developing countries and satisfaction was expressed that a considerable number of nationals of those countries had been able to participate in the second Seminar. Some representatives expressly thanked the Governments of Israel and Sweden for the scholarships they had made available for the 1966 Seminar and expressed the hope that other Governments would follow their example, in order that the number of participants from the developing countries might be maintained. The representative of Israel announced that if there was any unexpended balance of the scholarships which his Government had made available for the 1966 Seminar, the Secretariat might make use of it for the next Seminar.

146. One representative suggested that the scope of the matters examined by the Seminar should be extended by increasing the number of lectures, widening the circle of the students' direct and personal contacts and taking advantage of the opportunities offered by the presence in Geneva of many specialized agencies and non-governmental organizations.

4. *Organization of the sessions of the International Law Commission*

147. One representative considered that it might be timely for the International Law Commission to re-examine the question of the organization of its sessions and other matters relating to its general administrative arrangements and that, if it should wish to do so, it should propose to the General Assembly a new pattern for its sessions and other adjustments, even to the extent of suggesting possible amendment of its statute. Another representative was in favour of holding two annual sessions of only four or five weeks each, instead of only one session of ten weeks as at present. That would enable the members of the Commission to divide their time between taking part in the work of the Commission and their other professional activities more conveniently.

IV. Voting

148. At its 918th meeting, the Sixth Committee voted on the draft resolutions and amendments thereto.

A. International conference of plenipotentiaries on the law of treaties

149. Voting on revised draft resolution A/C.6/L.596/Rev.2 and the amendment thereto (A/C.6/L.598) took place as follows:

(*a*) The amendment submitted by Czechoslovakia, Poland and the Union of Soviet Socialist Republics (A/C.6/L.598) to operative paragraph 4 of the ten-Power draft resolution (A/C.6/L.596/Rev.2) was rejected by a roll-call vote of 53 to 33, with 19 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ethiopia, Hungary, India, Indonesia, Iraq, Kuwait, Mali, Mongolia, Morocco, Nepal, Poland, Romania, Sierra Leone, Singapore, Somalia, Sudan, Syria, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia, Zambia.

Against: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Greece, Guatemala, Haiti, Honduras, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Peru, Rwanda, South Africa, Spain, Sweden, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela.

Abstaining: Cameroon, Central African Republic, Chad, Congo (Democratic Republic of), Dahomey, Ghana, Iran, Ivory Coast, Lebanon, Liberia, Libya, Nigeria, Pakistan, Portugal, Saudi Arabia, Senegal, Thailand, Togo, Turkey.

As a consequence of the result of the voting on that amendment, the amendment (A/C.6/L.601) to the preamble of the draft resolution (A/C.6/L.596/Rev.2) was withdrawn by the sponsors.

(*b*) Operative paragraph 3 of the draft resolution was adopted, in a separate vote requested by the representative of France, by 85 votes to 2, with 19 abstentions.

(*c*) Operative paragraph 4 of the draft resolution was adopted, in a separate vote requested by the representative of China, by 65 votes to 19, with 16 abstentions.

(*d*) Operative paragraph 5 of the draft resolution was adopted, in a separate vote requested by the representative of Upper Volta, by 51 votes to 32, with 23 abstentions.

(*e*) The draft resolution as a whole (A/C.6/L.596/Rev.2) was then adopted by 100 votes to none, with 6 abstentions.

150. At the 919th meeting, a number of representatives explained the vote of their respective delegations on the draft resolution and the amendment thereto. The representatives of Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Mali, Mongolia, Poland, Romania, Sierra Leone, Somalia, Tunisia, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Arab Republic, and the United Republic of Tanzania referred specifically to the amendment and to operative paragraph 4 of the draft resolution. The representatives of France and Tunisia explained their votes on operative paragraph 3 of the draft resolution and the representative of France also explained his vote on operative paragraph 5 of that draft.

B. Reports of the International Law Commission

151. The eight-Power draft resolution (A/C./L.597 and Add.1), with the oral changes to the title and the last preambular paragraph made by the sponsors, was adopted unanimously.

Recommendation of the Sixth Committee

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

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

(*b*) Resolutions adopted by the General Assembly

At its 1484th plenary meeting, on 5 December 1966, the General Assembly adopted the draft resolutions submitted by the Sixth Committee (par. 152 above). For the final texts, see resolutions 2166 (XXI) and 2167 (XXI) below.

2166 (XXI). International Conference of Plenipotentiaries on the Law of Treaties

The General Assembly,

Having considered chapter II of the report of the International Law Commission on the work of its eighteenth session,[16] which contains final draft articles and commentaries on the law of treaties,

Noting that the International Law Commission at its first session in 1949 listed the law of treaties among the topics of international law as being suitable for codification, that at its thirteenth session in 1961 it decided to prepare draft articles on the law of treaties intended to serve as the basis for a convention, and that at its fourteenth session in 1962 it included the law of treaties in the revised programme for its future work,

Recalling that in its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965 it recommended that the International Law Commission should continue the work of codification and progressive development of the law of treaties, taking into account the views expressed in the General Assembly and the comments submitted by Governments, in order that the law of treaties might be placed upon the widest and most secure foundations,

[16] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev. 1), part II.

and that in its resolution 2045 (XX) of 8 December 1965 it recommended that a final draft on the law of treaties should be submitted to the Assembly by the Commission in its report on the work of its eighteenth session,

Noting further that, at its seventeenth and eighteenth sessions in 1965 and 1966, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on the law of treaties prepared at its fourteenth and sixteenth sessions, and that at its eighteenth session the Commission finally adopted the draft articles,

Recalling that, as stated in paragraph 36 of the report of the International Law Commission on the work of its eighteenth session, the Commission decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject,

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

Believing that the successful codification and progressive development of the rules of international law governing the law of treaties would contribute to the development of friendly relations and co-operation among States, irrespective of their differing constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

1. *Expresses its appreciation* to the International Law Commission for its valuable work on the law of treaties and to the Special Rapporteurs for their contribution to this work;

2. *Decides* that an international conference of plenipotentiaries shall be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

3. *Requests* the Secretary-General to convoke, at Geneva or at any other suitable place for which he receives an invitation before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969;

4. *Invites* States Members of the United Nations, States members of the specialized agencies, States Parties to the Statute of the International Court of Justice and States that the General Assembly decides specially to invite, to participate in the conference;

5. *Invites* the States referred to in paragraph 4 above to include as far as possible among their representatives experts competent in the field to be considered;

6. *Invites* the specialized agencies and the interested inter-governmental organizations to send observers to the conference;

7. *Refers* to the conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session as the basic proposal for consideration by the conference;

8. *Requests* the Secretary-General to present to the conference all relevant documentation and recommendations relating to its method of work and procedures, and to arrange for the necessary staff and facilities which will be required for the conference, including such experts as may be necessary;

9. *Invites* Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit, not later than 1 July 1967,

their written comments and observations on the final draft articles concerning the law of treaties prepared by the International Law Commission;

10. *Requests* the Secretary-General to circulate such comments so as to facilitate the discussion of the subject at the twenty-second session of the General Assembly;

11. *Decides* to include an item entitled "Law of treaties" in the provisional agenda of its twenty-second session with a view to further discussion of the draft articles in order to facilitate the conclusion of a convention on the law of treaties at the conference of plenipotentiaries convened pursuant to the present resolution.

1484th plenary meeting
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2167 (XXI). Reports of the International Law Commission

The General Assembly,

Having considered the reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session,[17]

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

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

Noting with satisfaction that at its eighteenth session the International Law Commission adopted the final text of its draft articles on the law of treaties and also made progress in the codification and progressive development of the international law relating to special missions,

Noting further with appreciation that the United Nations Office at Geneva organized in May 1966, during the eighteenth session of the International Law Commission, a second session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law and that the Seminar, which was made possible by the generous collaboration of members of the Commission, was well organized and functioned to the satisfaction of all,

1. *Takes note* of the report of the International Law Commission on the work of the second part of its seventeenth session and of chapters I, III and IV of the report on the work of its eighteenth session;

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

3. *Notes with approval* the programme of work for 1967 proposed by the International Law Commission in chapter IV of the report on the work of its eighteenth session;

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

[17] *Ibid., Supplement No. 9* (A/6309/Rev.1).

(*a*) Continue the work of codification and progressive development of the international law relating to special missions, taking into account the views expressed at the twenty-first session of the General Assembly and the comments which may be submitted by Governments, with the object of presenting a final draft on the topic in the report on the work of its nineteenth session;

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

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

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

1484th plenary meeting,
5 December 1966

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9. CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS: (*a*) REPORT OF THE 1966 SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES (*b*) REPORT OF THE SECRETARY-GENERAL ON METHODS OF FACT-FINDING (AGENDA ITEM 87)

(*a*) Report of the Sixth Committee[18]

[*Original: English*]
[*6 December 1966*]

I. Introduction

1. At its 1415th plenary meeting, on 24 September 1966, the General Assembly decided to include item 87 entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" in the agenda of its twenty-first session and to allocate the item to the Sixth Committee.

2. The Sixth Committee considered this item at its 924th to 942nd meetings, from 1 to 29 November 1966.

3. The item was previously discussed by the General Assembly at its seventeenth, eighteenth and twentieth sessions. These discussions resulted in the adoption of General Assembly resolutions 1815 (XVII) and 1816 (XVII) of 18 December 1962, 1966 (XVIII) and 1967 (XVIII) of 16 December 1963 and 2103 (XX) and 2104 (XX) of 20 December 1965.

4. At its seventeenth session the General Assembly, by resolution 1815 (XVII) of 18 December 1962, recognized "the paramount importance, in the progressive development

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[18] Document A/6547, reproduced from *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87.

of international law and in the promotion of the rule of law among nations, of the principles of international law concerning friendly relations and co-operation among States and the duties derived therefrom, embodied in the Charter of the United Nations which is the fundamental statement of those principles..."; resolved to undertake, pursuant to Article 13 of the Charter, a study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter with a view to their progressive development and codification, so as to secure their more effective application; decided to study, at its eighteenth session, four of those principles, namely:

"(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

"(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

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

"(*d*) The principle of sovereign equality of States."

5. At its eighteenth session the General Assembly, by resolution 1966 (XVIII) of 16 December 1963, established a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. That Committee was requested to draw up and submit to the General Assembly a report "containing, for the purpose of the progressive development and codification of the four principles" enumerated in paragraph 4 above "so as to secure their more effective application, the conclusions of its study and its recommendations...". Likewise, the General Assembly decided to consider the report of the Special Committee at its next session and to study, at the same time, the following three principles:

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

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

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

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

7. The Special Committee established under General Assembly resolution 1966 (XVIII) met at Mexico City from 27 August to 1 October 1964, and submitted a report on its work to the General Assembly.[19]

8. At its twentieth session the General Assembly considered under the item "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter",[20] the report of the 1964 Special Committee, the three principles referred to in paragraph 5 above and the report of the Secretary-General

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

[20] *Ibid.*, document A/6165, para. 5.

on methods of fact-finding.[21] The Sixth Committee considered that agenda item together with item 94, entitled "Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities".[22]

9. The General Assembly adopted at its twentieth session resolution 2103 (XX) of 20 December 1965. By resolution 2103B (XX) the General Assembly requested

> "...the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, reconstituted under paragraph 3 of resolution 2103A (XX) above, to take into consideration, in the course of its work and in drafting its report, the request for the inclusion in the agenda of the [Observance by Member States of the principles relating to the sovereignty of States, their territorial integrity, non-interference in their domestic affairs, the peaceful settlement of disputes and the condemnation of subversive activities] mentioned in the first preambular paragraph above[23] and the discussion of that item at the twentieth session of the General Assembly."

10. Also at its twentieth session the General Assembly adopted resolution 2104 (XX) of 20 December 1965 concerning the question of methods of fact-finding.

11. The Special Committee reconstituted under Assembly resolution 2103 (XX) met at United Nations Headquarters in New York from 8 March to 25 April 1966, adopted a report on its work (A/6230) and submitted it to the General Assembly in accordance with operative paragraph 4 (*c*) of resolution 2103 (XX). The report was divided into the following nine chapters: I. Introduction; II. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; III. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; IV. The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; V. The principle of sovereign equality of States; VI. The duty of States to co-operate with one another in accordance with the Charter; VII. The principle of equal rights and self-determination of peoples; VIII. The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter; IX. Conclusion of the work of the 1966 Special Committee.

12. At the twenty-first session of the General Assembly the item "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" covered the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (A/6230) and the study prepared by the Secretary-General, in pursuance of operative paragraph 1 of General Assembly resolution 2104 (XX), on methods of fact-finding with respect to the execution of international agreements (A/6228). The Committee had also before it the comments received from Governments, in accordance with paragraph 2 of General Assembly resolution 2104 (XX), on the question of methods of fact-finding (A/6373 and Add.1).

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[21] *Ibid.*, document A/5694.

[22] *Ibid.*, document A/6165, paras. 6 and 7.

[23] *Ibid.*, *Nineteenth Session*, *Annexes*, annex No. 2, documents A/5757 and Add.1.

II. Proposals and amendments

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

13. Cameroon, Chile, Colombia, Czechoslovakia, Ecuador, Guatemala, Honduras, India, Mexico, Nigeria, Panama, Sudan, the United Arab Republic, Uruguay, Venezuela and Yugoslavia submitted a draft resolution (A/C.6/L.607 and Add.1 and 2), which read as follows:

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, and 2103 (XX) of 20 December 1965 which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation maong States,

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

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

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

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

Being convinced of the significance of continuing the effort to achieve as much general agreement as possible in the process of the elaboration of the seven principles of international law set forth in General Assembly resolution 1815 (XVII) without prejudice to the applicability of the rules of procedure of the Assembly, and with a view to the adoption at the twenty-second session of the General Assembly of a declaration which would constitute a landmark in the progressive development and codification of those principles,

Having considered the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States which met in New York from 8 March to 25 April 1966, and having considered specifically the facts that it was noted in that Committee that the differences between the various points of view on the formulation of the principles had been materially reduced and that among the factors which hampered the achievement by the Committee of a greater measure of agreement was lack of sufficient time for additional deliberation and negotiation,

1. *Takes note* of the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

2. *Expresses its appreciation* to that Committee for the valuable work it performed;

3. *Takes note* of the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States, and of its decision that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965;

4. *Decides* to ask the Special Committee as reconstituted by General Assembly resolution 2103 (XX) to continue its work;

5. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first session of the General Assembly and in the 1964 and 1966 Special Committee, to complete the formulations of:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(*b*) The duty of States to co-operate with one another in accordance with the Charter,

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

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

6. *Further requests* the Special Committee to consider any additional proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, which could widen the area of agreement already expressed in General Assembly resolution 2131 (XX);

7. *Requests* the Special Committee, having regard to the work already accomplished by the 1966 Special Committee as specified in operative paragraph 3 above, to submit to the twenty-second session of the General Assembly a comprehensive report on the principles entrusted to it for study and a draft declaration on the seven principles set forth in General Assembly resolution 1815 (XVII);

8. *Requests* the Special Committee to meet at Geneva, or at any other suitable place for which an invitation is received by the Secretary-General, and to submit its report and the draft declaration to the General Assembly at its twenty-second session;

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

10. *Decides* to include an item entitled 'Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations' in the provisional agenda of its twenty-second session.

14. The sponsors of the draft resolution (A/C.6/L.607 and Add.1 and 2), together with Bolivia, Brazil, Bulgaria, Costa Rica, the Dominican Republic, El Salvador, Hungary, Madagascar, Mongolia, Nepal, Nicaragua, Paraguay, Peru, and Poland, submitted a first revision of the draft resolution (A/C.6/L.607/Rev.1 and Add.1) adding at the end of operative paragraph 7 the words "such as will constitute an outstanding event in the progressive development and codification of those principles;".

15. Australia, Canada, Jamaica, Japan, New Zealand, Norway, the United Kingdom of Great Britain and Northern Ireland and the United States of America submitted amendments (A/C.6/L.608) to the revised draft resolution (A/C.6/L.607/Rev.1 and Add.1) which read as follows:

1. Add the following new preambular paragraph after the fifth preambular paragraph:

"Bearing in mind also the nature of General Assembly resolutions and in particular that of resolutions whose purpose is the progressive development and codification of principles of international law,".

2. Amend the sixth preambular paragraph as follows: (*a*) add the word "accordingly" after the opening words "Being convinced"; (*b*) replace the words "as much general agreement as possible in" by the words "general agreement at every stage of"; (*c*) replace the words "the adoption at the twenty-second session of the General Assembly" by the words "the early adoption".

3. End operative paragraph 3 with a semicolon after the words "equality of States".

4. In operative paragraph 5, after "1966 Special Committee", add "and building on existing areas of substantial agreement".

5. Amend operative paragraph 6 to read:

"6. *Further requests* the Special Committee to complete the formulation of the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, on the basis of General Assembly resolution 2131 (XX) and in an effort to widen the area of agreement on the legal content of that principle;".

16. The sponsors of the revised draft resolution, together with Lebanon, submitted a second revision of the draft resolution (A/C.6/L.607/Rev.2) introducing the following changes into the text of the draft resolution:

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

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

(*b*) The following new operative paragraph 7 was added:

"7. *Further requests* the Special Committee, having considered, as a matter of priority, the principles referred to in operative paragraphs 5 and 6 above, to consider any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States;"

(*c*) As a result, operative paragraphs 7, 8, 9 and 10 were renumbered accordingly.

17. The sponsors of the amendments (A/C.6/L.608) withdrew amendments 1, 2 and 4 to draft resolution A/C.6/L.607/Rev.1 and Add.1 maintaining amendments 3 and 5 (A/C.6/L.608/Rev.1) to draft resolution A/C.6/L.607/Rev.2.

18. Finally, the sponsors of draft resolution A/C.6/L.607/Rev.2, together with Ghana and Romania, submitted a third revision of the draft resolution (A/C.6/L.607/Rev.3 and Add.1), which read as follows:

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, and 2103 (XX) of 20 December 1965 which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

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

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

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

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

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

Having considered the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States which met in New York from 8 March

to 25 April 1966, and having considered specifically the facts that it was noted in that Committee that the differences between the various points of view on the formulation of the principles had been materially reduced and that among the factors which hampered the achievement by the Committee of a greater measure of agreement was lack of sufficient time for additional deliberation and negotiation,

1. *Takes note* of the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

2. *Expresses its appreciation* to that Committee for the valuable work it performed;

3. *Takes note also* of the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States, and of its decision that with regard to the principle of non-intervention the Special Committee will abide by General Assembly resolution 2131 (XX) of 21 December 1965;

4. *Decides* to ask the Special Committee as reconstituted by General Assembly resolution 2103 (XX) to continue its work;

5. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committee, to complete formulations of:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

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

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

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

6. *Requests* the Special Committee to consider proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX);

7. *Requests* the Special Committee, having considered, as a matter of priority, the principles referred to in operative paragraphs 5 and 6 above, to consider any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States;

8. *Requests* the Special Committee, having regard to the work already accomplished by the 1966 Special Committee as specified in operative paragraph 3 above, to submit to the twenty-second session of the General Assembly a comprehensive report on the principles entrusted to it for study and a draft declaration on the seven principles set forth in General Assembly resolution 1815 (XVII) such as will constitute a landmark in the progressive development and codification of those principles;

9. *Requests* the Special Committee to meet at Geneva, or at any other suitable place for which an invitation is received by the Secretary-General;

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

11. *Decides* to include an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" in the provisional agenda of its twenty-second session.

19. Thereafter, the sponsors of the amendments (A/C.6/L.608/Rev.1) to draft resolution A/C.6/L.607/Rev.2 submitted an amendment (A/C.6/L.608/Rev.2) to operative paragraph 3 of draft resolution A/C.6/L.607/Rev.3 and Add.1, reading as follows:

"At the end of operative paragraph 3, change the semicolon to a comma and add: 'and of its decision noting the report of the drafting committee that no agreement was reached on the additional

proposals made with the aim of widening the area of agreement in General Assembly resolution 2131 (XX);'."

20. The Secretary-General submitted a statement (A/C.6/L.609) of the administrative and financial implications of the draft resolution (A/C.6/L.607/Rev.1). This statement was also made applicable to the second and third revisions of the draft resolution.

B. Question of methods of fact-finding

21. Colombia, Dahomey, Ecuador, Jamaica, Japan, Liberia, Madagascar, Mexico, the Netherlands, Pakistan, Somalia, Togo and Turkey submitted a draft resolution (A/C.6/L.610 and Add.1), reading as follows:

The General Assembly,

Recalling its resolutions 1967 (XVIII) of 16 December 1963 and 2104 (XX) of 20 December 1965 on the question of methods of fact-finding,

Noting with appreciation the two reports (A/5694 and A/6228) made by the Secretary-General in pursuance of the above-mentioned resolutions,

Noting the comments submitted by Member States pursuant to paragraph 1 of resolution 1967 (XVIII) and paragraph 2 of resolution 2104 (XX) and the views expressed during its twentieth and twenty-first sessions,

Noting chapter VII of the report (A/5746) of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, established under General Assembly resolution 1966 (XVIII) of 16 December 1963,

Reaffirming its belief that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions,

Noting that, with regard to methods of fact-finding in international relations, a considerable documentation has now been made available by the reports of the Secretary-General on practice in relation to settlement of disputes as well as in respect to the execution of international agreements, and furthermore by the views expressed and the proposals made by Member States,

Considering it desirable that the General Assembly, at its twenty-second session, should endeavour, following a report to the competent Main Committee by a working group appointed by the Chairman of that Committee, to draw conclusions concerning the question from this documentation,

Recalling its belief that a study of the question might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek peaceful means of settlement of their own choice,

1. *Invites* Member States to submit in writing to the Secretary-General, before 1 August 1967, any views, or further views, they may have on this subject in the light of the reports of the Secretary-General, the views expressed and the proposals made, and in particular on the following aspects:

(*a*) The effectiveness of existing arrangements for international fact-finding,

(*b*) The need for new international machinery for fact-finding, its composition and its terms of reference;

2. *Decides* to include an item entitled "Question of methods of fact-finding" in the provisional agenda of the twenty-second session of the General Assembly, in order to consider what further action may be appropriate.

22. Hungary and the Ukrainian Soviet Socialist Republic submitted amendments (A/C.6/L.612) to the draft resolution (A/C.6/L.610 and Add.1), which would: (*a*) delete the fifth, seventh and eighth preambular paragraphs; (*b*) at the end of the preamble insert the following new preambular paragraph: "*Being unable* to consider the substance of the question of methods of fact-finding owing to lack of time,"; (*c*) end operative paragraph 1 after the words "on this subject" and insert a semicolon. These amendments were withdrawn

by the sponsors, following the oral modifications introduced in the text of the draft resolution (A/C.6/L.610 and Add.1).

23. Later, the sponsors orally amended the text as follows:

(*a*) The seventh preambular paragraph was deleted;

(*b*) In the new seventh preambular paragraph (formerly eighth), the word "other" was inserted between the words "to seek" and the words "peaceful means";

(*c*) A new eighth preambular paragraph was added reading "*Having been unable* to consider the substance of the question of methods of fact-finding owing to lack of time,";

(*d*) Operative paragraph 1 was redrafted to read as follows:

"1. *Invites* Member States to submit in writing to the Secretary-General, before 1 August 1967, any views, or further views, they may have on this subject, taking into account the reports of the Secretary-General, the views expressed and the proposals made;".

III. Discussion

A. Consideration of the report of the 1966 Special Committee (A/6230)

1. *General considerations relating to the principles and aims of the work*

24. The supreme importance of the work of codification and progressive development of the principles of international law concerning friendly relations and co-operation among States was stressed by a number of representatives. The principles involved were the basic ones of the United Nations Charter. Some representatives thought that the world had changed in the time since the Charter was adopted, largely through the accession to independence of a large number of new States, and it was necessary to apply and develop those principles to the new world situation which resulted. Progressive development should take place in order to reduce the gap between social reality and the international legal order. It was generally agreed in principle that the work at present under way should lead to the adoption of a declaration.

25. It was agreed that the work was not a process of covert and informal amendment of the Charter. That document, which was not only a constitution but, as one representative observed, the greatest law-making treaty of modern times, had to be interpreted effectively in the light of its object and purpose, and, as was said by another, in that of more than twenty years of development of customary international law. The substance of the principles could not be discarded but should be amplified, enriched and adapted to the problems of the present day. One representative added that the task related not only to rules of conduct but also to organizational rules and principles, since all of the provisions of the Charter were relevant to the purpose, and organizational rules were relevant not only for the interpretation of the rules of conduct, but also in themselves, as an integral part of the principles to be codified.

26. Some delegations said that attention should be paid to the difference between *lex lata* and *lex ferenda;* while it was entirely proper that proposals *de lege ferenda* should be made and considered, many such proposals which had been made during the work were political rather than juridical propositions, designed to stretch the Charter to fit a particular ideology. Others, however, thought it essential that to achieve its purpose the formulation of the principles should embody genuinely progressive and democratic elements and should not lose sight of the main social purpose of international law, which was the safeguarding of the sovereign rights of peoples and the maintenance of peace and co-operation. A further group of representatives thought that no sharp distinction could or should be drawn

between legal and political propositions, nor was the distinction between *lex lata* and *lex ferenda* very relevant to the formulation of a declaration of principles which was not the final step in the process of progressive development and codification.

27. One representative counselled against attempting to draft excessively precise texts which might impair the dynamic character of the law, give rise to contradictions and make difficult the attainment of the necessary breadth of agreement. Others, however, believed that it would be a mistake not to go far enough in this direction. Excessively abbreviated statements of rules might detract from the Charter by not taking account of all its relevant provisions, and that would be far from conducive to the sound codification and progressive development of the Charter principles.

2. *General comments on the work of the 1966 Special Committee*

28. Some representatives expressed disappointment that the 1966 Special Committee had been able to report new formulations on only two principles, peaceful settlement of international disputes and sovereign equality and of those formulations the latter was only a slightly expanded version of what had been adopted by the 1964 Special Committee in Mexico City. A greater number, however, thought that the session of the Special Committee in 1966 had been more fruitful than might at first appear and that there was good hope of success if the work was pursued further. Much had been done towards defining the issues and laying a basis for agreement at a later stage. One representative added that there had been a noticeable shift towards acceptance of progressive ideas. It was pointed out that, though formulations had been unanimously adopted on only two principles, formulations on other principles had received wide though less than unanimous agreement, and these texts laid a solid foundation for future work.

29. Some representatives praised the spirit of conciliation and the desire to reach agreement which in their view prevailed among the delegations on the 1966 Special Committee and said that the main factors limiting the results of the work were lack of time and the difficulty of the task. Others, however, thought that the task was not very difficult. What had hampered the formulation of the principles was the attitude of certain States which, feeling that the project might create legal difficulties for them, had raised artificial obstacles to success.

3. *General considerations on future work*

30. It was generally agreed that the Special Committee, as reconstituted by General Assembly resolution 2103 (XX) of 20 December 1965, should be asked to hold another session in 1967. Although some representatives stated that the Special Committee should not be asked to consider again the principles on which formulations had been reached, it was ultimately agreed that, while priority should be given to those on which no formulations had yet been adopted, the other two principles should be taken up again with a view to widening the areas of agreement expressed in the formulations. It was also the general view that the Special Committee should be requested to prepare a draft declaration on the seven principles for consideration by the General Assembly at its twenty-second session in 1967. The discussion in regard to the effect to be given to General Assembly resolution 2131 (XX) of 21 December 1965 is summarized in paragraphs 52-56 below.

31. There was extensive discussion of the role to be played by consensus or unanimity in the future work of the Special Committee. A few representatives believed that what was being aimed at was an authentic interpretation of the Charter by the parties to it, which, if agreed to by all of them, would have the same legal force as the Charter itself. For those representatives unanimity was indispensable, as without it there would be no possibility of authentic interpretation. It was said by one of those representatives that a method of

deciding by general agreement should be an incentive to negotiation and compromise and not a dogma whose only purpose was obstruction. Other representatives, however, considered that the goal was a recommendation by the General Assembly. Although the Assembly could not of itself create general international law, its recommendations could nevertheless, if virtually unanimous, constitute such cogent evidence of the practice of States that it could provide substantial evidence of the rules of customary law. For those representatives a consensus procedure would mean proceeding without a vote where there was no recorded dissent, rather than by strict unanimity, and voting was not in all events excluded.

32. One representative, while maintaining the value of unanimity, considered that the Special Committee's main duty was to clarify the situation, and that, when every possibility of unanimity was exhausted, a vote should be taken (preferably by roll-call) not in order to decide on adoption of the text, but rather so that the General Assembly could be informed as to the degree of support for the various views. Another group considered that every effort should be made to reach general agreement, but that as a last resort texts should be voted on so that one delegation or a few delegations could not paralyse the efforts of the great majority. Still other representatives believed that the practice followed by the 1964 and 1966 Special Committees should be abandoned, and that no demand should be made for unanimous adoption, which was not even required for amendments to the Charter itself. In their view, the value of a declaration would depend not upon the method of its adoption but upon its content, its lucid formulation and its application by States; if matters of major importance were left aside because of the impossibility of consensus, the codification would in any case be a failure.

33. Several representatives stressed the need for proceeding with a maximum of objectivity, with a constant view to the broadest interests of the international community and without pursuit of short-term political gains. One representative said that it should be decided whether the aim was a declaration by the General Assembly, which traditionally was an infrequent and solemn instrument of major and lasting importance with which maximum compliance was expected, or whether it was a less solemn document which would mirror existing trends, possibly of an ephemeral character.

34. As to the methods of drafting, it was suggested that the relationship between the principles should constantly be borne in mind, and one representative said it was essential to maintain close liaison between the various working groups. Another said that working groups should be appointed not only from members of the drafting committee but from other members of the Special Committee as well, and that some record should be kept of the work of working groups, in the form of reports by their chairmen either to the drafting committee or to the Special Committee. It was also suggested that perhaps some equivalent to the system of Special Rapporteurs used by the International Law Commission could be worked out, and that greater use should be made of written documents setting out and explaining in detail the proposals made and their implications. In any case, if the suggestions made with respect to working groups were adopted, such groups should be established at the very outset of the session of the Special Committee, in order to avoid last minute proposals and hasty negotiations, hardly compatible with a proper method of drafting legal documents of high importance.

4. *Comments on the principles examined by the Special Committee*

(a) *The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations*

35. Some representatives expressed regret that the 1966 Special Committee had been unable to arrive at an agreed formulation of this principle (see A/6230 above, para. 155)

as they considered that serious violations of it in current international life were creating dangerous situations and that a formulation would help to ensure world peace. They considered that the Special Committee at its next session should devote special effort to this principle, and mentioned different proposals and amendments made at the 1966 session, or the text which had nearly been accepted by the 1964 Special Committee in Mexico City,[24] as bases on which they wished to see agreement reached.

36. Several representatives thought that a formulation should take full account of developments in practice during the years since the United Nations Charter was drafted and should fully reflect the new realities of international life. It would, in their view, be undesirable to try to distinguish sharply between existing law and developing law, or between codification and progressive development; gaps had to be filled and logical consequences of rules could be included. One representative, however, said that the principle involved was exactly that contained in Article 2, paragraph 4, of the Charter, and that any effort to alter its scope or the meaning of the terms used would amount to an amendment of the Charter. Another representative declared that the principle was a peremptory norm of international law, from which there could be no derogation.

37. Much of the discussion in the Sixth Committee centred on the meaning of the term "force". There was general agreement that the term covered armed force. Several representatives included the use of irregular and volunteer forces in the use of force; others mentioned the training of terrorists and saboteurs for infiltration across frontiers or the existence within a State of camps for such training; and still others extended the term to all subversive activities against another State or against legitimate democratic Governments.

38. A considerable number of representatives said that the term "force" covered not only armed force, but also any other form of duress or coercion, or any form of pressure, including economic and political pressure (some referred also to social, cultural and psychological pressure) directed against the territorial integrity or political independence of a State. A few of those representatives explained that in their view the term "force" in Article 2, paragraph 4, of the Charter had a broader meaning than "force" in Article 44, as the contexts were different, and that therefore the inclusion of all forms of pressure did not go beyond the meaning of the principle in the Charter. It was also argued that the circumstances of modern international life, where economic or other kinds of pressure could have just as coercive an effect as military action, made a broad definition of "force" necessary.

39. On the other hand, it was argued by one representative that Article 2, paragraph 4, and Article 44, taken together, meant that the principle covered only armed force, and that those attempting to expand the concept of force would encounter difficulties of definition which they would have to overcome in the interest of the international community. Other representatives thought it essential to indicate that the right of self-defence under Article 51 of the Charter could not be invoked in relation to economic and political pressures. Still others thought it preferable to deal with such pressures only under the principle of non-intervention.

40. In regard to the consequences and corollaries of the prohibition of the threat or use of force, a number of representatives thought that, in addition to declaring the criminality of wars of aggression, a formulation of the principle should include a prohibition of propaganda for war, and one representative suggested consideration of the possibility of States undertaking the obligation to spread peace propaganda and support social movements for the maintenance of peace. Another representative took the view that a provision regarding war propaganda should be in hortatory language rather than in that of a legal prohibition.

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[24] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746, para. 106, Paper No. 1(I).

41. Several representatives expressed the desire that a formulation should include a prohibition of the use of force for repression of liberation movements or for denial of the right of self-determination. A few representatives said that it was desirable expressly to prohibit the threat or use of force to violate existing boundaries. One representative thought that the prohibition should apply not only to boundaries but also to other international lines of demarcation, while another opposed any reference to such lines of demarcation. Some wished that the use of force in acts of reprisal should be condemned. Others said that recognition should be given to the obligation of States to achieve general and complete disarmament under effective international control; one representative, however, wished to deal with the question of disarmament in hortatory language rather than as an obligation.

42. One representative called attention to a long-established institution of international law which had limited the use of force even during the period when States were legally entitled to wage war in a just cause: that was the institution of permanent neutrality, like that of Switzerland and more recently Austria, under which States recognizing permanent neutrality pledged themselves to respect the territorial integrity and political independence of the neutral State, while the latter undertook not to join any military alliances.

43. In regard to the exceptions to the prohibition of the threat or use of force, a number of representatives stressed that the right of individual or collective self-defence should be strictly limited to the conditions laid down in Article 51 of the Charter. Some representatives considered that the right of self-defence, both individual and collective, was enjoyed not only by States but also by peoples defending themselves against colonial domination and struggling for freedom and self-determination. On the other hand, one representative, while recognizing that Article 2, paragraph 4, of the Charter applied only in international relations and thus did not prohibit rebellion aiming at independence, said that outside aid to a rebellion was generally prohibited by international law; others thought that the duty to respect the territorial integrity of States and the principle of non-intervention were relevant in this regard. In reply, it was argued that the struggle against colonialism was in truth an international struggle since colonial régimes constituted illegal *de facto* occupation, and thus outside aid was permissible.

44. Some representatives spoke of force as legal when it was used pursuant to a decision of a competent organ of the United Nations. Others said that only the Security Council was competent in that regard. One representative mentioned the use of force under regional arrangements in accordance with Article 53 of the Charter, and another mentioned the desirability of participation by the Security Council in decisions to use force under such arrangements. One representative thought that none of the formulations yet proposed on the prohibition of the threat or use of force did complete justice to the Charter provisions (in Chapter VII and elsewhere) concerning the functions of the United Nations in the maintenance of international peace and security.

(b) *The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered*

45. The 1966 Special Committee unanimously adopted a text setting out points of consensus on this principle (see A/6230 above, paras. 248 and 272). A number of representatives said that they were in general satisfied with that text. Although some of them expressed the hope that it would be possible to expand the scope of agreement in later stages of work, some representatives considered that the Sixth Committee should transmit the text to the Special Political Committee in connexion with consideration by the latter of agenda item 36 relating to peaceful settlement of disputes. One representative thought that the formulation should immediately be embodied in a declaration by the General Assembly, which might later, if necessary, be included in a single declaration covering all seven principles.

46. On the other hand, one representative said that the text lacked legal substance, and another thought that the agreed formula was unsatisfactory as it detracted from Chapter VI of the Charter and other Charter provisions. This might be prejudicial to the more effective application of the principle of peaceful settlement. Moreover, numerous representatives mentioned points which they would have wished to see included in the text.

47. It was agreed in the Sixth Committee that States had an obligation to settle their disputes by peaceful means and that they had a free choice of the means for doing so. In regard to this latter principle one representative regretted that the text did not expressly preserve the efficacy of any provision binding the parties with regard to means of settlement, an idea which appeared in the Charter. One representative thought that the formulation should have included the statement that "International disputes shall be settled on the basis of the sovereign equality of States, in the spirit of understanding, and without the use of any form of pressure". Other representatives, however, found that the formulation adopted by the Special Committee did not include all the elements needed to improve the juridical conditions for the application of the principle, and that it gave no assurance of recourse to peaceful means of settlement. It was also remarked that, although the primary element in the settlement of international disputes must be negotiations, the text did not attempt to deal with the question of what happened if the negotiations did not get under way, and thus was of doubtful usefulness. It was added that States, having begun negotiations, could not be expected to agree to continue them indefinitely, as the text seemed to imply, particularly when the disputes invoked such matters as the existence on their continent of colonial domination, racism and apartheid.

48. A number of representatives thought that more emphasis should have been placed upon judicial settlement and arbitral procedure, and many of these favoured stressing the role of the International Court of Justice as the principal judicial organ of the United Nations. Several representatives expressed the view that something should have been done to promote wider acceptance of the compulsory jurisdiction of the Court, and others considered that the text should have recommended the inclusion of clauses on settlement of disputes in general multilateral treaties. Some of those advocating a wider role for the International Court made it clear that they did so despite their disappointment in a recent judgement, and their dissatisfaction with the present composition of that body. Other representatives, however, emphasized the optional nature of the Court's jurisdiction, and did not consider it advisable to lay any stress on judicial settlement or to recommend the inclusion of settlement clauses in multilateral treaties while the Court retained its present composition and while much of international law remained uncodified.

49. Two representatives stated that negotiation was the most effective method for settlement of international disputes. Others, however, replied that negotiation had its limitations, since it involved a power relationship based on the particular interests of States rather than on the general welfare, and that giving *de jure* pre-eminence to negotiation was not desirable, as doing so might limit the freedom of the parties to choose the most appropriate means of settling the dispute in question.

50. Some representatives wished that the element of good faith had been mentioned in connexion with this principle. Another thought that reference should have been made to the supremacy of international law. It was observed by another that for a settlement to be valid, it must not only be consented to by the parties but must also be in conformity with the Charter and with international law. One representative considered the text defective because it contained no definition of what constituted an "international dispute", nor of the domestic jurisdiction of States.

51. Finally, some representatives expressed the hope that in future work on this principle full account would be taken of the experience of the Latin American States, which had a long history of initiatives in the field of peaceful settlement.

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

52. Most of the discussion in the Sixth Committee centred around the effect which should be given to General Assembly resolution 2131 (XX) of 21 December 1965 (containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty) in regard to the formulation of the principle of non-intervention. The 1966 Special Committee, in its work on this principle, adopted by 22 votes to 8, with 1 abstention, a resolution (see A/6230 above, paras. 340-341) whereby it decided that it would abide by General Assembly resolution 2131 (XX), and instructed its Drafting Committee, without prejudice to that decision, to direct its work on the principle towards the consideration of additional proposals, with the aim of widening the area of agreement of Assembly resolution 2131 (XX). At the conclusion of the session, the Special Committee took note of a report of the Drafting Committee that no agreement had been reached on the additional proposals made with the aim of widening the area of agreement of the resolution.

53. A great number of representatives considered that the legal value of resolution 2131 (XX) was beyond dispute, and that its substance should be incorporated in the formulation of the principles. The majority of the 1966 Special Committee, they contended, had been right in considering that the resolution was a legal formulation, and in deciding to abide by it. There were other important examples of the adoption of declarations of consciously legal content on the recommendation of political organs of the United Nations, and the body of resolutions of the General Assembly could be a source of customary international law. Resolution 2131 (XX), which had been adopted by 109 votes to none, with 1 abstention, after careful deliberation and the consideration of a large number of drafts, could not have been adopted unless it had been considered to be in accordance with the law, reflected a universal legal conviction, and was therefore authoritative. It was worded clearly and precisely enough to be a sufficiently complete formulation of the principle. It should be respected by States, and could not be attacked as legally defective; some added that the Special Committee would exceed its competence if it attempted to alter the substance of the resolution. Some speakers said that, while they were willing to consider drafting changes which did not alter the substance and any additional proposals which might widen the area of agreement, no amendments which might impair the substance should be considered. One representative especially deplored the fact that some delegations had attempted to delete from the Special Committee's formulation operative paragraph 6 of the resolution, which provided in part that "All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure."

54. A number of other representatives contended, however, that the Declaration embodied in General Assembly resolution 2131 (XX) was political rather than legal in nature. In their view, while the resolution was an important document entitled to the most careful study, it could not be incorporated automatically in a declaration on the principles of international law concerning friendly relations, but should be carefully re-examined from the legal standpoint, with a view both to its substance and to its drafting. They added that it had been a mistake for the Special Committee to tie its hands by deciding to "abide by" the Declaration, and they urged that a more flexible approach would be taken in the future. Some, arguing that resolution 2131 (XX) could not be taken as reflecting a universal legal conviction, referred to the reservations regarding its non-legal nature expressed by their own delegations and by others at the time the resolution was adopted. It was contended that the Declaration had been hastily drafted, without full consultation, and one representative stated that in principle a resolution emanating from a political organ could not be included as it stood in a formulation of a principle of international law. It

was further contended that the preamble of resolution 2131 (XX) could not be incorporated in the future declaration on friendly relations, and that some of its operative paragraphs (in particular, paras. 6, 7 and 8) dealt with matters other than non-intervention; that other provisions were not as precise as was required in statements of rules of international law; that the resolution made no reference to the duty of the United Nations itself to refrain from intervention, a duty laid down in the Charter; and that the substance and drafting would have to be reviewed in order to fit in with the formulation of other principles in the future declaration on friendly relations.

55. One representative hoped that the Special Committee would not renew the discussion of whether resolution 2131 (XX) represented a universal legal conviction. In his view, the Special Committee should seek to clarify the legal content of the resolution and transfer it into the framework of a declaration on friendly relations.

56. Operative paragraph 6 of the draft resolution first submitted to the Sixth Committee on this part of the item (A/C.6/L.607) requested the Special Committee to consider "any additional proposals...which could widen the area of agreement already expressed in General Assembly resolution 2131 (XX)". After consultations between the sponsors of the draft and the sponsors of the amendments thereto (A/C.6/L.608/Rev. 1) (see paras. 15-17 above), that operative paragraph of the draft was finally revised (A/C.6/L.607/Rev.3) to request the Special Committee "to consider proposals...with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX)," (see para. 18 above) and the amendment to the paragraph was withdrawn. After the Sixth Committee approved that draft resolution, one of its sponsors explained his affirmative vote as having resulted from his country's whole-hearted support of resolution 2131 (XX). A number of other representatives, including several of the sponsors of the withdrawn amendments to operative paragraph 6 (A/C.6/L.608/Rev.1), explained their votes as due in part to their satisfaction that that operative paragraph, as revised, gave the Special Committee at its next session sufficient latitude with regard to its work on the principle of non-intervention, in particular with regard to General Assembly resolution 2131 (XX).

57. At the time of voting there was agreement on the wording of all parts of the draft resolution except for operative paragraph 3, where the sponsors of amendment A/C.6/L.608/Rev.2 (see para. 19 above) thought it would be more complete and consequently more accurate to take note also of the decision of the 1966 Special Committee noting the report of the drafting committee that no agreement was reached on the additional proposals made with the aim of widening the area of agreement of resolution 2131 (XX). Some of the sponsors of the draft resolution opposed the amendment, however, on the grounds that it would have the effect of weakening the legal significance of resolution 2131 (XX), that it would be inappropriate to note such a negative factor as the lack of agreement and would give it a disproportionate significance, that the Special Committee had not decided to take note explicitly of the lack of agreement, and that the amendment would add nothing that was not already included in revised operative paragraph 6.

58. Apart from the discussion of the legal value of General Assembly resolution 2131 (XX), representatives made various suggestions as to points which should be included in or omitted from the formulation of the principle. Among the points suggested for inclusion were definitions of the terms "intervention", "the personality of a State", "wars of aggression" and "force"; a condemnation of intervention committed under the pretext of an alleged treaty right, since a treaty purporting to confer such a right would be invalid under general international law and under the Charter; and a prohibition of assistance to subversive elements or rebels, of the clandestine supply of arms and of infiltration of personnel. One representative opposed the inclusion of any reference to self-defence against intervention, since under the Charter only armed attack could justify the use of force in self-defence.

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

59. The 1966 Special Committee unanimously adopted a text setting out points of consensus on this principle (see A/6230 above, paras. 403 and 413). This text was the same as that adopted by the 1964 Special Committee, except that the first paragraph was expanded to declare that States are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. This addition was welcomed by several representatives, who considered that it improved the text. One representative, however, thought that the new sentence was not clear and that it would legalize some *de facto* inequalities between States. He suggested that the sentence be redrafted to read: "They have equal rights and duties and are equal members of the international community, notwithstanding the different economic, social and political systems or other way of life they have adopted."

60. Apart from this suggestion, there were no criticisms of the contents of the Special Committee's text, although one representative said that it was unsatisfactory as a whole because it was too obvious and too vague. A considerable number of representatives, however, mentioned various points which they considered should have been included in the text, and expressed the hope that new efforts would be made to cover them. Some representatives also urged that the principle should be examined again with a view to progressive development.

61. The point most frequently mentioned for inclusion was the right of States freely to dispose of their national wealth and natural resources, which some representatives said was an essential aspect of the principle in the economic field. It was suggested that when work was resumed on this point, attention should be given to the text which became General Assembly resolution 2158 (XXI) of 25 November 1966 on permanent sovereignty over natural resources, to General Principle III of the Final Act of the United Nations Conference on Trade and Development, and to a provision included by the Third Committee at the present session in the draft Covenant on Economic and Social Rights. Others expressed regret that the Committee had been unable to achieve agreement on one or another of the compromise texts which had commanded considerable support. While some representatives advocated a formula providing that in the exercise of this right due regard should be paid to applicable rules of international law and to valid agreements, another said that to subordinate the right to the supremacy of international law would be inconsistent with the principle of sovereign equality.

62. Other points which several representatives wished to see included were the right of each State to remove any foreign military base from its territory, and the prohibition of any experiment or any action which might have harmful effects on other States. One representative said that the text should prohibit aircraft carrying nuclear bombs and other types of weapons of mass destruction from crossing national frontiers. Some also wished to include the right of each State to take part in the solution of international questions affecting its legitimate interests, including the right to join international organizations and to become party to multilateral treaties dealing with such interests. One representative thought that arbitrary discrimination regarding the rights and duties of membership in organizations of the United Nations family should be prohibited.

63. Finally, there was a division of opinion regarding the inclusion of a reference to the supremacy of international law. Some advanced arguments to show that such supremacy was consistent with or was an essential basis for the principle, while others took the contrary view; one representative thought that the disagreement was more apparent than real since the obligation of States to observe valid treaties and valid principles of customary international law was not in question.

(e) *The duty of States to co-operate with one another in accordance with the Charter of the United Nations*

64. A number of representatives regretted that although the Special Committee had seemed to be close to an agreed formulation in regard to this principle it had ultimately proved impossible to reach agreement. It was said that lack of time had been one of the main causes for the lack of success, and one representative saw the lack of agreement as merely a matter of semantics. The hope was expressed that at a further session of the Special Committee, on the basis of the degree of agreement already reached, a text could be formulated on the principle, which was particularly important for the solution of the problems of the developing countries and could help in promoting world economic solidarity and lasting peace.

65. Several representatives stated that the principle constituted a legal as well as a moral duty, and required States to take effective action. One representative said that moral duties were the guideposts for developing new rules within an accepted legal framework, while legal duties were the result of that creative process; acceptance of the duty of co-operation would provide a legal framework for the recognition of the right of all peoples to share in the world's expanding prosperity. He considered, in view of the fact that contact was sometimes lacking between the activities of various bodies of the United Nations and of the specialized agencies, that there was an urgent need to take stock of the progress made to date in international co-operation, and that it might be possible, on the basis of an inventory of agreed texts, to draw up a Charter of Development which would inspire and mould public opinion.

66. Some representatives considered that the duty of co-operation was universal, without any limiting conditions, not limited to the ambit of the United Nations, and not permitting any discrimination on the ground of differences of political, economic or social systems. One representative, however, said that it was unreasonable to demand universal co-operation without any discrimination whatever. Another took the view that the duty to co-operate in accordance with the Charter was restricted to Members of the United Nations only; he thought it desirable, however, to refer in the text to co-operation in the matter of disarmament and was willing to discuss that matter by reference to the duties of States generally.

67. A few representatives mentioned the principle as applying mainly to the economic and social fields. Others mentioned in addition the political, cultural, scientific and technological fields. One representative said that the principle would be very difficult to apply so long as there were countries in the world whose governments did not recognize the fundamental principles of human rights.

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

68. A number of representatives regretted the lack of success of the 1966 Special Committee in formulating this principle, but hoped that another session would make it possible to overcome the difficulties caused in 1966 by lack of time, the newness of the question to the Special Committee, and the sheer bulk of material bearing on the question. Some expressed their preferences for one or another of the proposals made in the Special Committee. Others said that the formulation should be based on General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and later related documents adopted in the United Nations and elsewhere; one representative, however, expressed the view that that resolution had no more than persuasive force in the discussion of the legal elements of the principle. Another mentioned General Assembly resolution 2131 (XX) as also furnishing a basis for further work.

69. It was generally agreed by all who spoke in the debate that the principle constituted a rule of international law and not a mere moral precept. It was also agreed that the word "peoples" applied not only to States but also to other entities, in particular, in the view of some representatives, to peoples in colonial countries. One representative specified that the principle applied to the people, as a whole, of a territory constituting a distinct geographical entity. Another, however, expressed concern lest a reference to a geographically distinct territory might not deny the right to self-determination of a number of oppressed peoples. Another raised the question whether "peoples" included minorities, so as to give a right to secession in States having more than one national community.

70. As regards the content of the right, various representatives mentioned the right to freedom and independence; the right freely to choose political, social and economic systems and ways of life without foreign interference; the exercise of full sovereignty over national territory; the right to dispose freely of natural wealth and resources; and the rights to protection under international law, and to obtain assistance from States and international organizations.

71. There was some discussion of the use of force in the exercise of the right of self-determination. Some representatives said that that right included the right of peoples under colonial domination to use force in self-defence. Some added that States were prohibited from taking measures against peoples struggling for their freedom and independence. One delegation said that General Assembly resolution 2105 (XX) of 20 December 1965, which invited all States to provide material and moral assistance to national liberation movements in colonial territories, confirmed that such assistance was legitimate under international law. Others, however, invited attention to General Assembly resolution 1514 (XV), which declared that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country was incompatible with the purposes and principles of the Charter.

(g) *The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter of the United Nations*

72. A number of representatives said that the failure of the 1966 Special Committee to agree on a formulation in regard to this principle (see A/6230 above, para. 565) was mainly due to a lack of time, and that another session should permit the progress already made to be brought to fruition. In the view of several speakers, the draft articles on the law of treaties submitted to the General Assembly by the International Law Commission in its report on the work of its eighteenth session [25]—and in particular article 23 of that draft, on *pacta sunt servanda*—offered a useful basis for continued work on the principle.

73. There were divergences of opinion concerning the relationship between the future work on the principle and the codification of the law of treaties on the basis of the work of the International Law Commission. Some representatives attributed the lack of success of the 1966 Special Committee in part to the desire of some delegations on that Committee to deal in a formulation of the principle with some of the specific rules and criteria governing the validity of treaties, and they thought it undesirable for the Committee to attempt to settle points which would have to be resolved at the future conferences on the law of treaties; those points should be set aside in order to facilitate agreement in the Special Committee. On the other hand, it was said that some of the draft articles prepared by the International Law Commission had been left with somewhat uncertain content because they impinged on topics within the Special Committee's terms of reference; the Special Committee should study those aspects, and the considered views of that Committee and of the General Assembly on them might be helpful to the conference on the law of treaties.

[25] See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1).

74. It was said that one of the matters on which there had been division of opinion in the Special Committee was the inclusion of a reference to sovereign equality. Some representatives considered it essential to deal with that aspect, in particular because the principle would not be respected as long as the problem of unequal treaties was left unsolved, and because the principle applied only to obligations which had been freely assumed; one representative expressed the view that any obligations undertaken by a people still under colonial domination were vitiated *ab initio*. Others thought that detailed examination of these matters should be left to the conference on the law of treaties.

75. Another matter of difficulty, it was said, was the inclusion in the formulation of the principle of Article 103 of the Charter, which provided that in the event of conflict between the obligations of Members under the Charter and their obligations under any other international agreement, the Charter obligations should prevail. Some representatives expressed a desire for such an inclusion; one added that the principle rendered invalid a treaty provision allowing intervention, for example, which was not permitted under the Charter.

76. It was agreed that good faith was an essential element in the formulation of the principle. One representative thought that good faith meant that in their international relations States must respect the sovereign and legitimate interests of other States.

B. Question of methods of fact-finding

77. This question was not referred to the 1966 Special Committee and was considered by the Sixth Committee in pursuance of General Assembly resolution 2104 (XX) of 20 December 1965 and on the basis of reports of the Secretary-General and of comments of Governments.

78. One representative stated that inquiry was an undeveloped element among the means of peaceful settlement of international disputes, and shortcomings in the area of fact-finding machinery gave rise to difficulties for international organs and for States; it was therefore desirable to take a new initiative in that field. Others stressed the importance of fact-finding in international life but some of them expressed a preference for entrusting that function either to *ad hoc* bodies composed of persons with special knowledge of the disputed question, to existing organizations, or to judicial bodies of whose normal procedure fact-finding was an element, while others reserved their positions regarding steps to be taken.

79. The discussion of possible new measures centred on a suggestion in written comments of the Government of the Netherlands (A/6373 and Add.1) of the creation of a new, permanent fact-finding body, complementary to the existing machinery, whose competence would be entirely on a voluntary basis and whose method of work would be determined in accordance with the needs of each case; this body, which would be strictly limited to fact-finding rather than conciliation, could be used to establish facts relating to disputes or to the execution of international agreements. One representative said that while it had been demonstrated that there were advantages in permanent fact-finding machinery, before any action was taken a study should be made of why States did not use existing machinery for this purpose; another stated that he was in favour of the creation of any organ which could contribute to the peaceful settlement of disputes. Still another stated that an international fact-finding body was needed if the principles of international law were to be translated into reality.

80. A number of representatives either reserved their position about the creation of a new fact-finding body, expressed doubts about the advisability of doing so or expressed opposition to the idea. It was said that *ad hoc* bodies were superior for the purpose, that

existing machinery such as the Panel for Inquiry and Conciliation established by General Assembly resolution 268D (III) of 28 April 1949 remained unused and that it was difficult to imagine a single body capable of establishing facts in all the different kinds of disputes which might arise. Some of these representatives reserved their position regarding the preambular paragraph of the resolution recommended by the Sixth Committee, which refers to a study of the feasibility and desirability of establishing a special international body for fact-finding or of entrusting fact-finding responsibilities to an existing organization.

81. As regards the action to be taken at the current session of the General Assembly, it was recognized that neither the 1964 Special Committee (to which the question of methods of fact-finding had been referred) nor the Sixth Committee had had an opportunity for full discussion of the question and hence it was not possible to take a final decision on it until the next regular session of the General Assembly. It was agreed, however, that the item should be placed on the provisional agenda of the twenty-second session in order to consider what further action might be appropriate.

82. The co-sponsors of the draft resolution (A/C.6/L.610 and Add.1), in paragraph 21 above, and some other representatives thought that it was desirable that the Main Committee dealing with the item at the twenty-second session should have the assistance of a working group appointed by the Chairman of that Committee, as the materials to be studied were too complex to be dealt with in the Main Committee. That view was reflected in the seventh preambular paragraph of the draft resolution. Some others, however, thought it undesirable to prejudice the action to be taken by the competent Committee at the next session. The amendments submitted by the Ukrainian Soviet Socialist Republic (A/C.6/L.612), later co-sponsored by Hungary, proposed *inter alia* the deletion of the preambular paragraph in question. The co-sponsors of the draft resolution and those of the amendment later agreed on a compromise text from which that preambular paragraph was omitted (see paras. 22 and 23 above); one of the co-sponsors of the draft resolution stated that they agreed to the deletion of the seventh preambular paragraph on the understanding that they nevertheless maintained their position in regard to it, and that that understanding would be recorded in the report of the Sixth Committee.

IV. Voting

83. At its 942nd meeting, the Sixth Committee voted on the draft resolutions and amendments thereto.

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

84. Voting on revised draft resolution A/C.6/L.607/Rev.3 and Add.1 and the revised amendment thereto (A/C.6/L.608/Rev.2) took place as follows:

(*a*) The amendment submitted by Australia, Canada, Jamaica, Japan, New Zealand, Norway, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/C.6/L.608/Rev.2) to operative paragraph 3 of the thirty-three Power draft resolution (A/C.6/L.607/Rev.3 and Add.1) was rejected by a roll-call vote of 54 to 18, with 12 abstentions. The voting was as follows:

In favour: Australia, Belgium, Canada, China, Denmark, France, Greece, Iceland, Italy, Jamaica, Japan, Netherlands, New Zealand, Norway, Philippines, Saudi Arabia, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Afghanistan, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chad, Chile, Colombia,

Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, El Salvador, Ethiopia, Gabon, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Kenya, Kuwait, Lebanon, Libya, Madagascar, Mexico, Mongolia, Nepal, Nicaragua, Nigeria, Panama, Poland, Romania, Sierra Leone, Syria, Togo, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia.

Abstaining: Austria, Ceylon, Finland, Iran, Ireland, Israel, Liberia, Somalia, Sweden, Thailand, Tunisia, Turkey.

(*b*) The thirty-three-Power draft resolution (A/C.6/L.607/Rev.3 and Add.1) was then adopted by 83 votes to none, with 2 abstentions.

85. At the 942nd meeting, the representatives of Australia, Belgium, Brazil, Canada, Ceylon, Chile, France, Greece, Italy, Japan, Nepal, New Zealand, Panama, Somalia, Spain, United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela explained their vote on the draft resolution and the amendment thereto.

B. Question of methods of fact-finding

86. The thirteen-Power draft resolution (A/C.6/L.610 and Add.1), as orally amended (see para. 23 above), was adopted unanimously.

87. At the 942nd meeting, the representatives of Bulgaria, Chad, Colombia, Cuba, Czechoslovakia, Hungary, Mongolia, Nigeria, Poland, Romania, Somalia, Sudan, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics explained their vote.

V. Recommendations of the Sixth Committee

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

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

(*b*) Resolutions adopted by the General Assembly

At its 1489th plenary meeting, on 12 December 1966, the General Assembly adopted the draft resolutions submitted by the Sixth Committee (para. 88 above). For the final texts, see resolutions 2181 (XXI) and 2182 (XXI) below.

2181 (XXI). Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963 and 2103 (XX) of 20 December 1965, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

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

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the

United Nations is of paramount importance for the maintenance of international peace an security and the improvement of the international situation,

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

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

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

Having considered the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,[26] which met in New York from 8 March to 25 April 1966, and having considered specifically that it was noted in that Committee that the differences between the various points of view on the formulation of the principles had been materially reduced and that among the factors which hampered the achievement by the Committee of a greater measure of agreement was lack of sufficient time for additional deliberation and negotiation,

1. *Takes note* of the report of the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States;

2. *Expresses its appreciation* to that Committee for the valuable work it has performed;

3. *Takes note also* of the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States, and of the Special Committee's decision that with regard to the principle of non-intervention it will abide by General Assembly resolution 2131 (XX) of 21 December 1965;

4. *Decides* to ask the Special Committee, as reconstituted by General Assembly resolution 2103 (XX), to continue its work;

5. *Requests* the Special Committee, in the light of the debate which took place in the Sixth Committee during the seventeenth, eighteenth, twentieth and twenty-first sessions of the General Assembly and in the 1964 and 1966 Special Committees, to complete the formulations of:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

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

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

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

6. *Requests* the Special Committee to consider proposals on the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accord-

[26] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 87, document A/6230.

ance with the Charter, with the aim of widening the area of agreement already expressed in General Assembly resolution 2131 (XX);

7. *Requests* the Special Committee, having considered, as a matter of priority, the principles referred to in paragraphs 5 and 6 above, to examine any additional proposals with a view to widening the areas of agreement expressed in the formulations of the 1966 Special Committee concerning the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered and the principle of sovereign equality of States;

8. *Requests* the Special Committee, having regard to the work already accomplished by the 1966 Special Committee, as specified in paragraph 3 above, to submit to the General Assembly at its twenty-second session a comprehensive report on the principles entrusted to it for study and a draft declaration on the seven principles set forth in Assembly resolution 1815 (XVII) which will constitute a landmark in the progressive development and codification of those principles;

9. *Requests* the Special Committee to meet at Geneva or at any other suitable place for which the Secretary-General receives an invitation;

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

11. *Decides* to include an item entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations" in the provisional agenda of its twenty-second session.

1489th plenary meeting
12 December 1966.

2182 (XXI). Question of methods of fact-finding

The General Assembly,

Recalling its resolutions 1967 (XVIII) of 16 December 1963 and 2104 (XX) of 20 December 1965 on the question of methods of fact-finding,

Noting with appreciation the two reports submitted by the Secretary-General in pursuance of the above-mentioned resolutions,[27]

Noting the comments submitted by Member States pursuant to paragraph 1 of resolution 1967 (XVIII) and paragraph 2 of resolution 2104 (XX) and the views expressed during its twentieth and twenty-first sessions,

Noting chapter VII of the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States,[28] established under General Assembly resolution 1966 (XVIII) of 16 December 1963,

Reaffirming its belief that an important contribution to the peaceful settlement of disputes and to the prevention of such disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions,

Noting that, with regard to methods of fact-finding in international relations, considerable documentation has now been made available by the Secretary-General in his reports

[27] *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda items 90 and 94, document A/5694; *ibid., Twenty-first Session, Annexes*, agenda item 87, document A/6228.

[28] *Ibid., Twentieth Session, Annexes*, agenda items 90 and 94, document A/5746.

on practice in relation to the settlement of disputes and the execution of international agreements, and by the views expressed and the proposals made by Member States,

Recalling its belief that a study of the question might include the feasibility and desirability of establishing a special international body for fact-finding or of entrusting to an existing organization fact-finding responsibilities complementary to existing arrangements and without prejudice to the right of parties to any dispute to seek other peaceful means of settlement, of their own choice,

Having been unable, owing to lack of time, to consider the substance of the question of methods of fact-finding,

1. *Invites* Member States to submit in writing to the Secretary-General, before 1 August 1967, any views, or further views, they may have on this subject, taking into account the reports of the Secretary-General, the views expressed and the proposals made;

2. *Decides* to include an item entitled "Question of methods of fact-finding" in the provisional agenda of its twenty-second session, with a view to considering what further action may be appropriate.

1489th plenary meeting
12 December 1966

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10. PROGRESSIVE DEVELOPMENT OF THE LAW OF INTERNATIONAL TRADE (AGENDA ITEM 88)

(*a*) Report of the Sixth Committee[29]

[*Original text: English*]
[*15 December 1966*]

INTRODUCTION

1. At the request of the Hungarian People's Republic, the item entitled "Consideration of steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade" was considered by the General Assembly at its twentieth session. On the basis of the report and recommendations of the Sixth Committee,[30] the General Assembly at its 1404th plenary meeting, on 20 December 1965, adopted resolution 2102 (XX). The operative part of that resolution reads as follows:

"*The General Assembly*,

"...

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

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

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

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[29] Document A/6594, reproduced from *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88.

[30] See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 92, document A/6206.

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

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

2. At its 1415th plenary meeting, on 24 September 1966, the General Assembly decided to include item 88 entitled "Progressive development of the law of international trade" in the agenda of its twenty-first session and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 946th to 953rd and 955th meetings, on 2, 5 to 9 and 14 December 1966.

4. The Sixth Committee had before it a report of the Secretary-General on this subject (A/6396 and Add.1 and 2), which was submitted in accordance with operative paragraph 1 of General Assembly resolution 2102 (XX). This report was prepared by the Office of Legal Affairs of the United Nations Secretariat on the basis of a preliminary draft elaborated by Professor Clive M. Schmitthoff of the City of London College, whose services had been retained by the Secretary-General for this purpose, and in consultation with the following experts: Dra. Margarita Arguas (Argentina), Dr. Taslim O. Elias (Nigeria), Professor Gyula Eörsi (Hungary), Professor Willis L. Reese (United States) and Professor Mustafa Kamil Yasseen (Iraq).

5. In accordance with the agreement reached during the debate in the Sixth Committee at the twentieth session of the General Assembly, the Secretary-General held consultations with some organs and units of the United Nations, the specialized agencies and other inter-governmental and non-governmental organizations. The International Law Commission advised the Secretary-General that, in view of its many activities and responsibilities and considering its extensive agenda, the Commission did not consider that it would be appropriate for it to undertake responsibilities in the field of the law of international trade. In addition, consultations were carried out with the Secretariat units most directly concerned with responsibilities in this field. The draft report was sent for comments to the secretariat of the United Nations Conference on Trade and Development (UNCTAD), the Department of Economic and Social Affairs, the Centre for Industrial Development and the United Nations regional economic commissions.

6. The Secretary-General sent the draft report for comments to the following specialized agencies: the International Bank for Reconstruction and Development, the Inter-Governmental Maritime Consultative Organization and the International Civil Aviation Organization. Consultations were also carried out with other inter-governmental and non-governmental organizations, namely: the International Institute for the Unification of Private Law, the Hague Conference on Private International Law, the International Chamber of Commerce and the United International Bureaux for the Protection of Intellectual Property.

7. Some of the suggestions received from the above-named United Nations organs, Secretariat units and other institutions were incorporated in the report. Certain observations submitted by the Hague Conference on Private International Law and by the International Institute for the Unification of Private Law, being of a general nature, were published as an addendum to the Secretary-General's report (A/6396/Add.1). The text of a resolution on the subject adopted by the Council of the International Chamber of Commerce was reproduced as document A/6396/Add.2. The Secretary-General of the International Institute for the Unification of Private Law and the Secretary-General of The Hague Conference on Private International Law attended the meetings of the Sixth Committee at which the present item was discussed, and each made a statement at the 946th meeting of the Committee.

8. Chapter I of the report of the Secretary-General contained an analysis of the concept of the term "law of international trade" and explained the two legal techniques which have been used to reduce the conflicts and divergencies arising from various national laws in matters relating to international trade, i.e., the establishment of rules regulating the conflict of laws and the harmonization of substantive rules. Chapter II consisted of a survey of the work in the field of harmonization and unification of international trade law, by inter-governmental organizations, by regional inter-governmental organizations and groupings and by non-governmental organizations. Chapter III contained an analysis of the methods, approaches and topics which were considered suitable for the progressive harmonization and unification of the law of international trade. The final chapter of the report, chapter IV, dealt with the prospective role of the United Nations in this field; it presented a picture of the progress and shortcomings of the work done and recommended action to remedy the existing shortcomings. In particular it expressed the view that the General Assembly might wish to consider the possibility of establishing a new commission which might be called the United Nations commission on international trade law for the purpose of furthering the progressive development of the law of international trade.

PROPOSALS

9. Argentina, Ceylon, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Ghana, Greece, Honduras, Hungary, India, Nepal, Nigeria, Panama, Sudan, the United Arab Republic, the United Republic of Tanzania, Uruguay and Yugoslavia submitted a draft resolution (A/C.6/L.613). Subsequently, Cameroon, Jamaica, Spain and Venezuela (A/C.6/L.613/Add.1) and Bolivia, Romania and the United States of America (A/C.6/L.613/Add.2) added their names to the list of sponsors. In the preamble of the draft resolution the General Assembly would, *inter alia*, refer to the report of the Secretary-General on the progressive development of the law of international trade; reaffirm its conviction that conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade; note the efforts made by inter-governmental organizations towards the harmonization and unification of international trade law; note that progress in this area had not been commensurate with the importance and urgency of the problem; express its conviction that it would be desirable for the United Nations to play a more active role in this field; note that such action would be properly within the scope and competence of the Organization under Articles 1 (3) and 13, and Chapters IX and X of the Charter; recall that UNCTAD had a particular interest in promoting the establishment of rules furthering international trade; and recognize that there is no existing United Nations organization which is both familiar with this subject and able to devote sufficient time to work in the field. The operative part of the draft resolution read as follows:

"1. *Decides* to establish a United Nations Commission on International Trade Law which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade.

"*Organization of the United Nations Commission on International Trade Law*

"2. The United Nations Commission on International Trade Law shall consist of [eighteen] [twenty-one] [twenty-four] [thirty] States, elected by the General Assembly for a term of six years, provided, however, that of the members elected at the first election, the terms of [six] [seven] [eight] [ten] members shall expire at the end of two years and the terms of [six] [seven] [eight] [ten] other members at the end of four years.

"3. In electing the members of the Commission, the General Assembly shall be guided by the principle of equitable geographical distribution and shall have due regard to the principle that in the Commission as a whole an adequate representation of countries of free enterprise and centrally planned economies, and of developed and developing countries, should be assured.

"4. The representatives of members of the Commission shall be appointed by member States in so far as possible from amongst persons of eminence in the field of the law of international trade.

"5. Retiring members shall be eligible for re-election.

"6. The Commission shall normally hold one regular session a year at the [Headquarters of the United Nations] [European Office of the United Nations].

"7. The Secretary-General shall make available to the Commission appropriate staff and facilities required by the Commission to fulfil its task.

"*Functions*

"8. The Commission shall further the progressive harmonization and unification of the law of international trade by

"(*a*) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

"(*b*) Promoting wider participation in existing international conventions, and wider acceptance of existing model and uniform laws;

"(*c*) In collaboration, where appropriate, with the organizations operating in this field, preparing, and promoting the adoption of, new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices;

"(*d*) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the laws of international trade;

"(*e*) Collecting and disseminating information on national legislation and modern legal developments in the field of the law of international trade;

"(*f*) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

"(*g*) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

"(*h*) Taking any other action it may deem useful to fulfil its functions.

"9. The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the relevant provisions of General Assembly resolution 1995 (XIX). Any other recommendations relevant to the work of the Commission which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make shall be similarly transmitted to the General Assembly.

"10. The Commission may consult with any international or national organization, scientific institution and individual expert, on any subject entrusted to it if it considers that such consultation might assist it in the performance of its functions.

"11. The Commission may establish appropriate working relationships with inter-governmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade."

10. Following informal consultations, the sponsors of draft resolution A/C.6/L.613, joined by Guatemala, Italy, Mali and Turkey, submitted a revised version of the draft resolution (A/C.6/L.613/Rev.1). Later, Malawi and the Netherlands (A/C.6/L.613/Rev.1/Add.1) and Belgium and Syria (A/C.6/L.613/Rev.1/Add.2) joined the sponsors of the revised draft resolution. In this revision: (*a*) the reference to "conflicts and" was deleted from the third preambular paragraph, so that the resolution would provide for the General Assembly to reaffirm "its conviction that divergencies arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade"; (*b*) the wording of operative paragraph 3 was changed to provide

that the General Assembly should, in the election of the members of the commission, be guided by the principle of equitable geographical distribution "with due regard to the adequate representation of the principal economic and legal systems of the world and of developed and developing countries"; (*c*) operative paragraph 8 (*c*) was changed to read as follows: "Preparing and/or promoting the adoption of new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices in collaboration, where appropriate, with the organizations operating in this field;"; (*d*) a reference to "case law" was introduced into operative paragraph 8 (*e*) so that it would read as follows: "Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;"; (*e*) the language in operative paragraph 10 was modified to read: "10. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it if it considers that such consultation or services might assist it in the performance of its functions".

11. As a result of further discussions among the sponsors, a second revision (A/C.6/L.613/Rev.2) was submitted by the sponsors. In accordance with the second revised version of the draft resolution, the General Assembly would (*a*) express, in the second preambular paragraph, its appreciation for the report of the Secretary-General (A/6396 and Add.1 and 2); (*b*) add the following, as a new third preambular paragraph: "Considering that international trade co-operation among States is an important factor for promoting friendly relations and consequently for the maintenance of peace and security", and (*c*) provide for reversal of the order of the former third and fourth preambular paragraphs. The operative part of the second revised draft resolution (A/C.6/L.613/Rev.2) read as follows:

"I

"1. *Decides* to establish a United Nations Commission on International Trade Law which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade.

"II

"*Organization and functions of the United Nations Commission on International Trade Law*

"2. The United Nations Commission on International Trade Law shall consist of ..... States, elected by the General Assembly at its twenty-second session for a term of six years. In electing the members of the Commission, the General Assembly shall observe the following distribution of seats:

"(*a*) ..... from African States;
"(*b*) ..... from Asian States;
"(*c*) ..... from Eastern European States;
"(*d*) ..... from Latin American States;
"(*e*) ..... from Western European and other States.

"3. Of the members elected at the first election, the terms of ..... members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in the preceding paragraph by drawing lots.

"4. The members elected at the first election shall take office on 1 January 1968. Subsequently, the members shall take office on 1 January of the year following each election.

"5. In electing the members of the Commission, the General Assembly shall be guided by the principle of equitable geographical distribution with due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries.

"6. The representatives of members on the Commission shall be appointed by Member States in so far as possible from amongst persons of eminence in the field of the law of international trade.

"7. Retiring members shall be eligible for re-election.

"8. The Commission shall normally hold one regular session a year. It shall, if there are no technical difficulties, meet alternately at the United Nations Headquarters and the United Nations Office at Geneva.

"9. The Secretary-General shall make available to the Commission appropriate staff and facilities required by the Commission to fulfil its task.

"10. The Commission shall further the progressive harmonization and unification of the law of international trade by:

"(*a*) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

"(*b*) Promoting wider participation in existing international conventions, and wider acceptance of existing model and uniform laws;

"(*c*) Preparing and/or promoting the adoption of new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

"(*d*) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

"(*e*) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

"(*f*) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

"(*g*) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

"(*h*) Taking any other action it may deem useful to fulfil its functions.

"11. The Commission shall bear in mind the interests of all peoples and particularly those of developing countries in the extensive development of international trade.

"12. The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the relevant provisions of General Assembly resolution 1995 (XIX). Any other recommendations relevant to the work of the Commission which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make shall be similarly transmitted to the General Assembly.

"13. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it if it considers that such consultation or services might assist it in the performance of its functions.

"14. The Commission may establish appropriate working relationships with inter-governmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade.

"III

"15. *Requests* the Secretary-General, pending the election of the Commission, to carry out the preparatory work necessary for the organization of the work of the Commission and, in particular (i) to invite Member States to submit in writing before 1 July 1967, taking into account in particular the report of the Secretary-General (A/6396), comments on a programme of work to be undertaken by the Commission in discharging its functions under paragraph 10 of this resolution and (ii) to request similar comments from the organs and organizations referred to in paragraph 10 (*f*) and (*g*) and in paragraph 14 of this resolution;

"16. *Decides* to include an item entitled 'Election of the members of the United Nations Commission on International Trade Law' in the provisional agenda of the twenty-second session of the General Assembly."

12. As a result of additional informal consultations, the sponsors of draft resolution A/C.6/L.613/Rev.2 submitted a third revision (A/C.6/L.613/Rev.3) on 13 December, paragraphs 1, 2, 3 and 5 of which read as follows:

"*The General Assembly*,

"...

"1. *Decides* to establish a 'United Nations Commission on International Trade Law' which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade.

"II

"*Organization and functions of the United Nations Commission on International Trade Law*

"2. The United Nations Commission on International Trade Law shall consist of twenty-nine States, elected by the General Assembly for a term of six years, except as provided in paragraph 3 of this resolution. In electing the members of the Commission, the General Assembly shall observe the following distribution of seats:

"(*a*) Seven from African States;
"(*b*) Five from Asian States;
"(*c*) Four from Eastern European States;
"(*d*) Five from Latin American States;
"(*e*) Eight from Western European and other States.

"3. Of the members elected at the first election to be held at the twenty-second session of the General Assembly, the terms of fourteen members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in the preceding paragraph by drawing lots.

"...

"5. In electing the members of the Commission, the General Assembly shall also have due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries."

13. In the course of the consideration of the third draft (A/C.6/L.613/Rev.3), it was orally agreed by the representative of Colombia on behalf of the sponsors that a more logical sequence of the operative paragraphs could be achieved by certain changes in the order thereof: (*a*) specifically, it was proposed to transpose the content of operative paragraph 5 without the opening words: "In electing the members of the Commission" to the end of operative paragraph 2; (*b*) operative paragraphs 6-16 would be renumbered 5-15;[31] (*c*) the consequential changes would be made in renumbered operative paragraph 14 (former paragraph 15). Furthermore, the sponsors orally agreed to the following new wording of renumbered operative paragraph 9 (*c*) (formerly paragraph 10 (*c*)):

> "(*c*) Preparing or promoting the adoption of new international conventions, model laws and uniform laws, and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;".

It was also agreed to replace, in the Spanish version of operative paragraph 3, the words "*elegirá por sorteo*" by the words "*designará por sorteo*".

14. Following the submission of the original draft resolution (A/C.6/L.613 and Add.1 and 2), the Secretary-General presented for the consideration of the Sixth Committee a statement of the administrative and financial implications (A/C.6/L.615) of that draft

[31] In drawing up the final text of the draft resolution adopted by the Sixth Committee, the numbering of the paragraphs in the three operative parts was changed to conform to United Nations editorial style.

resolution. Upon the submission of the third revised draft resolution (A/C.6/L.613/Rev.3), he presented a statement of the administrative and financial implications (A/C.6/L.615/Rev.1) of that revised draft resolution.

Discussion

15. Numerous representatives expressed appreciation of the initiative taken by the Hungarian delegation at the twentieth session of the General Assembly with respect to the progressive development of the law of international trade, and welcomed the report of the Secretary-General. The assistance which had been provided by Mr. Schmitthoff in the preparation of the report was recognized as very valuable. The consultations carried on by the Secretary-General with individual experts, with organs of the United Nations and with institutions active in the field had been extremely profitable in the view of numerous representatives.

16. A great number of representatives supported the conclusions of the report, particularly that the United Nations should take an active part in efforts towards the harmonization and unification of the law of international trade. Many representatives stated that this could most appropriately be done by the establishment of a United Nations organ such as the one described in the Secretary-General's report.

17. Several representatives pointed out the extreme importance for developing countries of devoting attention to and participating in efforts towards the progressive development of the law of international trade. One representative pointed out that since developing countries were not able, by force of circumstance, to participate in numerous international institutions active in this field, their participation in such a United Nations organ as had been proposed was particularly important to them. It was pointed out in this connexion that the commission could be instrumental in improving trade practices that had evolved in the past, which benefited developed countries at the expense of the developing countries.

Functions of the proposed commission

18. Certain representatives considered that the proposed commission should be authorized to take action both in the area of the harmonization and unification of substantive rules relating to trade law and in the field of conflict of law rules. Other representatives considered that the work of the proposed commission should be primarily in the field of the unification of substantive rules.

19. With respect to the specific role that such a commission should perform, representatives expressed varying views. Certain representatives considered that the commission should engage in co-ordinating and centralizing the efforts of organizations already active in the field under discussion, and in promoting the wider acceptance of instruments already in existence. Others considered that the commission should in addition, where appropriate, perform the function of formulating new international instruments designed to further the development of international trade law. One representative expressed the view that the proposed commission should, in its initial endeavours, concentrate on co-ordinating efforts of institutions already active in the progressive development of international trade law, before considering the possibility of initiating new measures in this field while bearing in mind the financial implications.

20. Certain representatives pointed out that the proposed commission's functions did not include the adoption of instruments binding upon States, but that in this connexion a clarification of the scope of the authority would be welcome. In response to this request, it was stated on behalf of the sponsors that under its terms of reference the commission would work out model laws and uniform laws which could then serve as standards which

States might wish to consider as guides in the development of their own national legislation, and formulate draft international instruments to which States would give their consideration.

21. Reference was made by several representatives to the fact that the functions of the commission should not be interpreted to imply that it could engage in activities affecting sectors of private international law which fall outside the laws governing commercial transactions, or that it could take steps having a bearing on international trade relations governed by public law.

Collaboration with other organizations

22. It was pointed out by several representatives that, should the commission engage in formulating activities, it should maintain close liaison with the inter-governmental and non-governmental organizations already active in the field in order to avoid overlapping and duplication. In the latter connexion, numerous representatives pointed out the valuable contributions to the progressive development of international trade law which had been made by the International Institute for the Unification of Private Law and the Hague Conference on Private International Law. One representative made reference to the fact that both of these institutions had welcomed the establishment of the proposed commission. The Sixth Committee agreed to express its appreciation to these organizations for the major contributions they had made to the work in this field, for their valuable comments on the report of the Secretary-General and for the participation of their representatives in the debates of the Committee. It was suggested that appropriate working relationships should be established between the proposed commission and these two organizations, since the experience and expertise which they had acquired would be of great assistance to the proposed commission. In connexion with the relationship to be established with the two organizations, attention was drawn to the agreements concluded between the Secretary-General of the United Nations and the secretaries-general of those organizations pursuant to Economic and Social Council resolution 678 (XXXVI) of 3 July 1958, and it was suggested that a similar method be followed in connexion with the work of the new commission.

23. Various representatives made mention of the participation of their respective countries in inter-governmental and non-governmental organizations active in this field. Reference was made, for instance, to the Council for Mutual Economic Assistance, the Council of Europe, the Nordic Council, the Asian-African Legal Consultative Commission, the European Economic Community, the Inter-American Council of Jurists, the European Free Trade Association, the United Nations regional economic commissions and to the International Chamber of Commerce and the International Maritime Committee. In this connexion it was pointed out that experience gained by States in the course of participation in such institutions and organizations was relevant to the work of the proposed commission to promote the progressive unification and harmonization of international trade law. It was also pointed out by several representatives that the experience gained by States in seeking to reduce the divergencies existing within their own legal systems could also be relevant to proposed efforts on the international level, which were far more complicated owing to numerous facts such as the variety of legal concepts and languages.

24. During the final stage of the Committee's deliberations and in view of the new formulation of operative paragraph 9 (*c*) of the draft resolution (A/C.6/L.613/Rev.3), as described in paragraph 13 of the present report, a question arose as to whether the collaboration in operative paragraph 9 (*c*) mentioned was to be understood to apply to all of the activities of the proposed commission described in that sub-paragraph. It was agreed by the representatives who spoke on this issue and on behalf of the sponsors that there was no doubt that the collaboration referred to applied to all the activities of the commission enumerated in the sub-paragraph under discussion.

Relationship with the United Nations Conference on Trade and Development (UNCTAD)

25. The Committee discussed the relationship which should exist between work relating to the progressive development of the law of international trade and UNCTAD. Several representatives welcomed the provision in the draft resolution for the submission to UNCTAD of the reports prepared by the commission for the General Assembly since this would assure the required liaison with the Assembly and would assist the commission in reaching solutions which were attuned to the practical needs of the commercial world. Reference was made to paragraph 14 of General Assembly resolution 1995 (XIX), of 30 December 1964, providing that when the Conference was not in session, the Trade and Development Board carries out its functions.

Size and composition of the proposed commission and terms of office of its members

26. In commenting on the size of the proposed commission, representatives expressed various preferences. However, they agreed that it should be small enough not to be unwieldy but large enough to allow for a membership in which States of the various legal and socio-economic systems and States in different stages of development would be represented. One representative suggested, for example, that there should be between twenty-four and thirty members; another believed that the size should be between twenty-four and twenty-seven; yet another suggested a commission with from eighteen to twenty-four members, while another considered that from twenty-one to twenty-eight would be an appropriate solution. It was pointed out by one representative that it should be borne in mind that in certain areas there existed a scarcity of persons who are highly qualified legal experts in the technical and complicated field of international trade law.

27. Upon the introduction of draft resolution A/C.6/L.613/Rev.3, it was pointed out on behalf of the sponsors that the formulation of the revised version and the distribution of seats provided for in operative paragraph 2 thereof had been arrived at in a spirit of co-operation and compromise. It was hoped that although the solution proposed in the revised draft resolution was not completely satisfactory to all delegations, it could be adopted in the same spirit of co-operation. Several representatives spoke in support of this view.

28. The representative of Ecuador, speaking on behalf of his delegation and the delegations of Bolivia, Colombia, El Salvador, Honduras, Jamaica, Mexico, Panama, Paraguay and Uruguay, and the representative of Venezuela on his own behalf, wished to record the conviction of these delegations that the distribution of seats in the proposed commission, as provided for in the draft resolution (A/C.6/L.613/Rev.3), did not reflect an equitable geographical distribution in respect of the States of Latin America and did not take into consideration the realities of that region. The Ecuadorian representative stated that, in the view of the delegations for which he spoke, the disposition of seats suggested in the draft resolution should not constitute a precedent in respect of any future organs which might be established. The representatives of the African and Asian States, of the Eastern European States and of the Western European and other States, giving the views of their groups or of their own delegations, expressed their belief that the representation provided for was not an equitable solution, but that in the interest of progress and in view of the contribution which the proposed commission could be expected to make, they would accept the compromise reached. Another representative expressed the hope that the resolution would not be interpreted with undue rigidity.

29. The draft resolution (A/C.6/L.613/Rev.3) provided that the term of office of the members of the commission should be six years, but in order to ensure a degree of continuity in its membership, a rotation system was envisaged whereby the terms of office of

fourteen of the members elected at the first election—which would take place at the twenty-second session of the General Assembly—would expire at the end of three years; the President at that session would select those fourteen members by drawing lots. The sponsors of the draft resolution agreed that the fourteen members with three-year terms would be selected as follows from the different groups:

Four from African States;
Two from Asian States;
Two from Eastern European States;
Two from Latin American States; and
Four from Western European and other States.

Place of meeting

30. With respect to the place where the sessions of the proposed commission should be held, various representatives expressed divergent opinions. It was pointed out, on the one hand, that reasons of economy and efficiency would call for a choice of the United Nations Headquarters as the seat of the proposed commission; on the other hand, some argued it might be more appropriate and convenient if Geneva were chosen. A number of delegations remarked that the commission should co-operate closely with UNCTAD whose headquarters are located in Geneva, in view of the importance of that organ and of its interest in promoting the establishment of rules furthering international trade. It was finally agreed, as a compromise solution, that if there were no technical difficulties, the commission should meet alternately at United Nations Headquarters and the European Office of the United Nations at Geneva.

Time of election of members of the commission and of its first session

31. Certain representatives expressed the need for careful preparation in connexion with the establishment of the proposed commission. Some representatives suggested that prior to the establishment of the commission preliminary studies should be made of subjects which might be suitable for consideration by the commission. Other representatives stated that there was a need for careful consideration of the financial implications of the establishment at the appropriate time of such a commission. It was suggested by several representatives that prior to the election of the members of the commission it might be wise to provide for further study and consultation. It was suggested in this connexion that were such a course to be adopted, during the intervening period the Secretariat could make administrative and technical preparations for the work of the commission and might circulate requests to Member States and to inter-governmental and non-governmental institutions for suggestions as to the work programmes of the commission.

32. It was finally agreed that the commission would be elected by the General Assembly at its twenty-second session and that, pending the election, the Secretary-General would be requested to carry out the preparatory work necessary for the organization of the work of the commission.

VOTING

33. At its 955th meeting, on 14 December 1966, the Sixth Committee adopted unanimously revised draft resolution A/C.6/L.613/Rev.3, as amended (see para. 13 above). The representatives of Cameroon, Dahomey, Ecuador, France, Ghana, Greece, Mexico, Nepal, Somalia, Venezuela and the United States of America explained their votes.

Recommendation of the Sixth Committee

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

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

(*b*) Resolution adopted by the General Assembly

At its 1497th plenary meeting, on 17 December 1966, the General Assembly adopted the draft resolution submitted by the Sixth Committee (para. 34 above). For the final text, see resolution 2205 (XXI) below.

2205 (XXI). Establishment of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2102 (XX) of 20 December 1965, by which it requested the Secretary-General to submit to the General Assembly at its twenty-first session a comprehensive report on the progressive development of the law of international trade,

Having considered with appreciation the report of the Secretary-General on that subject,[32]

Considering that international trade co-operation among States is an important factor in the promotion of friendly relations and, consequently, in the maintenance of peace and security,

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

Reaffirming its conviction that divergencies arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade,

Having noted with appreciation the efforts made by inter-governmental and non-governmental organizations towards the progressive harmonization and unification of the law of international trade by promoting the adoption of international conventions, uniform laws, standard contract provisions, general conditions of sale, standard trade terms and other measures,

Noting at the same time that progress in this area has not been commensurate with the importance and urgency of the problem, owing to a number of factors, in particular insufficient co-ordination and co-operation between the organizations concerned, their limited membership or authority and the small degree of participation in this field on the part of many developing countries,

Considering it desirable that the process of harmonization and unification of the law of international trade should be substantially co-ordinated, systematized and accelerated and that a broader participation should be secured in furthering progress in this area,

Convinced that it would therefore be desirable for the United Nations to play a more active role towards reducing or removing legal obstacles to the flow of international trade,

Noting that such action would be properly within the scope and competence of the Organization under the terms of Article 1, paragraph 3, and Article 13, and of Chapters IX and X of the Charter of the United Nations,

Having in mind the responsibilities of the United Nations Conference on Trade and Development in the field of international trade,

Recalling that the Conference, in accordance with its General Principle Six,[33] has a particular interest in promoting the establishment of rules furthering international trade as one of the most important factors in economic development,

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[32] *Official Records of the General Assembly, Twenty-first Session. Annexes*, agenda item 88, documents A/6396 and Add.1 and 2.

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

Recognizing that there is no existing United Nations organ which is both familiar with this technical legal subject and able to devote sufficient time to work in this field,

I

Decides to establish a United Nations Commission on International Trade Law (hereinafter referred to as the Commission), which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade, in accordance with the provisions set forth in section II below;

II

ORGANIZATION AND FUNCTIONS OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

1. The Commission shall consist of twenty-nine States, elected by the General Assembly for a term of six years, except as provided in paragraph 2 of the present resolution. In electing the members of the Commission, the Assembly shall observe the following distribution of seats:

(*a*) Seven from African States;

(*b*) Five from Asian States;

(*c*) Four from Eastern European States;

(*d*) Five from Latin American States;

(*e*) Eight from Western European and other States. The General Assembly shall also have due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries.

2. Of the members elected at the first election, to be held at the twenty-second session of the General Assembly, the terms of fourteen members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in paragraph 1 above, by drawing lots.

3. The members elected at the first election shall take office on 1 January 1968. Subsequently, the members shall take office on 1 January of the year following each election.

4. The representatives of members on the Commission shall be appointed by Member States in so far as possible from among persons of eminence in the field of the law of international trade.

5. Retiring members shall be eligible for re-election.

6. The Commission shall normally hold one regular session a year. It shall, if there are no technical difficulties, meet alternately at United Nations Headquarters and at the United Nations Office at Geneva.

7. The Secretary-General shall make available to the Commission the appropriate staff and facilities required by the Commission to fulfil its task.

8. The Commission shall further the progressive harmonization and unification of the law of international trade by:

(*a*) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

(*b*) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws;

(*c*) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

(*d*) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

(*e*) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

(*f*) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

(*g*) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

(*h*) Taking any other action it may deem useful to fulfil its functions.

9. The Commission shall bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade.

10. The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the Conference or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the revelant provisions of Assembly resolution 1995 (XIX) of 30 December 1964. Any other recommendations relevant to the work of the Commission which the Conference or the Board may wish to make shall be similarly transmitted to the General Assembly.

11. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it, if it considers such consultation or services might assist it in the performance of its functions.

12. The Commission may establish appropriate working relationships with inter-governmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade.

III

1. *Requests* the Secretary-General, pending the election of the Commission, to carry out the preparatory work necessary for the organization of the work of the Commission and, in particular:

(*a*) To invite Member States to submit in writing before 1 July 1967, taking into account in particular the report of the Secretary-General,[34] comments on a programme of work to be undertaken by the Commission in discharging its functions under paragraph 8 of section II above;

(*b*) To request similar comments from the organs and organizations referred to in paragraph 8 (*f*) and (*g*) and in paragraph 12 of section II above;

2. *Decides* to include an item entitled "Election of the members of the United Nations Commission on International Trade Law" in the provisional agenda of its twenty-second session.

1497th plenary meeting
17 December 1966

[34] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, documents A/6396 and Add.1 and 2.

11. STRICT OBSERVANCE OF THE PROHIBITION OF THE THREAT OR USE OF FORCE IN INTERNATIONAL RELATIONS, AND OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION (AGENDA ITEM 92)

Resolution [2160 (XXI)] adopted by the General Assembly

2160 (XXI). Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination

The General Assembly,

I

Drawing the attention of States to the fundamental obligations incumbent upon them in accordance with the Charter of the United Nations to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,

Deeply concerned at the existence of dangerous situations in the world constituting a direct threat to universal peace and security, due to the arbitrary use of force in international relations,

Reaffirming the right of peoples under colonial rule to exercise their right to self-determination and independence and the right of every nation, large or small, to choose freely and without any external interference its political, social and economic system,

Recognizing that peoples subjected to colonial oppression are entitled to seek and receive all support in their struggle which is in accordance with the purposes and principles of the Charter,

Firmly convinced that it is within the power and in the vital interest of the nations of the world to establish genuinely sound relations between States, based on justice, equality, mutual understanding and co-operation,

Recalling the declarations contained in its resolutions 1514 (XV) of 14 December 1960 and 2131 (XX) of 21 December 1965,

1. *Reaffirms* that:

(*a*) States shall strictly observe, in their international relations, the prohibition of the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Accordingly, armed attack by one State against another or the use of force in any other form contrary to the Charter of the United Nations constitutes a violation of international law giving rise to international responsibility;

(*b*) Any forcible action, direct or indirect, which deprives peoples under foreign domination of their right to self-determination and freedom and independence and of their right to determine freely their political status and pursue their economic, social and cultural development constitutes a violation of the Charter of the United Nations. Accordingly, the use of force to deprive peoples of their national identity, as prohibited by the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty contained in General Assembly resolution 2131 (XX), constitutes a violation of their inalienable rights and of the principle of non-intervention;

2. *Urgently appeals* to States:

(*a*) To renounce and to refrain from any action contrary to the above-stated fundamental principles and to assure that their activities in international relations are in full harmony with the interests of international peace and security;

(*b*) To exert every effort and to undertake all necessary measures with a view to facilitating the exercise of the right of self-determination of peoples under colonial rule, lessening international tension, strengthening peace and promoting friendly relations and co-operation among States;

3. *Reminds* all Members of their duty to give their fullest support to the endeavours of the United Nations to ensure respect for and the observance of the principles enshrined in the Charter and to assist the Organization in discharging its responsibilities as assigned to it by the Charter for the maintenance of international peace and security;

II

Considering that the above principles, together with the other five principles of friendly relations and co-operation among States, have been the object of a study with a view to their progressive development and codification[18] on the basis of General Assembly resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963 and 2103 (XX) of 20 December 1965,

Requests the Secretary-General to include the present resolution and the records of the debate on the item entitled "Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination" in the documentation to be considered in the further study of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, with a view to the early adoption of a declaration containing an enunciation of these principles.

1482nd plenary meeting,
30 November 1966.

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

1. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Application of the Agreement between the Government of the French Republic and the United Nations Educational, Scientific and Cultural Organization regarding the headquarters of UNESCO and the privileges and immunities of the Organization on French territory (2 July 1954)

(i) Extracts from a note of the Director-General to the Executive Board

(Document 72 EX/11, 13 April 1966)

...

I

Communication, dated 14 March 1966, from the Director-General to the Minister of Foreign Affairs of the French Republic

"The Director-General of the United Nations Educational, Scientific and Cultural Organization pays his respects to the Minister of Foreign Affairs of the French Republic and has the honour to convey the following communication to him:

[18] *Official Records of the General Assembly, Twenty-first Session, Annexes,* agenda item 87, document A/6230.

The Permanent Delegation of the Republic of China to UNESCO informed the Director-General of the Organization that, on Saturday, 12 March, about 8 a.m., the premises occupied by the delegation in the Avenue George V and the Rue Pergolèse were cordoned by a strong detachment of police. A police superintendent and an official of the Ministry of Foreign Affairs entered the said premises, accompanied by a number of policemen. They informed the members of the delegation present that they must vacate the premises before midday and they refused to give additional time as requested by Mr. Chen Yuan, Minister Plenipotentiary and Head of the Delegation. No communication with persons outside the buildings was allowed and the Head of the Delegation was prevented from telephoning to the Director-General of UNESCO.

Seals were affixed to the Delegation's archives and documents left in the premises. A request by a member of the Delegation that the Delegation's stamp should be placed on the seals beside that of the French authorities was refused.

The premises were evacuated early in the afternoon and members of the Delegation were forbidden to re-enter them.

In the light of the information thus supplied to him, it seems to the Director-General of UNESCO that the measures taken by the French authorities constitute an infringement of the inviolability of the premises in which the Delegation of the Republic of China to UNESCO had established its headquarters and the domicile of some of its members. It also appears to him that these measures contravene the immunities enjoyed by the members of the Delegation of the Republic of China and the guarantees attaching to this Delegation's status in respect of the protection of its archives and documents and its freedom of communication.

Referring to the memorandum which he sent on 6 April 1965 to the Permanent Delegate of France to UNESCO and confirming what he said to the latter on Saturday afternoon, 12 March, the Director-General of UNESCO formally protests against action which, in the light of the information at present available to him, he considers to be incompatible with the provisions of Article 18 of the Agreement between the Government of the French Republic and the United Nations Educational, Scientific and Cultural Organization regarding the Headquarters of UNESCO and the privileges and immunities of the Organization on French territory.

The Director-General of UNESCO, while reserving the Organization's position with regard to other measures which the application of the said Agreement may require, requests the Minister of Foreign Affairs to take the necessary steps to ensure that the Delegation of the Republic of China to UNESCO may, as soon as possible, be able to discharge its duties in a normal fashion and, for that purpose, to benefit once again on French territory from the facilities, privileges and immunities attaching to its status. The restitution to the Delegation of its archives and documents and the personal belongings of its members is a matter of particular urgency."

...

Communication, dated 18 March 1966, from the Permanent Delegate of France to the Director-General

"The Permanent Delegate of France to UNESCO pays his respects to the Director-General of the United Nations Educational, Scientific and Cultural Organization and, in answer to his memorandum of 14 March 1966 addressed to the Minister of Foreign Affairs, has the honour to call his attention to the following:

1. The buildings in question are the property of the Chinese State, which the Embassy of the People's Republic of China is alone entitled to represent in France. The delegates of Taipeh to UNESCO were, moreover, unable to produce any legal instrument to justify

their occupation; hence they could not be considered as other than occupants without title of premises which did not therefore enjoy any immunity either under the 1954 Headquarters Agreement or under any other treaty obligation or rule of customary law.

2. The Director-General of UNESCO was probably not fully informed of the conditions under which the French Government's decision was carried out. It is not true, for instance, that the Formosan Delegation was refused sufficient time to vacate the premises which it was improperly occupying; on the contrary, it was notified on several occasions, namely on 21 April 1965, and on 14 February, 2 and 11 March 1966, that such a situation could not continue indefinitely. On each of these occasions, the Formosan Delegation refused to acknowledge the communication made to it.

The French Government, however, endeavoured to facilitate the settlement of this matter by making vacant apartments available to members of the Delegation, despite the fact that most of them already had private residences.

It is equally untrue to say that the Delegation was prevented on 12 March from communicating with persons outside the buildings; Mr. Chen Yuan got into touch with the *Chef du Protocole;* and, if he was unable to communicate with the Director-General of UNESCO himself, it was not because he had been prevented from doing so.

The French Government understands the anxiety of the Director-General of UNESCO to secure guarantees for the Formosan Delegation concerning the protection and free disposal of its archives and the personal belongings of its members. Accordingly, on 12 March, immediate facilities were offered to the Formosan delegates for that purpose; but those concerned refused them and preferred to postpone the removal of these personal belongings and documents. That is why the seals were affixed. Members of the Delegation were informed that they could return whenever they wished, accompanied by representatives of the competent French authorities, in order to collect their property.

3. Although reluctantly obliged to resort to the measures described in the above-mentioned communication, and which it was within the power of the delegates of Taïpeh to UNESCO to avoid, the French Government did not thereby overlook the terms of the 1954 Headquarters Agreement, which, needless to say, it will continue to apply to the latter. All it did was to put an end to a situation which was contrary to both international and domestic law and which it had tried in vain to settle by other means."

Communication, dated 1 April 1966, from the Director-General to the Minister of Foreign Affairs of the French Republic

"The Director-General of the United Nations Educational, Scientific and Cultural Organization pays his respects to the Minister of Foreign Affairs of the French Republic and, referring to his communication of 14 March 1966 and that, dated 18 March 1966, from the Permanent Delegate of France, has the honour to inform him of the following:

1. The Director-General of UNESCO has noted the information contained in the said communication of 18 March relating to the conditions under which the French Government's decision was carried out on 12 March.

2. The Director-General has also noted with satisfaction that the French Government understands his anxiety to secure for the Delegation of the Republic of China guarantees concerning, in particular, the protection and free disposal of its archives and of the personal belongings of its members. He hopes that the contacts which have now been established will make it possible in the near future to arrive at a satisfactory solution to this problem.

3. With regard to the immunity of the premises, the Permanent Delegate of France states in his above-mentioned communication that the Permanent Delegation of the Republic of China to UNESCO occupied the premises in the Avenue George V and in the Rue

Pergolèse without title thereto, and he concludes that these premises could therefore not enjoy 'any immunity under the 1954 Headquarters Agreement or under any other treaty obligation or rule of customary law'.

4. The Director-General of the United Nations Educational, Scientific and Cultural Organization cannot accept this conclusion. As he pointed out in his communication of 6 April 1965 to the Permanent Delegate of France, the Director-General, who cannot take sides in the dispute concerning the ownership of the premises concerned, considers that the Head of the Delegation of the Republic of China to UNESCO enjoys, in accordance with Article 18 of the Headquarters Agreement, the status accorded to the heads of foreign diplomatic missions and that the premises he occupies as the headquarters of his delegation or as his domicile are therefore inviolable.

5. This point of view is in conformity with diplomatic tradition and international practice, codified in Article 22 of the Vienna Convention of 18 April 1961 on diplomatic relations. These provisions do not make the inviolability of the premises of a delegation's headquarters dependent on the recognition, by the Government of the State on whose territory the premises are situated, of a title of ownership."

II

1. The Board will have heard from the foregoing texts that there is a conflict between the Government of the Republic of China and the Government of the French Republic with regard to the ownership of the premises in the Avenue George V and in the Rue Pergolèse. The Director-General still considers, as he has always maintained and pointed out to the two parties concerned, that this is a problem which does not concern the Organization.

2. But the question which does concern the Organization is whether the measures taken on 12 March 1966 by the French Authorities against the Permanent Delegation of the Republic of China are or are not compatible with the Headquarters Agreement concluded on 2 July 1954 between the Government of the French Republic and UNESCO.

3. In this respect, the communications exchanged between the Ministry of Foreign Affairs of the French Republic and the Director-General of UNESCO reveal a difference of opinion on the way in which the provisions of the Headquarters Agreement of 2 July 1954 should be interpreted and applied.

4. The Director-General refers the question to the Executive Board's judgement.

(ii) Communication of 18 April 1966 from the Permanent Delegate of France to UNESCO

(Document 72 EX/11 Add., 20 April 1966)

"The Permanent Delegate of France to UNESCO presents his compliments to the Director-General of the United Nations Educational, Scientific and Cultural Organization and, referring to his note of 1 April 1966 to the Ministry of Foreign Affairs, has the honour to draw his attention to the following points:

1. It is clear that, when the Taipeh authorities decided to change the location of their Delegation to UNESCO, their only aim, in attempting to claim the protection of immunities conferred for other purposes, was to elude the legitimate application of the appropriate territorial law. This entirely unwarranted transfer, of which the French Government has never taken legal cognizance, could not, in any case, confer on the buildings occupied by the Taipeh Delegation the protection that the Delegation claims.

2. The recognition by France of the Government of the People's Republic of China brought into being an international obligation for the French Government, which could not thereafter tolerate the totally unwarranted occupation of buildings belonging to the

Chinese State, against the will of that State, which is the legitimate owner. The French Government cannot be open to criticism for having put an end to this situation.

3. The Permanent Delegate wishes to reaffirm that the French authorities intend fully to respect the provisions of the Headquarters Agreement of 1954. The French Government has not failed to appreciate the implications of that Agreement and has sought so far as possible to facilitate the settlement of this affair. It is because the Taipeh Delegation refused to respond to the repeated approaches of the French Government that the latter was obliged to resort to administrative measures, while assisting the members of the Delegation to rehouse themselves and providing them with all facilities for the disposal of their archives and personal property. The Permanent Delegate of France to UNESCO takes this opportunity of renewing to the Director-General of the United Nations Educational, Scientific and Cultural Organization the assurance of his highest consideration".

(iii) Resolution No. 9.1 adopted by the Executive Board at its seventy-second session[35]

Application of the Agreement between the Government of the French Republic and the United Nations Educational, Scientific and Cultural Organization regarding the Headquarters of UNESCO and the privileges and immunities of the Organization on French territory (2 July 1954) (documents 72 EX/11 and Add.)

The Executive Board,

1. *Having received* the report of the Director-General contained in documents 72EX/11 and 72 EX/11 Add.,

2. *Bearing in mind* also the points of view expressed in the communications of the other parties directly concerned reproduced in the same documents,

3. *Notes with appreciation* the attitude adopted by the Director-General in relation to the events of 12 March 1966 in his concern to assure the full respect of the provisions of the Headquarters Agreement and expresses its confidence that he will safeguard this Agreement in all circumstances.

(*b*) Declaration of the principles of international cultural co-operation[36]

The General Conference

of the United Nations Educational, Scientific and Cultural Organization, met in Paris for its fourteenth session, this fourth day of November 1966, being the twentieth anniversary of the foundation of the Organization,

recalling

that the Constitution of the Organization declares that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed" and that the peace must be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind,

recalling

that the Constitution also states that the wide diffusion of culture and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern,

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[35] The summary records of the discussion of this item will be found in 72 EX/SR/1 and 72 EX/SR/15.

[36] Adopted by the General Conference of UNESCO, on 4 November 1966, during its fourteenth session.

considering

that the Organization's Member States believing in the pursuit of truth and the free exchange of ideas and knowledge, have agreed and determined to develop and to increase the means of communication between their peoples,

considering

that, despite the technical advances which facilitate the development and dissemination of knowledge and ideas, ignorance of the way of life and customs of peoples still presents an obstacle to friendship among the nations, to peaceful co-operation and to the progress of mankind,

taking account

of the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination, the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, proclaimed successively by the General Assembly of the United Nations,

convinced

by the experience of the Organization's first twenty years that, if international cultural co-operation is to be strengthened, its principles require to be affirmed,

proclaims

this Declaration of the principles of international cultural co-operation, to the end that governments, authorities, organizations, associations and institutions responsible for cultural activities may constantly be guided by these principles; and for the purpose, as set out in the Constitution of the Organization of advancing, through the educational, scientific and cultural relations of the peoples of the world, the objectives of peace and welfare that are defined in the Charter of the United Nations:

Article I

1. Each culture has a dignity and value which must be respected and preserved.

2. Every people has the right and the duty to develop its culture.

3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

Article II

Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind.

Article III

International cultural co-operation shall cover all aspects of intellectual and creative activities relating to education, science and culture.

Article IV

The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:

1. To spread knowledge, to stimulate talent and to enrich cultures;

2. To develop peaceful relations and friendship among the peoples and bring about a better understanding of each other's way of life;

3. To contribute to the application of the principles set out in the United Nations Declarations that are recalled in the Preamble to this Declaration;

4. To enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life;

5. To raise the level of the spiritual and material life of man in all parts of the world.

Article V

Cultural co-operation is a right and a duty for all peoples and all nations, which should share with one another their knowledge and skills.

Article VI

International co-operation, while promoting the enrichment of all cultures through its beneficent action, shall respect the distinctive character of each.

Article VII

1. Broad dissemination of ideas and knowledge, based on the freest exchange and discussion, is essential to creative activity, the pursuit of truth and the development of the personality.

2. In cultural co-operation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity.

Article VIII

Cultural co-operation shall be carried on for the mutual benefit of all the nations practising it. Exchanges to which it gives rise shall be arranged in a spirit of broad reciprocity.

Article IX

Cultural co-operation shall contribute to the establishment of stable, long-term relations between peoples, which should be subjected as little as possible to the strains which may arise in international life.

Article X

Cultural co-operation shall be specially concerned with the moral and intellectual education of young people in a spirit of friendship, international understanding and peace and shall foster awareness among States of the need to stimulate talent and promote the training of the rising generations in the most varied sectors.

Article XI

1. In their cultural relations, States shall bear in mind the principles of the United Nations. In seeking to achieve international co-operation, they shall respect the sovereign

equality of States and shall refrain from intervention in matters which are essentially within the domestic jurisdiction of any State.

2. The principles of this Declaration shall be applied with due regard for human rights and fundamental freedoms.

(*c*) Communication from the Portuguese Government to the Director-General dated 30 June 1965 (Document 14 C/34)

(i) Sixth Report of the Legal Committee (Fourteenth session of the General Conference) (Document 14 C/90, 25 November 1966)[37]

1. In the course of ten meetings held between 8 and 22 November 1966, the Legal Committee examined the above-mentioned agenda item in accordance with the decision adopted by the General Conference at its fourth plenary meeting concerning the Executive Board's recommendation (document 14 C/2, paragraph 11 (*e*)) which was taken up by the General Committee of the General Conference (1st meeting).

2. Owing to the length of the discussions, the present report, apart from summarizing the decisions adopted by the Committee, cannot provide the General Conference with more than a brief outline of the essential points raised during the debate.

Committee's terms of reference

3. The Committee noted that the General Conference, when entrusting the Legal Committee with the study of this question, had not specifically indicated the Committee's terms of reference on this item. Some members of the Committee therefore wondered whether it would not be appropriate to request the General Conference or its General Committee to indicate the particular points on which the Committee was asked to rule. Other members of the Committee felt that the Committee's terms of reference derived from the terms of decision 71 EX/5.4 by which the Executive Board decided to refer to the General Conference "the request of the Government of Portugal for the advisory opinion of the International Court of Justice to be sought, on the issue of the validity" of decision 70 EX/14 concerning Portugal "for consideration at its fourteenth session in accordance with the principles and practices established within the United Nations system" and that it was therefore incumbent on the Legal Committee, in the absence of any indication by the General Conference, to consider this item of the agenda in whatever way seemed to it to be most appropriate.

4. During the initial discussion of this question, reference was made more specifically to the following provisions:

> Rule 32, paragraph (*b*) of the Rules of Procedure of the General Conference, which stipulates that "the Committee shall consider: ... (*b*) any legal question which may be referred to it by the General Conference or any of its organs";
>
> Rule 33, paragraph 1 of the said Rules of Procedure which provides that "The Legal Committee may be consulted on any question concerning the interpretation of the Constitution and of the Regulations";
>
> Rule 33, paragraph 3 of the said Rules of Procedure which provides that the Committee "may decide ... to recommend to the General Conference that any question concerning the interpretation of the Constitution be referred to the International Court of Justice for an advisory opinion";

[37] The summary records of the discussion of this item in the Legal Committee will be found in 14 C/LEG/SR/9 to 15 and SR/18 to 20 (prov.).

Article 65, paragraph 1 of the Statute of the International Court of Justice which provides that "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request".

5. The Committee noted that, while these various provisions meant that the Organization could, if it saw fit, seek an advisory opinion from the Court, no provision in the Court's Statute entitled a State to submit such a request itself. The Committee further considered that, since this choice was left to the Organization, it was for the Organization, if necessary, to decide what legal questions should be submitted to the International Court of Justice without being in any way bound in this matter by the wording of the questions proposed by a Member State.

6. At the end of this initial discussion, the Legal Committee decided to proceed with the examination of this item of the agenda under the following headings and in the order indicated: (*a*) Was the Executive Board decision 70 EX/14 itself in accordance with the provisions of the Constitution? (*b*) Was it desirable for the General Conference to request an opinion from the International Court of Justice on this question? (*c*) What form should such request for an advisory opinion take? At a subsequent stage, the Committee decided also to consider the legal aspects of paragraph 4 of resolution 70 EX/14 adopted by the Executive Board, which invited the Director-General "to carry out, with the authorization of the Portuguese Government ... a study *in situ* of the present state of education in African territories under Portuguese administration, from the point of view of the aims and general objectives of UNESCO as defined in its Constitution and in the relevant resolutions of the General Conference..."

Is the decision given in paragraph 5 of resolution 70 EX/14 adopted by the Executive Board itself in accordance with the provisions of the Constitution?

7. The above-mentioned resolution of the Executive Board reads as follows:

"The Executive Board,

1. *Having examined* item 14 of its agenda concerning the consequences of Portugal's becoming a member of UNESCO,

2. *Recalling* the Declaration of the General Assembly of the United Nations on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) and its implications with respect to the African territories under Portuguese administration,

3. *Recalling*, further, that the General Conference at its thirteenth session adopted resolution 1.116 with the spirit of safeguarding the International Conference on Public Education, jointly convened by the International Bureau of Education and UNESCO in Geneva, from incidents similar to those which took place during the XXVIIth Conference on Public Education,

4. *Invites* the Director-General to carry out, with the authorization of the Portuguese Government, and with the aid either of qualified officials of the Secretariat or of appropriate eminent personalities, a study *in situ* of the present state of education in African territories under Portuguese administration, from the point of view of the aims and general objectives of UNESCO as defined in its Constitution and in the relevant resolutions of the General Conference, and to report thereon to the Board at its seventy-first session,

5. *Requests* the Director-General not to give effect, pending the results of this study and their examination by the Board, to any invitations to Portugal by virtue of decisions of the General Conference or of the Executive Board,

6. *Asks* the Director-General to bring this resolution to the attention of the Government of Portugal with a request that all the necessary facilities be granted within the territories concerned for the carrying out of the study mentioned in paragraph 4 above."

8. Most members of the Committee argued that the validity of the Executive Board's decision mentioned in paragraph 5 of that resolution could not be questioned and that it was in full accordance with the provisions of the Constitution and, particularly, with those of its Article V.B.5(*b*) which reads as follows:

"(*b*) The Executive Board, acting under the authority of the General Conference, shall be responsible for the execution of the programme adopted by the Conference. In accordance with the decisions of the General Conference and having regard to circumstances arising between two ordinary sessions, the Executive Board shall take all necessary measures to ensure the effective and rational execution of the programme by the Director-General."

9. Many members recalled that resolution 13 C/1.116 of the General Conference, which relates to invitations to sessions of the International Conference on Public Education and to which decision 70 EX/14 of the Executive Board referred, had been adopted "in order to avoid in future the difficulties which characterized the XXVIIth Conference" and, in its spirit, to secure the specific exclusion of Portugal, and that it should be interpreted accordingly. Thus, Portugal's admission to UNESCO, after the adoption of resolution 13 C/1.116, constituted a new circumstance which obliged the Executive Board to take decision 70 EX/14 in order to ensure the effective and rational execution of the programme.

10. Certain members considered that it should be admitted that UNESCO possessed, in virtue of its Constitution, all the powers necessary for the carrying out of its mission, even if those powers were not expressly mentioned in the Constitution.

11. Other members pointed out that no provision of the Constitution empowered the Executive Board to take decisions the effect of which was to suspend a Member State from the exercise of some of its rights and that the two cases of suspension provided for by the Constitution in Article II, paragraph 4 (Member States of UNESCO suspended from the exercise of the rights and privileges of membership of the United Nations) and in Article IV, paragraph 8 (*b*) (non-participation in votes of the General Conference in the event of arrears in the payment of contributions) were obviously not applicable. But some members counter-argued that Article II, paragraph 4 and Article IV, paragraph 8 (*b*) were not exhaustive and did not in any way limit the application of Article V.B.5 (*b*).

12. One member of the Committee argued that even a wide interpretation of the provisions of the Constitution could not justify the view that, apart from the cases expressly provided for by the Constitution, the rights and prerogatives of a Member State could be limited or suspended for a more or less lengthy period by a decision of the Executive Board. Although it may be regretted that certain infringements of the Constitution could not at present be punished, a solution must be sought through recourse to express procedures and, possibly, through amendments to the Constitution, as had been the case with other organizations.

13. Some members thought that the Executive Board's decision was not in accordance with the provisions of the Constitution, while others declared that the matter was at least open to doubt. One member also pointed out that decision 70 EX/14 contained no reference to Article V.B.5 (*b*) of the Constitution and said that it did not seem to him to have been in any way proved that that decision related to the execution of the programme.

14. Referring to resolution 13 C/1.116 of the General Conference, one member of the Committee held that, although that resolution had undoubtedly been adopted with

the intention to exclude Portugal from sessions of the International Conference on Public Education at a time when that State was not a member of UNESCO, it nevertheless recognized the right of that State to be invited to those sessions as soon as it became a member of UNESCO and that it should be considered that the Executive Board, when taking decision 70 EX/14, had not acted in accordance with Article V.B.5 (*b*), which provided that the Board must act "under the authority of the General Conference" and "in accordance with the decisions of the General Conference".

15. Some members also cited, in support of the Executive Board's decision, the provisions of the Declaration of the General Assembly of the United Nations on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) and its implications with respect to the African territories under Portuguese administration, to which the Executive Board referred expressly in resolution 70 EX/14, and the provisions of other resolutions adopted by various United Nations organs condemning the colonialist policy of Portugal and inviting the specialized agencies, and UNESCO in particular, to refrain from giving assistance to that country. They indicated that, in that respect, the Executive Board, in adopting resolution 70 EX/14, had merely acted upon those different declarations and resolutions. They pointed out that resolution 70 EX/14 indisputably concerned relations between the United Nations and UNESCO. It was remarked, on the other hand, that in any case the decisions and resolutions in question could not be interpreted as obliging UNESCO to adopt, at the very utmost, measures of such a nature that they would be without any legal basis in the Constitution and some of which, moreover, would go beyond the measures envisaged in the text itself of those declarations and resolutions.

16. One member of the Committee pointed out that some of the resolutions cited in support of the Board's decision had been adopted subsequently to that decision, and that in any case the declarations and resolutions in question could not change UNESCO's constitutional situation, since the application of Article II (4) of the Constitution was dependent upon a decision of the United Nations Organization—which itself could only be taken within the framework of Article 5 of the Charter—as well as upon a request addressed to UNESCO by that Organization.

17. At the conclusion of the debate on this first aspect of the question contained in item 22 of the agenda, the Committee heard, at his request, the delegate of Portugal. The latter stated that the aim of paragraph 5 of resolution 70 EX/14 of the Executive Board was not merely to make it impossible for Portugal to be represented at the International Conference on Public Education, but also to prevent it from participating in the World Congress on the Eradication of Illiteracy held in Teheran and the Intergovernmental Conference on the Status of Teachers. That decision could not be in conformity with resolution 13 C/1.116, unless it was held that the aim of that resolution was to deprive Portugal of the normal exercise of its rights as a Member State and to put it in a kind of "quarantine" that was more or less the equivalent of expulsion. Interpreted in that way—and nobody had so far suggested such an interpretation—resolution 1.116 would be contrary to the Constitution. Moreover, Portugal had consented to the carrying out of a "study *in situ*" provided that it was "not intended to be a discriminatory measure against Portugal". It had already consented to the conduct of studies by other specialized agencies and those organizations had enjoyed the fullest freedom of action. Since the admission of Portugal to UNESCO had raised no political problem, political considerations could not be invoked to deprive it of the rights normally recognized as belonging to all Member States. The representative of Portugal stated in conclusion that he regarded the Executive Board's decision as illegal and contrary not only to the spirit but also to the letter of the Constitution.

18. In the course of the debate the delegate of Argentina had submitted a draft text (document 14 C/LEG/DR.2) to serve as conclusion of the debate on this first point and to be included subsequently in a draft resolution dealing with all the points examined by the Committee. That draft text was worded as follows:

"The resolution of the Executive Board (70 EX/Decisions/14) was adopted under the powers given it by Article V.B.5 (*b*) of the Constitution of UNESCO, for the purpose of safeguarding the effective and rational execution of the programme."

The above text was, however, withdrawn provisionally by its sponsor and the Committee then decided, by 11 votes to 9, to go on to consider the second point without taking a vote on the first.

Should the General Conference ask the International Court of Justice to give an opinion on this question?

19. Several members of the Committee stated that they could hardly give an opinion on this second question without knowing what the Committee's answer would be to the first one. Some thought that it would have been better to put the questions in the reverse order, whereas others thought that the situation would be clearer if the Committee had decided by a vote on whether the Executive Board's decision was consistent with the provisions of the Constitution.

20. During the discussion which nevertheless opened on this question, one member recalled that it was firstly a matter for the General Conference, UNESCO's sovereign body, to give a decision on the interpretation of its Constitution, and that that interpretation was as much a political choice as a legal one. An opinion given by the International Court of Justice would not altogether settle the question, for the General Conference would ultimately have to examine that opinion and take the necessary decisions.

21. Other members of the Committee pointed out that Article XIV of the Constitution stated in paragraph 2 that any question or dispute concerning the interpretation of the Constitution "shall be referred for determination to the International Court of Justice or to an arbitral tribunal, as the General Conference may determine under its Rules of Procedure", and that Rule 33 of the Rules of Procedure showed that asking for an advisory opinion was the correct procedure in this case.

22. Although the wording of paragraph 2 of Article XIV of the Constitution was not altogether satisfactory and could perhaps be improved, the Committee felt that, while this provision indicated the course to adopt in solving questions concerning the interpretation of the Constitution, it empowered the Organization but did not oblige it to appeal to the International Court of Justice.

23. Some members, however, took the view that, since the communication of the Portuguese Government raised questions affecting the interpretation of the Constitution, recourse should be had to the procedure indicated in Article XIV of the Constitution supplemented by Rule 33 of the Rules of Procedure. In this connexion, one member of the Committee recalled that the International Court of Justice had all the necessary powers to express its opinion on matters of this kind and, in particular, to pick out the legal elements of the questions referred to it. Moreover, in so far as the powers of an organ of UNESCO were involved. it would be better to call in a body from outside UNESCO and to put the question in a neutral and objective manner.

24. Other members of the Committee, however, considered that, since the Legal Committee was qualified to give an opinion to the General Conference on the interpretation of the Constitution, there was no need to recommend the General Conference to apply to the International Court of Justice.

What should be the form of the request for an advisory opinion?

25. Members of the Committee expressed reservations concerning the study of this question by the Committee before a decision had been made regarding the previous question

of the expediency of a request for an advisory opinion, for any discussion on the form of a question would prejudge the decision that had to be taken on the substance, and they pointed out that it would be difficult for them to participate in the debate on this third point. The Committee accordingly decided not to close the discussion on the question of expediency, and to continue to discuss this as well as to examine at the same time the possible framing of the question to be put to the Court.

26. Some members thought that the only question that could be put to the Court was whether the decision 70 EX/14 of the Executive Board was or was not consistent with the provisions of the Constitution, and one member proposed a draft to this effect. This proposal was subsequently presented in writing (document 14 C/LEG/DR.3).

27. Another member of the Committee, while expressing reservations as to the principle of framing questions for reference to the Court, pointed out that their formulation would necessarily involve relations between UNESCO and the United Nations Organization, both because of the reference made in resolution 70 EX/14 to the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples and the reference made in resolution 71 EX/5.4 to "the principles and practices established within the United Nations system". Now, under Article X, paragraph 2 of the Agreement between the United Nations and UNESCO, the General Assembly authorized UNESCO "to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities, other than questions concerning the mutual relationships of the Organization of the United Nations or other Specialized Agencies". Any request for an opinion like that which might be contemplated in the present case, he concluded, would exceed the limits of the General Assembly's authorization, and the General Conference would not therefore have the right to put such a question.

Legal aspects of paragraph 4 of resolution 70 EX/14 concerning the study in situ

28. Some members wondered whether the Committee should examine this aspect of the question, of which it was not clearly seized. Some members pointed out that, since Portugal did not propose that this aspect of the question should be referred to the Court, there was no doubt of the legality of this decision of the Executive Board and therefore no need for the Committee to examine it. Another member, however, pointed out that the study *in situ* constituted one of the decisions taken by the Executive Board in its resolution 70 EX/14 and that this decision presented legal aspects that the Committee could and should examine. By 13 votes to 2 with 5 abstentions, the Committee decided to examine the legal aspects of this decision of the Executive Board.

29. A member of the Committee put two questions which the representative of Portugal might be asked to answer:

(*a*) Does the Government of Portugal interpret the term "non-discrimination" as necessarily stipulating that studies should be carried out in the complainant countries?

(*b*) Does the Government of Portugal consider as alternative or complementary courses of action the two procedures it has requested in its two communications, namely, on the one hand, reference of the question to the International Court of Justice and, on the other, a non-discriminatory study *in situ*?

30. In answer to the first of these questions, the Portuguese delegate stated that by a "non-discriminatory" measure Portugal meant a study which would not imply that its rights as a Member State were suspended until the Executive Board had given a decision on the results of this study, and that he did not understand why such a study was and should be limited to Portugal's overseas territories only. As to the second question, he stated

that, if resolution 70 EX/14 were withdrawn, there would be no need to consult the Court. Provided Portugal's rights were recognized in their entirety, the Government would not object to the study being carried out, and would be grateful to UNESCO for any recommendations concerning the improvement of teaching conditions in its territories. But it could not agree to this study being carried out for the purpose of applying political sanctions against Portugal.

31. After the Portuguese representative had spoken, several members of the Committee felt that he had evaded answering the questions put to him and that it would be useless to have further examination of the issue.

Draft resolutions

32. At the end of the debate on the question as a whole, the Legal Committee had before it the written proposals listed below:

14 C/LEG/DR.2 submitted by the delegate of Argentina.
14 C/LEG/DR.3 submitted by the delegate of Spain.
14 C/LEG/DR.4 submitted by the delegate of Tanzania.
14 C/LEG/DR.5 submitted by the delegate of the United Arab Republic.
14 C/LEG/DR.6 submitted by the delegate of India.
14 C/LEG/DR.7 submitted by the delegate of Chile.

Later a proposal was also submitted by the delegate of the Union of Soviet Socialist Republics, and distributed in document 14 C/LEG/DR.8.

33. The delegate of Argentina said that the text he had proposed in document 14 C/LEG/DR.2 did not in itself constitute a draft resolution and that it had been submitted, at an earlier stage in the debate, as a text for incorporation in a broader draft resolution. This intention was no longer consistent with the procedure subsequently adopted by the Committee, and he considered that he should not put his text to the vote as its substance seemed to be contained in the draft resolution submitted by the delegate of Chile (document 14 C/LEG/DR.7). The Chairman accordingly decided that this text would not be put to the vote.

34. The delegate of Spain having withdrawn his draft resolution (document 14 C/LEG/DR.3), which had been incorporated in the draft resolution 14 C/LEG/DR.7 submitted by the delegate of Chile, the Committee decided, after a brief debate on the method to be followed for examining and voting on the four drafts still before it, to proceed in accordance with the Rules of Procedure of the General Assembly of the United Nations, Rule 93 (Assembly) and Rule 132 (Committees), which provided that "if two or more proposals relate to the same question, the General Assembly (or the Committee) shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The General Assembly (or the Committee) may, after each vote on a proposal, decide whether to vote on the next proposal."

35. After hearing the sponsors of the draft resolutions, the Committee decided to vote on the draft resolution submitted by the delegate of Tanzania (document 14 C/LEG/DR.4), which, after correction of the French and Spanish texts, read as follows:

"*Item 1*

The Legal Committee, after examining the legality of the resolution of the Executive Board (70 EX/Decisions/14)—being one of the issues arising from the Communication from the Portuguese Government to the Director-General dated 30 June 1965—decided that the Executive Board adopted the above-mentioned resolution under the powers given it by Article V.B.5 (*b*) of the Constitution of UNESCO, for the purpose of safeguarding the effective and rational execution of the programme."

36. The question having been asked whether, in expressing an opinion on this proposal, the Legal Committee considered it was acting under Rule 32 (*b*) of the Rules of Procedure, the Chairman decided that the Committee could take a decision only under Rule 33, paragraphs 1 and 2, and that accordingly the draft resolution referred to above required a two-thirds majority of the members of the Committee for its adoption. This decision was appealed against and the question was asked whether the Chairman had the necessary powers under Rule 39 of the Rules of Procedure to take such a decision and, if so, in so far as this last question involved an interpretation of the Rules of Procedure, it too ought not to be decided by a two-thirds majority.

37. The appeal against the Chairman's decision regarding the majority required for the adoption of draft resolution 14 C/LEG/DR.4 was put to the vote and the Chairman's decision was maintained by 12 votes to 9.

38. The Committee then voted on the draft resolution contained in document 14 C/LEG/DR.4. At the request of two delegations, voting took place by roll-call. The draft resolution was rejected by 12 votes to 8, with 1 abstention.

For: Chad, Czechoslovakia, India, Senegal, Tanzania, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.

Against: Argentina, Canada, Chile, Denmark, France, Federal Republic of Germany, Japan, Netherlands, Peru, Spain, United Kingdom, United States of America.

Abstained: Philippines.

39. The delegates of Argentina, Chile and Peru said that their votes against the draft resolution submitted by the delegate of Tanzania did not imply that they disagreed with its substance, and that they would have been able to support this proposal if it had formed part of a general resolution providing for recourse to the advisory opinion procedure. It was only because the draft did not contain a clause providing for such recourse that they had been obliged to vote against it.

40. The Committee then proceeded to consider the draft resolution submitted by the delegate of the United Arab Republic, which, after amendment by the author, read as follows:

"The Legal Committee, having discussed all the legal aspects of the request of the Government of Portugal addressed to the Director-General on 30 June 1965, has decided that its report shall reflect all points of view expressed, so that the General Conference may be properly informed in whatever decision it may deem fit to take in plenary meeting.

It should be noted that:

With regard to the compatibility of the Executive Board decision (70 EX/Decisions/14) with the UNESCO Constitution,

(*a*) the following delegations considered that such compatibility exists:
(*b*) the following delegations considered that such compatibility does not exist:
(*c*) the following delegations expressed doubts regarding this compatibility:
(*d*) certain delegations expressed no opinion on the subject, namely:".

41. Some members of the Committee declared that they could not quite understand the meaning of this proposal, which did not appear to them to constitute a draft resolution in the usual sense of the term, and they wondered whether the Committee could pass an opinion on an incomplete text and how the text would be completed; some of them added that the vote which had been taken on draft resolution 14 C/LEG/DR.4 made the adoption of such a text useless, whilst others pointed out that their view could not be determined by the terms employed in the draft resolution and did not fall into any of the categories indicated.

42. After the author of the amendment had explained that the aim of his proposal had been to present the General Conference with the most complete picture possible of the different points of view expressed and that the voting on draft resolution 14 C/LEG/DR.4 had not brought out all the shades of opinion expressed, the Committee went on to a brief debate on procedure in the course of which it was explained *inter alia* that, if the proposal were adopted, it would be for the Committee itself to complete the text. Put to the vote, the proposal quoted in paragraph 40 above was rejected by 13 votes to 8.

43. After an exchange of views on procedure, the Committee next went on to examine the draft resolution submitted by the Indian delegate. The delegate of Senegal then expressed the wish to accept responsibility for and to submit as his own resolution the text appearing in document 14 C/LEG/DR.2 and quoted in paragraph 18 above, which the delegate of Argentina had previously submitted and then withdrawn. The Committee having entered into a procedural debate as to whether this resolution was admissible and at what point it could be discussed, the delegate of India suggested, by way of compromise, that the text taken up again by Senegal (the text previously submitted by Argentina) be submitted as an amendment to his own resolution. The draft resolution of the delegate of India reads as follows:

> "The Legal Committee has examined the Executive Board resolution submitting to the General Conference the communication from the Government of Portugal requesting that an opinion be sought from the International Court of Justice.
>
> The Committee decided that the resolution of the Executive Board (70 EX/Decisions/14) was adopted under the powers given it by Article V.B.5 (*b*) of the Constitution of UNESCO, for the purpose of safeguarding the effective and rational execution of the programme.
>
> As divergent views were expressed during discussion of the legal aspects of the matter, the Committee has decided to include a detailed record of that discussion in its report in order to inform the General Conference, while leaving it to reach a final decision on the request of the Government of Portugal."

44. A division having been called for, the Committee decided, after further debate on the procedure to be followed, to vote each paragraph in turn. The first paragraph was adopted unanimously. At the request of two members of the Committee, the vote on the second paragraph was taken by roll-call after the Chairman had explained that adoption of this paragraph required a two-thirds majority. The second paragraph was voted in this way and was rejected by 12 votes to 8 with 1 abstention. Those voting in favour were: Chad, Czechoslovakia, India, Senegal, Tanzania, Union of Soviet Socialist Republics, United Arab Republic and Yugoslavia. Those voting against were: Argentina, Canada, Chile, Denmark, France, Federal Republic of Germany, Japan, Netherlands, Peru, Spain, United Kingdom and United States of America. The Philippines abstained. The third paragraph was also rejected by 12 votes to 8 with 1 abstention. The remainder of the proposal (paragraph 1) was then put to the vote and adopted by 6 votes to 1 with 2 abstentions.

45. Several members of the Committee explained that they had not taken part in the last vote or had abstained because the proposal, after the amputation of the last two paragraphs, had become void of meaning. The delegates of Argentina, Chile and Spain stated that they had voted against the second paragraph of the proposal, not because they disagreed with its substance, but because it only formed one part of a whole which ought also to include a clause envisaging the possibility of a request for an advisory opinion from the International Court of Justice.

46. The Committee then went on to discuss the texts contained in documents 14 C/LEG/DR.7 and 8. Document 14 C/LEG/DR.7, submitted by the delegation of Chile, reads, after correction of the English and Spanish texts, as follows:

"*The General Conference,*

Recalling resolution 1.116 of the thirteenth session of the General Conference,

Recalling decisions 70 EX/14 and 71 EX/5.4 of the Executive Board,

Considering that decision 70 EX/14 of the Executive Board was adopted pursuant to Article V.B.5 (*b*) of the Constitution of UNESCO for the purpose of safeguarding the effective and rational execution of the programme,

Noting the Rules of Procedure for the Calling of International Conferences of States and the Summary Table of a General Classification of the Various Categories of Meetings Convened by UNESCO,

Having regard to the relevant provisions of the Constitution of UNESCO, of the Agreement between the United Nations and UNESCO and of the Statute of the International Court of Justice,

Decides to request an advisory opinion of the International Court of Justice on the following questions of law:

Does the Constitution of UNESCO and in particular Article V thereof give the power to withhold from a Member State, by virtue of decisions of the General Conference or Executive Board, any invitations to meetings convened by UNESCO under Article 3 of the Rules of Procedure for the Calling of International Conferences of States and the Summary Table of a General Classification of the Various Categories of Meetings convened by UNESCO, other than as provided for in Article II of the Constitution; in particular, is the Executive Board's decision 70 EX/14 in accordance with the Constitution of UNESCO?

Requests the Director-General to take the necessary steps accordingly."

47. Document 14 C/LEG/DR.8, submitted by the delegation of the USSR, reads, after correction of the French and Spanish texts, as follows:

"1. *Transfer* the third paragraph to the operative part of the resolution, re-wording it as follows:

Decides that decision 70 EX/14 of the Executive Board was adopted pursuant to a series of resolutions of United Nations bodies and in conformity with Article V.B.5 (*b*) of the Constitution of UNESCO for the purpose of safeguarding the effective and rational execution of the programme.

2. *Delete* the last two paragraphs of the draft resolution."

48. After a debate on the question whether document 14 C/LEG/DR.8 constituted a draft amendment or a separate proposal, the Committee decided first to take a vote on document 14 C/LEG/DR.8. The two parts of this document were voted upon separately, the Chairman having decided that the adoption of the first part would require a two-thirds majority under Rule 33, paragraph 2 of the Rules of Procedure. The first part was rejected by 13 votes to 7. The second part was then put to the vote and was also rejected by 13 votes to 7.

49. After this last vote, the delegates of the following eight Member States declared that they were unable to take part in the discussion and voting on document 14 C/LEG/DR.7 and withdrew from the conference room for the period of that discussion: Chad, Czechoslovakia, India, Senegal, Tanzania, USSR, United Arab Republic and Yugoslavia.

50. The delegate of Senegal stated that, as the Committee was divided into two groups for purely political reasons, he saw no point in taking further part in the work of the Committee on this item of the agenda. The delegate of the United Arab Republic added that the legal arguments put forward in support of the proposal to the effect that the Committee

recognized the validity of the Executive Board's decision had not been seriously studied or refuted and that consequently he would take no further part in the Committee's discussions on document 14 C/LEG/DR.7. The delegate of Chad also expressed his disappointment at the serious turn which the debates of the Committee had taken and indicated that in consequence of the Committee's latest decisions he would withdraw. The delegate of Tanzania said he had hoped that the Committee would find a solution to the legal problem before it that would take account of facts and realities. As the Committee was veering towards a purely theoretical solution which took no account of these realities and as the Court could not resolve the practical problem facing UNESCO, he could not participate in such a decision. The delegate of Yugoslavia said that she fully shared the view expressed in the previous speakers' statement. The resolution that the Committee was about to adopt would amount to a disavowal of the Executive Board, with which she could not be associated. She said that she would take no further part in the discussions on this item. The delegates of Czechoslovakia and of the USSR also announced that they would not take part in the remainder of the discussion on this item of the agenda and more particularly on document 14 C/LEG/DR.7. They declared that any decision by the Committee on the point would be illegal because it would run counter to Article X, paragraph 2 of the Agreement between the United Nations and UNESCO, as had been urged at an earlier stage of the debate. The delegate of India stated that the Committee had reached a serious situation because of the attitude of the majority, which was contradictory and hostile to any compromise. This majority, which included Executive Board members who had approved and sponsored the Board's resolution, had preferred to repudiate the Executive Board rather than cause pain to a State whose attitude was reprobated by the majority of the members of the United Nations family of organizations. This majority was now proposing a draft resolution which consisted in ignoring the series of decisions taken by the United Nations on Portugal, casting doubt upon the legality of the actions of the Executive Board and depriving the General Conference of its sovereign power of decision. This majority had made its choice between the need to enforce the principles proclaimed by UNESCO and the disintegration of the Organization which any support given to the colonialist and racialist policy of Portugal under the guise of legal arguments would inevitably entail. The delegate of India said in conclusion that it was difficult for the former colonial and subjugated countries to accept such a choice due to a compromise of any kind whatsoever on this subject and to stand by unconcerned during the preparation and voting of a recommendation which would decide in favour of Portugal against the United Nations and UNESCO.

51. The Committee having decided to take a vote on the draft resolution in document 14 C/LEG/DR.7, the question arose of what was the required majority for the adoption of the third paragraph of the preamble. The Chairman having decided that this paragraph did not constitute an interpretation by the Legal Committee of Article V.B.5 (*b*) of the Constitution and that consequently a two-thirds majority would not be required, the draft resolution was put to the vote as a whole and was adopted unanimously. The Legal Committee accordingly recommended to the General Conference that the draft resolution appearing in paragraph 46 of this report be adopted.

(ii) Resolution No. 20 adopted by the General Conference at its fourteenth session[38]

The General Conference,

Considering that the Government of Portugal continues to pursue in the African territories under its domination a policy of colonialism and racial discrimination which deprives the peoples of those territories of their most elementary rights to education and culture, thus violating the fundamental obligations of every member of UNESCO,

[38] Verbatim records of the discussion in plenary meetings of the General Conference will be found in 14 C/VR. 30 to 35.

Considering also that this behaviour on the part of Portugal violates the fundamental principles of the Convention and Recommendation against Discrimination in Education adopted at the eleventh session of the General Conference of UNESCO,

Recalling the many resolutions of the United Nations General Assembly and the Security Council condemning Portugal, and the resolution of the Economic and Social Council expelling Portugal from the Economic Commission for Africa,

Referring to Article 73 of Chapter XI of the United Nations Charter, concerning non-self-governing territories, and to Article IX of the Agreement between the United Nations and UNESCO, concerning UNESCO's obligation to co-operate with the United Nations in giving effect to the principles and obligations set forth in Chapter XI of the Charter with regard to matters affecting the well-being and development of the peoples of non-self-governing territories,

Recalling resolution 1.116 adopted by the General Conference at its thirteenth session with a view to excluding Portugal from meetings convened by UNESCO,

Reaffirming the right of the General Conference, as the sovereign organ of UNESCO, to interpret the provisions of the Constitution, and particularly the provisions of Article V of that Constitution, which give the Executive Board authority to take all necessary measures for the execution of the programme in accordance with the decisions of the General Conference,

1. *Confirms* the decision taken by the Executive Board at its seventieth session (70 EX/Decisions14), whilst reserving the right of the Organization to take such other subsequent measures as may be necessary;

2. *Rejects*, accordingly, the request of the Portuguese Government (14 C/34, Annex I) that the question be referred to the International Court of Justice.

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2. INTERNATIONAL TELECOMMUNICATION UNION

Resolution No. 559 regarding Rhodesia adopted by the Administrative Council of the ITU at its twenty-first session in 1966

The Administrative Council,

Having examined

document No. 3525/CA21 containing communications from the United Kingdom of Great Britain and Northern Ireland advising that, as a result of the illegal declaration of Rhodesia's independence on 11 November 1965 and the dismissal of former ministers, the authority of the Rhodesian Delegation to the Montreux Plenipotentiary Conference ceased on 11 November 1965 and the former Delegation was thus no longer empowered to sign the Final Acts when they were formally presented for signature on 12 November 1965,

Considering that

the recommendations of the Administrative Council contained in Circular Telegrams Nos. 44/14 and 45/14 of 14 May 1966 were approved by a majority of the Members of the Union,

Instructs the Secretary-General

1. To delete the signatures of the former Rhodesian Delegation appended to the copy of the International Telecommunication Convention (Montreux, 1965), the Additional

Protocols I, II and III, the Final Protocol and the Optional Additional Protocol deposited in the archives of the Union;

2. To notify all Members of the Union by circular letter that the signatures have been deleted and invite them to amend their published copies accordingly;

3. To refuse acceptance of any purported instrument of ratification or accession by or on behalf of the existing illegal regime in Rhodesia;

4. To take the necessary steps so that the existing illegal regime in Rhodesia shall not be invited to take part in the work of any conference or meeting called by the Union, or under its auspices, until the Administrative Council, taking into account the decisions taken by the United Nations, shall find that the conditions for constructive co-operation have been restored.
