

## HUNDRED AND SEVENTY-NINTH MEETING

*Held at Lake Success, New York, on Monday, 31 October 1949, at 3.15 p.m.*

*Chairman: Mr. LACHS (Poland).*

### Report of the International Law Commission (A/925) (continued)

#### PART II: DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES (continued)

*Proposals and amendments regarding the disposal of the draft declaration (A/C.6/L.50, A/C.6/L.53, A/C.6/L.54, A/C.6/L.55, A/C.6/L.56, A/C.6/L.59, A/C.6/L.61) (continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of the third paragraph of the draft resolution submitted jointly by the delegations of Argentina, the Netherlands and the United States (A/C.6/L.50), and of the two amendments to that paragraph. The first of those amendments was that submitted jointly by the delegations of Chile, Colombia and Cuba (A/C.6/L.61),<sup>1</sup> which replaced their original amendments to that paragraph which were included in documents A/C.6/L.55,<sup>2</sup> and A/C.6/L.56,<sup>3</sup>; the second was the amendment<sup>4</sup> submitted by the Belgian delegation.

2. Mr. HARMEL (Belgium) remarked that, while in principle his amendment did not differ greatly from that submitted jointly by the Chilean, Colombian and Cuban delegations, it reintroduced the idea contained in the second part of the third paragraph of the joint proposal of Argentina, the Netherlands and the United States (A/C.6/L.50). Inasmuch as the various ideas were stated in separate paragraphs of the Belgian amendment, it would be easy for the Committee to express its opinion on each.

3. He thereupon introduced his amendment, which read as follows:

*"Considering the difficulties at present inherent in the task of formulating rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations,*

*"Considering further the difficulty of determining with accuracy which rules in the draft of the International Law Commission now form part of international law and which are in the course of becoming international law,*

*"Considering therefore that further study of these questions is necessary."*

4. He pointed out that those three paragraphs were intended as a replacement for the third paragraph of the joint proposal (A/C.6/L.50).

5. Mr. SOTO (Chile) remarked that the object of the joint amendment (A/C.6/L.61) of Chile, Colombia and Cuba was to reconcile the various ideas expressed during the 177th meeting with respect to the third paragraph of the joint draft resolution. Inasmuch as the debate had shown that a number of representatives found it difficult to accept the second part of that paragraph, the joint amendment omitted that part, with the consent of the United States delegation.

6. The reference in the joint amendment to the difficulties encountered by the General Assembly in formulating basic rights and duties of States had been questioned by the representative of France on the ground that the General Assembly could not recognize the difficulties of a task which it had not completed. The representative of Chile could not agree with that view. The difficulties of a task might well become apparent in the process of dealing with it; the general debate had clearly shown that there were definite difficulties in the way of formulation by the General Assembly of basic rights and duties of States. Consequently, the Committee had every right to say that those difficulties existed.

7. The second idea in the joint amendment, which was that rights and duties of States should be formulated in the light of new developments of international law and in harmony with the Charter of the United Nations, had been contained in the original Cuban amendment (A/C.6/L.55).

8. The third idea, that of the need of continued study with regard to the subject, had come from the original Chilean and Colombian amendment (A/C.6/L.56).

9. The Chilean delegation was not completely satisfied with the joint amendment (A/C.6/L.61) but had sponsored it in a spirit of compromise, hoping that it would be acceptable to most of the delegations. He urged the Committee to adopt it in that spirit.

10. Mr. GARCÍA AMADOR (Cuba) associated himself with the remarks of the Chilean representative. While it could not be said that any one of the three sponsors of the joint amendment, or the United States representative who had accepted it, was completely satisfied with that text, it represented a conciliation formula which should be acceptable to the Committee.

11. The representatives of France and Belgium had felt that the joint amendment should contain a reference to the difficulties, in any formulation of basic rights and duties of States, of determining with accuracy what was international law and what was in the course of becoming international law. He recalled, however, that that idea had been most widely objected to in the preceding debate and asked those representatives not to insist on the inclusion, in a text intended to be conciliatory, of concepts which did not meet with general approval.

12. Mr. MATTAR (Lebanon) said, with reference to the third paragraph of the joint draft resolution (A/C.6/L.50), that his delegation had no objection to the first part which mentioned the difficulties "at this time" of formulating basic rights and duties of States. He was, however, quite unable to accept the second part, and agreed with the remarks made in that connexion by the representative of Brazil<sup>5</sup> at the 177th meeting. It should not, in fact, be difficult to determine

<sup>1</sup> See the Summary Record of the 178th meeting, paragraph 56.

<sup>2</sup> See the Summary Record of the 177th meeting, paragraph 39.

<sup>3</sup> *Ibid.*, paragraph 42.

<sup>4</sup> See paragraph 3 below.

<sup>5</sup> See the Summary Record of the 177th meeting, paragraph 13.

what international law was. Experience proved that that was possible: a number of principles of international law were consecrated in the United Nations Charter, which had been signed by fifty-nine Member States. He was therefore equally unable to accept the Belgian amendment,<sup>1</sup> which reintroduced the idea contained in the second part of the third paragraph of the joint draft resolution.

13. Inasmuch as the joint Chilean, Colombian and Cuban amendment did not deny the possibility of formulating basic rights and duties of States, he would vote for that amendment.

14. Mr. FERRER VIEYRA (Argentina) said that his delegation would have no objection to accepting the joint amendment if its sponsors would agree to modify it by deleting the reference to the General Assembly, so that the text might begin: "*Considering the difficulties encountered at this time in formulating . . .*", and by inserting, before the words "the need", the word "recognizing". However, he made no formal motion to that effect.

15. The representatives of CHILE, COLOMBIA and CUBA accepted the insertion of the word "recognizing" suggested by the Argentine representative.

16. Mr. CHAUMONT (France) remarked that the Belgian amendment was the best fitted to get the Committee out of the impasse in which it found itself. In that amendment, the various ideas which had been jumbled together in the joint draft resolution had been carefully disentangled. As views on those ideas differed, the Belgian text would afford all delegations the opportunity to vote on each part as they saw fit.

17. The French delegation would vote in favour of the first paragraph of the Belgian amendment. Although the Committee had not discussed the draft declaration article by article (A/925, paragraph 46), all were aware that certain difficulties existed and it was perfectly proper to mention them in a resolution. The recognition of those difficulties should not, however, be attributed to the General Assembly since the Sixth Committee, in acting for the Assembly, had dealt with the draft declaration only from the procedural point of view and had not examined its substance in detail.

18. He had been convinced by the arguments advanced at the 177th meeting by the Brazilian representative, and by others who had objected to the second part of the third paragraph of the joint proposal. He would therefore vote against the second paragraph of the Belgian amendment, which reproduced the same idea, and also against the third paragraph of that amendment.

19. The CHAIRMAN announced that the joint amendment of Chile, Colombia and Cuba, the Belgian amendment, and the text of the third paragraph of the joint draft resolution of Argentina, the Netherlands and the United States would be put to the vote in that order.

20. Mr. KORETSKY (Union of Soviet Socialist Republics) said that, since the various texts were not mutually exclusive or contradictory — he, for example, could vote in favour of them all — it

would be helpful if the delegations concerned were to present a single text for the Committee's consideration. Such a text should not be difficult to produce because there seemed to be agreement in principle.

21. Mr. GARCÍA AMADOR (Cuba) did not think that the USSR representative's suggestion was feasible. He pointed out, moreover, that the Belgian amendment was quite different in substance from the joint amendment.

22. Mr. CHAUMONT (France) supported the Cuban representative. Unless the amendments were kept separate, his delegation would be unable to vote for some ideas and to reject others, as it intended to do.

23. The CHAIRMAN stated that, since the sponsors of the amendments were not prepared to collaborate on a joint text, the amendments would be put to the vote separately. He pointed out that, while the joint Chilean, Colombian and Cuban amendment covered the same ground as the first and third paragraphs of the Belgian amendment,<sup>2</sup> the second paragraph of the Belgian amendment contained a different idea, which would have to be put to the vote separately whether or not the joint amendment (A/C.6/L.61)<sup>3</sup> was adopted.

*The joint amendment of Chile, Colombia and Cuba to the third paragraph of the joint draft resolution was adopted by 38 votes to 6, with 5 abstentions.*

24. Mr. HARMEL (Belgium) said that he had voted in favour of the joint amendment in that very spirit of conciliation to which an appeal had previously been made. That spirit meant acceptance of the majority's decision.

25. He hoped that the Committee would adopt the second paragraph of his amendment, because the resolution would be incomplete unless it admitted the difficulty of determining what in the draft declaration formed part of international law and what was in the course of becoming international law. The second part of his amendment would draw that difficulty to the attention of Governments — which in the final analysis would decide the fate of the draft declaration — and would enable them to say what they wished it to contain.

26. Mr. GARCÍA AMADOR (Cuba) pointed out that the Committee had accepted the joint amendment by a large majority. That amendment had deliberately excluded the controversial idea contained in the second paragraph of the Belgian amendment. He did not think that, after the Committee had tacitly approved its omission, the paragraph containing that idea should be put to the vote.

27. The CHAIRMAN remarked that the second paragraph of the Belgian amendment<sup>4</sup> had to be put to the vote. Submission of that paragraph was entirely in order, for it was not covered in the joint amendment (A/C.6/L.61) and differed to some extent from the original text of the third paragraph of the joint proposal (A/C.6/L.50).

*The second paragraph of the Belgian amendment was rejected by 23 votes to 11, with 15 abstentions.*

28. Mr. AMADO (Brazil) said, in explanation of his vote, that his delegation made the same reser-

<sup>1</sup> See paragraph 3 above.

<sup>2</sup> See paragraph 3 above.

<sup>3</sup> See the Summary Record of the 178th meeting, paragraph 56.

<sup>4</sup> See paragraph 3 above.

uations with respect to the word "basic" in the new text of the third paragraph as had been made by the Israeli delegation at a previous meeting.<sup>1</sup>

29. The CHAIRMAN noted that the joint amendment had replaced the third paragraph. He called attention to the fourth paragraph of the joint draft resolution (A/C.6/L.50), in which the word "draft" should be inserted before the final word "declaration" for reasons of uniformity. As the Cuban amendment to that paragraph had been withdrawn, there were no amendments before the Committee.

*The fourth paragraph of the joint proposal was adopted without comment by 49 votes to none, with one abstention.*

30. The CHAIRMAN directed the Committee's attention to the fifth paragraph of the joint proposal. He recalled that the sponsors of that proposal had accepted the deletion of "the articles of" and that the Norwegian representative had moved the reinsertion of those words as an amendment.<sup>2</sup>

*The Norwegian amendment was rejected by 28 votes to 7, with 13 abstentions.*

*The fifth paragraph of the joint draft resolution, as amended at the 178th meeting, was adopted by 36 votes to 2, with 8 abstentions.*

31. The CHAIRMAN opened the discussion on the sixth paragraph of the joint draft resolution (A/C.6/L.50). Amendments to that paragraph had been presented by Israel (A/C.6/L.53), Lebanon (A/C.6/L.54), Cuba (A/C.6/L.55), Chile and Colombia (A/C.6/L.56) and Poland (A/C.6/L.59).<sup>3</sup>

32. Mr. MATTAR (Lebanon) said that he would withdraw his amendment (A/C.6/L.54), which called for inserting the words "the preamble and" after "Commends", on the understanding that "the articles of" would be deleted, as had been done in the case of the fifth paragraph.<sup>4</sup>

33. The CHAIRMAN replied that the deletion would be in conformity with the fifth paragraph as approved, and that he would therefore urge the Committee to adopt it.

34. Mr. ROBINSON (Israel) said, in introducing his amendment (A/C.6/L.53), that he had suggested the deletion of the words, "as a guide to international law and to its progressive development" for the reasons stated below.

35. The meaning of that expression was obscure. In what sense and in what circumstances should Governments be guided by the draft declaration? Was it intended to make up for omissions in international law, to serve as a guide in the interpretation of international law, in its application, or in its future development? The phrase did not make clear to Governments what was required of them.

36. Furthermore, it was illogical to commend as a guide a document that was still in the draft stage and was consequently, by definition, unfinished. There was still a further consideration. On what moral grounds could the General Assembly recommend as a guide a draft whose various

articles it had not examined? The debate, general though it had been, had shown that a number of delegations — among them those in favour of a declaration on rights and duties of States — had various criticisms to make of the current draft declaration, and a number of amendments to it had been proposed. Indeed, if Governments sought to determine the meaning of the sixth paragraph of the joint draft resolution from the debate which had taken place in the Sixth Committee, they would be struck by the discrepancy between that debate and its result. They would be at a loss to understand why they were asked to consider the draft declaration as a guide to international law and its development.

37. He further pointed out that it had been logical in the original United States draft resolution (A/C.6/330), which wished no further action to be taken on the draft declaration, to commend that document as a source of law. The original Argentine draft resolution (A/C.6/332), which called for further action, with equal logic refrained from commending the draft declaration as either a guide or a source of law. The joint draft resolution (A/C.6/L.50) quite illogically commended the draft declaration as a guide in one paragraph and asked Governments for comments and suggestions on it in the next.

38. In whatever language the sixth paragraph of the joint draft resolution (A/C.6/L.50) might be adopted, it would make the adoption of the seventh paragraph contradictory, as had been made clear by the representative of Norway.<sup>5</sup>

39. Mr. Robinson called attention to discrepancies in the wording of the sixth paragraph in the various languages. Under rule 51 of the rules of procedure, all resolutions were to be made available in the official languages. That meant that the resolutions were to be considered equally authentic in all five official languages. Great care should therefore be taken to avoid divergencies, lest one group of States using one of the five languages should find itself under a different obligation from another group using another language. In that connexion, he considered the word "commends" ill chosen. It represented an innovation in the practice of the General Assembly, which had always used the term "recommends". The two words were close but not identical in meaning, and the word "commends" had been translated into Spanish as "*recomienda*" which was the equivalent of the English word "recommends". Such a discrepancy would be avoided if the more usual term "recommends" were used in the English text.

40. Similarly, the English phrase "continuing consideration" had been translated into both French and Spanish by the equivalent of "continuing attention". That discrepancy, too, should be reconciled. Of the two, he preferred the phrase "continuing attention".

41. Mr. CHAUMONT (France) recalled his delegation's position<sup>6</sup> on the seventh paragraph of the original United States draft resolution (A/C.6/330; that stand was similar to the one just

<sup>1</sup> See the Summary Record of the 177th meeting, paragraph 50.

<sup>2</sup> See the Summary Record of the 178th meeting, paragraphs 13, 14, 52 and 54.

<sup>3</sup> The texts of all these amendments will be found in the present Summary Record. See paragraphs 32, 34, 43, 50 and 93 below.

<sup>4</sup> See the Summary Record of the 178th meeting, paragraphs 11, 16 and 51.

<sup>5</sup> See the Summary Records of the 177th meeting, paragraph 5.

<sup>6</sup> See the Summary Record of the 172nd meeting, paragraph 2.



taken by the Israeli representative on the sixth paragraph of the joint proposal. His main objection to the earlier text had been the use of the expression "source of law" in commending the declaration, which was ambiguous and might have given rise to different interpretations in various countries. The new version of the joint draft resolution, however, had taken those difficulties into account, and he therefore supported it.

42. He could not support the Cuban amendment (A/C.6/L.55)<sup>1</sup> which essentially restored the text of the original United States draft resolution, although in a slightly different form. If that amendment were adopted, his delegation might find it difficult to support the draft resolution as a whole.

43. Mr. KRAJEWSKI (Poland) wished to explain the reasons for his amendment to the sixth paragraph of the joint draft resolution. That amendment (A/C.6/L.59) called for the insertion of the words "as such" after "Commends"; and for the deletion, from the end of the sixth paragraph, of the words: "as a guide to international law and to its progressive development".

44. As the representative of Israel and he himself had earlier pointed out, the expression "guide" had no meaning and was therefore inappropriate. Recalling the specification of the Permanent Court of International Justice in the *Lotus* case, to the effect that the principles referred to in Article 38, paragraph 1, c of its Statute had to be duly recognized by all independent States<sup>2</sup>, he pointed out that the principles of the draft declaration, which was not a binding international instrument, did not come under that definition and, consequently, could not be considered as a source of law. The general principles in question were of an indefinite character; they were the result of a certain compromise and did not cover the field as a whole.

45. The teachings and writings of eminent jurists under Article 38, paragraph 1, d could never be regarded as a source of law, but could only serve as subsidiary means for the determination of the rules of law, that is, as evidence of what was or was not law when other evidence was unavailable. The draft declaration, in view of its incomplete character and the fact that it was to be studied further, should be recognized only as a contribution towards the development and codification of international law, and appreciated as such. The Polish amendment had been prompted by the fact that the word "guide" was not appropriate to a work which was not fully mature and which required further comments. The Polish amendment differed from that submitted by Israel in that it linked together the fifth and sixth paragraphs, thus qualifying the draft declaration as a contribution to international law, and commending it "as such" for further study.

46. Mr. MELENCIO (Philippines) felt that the sixth paragraph of the joint draft resolution was no longer necessary. The commendation of the draft declaration to the continuing consideration of Member States and of jurists of all nations was already implied in the fifth paragraph, in which the draft declaration was deemed a notable and substantial contribution to the progressive development of international law. The second idea in the sixth paragraph, that the draft declaration should

serve as a guide to international law and its progressive development, was in contradiction with the joint amendment of Chile, Colombia and Cuba (A/C.6/L.61) to the third paragraph of the joint proposal, which had just been adopted, and which spoke of the need of continuing study of the subject; that second idea was also in contradiction with the seventh paragraph of the joint proposal (A/C.6/L.50), which would transmit the draft declaration to Member States and relevant institutions for consideration and comments. A draft which obviously was not considered definitive, could not be commended as a guide.

47. Consequently, his delegation was inclined to suggest that the sixth paragraph of the joint draft resolution should be deleted if that were in conformity with the changes made in its other paragraphs.

48. Mr. Soto (Chile) recalled that the Chilean delegation, together with that of Colombia, had proposed replacing the sixth paragraph, to which objections had been raised, by the following text (A/C.6/L.56):

"Commends the principles formulated in the draft declaration to Member States and to international tribunals as a source of law pending the incorporation of the principles in a formal declaration approved by the General Assembly of the United Nations".

49. The two delegations had considered that the articles of the draft declaration which had not been approved by the General Assembly could not, as proposed in the sixth paragraph of the joint draft resolution (A/C.6/L.50), be commended as a guide or as positive law; hence the joint amendment replaced the word "articles" by "principles". That amendment was also in accord with the third, fourth and fifth paragraphs of the joint draft resolution, which, in their present text, referred to the principles and not to the articles of the draft declaration.

50. The sixth paragraph of the draft resolution commended the draft declaration to jurists. But, because they could use it only for study, the joint amendment replaced the word "jurists" by "international tribunals", which would be able to use the draft declaration as a source of law.

51. Another modification suggested in the joint amendment, one of form rather than substance, substituted for "guide to international law", which was not a proper legal term, the expression "source of law", which conveyed the true meaning of the joint draft resolution.

52. The amendment further deleted the reference to the progressive development of international law because, after having been described in the preceding paragraph as a contribution towards the progressive development of international law, the declaration could only be regarded as a source of law; to consider it as a guide to its progressive development would be illogical.

53. Finally, the amendment contained an addition to the sixth paragraph of the joint draft resolution which was consistent with its third paragraph as amended. That addition implied that once the General Assembly had approved the draft declaration, its principles would cease being a source of law and become positive law.

<sup>2</sup> See the Publication of the Permanent Court of International Justice, Series A, No. 10, Judgment No. 9, Section II.

<sup>1</sup> See paragraph 93 below.



54. He did not agree with the Philippine representative's view that the paragraph in question was inappropriate in view of the third paragraph just adopted. The third paragraph was part of the preamble leading up to the operative paragraphs of the draft resolution.

55. Mr. AMADO (Brazil) was of the opinion that the second part of the sixth paragraph, beginning with the words "as a guide to international law", might be deleted. The first part of the sixth paragraph, inviting Member States and international jurists to take into account and study the principles of the draft declaration, might be sufficient.

56. Mr. TATE (United States of America) stated that his delegation did not attach particular importance to the exact wording of the sixth paragraph of the joint proposal, which was essentially the same as the corresponding paragraph of the original United States proposal; what was important were the ideas contained in the paragraph.

57. The original text of his proposal (A/C.6/330) had contained the expression "source of law" as the appropriate legal term. In view of statements made in the Committee that the expression might be interpreted as having a stronger meaning than intended and than that given to it in Article 38, paragraph 1, d, of the Statute of the International Court of Justice, he had accepted the word "guide".

58. Agreeing with the representative of Israel that the latter word was not, properly speaking, a legal term, he thought nevertheless that it would make clear that the draft declaration, while not binding, was an indication of the direction in which international law might develop. Having no strong views on the matter, he thought that the expression was adequate, and he would therefore abstain on the other proposals. If, however, the Brazilian suggestion for the deletion of the second part of the sixth paragraph was acceptable to the Committee, he would not object to it.

59. Mr. KORETSKY (Union of Soviet Socialist Republics) wished to analyse the implications of the expressions "guide to international law" and "source of law". In either case, the General Assembly must know its competence in the matter. Since the General Assembly was not a legislative body, it was not competent under the Charter to sanction rules of international law, nor could such rules be made binding by its decisions. Article 13 of the Charter, which had been adopted after long debates at the San Francisco Conference, spoke of the function of the General Assembly to encourage the progressive development of international law and its codification but did not mention that the Assembly had power to codify international law. In Committee 2 of Commission II of the San Francisco Conference, the question had been raised<sup>1</sup> whether the General Assembly should be empowered to establish rules of international law which would be binding upon Members of the United Nations; the matter had been put to the vote, and by an overwhelming majority of 26 to 1, with 3 abstentions, Committee 2 had decided<sup>2</sup> against giving such power to the General Assembly. It was clear that the authors of the Charter, who had just emerged from

the struggle against the fascist Powers, had not wished to give the United Nations legislative powers because they had been opposed to the creation of a "super-State".

60. Thus, as regards the approach that should be taken to the draft declaration, Mr. Koretsky felt that the General Assembly, even if it were ready to consider the confirmation of the draft declaration as a source of law, would have to decide whether it was competent to commend the principles of the draft declaration as a source of law, which would make it binding upon Member States. At the present stage, however, before the necessary study and consideration, the Assembly could not commend the draft declaration as a source of law to States Members of the United Nations. He did not agree with the United States representative's view regarding the word "guide". How could the draft declaration, which had not been sufficiently studied, be put before nations as a goal and a guide for the future development of international law? Several interpretations had been given to the word "guide". The United States representative, in explaining his interpretation of the term, had indicated some indifference whether the term "source of law" or "guide to international law" was used. Article 38, paragraph 1, of the Statute of the International Court of Justice, however, gave a definite list of what could be considered as a source of law. The United States delegation had disregarded the kinds of sources listed in sub-paragraphs *a*, *b* and *c* of Article 38 and had used the term in the meaning of sub-paragraph *d* only, that is as a theory of international law. The members of the International Law Commission, however, had not formulated a new theory embracing the various theories which they represented; consequently, the General Assembly could not sanction and commend as a "guide" a work which represented many different and conflicting theories.

61. The question of the General Assembly's function in sanctioning principles was a matter of supreme importance and could not be decided casually in connexion with an unfinished document. The General Assembly should deal with the question of the legal standing of the draft declaration after it had been further studied.

62. In view of those considerations, Mr. Koretsky was opposed to the use of the expressions "source of law" and "guide to international law", both of which implied that the draft declaration was of binding force. The General Assembly was not a legislative organ and should not prejudge the issue by implying that it was.

63. He agreed with the representative of the Philippines, who had pointed to the impossibility of commending an unfinished document as a guide or source of law.

64. The word "principles", as used in the joint amendment of Chile and Colombia (A/C.6/L.56)<sup>2</sup> was not clear. He pointed out, in that connexion, that Article 38 of the Statute of the International Court of Justice listed principles ahead of the teachings of publicists in international law. Before the principles could be confirmed, careful study would be required. The draft declaration did not include a number of important principles of international law set forth in the

<sup>1</sup>See Documents of the United Nations Conference on International Organization, San Francisco, 1945, volume IX, page 70.

<sup>2</sup>See paragraph 48 above.

Charter such as the right of States to existence and self-determination. Why then commend a draft declaration which contained fewer principles than the Charter? He was therefore opposed to the use of the word "principles" as proposed in the joint amendment of Chile and Colombia.

65. In view of those considerations, Mr. Koretsky preferred the Polish amendment (A/C.6/L.59). Bringing the draft declaration to the attention of Member Governments and noting it as a contribution towards the development of international law would be sufficient. Much study would be required before it could be commended as a guide or as a source of law.

66. Mr. GÓMEZ ROBLEDO (Mexico) was opposed to the use of the expression "source of law", which was ambiguous. It could be taken to mean either a formative process or the creation of law or even the final document. It would therefore be preferable to avoid that expression in the present text. Referring to article 13 of the draft declaration, which mentioned sources of international law in connexion with the duty of States to carry out their obligations in good faith, he thought that adoption of the joint amendment of Chile and Colombia would give the draft declaration binding force without the necessary thorough discussion and approval by the General Assembly. He agreed that, for the reasons explained by the representative of Israel,<sup>1</sup> the words "guide to international law" should be omitted; and he favoured the deletion of the last phrase of the sixth paragraph of the joint draft resolution. He agreed with the Australian representative that the General Assembly should ultimately decide on the juridical nature of the document, but that it would be premature to do so at the present time.

67. Mr. BARTOS (Yugoslavia) stated that he was unable to vote for any of the texts before the Committee. A legal document intended to serve as a source of law could not be prepared in a few weeks, since the interpretation of the basic concepts of international law varied according to the philosophy underlying the legal structure of the different countries. It all came down to the difficult problem of what French jurists called *qualifications*. It was extremely difficult to decide on a common interpretation of such an expression as "source of law". In English law, principles were often formulated by the judges from case histories, whereas under Roman law judges were constrained to apply principles laid down in texts of law and to resort to subsidiary sources of law only when the primary sources proved insufficient. The United States delegation had made a praiseworthy attempt to achieve agreement, but Mr. Bartos felt that the question defied compromise.

68. The Yugoslav delegation could not accept the term "guide" because it interpreted that word to mean that the principles contained in the draft declaration were basic and that all other concepts were to be examined in the light of those principles.

69. The Yugoslav delegation agreed with the fundamental idea of the joint draft resolution (A/C.6/L.50) and with the considerations raised by various delegations of Latin America. Fundamentally, those proposals attempted to express

the idea that, although lacking binding force, a declaration recommended by the General Assembly would have moral value. In fact, the authors of the joint draft resolution indicated that they supported the rules laid down in the draft declaration. In connexion with the remarks of the USSR representative, Mr. Bartos stressed that, while no one could say that the General Assembly had legislative powers, it could make recommendations which undoubtedly carried great moral weight.

70. In view of the fact that no solution acceptable to everyone had yet been found, it might be better to avoid strict legal terms and use a form simple enough to command general support. The Yugoslav delegation could not accept the term "guide". The expression "source of law" would make the declaration binding and was therefore also unacceptable.

71. It might perhaps be wiser to reconsider the text in an attempt to achieve a compromise acceptable to the majority of the Committee.

72. Mr. ALEXIS (Haiti) was of the opinion that a compromise formula satisfactory to the majority could be achieved. He proposed that the sixth paragraph of the joint draft resolution (A/C.6/L.50) should be revised to read:

"Commends the proposals of the draft declaration to the continuing attention of Member States and to jurists of all nations and invites them to consider those proposals as the basic elements of a new international law to be drawn up in accordance with the Charter and with the development of international law".

73. That compromise proposal circumvented the difficulties involved in the joint proposal and the amendments employing the term "as a source of law".

74. The CHAIRMAN asked the representative of Haiti to submit his text in writing.

75. Mr. FITZMAURICE (United Kingdom) thought that the joint Argentina-Netherlands-United States proposal (A/C.6/L.50) had been the result of much effort to reach a compromise. He therefore wished to explain why he could not support the sixth paragraph of that text.

76. The United Kingdom delegation agreed with the points raised by the representatives of Israel and Poland in their two substantially similar proposals. To avoid having to vote on two nearly identical texts, Mr. Fitzmaurice suggested that one of the representatives might withdraw his proposal. Personally, he preferred the Polish text.<sup>2</sup>

77. He was in essential accord with the Polish amendment, but he did not agree that the draft declaration on rights and duties of States could not be considered as a source of law. The difficulty there lay in the interpretation of the word "source", but since that term only appeared in the joint amendment of Chile and Colombia (A/C.6/L.56) he thought there was no need to discuss the matter further.

78. Mr. Fitzmaurice agreed with most of the statements by the USSR representative. He pointed out, however, that the General Assembly had no legislative functions and that the point was not raised in the joint draft resolution (A/

<sup>1</sup> See paragraphs 34 to 37 above.

<sup>2</sup> See paragraph 43 above.

C.6/L.50). Without assuming legal functions, however, the General Assembly was empowered to commend the document as a guide to international law. On the other hand, Mr. Fitzmaurice felt that the use of the term "guide" was unwise since it implied that the draft declaration covered the whole field of international law which was not the case.

79. Moreover, while the draft declaration with few exceptions confined itself to a statement of basic principles, much more definition would none the less be needed before the declaration could be said to lay down precise rules of international law. The draft declaration could be considered an excellent guide to the conduct of nations but not to the formulation of international law. If the Committee wished to retain the sixth paragraph of the joint draft resolution, it might be possible to amend the text to read "a guide to the progressive development of international law". Since it was not a guide to positive international law or any part of international law, however, it would be better to omit the phrase entirely. Moreover, in view of the fifth paragraph which the Committee had just adopted, the sixth paragraph seemed superfluous. In that connexion, he thought that the Polish suggestions could be followed.

80. The amendment<sup>1</sup> of Chile and Colombia to the sixth paragraph of the joint resolution was unacceptable for the same reasons for which Mr. Fitzmaurice had opposed the amendment which those delegations had proposed to the third paragraph.<sup>2</sup> While he appreciated the considerations which had inspired its authors, he felt that it would alter the balance of the compromise draft resolution and he therefore could not support it. He would support either the Israeli amendment or, preferably, the Polish amendment to the sixth paragraph of the joint draft resolution.

81. Mr. FERRER VIEYRA (Argentina) opposed the amendment proposed by Chile and Colombia to the sixth paragraph for the same reasons as had been put forward by the representative of Mexico, among others. He pointed out that article 13 of the draft declaration used the term "sources of international law" in a particular sense and did not call the draft declaration itself a source of international law.

82. The sixth paragraph of the joint Argentine-Netherlands-United States draft resolution (A/C.6/L.50) drew the attention of Member States to the need of continuing study of the question, and he would therefore not object to the Israeli amendment or to the Polish amendment. Moreover, as the United Kingdom representative and other members had stated, it might be advisable to combine the fifth and sixth paragraphs of the joint draft resolution and delete the last phrase of the sixth paragraph "as a guide to international law and to its progressive development".

83. Mr. BELAÚNDE (Peru) thought that the Sixth Committee was attempting to accomplish too much in too short a time. The rights and duties of States required long and careful consideration if they were to be properly formulated.

84. The draft prepared by the International Law Commission was commendable but could not be

called perfect. Since it did not include all the basic principles of international law, it could not be considered as a source of, or guide to, international law. Inasmuch as, under the provisions of the Statute of the International Court of Justice, the sources of international law were binding, it would be advisable for the Sixth Committee to weigh very carefully the phrase "source of law" in the joint amendment of Chile and Colombia.

85. The Sixth Committee had not studied the draft declaration exhaustively and therefore could not say that it was a definitive guide. In truth, the Committee appreciated the draft declaration as a noteworthy contribution to international law and should confine itself to words to that effect. Such juridical terms as "guide" and "source of law" should not be loosely used.

86. He supported the remarks of the representatives of the United Kingdom and of Argentina. He regretted that he could not support the Haitian proposal. He felt that the term "basic elements" was subject to the same objections as the words "guide" and "source of law".

87. Mr. ROBINSON (Israel) withdrew his amendment (A/C.6/L.53) to the sixth paragraph in favour of the Polish amendment (A/C.6/L.59).<sup>3</sup>

88. Mr. TATE (United States of America) said that he had already explained that his Government had wished to indicate in its text that the draft declaration was not to be considered binding, but should be considered as a notable and substantial contribution to international law. If the fifth paragraph of the joint resolution (A/C.6/L.50) and the Polish amendment (A/C.6/L.59) to the sixth paragraph were to be combined, the result would be a strong and correct statement as follows:

"Deems the draft declaration a notable and substantial contribution towards the progressive development of international law and its codification and as such commends it to the continuing attention of Member States and of jurists of all nations".

The United States delegation could support that statement.

89. Mr. URRUTIA (Colombia) would accept the text read by the United States representative if the representative of Chile agreed.

90. Mr. SOTO (Chile) was willing to withdraw the Chilean-Colombian amendment (A/C.6/L.56) in favour of that United States text.

91. Mr. GARCÍA AMADOR (Cuba) considered that the sixth paragraph was the crucial point of the draft resolution. In making its decision, the Sixth Committee should not be frightened by phantoms. So far only those opposing the recommendation of the draft declaration as a source of law had spoken, and other representatives had not had an opportunity to explain what they meant by the expression "source of law". He could not agree with the French representative's objections to that phrase.

92. The USSR representative had said that, if the draft declaration were called a source of, or guide to, international law, it would become binding upon the States. The USSR representative had also declared that the General Assembly had no legislative powers; but how then, if that were

<sup>1</sup> See paragraph 48 above.

<sup>2</sup> See the Summary Record of the 177th meeting, paragraph 42.

<sup>3</sup> See paragraphs 34 and 43 above.



the case, could the General Assembly in a mild recommendation make the draft declaration binding merely by terming it "a source of law"? Nor could Mr. García Amador understand the objections raised by the representative of Peru to the term.

93. The Cuban delegation had proposed amending the sixth paragraph of the joint draft resolution as follows (A/C.6/L.55):

*"Commends the principles formulated in the declaration to Member States and to international tribunals as a source of law".*

The use of that vague text with the term "source of law" could not make the draft declaration binding. Moreover if the Cuban amendment were adopted, the sixth paragraph would be the only paragraph in the proposed resolution containing a juridical term.

94. The representative of Argentina had cited article 13 of the draft declaration in objecting to the use of the term "source of law". He pointed out, however, that "other sources of international law" mentioned in that article referred to treaties, custom, general principles, that is, anything which created or codified law. In conclusion, Mr. García Amador thought there could be no objection to the use of a phrase which would give a legal stamp to the proposed resolution.

95. Mr. SPIROPOULOS (Greece) said that the original United States draft resolution (A/C.6/330) had been greatly simplified by the joint draft resolution contained in document A/C.6/L.50. The United States representative had suggested that the fifth and sixth paragraphs could be combined. Mr. Spiropoulos felt, however, that the sixth paragraph could be deleted because everything necessary was included in the fifth paragraph. If the General Assembly thought the draft declaration was a notable contribution, it would certainly be taken into consideration by States and, therefore, the sixth paragraph as amended would be superfluous.

96. The amended text of the fifth paragraph should be satisfactory to all. He therefore moved that the sixth paragraph should be deleted. For the rest, he supported the remarks of the United Kingdom representative.

97. The CHAIRMAN pointed out that the Committee had before it the joint proposal (A/C.6/L.50); the Cuban amendment (A/C.6/L.55); and the Polish amendment (A/C.6/L.59); the Haitian proposal; and the Greek proposal to delete the sixth paragraph.

98. Mr. TATE (United States of America) appreciated the spirit which had moved the representative of Greece to make his suggestion, but he preferred to maintain the sixth paragraph. He would accept the essence of the Polish amendment, as he had just stated.

99. Mr. LOUTFI (Egypt) admired the conciliatory spirit of the United States delegation. He wondered, however, whether the representatives of Argentina and the Netherlands had agreed to the proposed amendments to the joint text (A/C.6/L.50). If so, he would adopt the original text

of the draft resolution and submit it as his own. 100. The CHAIRMAN stated that the representatives of both Argentina and the Netherlands had agreed to the text as read by the United States representative.

101. Mr. ALEXIS (Haiti) said that his purpose in offering his text had been to find a compromise solution. He would therefore withdraw his amendment and support the Polish amendment as reworded by the representative of the United States.<sup>1</sup>

102. The CHAIRMAN put to the vote the Cuban amendment (A/C.6/L.55)<sup>2</sup> to the sixth paragraph of the joint draft resolution (A/C.6/L.50).

*That amendment was rejected by 24 votes to 12, with 14 abstentions.*

103. Mr. GARCÍA AMADOR (Cuba) had continued to support the Cuban amendment because he felt that it was the only formula whereby the text of the draft declaration could be given juridical meaning. Otherwise, it would have no legal significance, and such a text should not emanate from the Sixth Committee.

104. As the Cuban amendment had not been adopted, he felt that the draft resolution contained only empty phrases. He intended to raise the question again in a plenary session of the General Assembly, at which the Cuban delegation would maintain the same position.

105. Mr. LOUTFI (Egypt) considered that the third paragraph of the joint Argentina-Netherlands-United States draft resolution (A/C.6/L.50) should be adopted in its original form.

106. The CHAIRMAN pointed out that the Polish amendment in the United States reading aimed at combining the fifth and sixth paragraphs by adding to the fifth the phrase "and as such commends it to the continuing attention of Member States and of jurists of all nations".

107. Mr. GARCÍA AMADOR (Cuba) requested that a roll-call vote be taken on the paragraph.

*A vote was taken by roll-call as follows:*

*Venezuela, having been drawn by lot, voted first.*

*In favour:* Venezuela, Yugoslavia, Argentina, Australia, Belgium, Brazil, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, France, Greece, Haiti, Iceland, Israel, Liberia, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

*Against:* Cuba, Egypt, Guatemala, India, Iran, Iraq, Lebanon, Pakistan, Panama, Saudi Arabia, Syria.

*Abstaining:* Yemen, Afghanistan, Costa Rica, Uruguay.

*The amendment was adopted by 38 votes to 11, with 4 abstentions.*

The meeting rose at 6.5 p.m.

<sup>1</sup> See paragraphs 72 and 88 above.

<sup>2</sup> See paragraph 93 above.