

## HUNDRED AND SEVENTY-EIGHTH MEETING

*Held at Lake Success, New York, on Monday, 31 October 1949, at 11 a.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.61) (continued)*

1. The CHAIRMAN invited the Committee to continue the consideration of the third paragraph of the joint Argentine-Netherlands-United States draft resolution (A/C.6/L.50) and the amendments thereto.

2. Mr. GARCÍA AMADOR (Cuba) said that, in order to facilitate the Committee's work, the Cuban delegation and the Chilean and Colombian delegations, which had submitted amendments to that paragraph (A/C.6/L.55, A/C.6/L.56) had agreed upon a joint amendment (A/C.6/L.61) which had been accepted by the United States and which would be circulated to members of the Committee in the course of the meeting.

3. The CHAIRMAN thought that, in the circumstances, consideration of the third paragraph of the report should be deferred.

4. Mr. ROBINSON (Israel) announced that, at the suggestion of the representative of Ecuador and to simplify the Committee's task, he would withdraw his amendment to the third paragraph (A/C.6/L.53),<sup>1</sup> provided it was clearly understood that the word "basic" used in that paragraph would not be interpreted as meaning that the General Assembly had adopted a definite position on a question of doctrine.

5. The CHAIRMAN called on the members of the Committee to examine the fourth paragraph of the joint draft resolution (A/C.6/L.50).

6. Mr. KORETSKY (Union of Soviet Socialist Republics) said that he understood that the Committee would merely discuss the fourth and following paragraphs without taking any decision on them until it had agreed on the third paragraph.

7. The CHAIRMAN replied that that was correct.

8. Mr. GARCÍA AMADOR (Cuba) withdrew his

amendment to replace the fourth paragraph by the following text (A/C.6/L.55):

"Thanks the International Law Commission for its work on the preparation of the draft declaration".

He requested that the word *agradecimiento* be replaced by the word *reconocimiento* in the Spanish translation of the joint draft resolution.

9. In reply to the CHAIRMAN, Mr. FERRER VIEYRA (Argentina), Rapporteur, said that that was a mere drafting amendment.

10. The CHAIRMAN then called upon the members of the Committee to examine the fifth paragraph of the joint draft resolution (A/C.6/L.50). He pointed out that the Lebanese representative had submitted an amendment (A/C.6/L.54) suggesting the insertion of the words "the preamble and" after the word "deems".

11. Mr. MATTAR (Lebanon) pointed out that his amendment merely reiterated the idea contained in the original draft resolutions presented by the United States (A/C.6/330) and Argentina (A/C.6/332). The preamble laid down principles which stressed certain fundamental provisions of the Charter. Furthermore, it would be impossible to separate the preamble from the articles of the draft declaration (A/925, paragraph 46) for they formed an indivisible whole.

12. Mr. FERRER VIEYRA (Argentina) pointed out that the authors of the joint draft resolution had deliberately omitted any mention of the preamble since the general discussion had only been on the articles of the draft declaration, and since reference to the preamble would require long preliminary discussion.

13. Mr. KORETSKY (Union of Soviet Socialist Republics) thought that no reference should be made in the draft resolution to the articles of the draft declaration since they had not been discussed separately. Moreover, according to commentaries<sup>2</sup> on the draft code of international treaties prepared by the Harvard University Law School, the preamble to an international instrument had no legal force. The simplest solution, therefore, would be to omit any reference to the articles, and to merely mention the draft declaration. That solution would, moreover, allay the Lebanese representative's concern lest the preamble be separ-

<sup>1</sup> See *American Journal of International Law*, 1935, Supplement, page 725.

ated from the articles of the draft declaration. In any event, the Committee should first state its views on the Cuban amendment (A/C.6/L.55) which suggested simply deleting the fifth paragraph.

14. Mr. TATE (United States of America) explained that one of the reasons why the authors of the joint draft resolution had omitted any reference to the preamble was because it provided for the General Assembly to proclaim the declaration. Moreover, many delegations agreed that the preamble and articles of a text did not have equal legal force. In the circumstances, the USSR proposal to refer to the draft declaration, rather than to its articles, would be the best solution. He did not agree with the desire of the Cuban representative to delete that paragraph, since the statement that the draft declaration constituted a notable contribution to the progressive development of international law and its codification would endow the draft declaration with an authority which it would otherwise lack.

15. Mr. CHAUDHURI (India) thought that the preamble should not be dissociated from the other parts of the draft declaration since the preamble showed the importance which the General Assembly attached to certain fundamental principles. It would suffice, for that purpose, to alter the text as suggested by the representatives of the USSR and the United States. He emphasized that the word "deems", with which the fifth paragraph began, removed any ambiguity, since it would hardly mean that the General Assembly "approved" the draft declaration. That word was nevertheless stronger than the expression "takes note" because it stated a positive opinion.

16. Mr. MATTAR (Lebanon) was prepared to withdraw his amendment (A/C.6/L.54) provided that a reference to the draft declaration as a whole was included in the text of the joint draft resolution (A/C.6/L.50).

17. Mr. GARCÍA AMADOR (Cuba) said that his delegation had proposed (A/C.6/L.55) the deletion of that paragraph because the operative part of the joint draft resolution made it clear that the question was far from exhausted and the paragraph was therefore superfluous. The Cuban delegation was nevertheless prepared to withdraw its amendment, but it wished to emphasize that, in its opinion, the draft declaration was an important contribution, not to the progressive development of international law but to its codification.

18. Mr. STABELL (Norway) considered that the proposal to include a reference to the draft declaration in the fifth paragraph of the draft resolution was tantamount to a reintroduction of the Lebanese amendment (A/C.6/L.54), which proposed a reference to the preamble. Since, however, the preamble to the draft declaration had been drafted in the form of a resolution, it could not be regarded as a contribution to the progressive development and codification of international law. Furthermore, to include a reference to the preamble in the joint draft resolution would be to superimpose two mutually incompatible resolutions.

19. In reply to the Norwegian representative, Mr. KORETSKY (Union of Soviet Socialist Republics) pointed out that the last paragraph of

the preamble, drafted as an operative clause, plainly had no juridical significance. There would therefore be no question of one draft resolution being superimposed upon another. If the Committee wished to compliment the International Law Commission on its work, no distinction should be drawn between the preamble and the text of the draft declaration, which were both open to serious criticism.

20. Mr. Koretsky considered it premature to describe the draft declaration as a notable and substantial contribution towards the progressive development of international law and its codification. Since the question was to be the subject of further study, the Committee should at most describe the draft declaration as deserving of the General Assembly's attention. In his view, the most satisfactory course would be to amalgamate the fourth and fifth paragraphs, by adding the following words at the end of the fourth paragraph: "directed towards the progressive development of international law and its codification". The adoption of his proposal would meet the wishes of the Cuban representative. He shared that representative's view that the draft declaration did not contribute to the progressive development of international law. He considered, on the contrary, that it tended rather to retard the development of international law, since its article 14, *inter alia*, was a serious attack on the principle of the sovereignty of States.

21. Mr. TATE (United States of America) thanked the Cuban representative for withdrawing his amendment to the fifth paragraph but did not share his view that the value of the draft declaration was solely or largely in its contribution to the codification of international law. Moreover, he was not in favour of the amalgamation of the fourth and fifth paragraphs proposed by the representative of the USSR, since that would be tantamount to an admission that the draft declaration was and would remain a dead letter with no real value. On the contrary, the United States delegation considered that the draft declaration, although immature, was a good beginning and made an important contribution to future work.

22. Mr. ORIBE (Uruguay) said that his delegation was in favour of the deletion of the fifth paragraph, which did not confine itself to stating that the draft declaration was an important study of international law, but which went so far as to describe that draft as an important contribution to the codification and progressive development of international law. No such qualities could be ascribed to a proposal which had not been debated article by article. The general debate had moreover made it quite clear that delegations were divided in their views both on the value of the project and on its real character.

23. The existence of the fifth paragraph appeared to be partly due to a desire to compliment the International Law Commission. For his part, Mr. Oribe regarded sincerity as preferable to courtesy, and considered that work should not be appraised without the most detailed examination.

24. In conclusion, the Uruguyan representative expressed the view that the fifth paragraph of the draft resolution was incompatible with the third, which stressed the difficulty of determining

with accuracy and certainty what is international law and what is and what is not in the course of becoming international law.

25. Mr. FERRER VIEYRA (Argentina) pointed out that to recognize that a piece of work was a contribution to the study of a question did not necessarily imply approval of all the theories or principles it enunciated. It was quite possible to recognize the value of a piece of work without necessarily being in agreement with all the ideas it contained. It was in that spirit that the fifth paragraph had been drafted.

26. Mr. MAÚRTUA (Peru) considered that the point at issue was how the work of the International Law Commission should be described. The Commission had undoubtedly made a considerable effort to draw up a draft declaration, and the value of its effort should be recognized. It should, however, be borne in mind that, in the opinion of a number of delegations including that of Peru, the text submitted by the Commission was quite inadequate. That text contained no definition of the State, made no reference to the right of States to recognition, nor to the principle of the right of self-determination; the treatment of the principle of non-intervention was also inadequate. To serve as a guide to international law, a declaration must be complete, a condition which the draft declaration submitted by the International Law Commission did not fulfil. For that reason, the Peruvian delegation agreed with the representative of the USSR that it would be preferable to amalgamate the fourth and fifth paragraphs of the draft resolution and merely express thanks to the Commission for the work it had accomplished, both in the sphere of the progressive development of international law and of its codification.

27. Mr. GARCÍA AMADOR (Cuba) pointed out that, far from sharing the viewpoint of the USSR delegation, his delegation considered that the draft declaration constituted an important contribution, if not to the progressive development of international law, at least to its codification. His delegation considered, in fact, that the International Law Commission had codified principles that the USSR might not acknowledge perhaps but which constituted long established principles of positive law for some States. For that reason, his delegation had repeatedly stressed the necessity of extending the greatest possible support to the document prepared by that Commission.

28. His delegation had suggested deleting the fifth paragraph of the draft resolution because it considered that the paragraph was so worded that it might give the impression that the International Law Commission had gone beyond enunciating existing principles of law.

29. Mr. CHAUDHURI (India) pointed out that, since the Cuban amendment had been withdrawn, there was no reason to prolong the debate on the deletion of the fifth paragraph of the joint draft resolution.

30. In his opinion, that paragraph could not give rise to any objections since it merely stated that the work of the International Law Commission was a contribution to the codification and progressive development of international law, without specifying those parts of the draft declaration dealing with positive law and those dealing with its development.

31. Mr. ODIO (Costa Rica) agreed with the representative of the USSR that it would be preferable to amend the fifth paragraph to read: "Deems the draft declaration a . . ." The original text (A/C.6/L.50) might lead one to believe that the draft declaration embodied, besides its articles, some dispositions which did not contribute to the progressive development of international law and its codification.

32. Moreover, he did not see the need to use two adjectives; it would be sufficient to call the contribution a "notable" one.

33. Contrary to the views expressed by the Uruguayan delegation, he considered that it would be wise to delete the fifth paragraph of the draft resolution. The principles set forth in the draft declaration had been for a long time basic principles in common usage. If the Committee was not disposed to adopt that draft, the least it could do was to declare that it was an important contribution to the juridical regulation of international relations.

34. Mr. KORETSKY (Union of Soviet Socialist Republics) wished to make it clear that, when he had stated<sup>1</sup> that he shared the opinion of the Cuban delegation, he had had in mind the fact that the draft declaration, because of its numerous omissions, did not contribute to the progressive development of international law. While it was true that the draft declaration established, even if in an unsatisfactory manner, the principle of non-intervention and that embodied in the adage *Pacta sunt servanda*, it was equally true that it failed to proclaim, among others, the sovereignty of the State, the principle of the right of self-determination, and the right of the State to exist.

35. He likewise made it clear that he had not formally proposed the deletion of the fifth paragraph of the draft resolution. The Sixth Committee could adopt it if it so desired. His delegation desired, however, that the summary record of the meeting should note that the appreciation expressed in that paragraph did not imply approval of the substance of the draft declaration.

36. The CHAIRMAN, in answer to Mr. ORIBE (Uruguay), said that the Cuban amendment calling for the deletion of the fifth paragraph of the draft resolution had been withdrawn but that, under the terms of rule 111 of the rules of procedure, any delegation could reintroduce it as its own.

37. Mr. ORIBE (Uruguay) said that his delegation did not propose, at that stage, to move the deletion of that paragraph but that it reserved the right to do so in the General Assembly.

38. His delegation considered that, since the paragraph in question did not state specifically which parts of the draft declaration represented codification and which parts dealt with the progressive development of international law, the danger existed that some articles, notably that which dealt with the duty of every State to refrain from intervention in the internal or external affairs of any other State, might not be interpreted as a declaration of principles of positive law but as the formulation of a desirable ideal as yet unrealized.

39. Mr. FERRER VIEYRA (Argentina) repeated that neither the fourth nor the fifth paragraph of

<sup>1</sup> See paragraph 20 above.

the draft resolution implied approval of the draft declaration. Regardless of one's attitude towards that draft, whether one approved or disapproved of it, one could not deny that it constituted an important contribution to the question of rights and duties of States.

40. Mr. GLASHEEN (Australia) said that his delegation was not opposed to the fifth paragraph of the draft resolution, but would abstain in the vote on it.

41. Mr. AMADO (Brazil) pointed out that the discussion which had taken place demonstrated the difficulties of drawing up a declaration on rights and duties of States.

42. Some of the articles of the draft declaration were considered by certain States to deal with the progressive development of international law, in the sense that they set forth principles not universally recognized, while other States regarded those same articles as embodying positive law which had existed for a long time and thus provided material for codification. The delegation of Brazil considered that the draft declaration was a formulation of legal norms existing in the international community, but realized that other delegations were not of the same opinion. For that reason, the Brazilian delegation found that the fifth paragraph of the draft resolution expressed perfectly the feeling of the Committee, and that the discussion on it reflected the divergences of views which, unfortunately, had been noted during the general discussion. He agreed with the USSR representative that the words "Deems the articles of the draft declaration" should be replaced by "Deems the draft declaration".

43. Lastly, in reply to the observations of the representative of Uruguay, Mr. Amado said that there could be no possibility of misinterpretation. The International Law Commission had accomplished an important task; it had succeeded in embodying in a single text principles considered by some to form part of positive law and by others to be in the course of becoming part of it. The Sixth Committee recognized in all sincerity the value of the work done. The delegation of Brazil, with the same sincerity, would vote for the fifth paragraph of the draft resolution.

44. Mr. KORETSKY (Union of Soviet Socialist Republics) was anxious that the Committee as a whole should agree with the Argentine representative's interpretation of the fifth paragraph of the draft resolution; that interpretation was that the Sixth Committee, by adopting that paragraph, would not be signifying approval, either the whole or in part, of the draft declaration. The Russian translation of the word "contribution" might be taken as meaning that the Committee approved in some degree the draft declaration, and he wished to clear up any doubt on that point.

45. Mr. FERRER VIEYRA (Argentina) confirmed that that was how his delegation would understand the fifth paragraph when voting for it. Neither the use of the word "contribution" in that paragraph of the draft resolution, nor the wording of any other paragraph implied approval of the draft declaration, which was regarded only as a scientific contribution to the study of the rights and duties of States.

46. The CHAIRMAN, while not claiming to give an authoritative opinion, considered that the word

"contribution" did not in any way imply approval of the draft declaration.

47. Mr. TATE (United States of America) was convinced that the authors of the joint draft resolution had merely wished to indicate that the draft declaration constituted a step forward in the progressive development of international law and its codification, without any idea of approval being attached to the use of the word "contribution".

48. Mr. GARCÍA AMADOR (Cuba) declared that the opinions just expressed should not figure in the summary record of the meeting as the interpretation of the Committee itself. They were nothing more than the personal interpretations of the delegations making them.

49. Mr. FERRER VIEYRA (Argentina) said that, during the discussion, no delegation had maintained the view that the use of the word "contribution" implied any approval, however faint, of the draft declaration.

50. The CHAIRMAN said that the statements of the Argentine and United States representatives would appear in the summary record as their personal views.

51. Since the Lebanese delegation had withdrawn its draft amendment (A/C.6/L.54), the only text for the fifth paragraph before the Committee was that of the joint draft resolution (A/C.6/L.50). To that paragraph, an amendment should be made, however, in accordance with the USSR suggestion accepted by the United States representative as follows: the words "the articles of the draft declaration" should be replaced by "the draft declaration".

52. Mr. STABELL (Norway) requested that the words "the articles of" be retained in the text of that paragraph.

53. Mr. TATE (United States of America) pointed out that the text of the draft resolution would be simplified as a result of the deletion of those words; in its present form, that draft resolution sometimes mentioned the articles and sometimes the draft declaration as a whole. The document drawn up by the International Law Commission constituted an entity consisting of the preamble and articles. The attitude adopted by the Sixth Committee towards the declaration would thus apply to both.

54. Mr. STABELL (Norway) objected that such an alteration would necessitate a similar change in the ninth paragraph of the draft resolution, under which the text of the articles of the draft declaration would be annexed to the resolution. The preamble drawn up by the International Law Commission was really only a draft resolution for the General Assembly; or, it might equally well be said that the joint draft resolution was really a new preamble to the draft declaration. The preamble of the International Law Commission expressed the views of that Commission on its own draft.<sup>1</sup> Those views in no way corresponded to those of the Sixth Committee, since the discussion showed that, although the Committee realized that the draft declaration would make a notable and substantial contribution to the progressive development of international law and its codification, it had no intention of approving the

<sup>1</sup> See document A/925, paragraph 46.

draft declaration as a whole. Thus, the two preambles could not be reconciled and neither could appear at the beginning of the draft declaration.

55. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) recalled, in connexion with the references made to the respective scope of the preamble and the articles in international instruments, that that problem had been settled, in so far as the United Nations Charter was concerned, by the authors of that instrument, whose views were recorded in the documents of the San Francisco Conference.

56. The CHAIRMAN called upon the Committee to resume the discussion of the third paragraph of the joint draft resolution (A/C.6/L.50), for which the delegations of Chile, Colombia and Cuba were proposing to substitute the following text (A/C.6/L.61):

*"Considering that the General Assembly at this time has encountered some difficulties in formulating basic rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations and the need of continuing study with regard to this subject"*.

57. He pointed out that the last part of the English text of that draft would be clearer if the word "recognizing" were inserted before the words "the need".

58. Mr. CHAUMONT (France) thought at first glance that that text would hardly be preferable to that of the original third paragraph. Certain objections, especially those raised by the delegations of Brazil, Cuba, Iran and France, had been met; but it looked as if the amendment, especially the first part of it, might raise others of considerable importance. Indeed, whereas the original text merely stated, in an objective manner, that it was difficult at the present time to formulate rights and duties of States and to determine what was now international law and what was in the course of becoming international law, the new text specified that the General Assembly itself was now confronted with difficulties of that kind, although actually the Assembly had not studied the substance either of the International Law Commission's draft or of the amendments proposed to that draft. It was possible that the Assembly would subsequently meet with such difficulties, but it would be premature to attribute such hesitation to the Assembly at a time when it had not yet begun to study the draft in detail.

59. Mr. CHAUDHURI (India) proposed a drafting amendment, to the effect that the phrase "at the present time" be substituted for the words "at this time" in the first part of the English text of the amendment submitted by Chile, Colombia and Cuba (A/C.6/L.61).

60. Mr. HARMEL (Belgium) drew attention to the fact that the difficulties that had arisen during

the discussion were concerned with two fundamental questions with respect to the declaration on rights and duties of States.

61. In the first place, many delegates had wondered whether it would be advisable at the present time to formulate, in terms of written law, rules based on customary law. The Belgian delegation was among those which considered that the problem raised undeniable difficulties.

62. In the second place, certain delegations considered that the draft declaration included, not only existing rules of positive law recognized by all States, but also principles which were already part of the positive law of some States but which could only become positive law in other States at some time in the future.

63. Those doubts and hesitations would no doubt be reflected in the draft resolution that was to be communicated to Governments, in order that they might give their views as to whether, on the one hand, it was possible now definitely to codify the rules of existing customary law and, on the other hand, it was desirable to combine in the same declaration rules of positive law and principles that were as yet merely ideological.

64. The Belgian representative would therefore prefer that the two ideas expressed in the third paragraph of the joint draft resolution submitted by Argentina, the Netherlands and the United States be retained in the final text, so that Governments might know on what points they were to give their views. He therefore suggested that the Committee should vote on both of those ideas, of which only the first was expressed in the joint draft resolution submitted by Chile, Colombia and Cuba (A/C.6/L.61).

65. The Belgian delegation would vote for the Australian amendment (A/C.6/L.58)<sup>1</sup> to the seventh paragraph of the joint draft resolution (A/C.6/L.50). That amendment had the merit of stating clearly, in a different form, the same questions concerning the nature of the instrument to be drawn up. Those questions had not been elucidated, and it was important to solve them in the light of the comments of the various Governments.

66. Mr. DUYNSTEE (Netherlands) asked the Belgian representative whether he would not agree that the fifth paragraph of the joint draft resolution laid sufficient stress on the difficulties that he wished to be mentioned in the third paragraph.

67. Mr. HARMEL (Belgium) stressed the importance of stating clearly the fundamental questions that had emerged from the discussion. He was therefore unable to accept the suggestion of the representative of the Netherlands.

The meeting rose at 1 p.m.

<sup>1</sup> See the Summary Record of the 180th meeting, paragraph 1.