

HUNDRED AND SEVENTY-FIFTH MEETING

Held at Lake Success, New York, on Thursday, 27 October 1949, at 10.45 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)

1. The CHAIRMAN, appealing to members of the Committee to arrive punctually at meetings, stated that he would commence the meeting of the following Monday, 31 October, with item 5 of the Committee's agenda, which was item 51 of the agenda of the General Assembly (Reparation for injuries incurred in the service of the United Nations: advisory opinion of the International Court of Justice and report of the Secretary-General).

2. He invited the Committee to continue the general debate on the draft declaration on rights and duties of States (A/925, paragraph 46).

3. Mr. Soto (Chile) expressed his delegation's appreciation of the work done by the International Law Commission which constituted the first attempt to determine the fundamental principles governing the relations among States on a universal scale. A similar declaration of principles, but one with only regional application, was already contained in the Bogotá Charter.

4. While the Commission's draft (A/925, paragraph 46) might be considered not as far-reaching as the text formulated by the Organization of American States, it should be borne in mind that historically and legally, there had been much more common ground for the jurists of the American countries than for those of the International Law Commission, who had been obliged to limit and simplify many concepts in the light of the different stages of development of the diverse legal systems of the world which they represented.

5. In drafting the declaration, the International Law Commission had given proof of the necessary moderation and had taken care not to go beyond the existing reality. In fourteen articles, it had synthesized the fundamental and generally recognized concepts governing relations among States. The draft declaration represented the least that could be demanded in the matter of rights and duties of States; his delegation wished that other principles might have been included and that some of those enunciated therein might have been of wider scope. Thus, certain principles of the Charter which were treated in the draft declaration in only some of their aspects might have been strengthened.

6. The Chilean delegation considered with sympathy, in that connexion, some of the concepts of

the Yugoslav proposal (A/C.6/326). Indeed, a declaration on rights and duties of States sponsored by the United Nations, whose purpose it was to maintain peace and security, should give particular weight to principles proscribing intervention and aggression which were intimately linked with the maintenance of peace and security. The Charter and the draft declaration spoke only of armed aggression, but not of political and economic aggression, both of which were particularly dangerous at the time. He looked with sympathy upon the amendments of Argentina (A/C.6/L.9)¹ and Cuba (A/C.6/L.25)² dealing with economic aggression.

7. With regard to the objection raised in the Committee that the draft declaration went beyond the provisions of the Charter, he pointed out that the draft declaration, which was not legally binding like the Charter, would have no usefulness whatsoever if it were limited to a restatement of the principles of the Charter and did not include other more or less universally recognized principles of international law to which the Charter did not refer.

8. The view had also been expressed that it was impossible at the time to give legal form to the principles contained in the draft declaration because, on the one hand, some of them were not yet universally recognized and, on the other, because international law was progressing at such a rate that other principles contained in the draft might become out of date within a few years. It had also been pointed out that, since the adoption of the Charter, it had been very difficult to determine what already was, and what was in the course of becoming, international law. Those arguments were not new; they had always been raised against any codification, be it of national or of international law, and they had led to the avoidance of codification in Anglo-Saxon legal systems. International law was a living entity which developed and progressed, and codification was as useful to that living international law as a dictionary or grammar to a living language. Codification represented a registration of the law at a certain time, subject to subsequent revision when that was considered necessary. Furthermore, codification promoted the evolution of law by defining diffuse and vague concepts. Consequently, to condemn the draft declaration to serve merely as a guide to the progressive development of international law, as suggested in the United States proposal (A/C.6/330), would be to deny recognition to the rights and duties of States which enabled them to act and develop freely in international life.

¹ See the Summary Record of the 172nd meeting, paragraphs 31 and 32.

² See the Summary Record of the 173rd meeting, paragraphs 6 to 10 and 16.

9. The view had been expressed by some members of the Committee that the draft declaration should be sent to Governments for their comments before further action was taken on it. The delegation of Chile would support such procedure provided, however, that the General Assembly (1) commended the principles of the draft declaration to Governments and international tribunals as a source of law, and (2) decided that the observations submitted by Governments should be referred to the International Law Commission together with the draft declaration for the preparation of a new draft to be submitted to one of the future sessions of the General Assembly for adoption. His delegation supported the views of the Colombian delegation on that point, that is, that the two steps outlined above were not mutually opposed and could be taken at the same time. While suggesting those steps in a spirit of conciliation, to meet the views of other members of the Committee, his delegation was prepared to agree to a decision being taken at the current session and generally accepted the text of the draft declaration, with the exception of articles 13 and 14 to which it had proposed an amendment (A/C.6/L.19). It reserved the right to explain that amendment at the appropriate time.

10. In conclusion, he felt that the objection that formulation of a declaration of that nature was premature was not entirely justified. What would be premature would be to treat the draft as an academic text on the way to oblivion while the peoples of the world looked to the United Nations for the implementation of the Charter.

11. Mr. RIVERA HERNÁNDEZ (Honduras) recalled that the present draft declaration had been elaborated by the International Law Commission after careful study, in pursuance of General Assembly resolution 178 (II), which specifically instructed the Commission to prepare a draft declaration on rights and duties of States. The General Assembly had wished that a draft declaration should be prepared by the foremost jurists of the time representing the different legal systems of the world; that had been done. The question now arose what procedure should be followed with respect to the draft declaration.

12. To ignore, shelve, or merely take note of the draft would be impossible, for that would amount to a denial of what the General Assembly itself had requested in resolution 178 (III). It would require the adoption of a new resolution revoking that decision of 21 November 1947. Such action would be impossible for it would be inconsistent with the purposes and very nature of the United Nations.

13. Consequently, the United States draft resolution, which denied the essential character of the draft, considered it merely as a contribution and guide to the further development and codification of international law, and recommended it as a source of law in the sense of Article 38, paragraph 1, d, of the Statute of the International Court of Justice, was unacceptable. That proposal was incompatible with the above-mentioned resolution which called for the preparation of a declaration and not merely for a scientific compilation of principles.

14. What other courses of action were possible? The General Assembly could adopt the draft declaration as such, either with or without modification; the Assembly could adopt that draft after

having transmitted it to the International Law Commission for further consideration, in the light of amendments suggested in the course of the current debate or of comments presented by Governments at the Assembly's request; or the Assembly could adopt the draft with or without amendment, with a view to subsequently incorporating it in an international convention which would be binding upon the fifty-nine Member States and any other State which might subsequently adhere to it.

15. Any one of those possibilities would be acceptable to his delegation, provided that the General Assembly actually adopted and proclaimed, in conformity with its resolution 178 (II), a declaration on rights and duties of States which would be as important and as necessary for the United Nations as the Universal Declaration of Human Rights.

16. With regard to the substance of the draft, Mr. Rivera Hernández wished to raise a few points while reserving, however, his Government's views on the subject.

17. The most revolutionary concept of the draft was that of article 14, which stated that relations between States should be conducted in accordance with the principle that the sovereignty of each State was subject to the supremacy of international law. That article was a positive expression of the old and cherished aspiration to place law above all nations as the only means of achieving peace and security. That principle, set forth as a duty incumbent upon States, required immediate revision of the internal structure of States and a reformulation of the underlying German concept of absolute national sovereignty which denied individual freedom as well as international law and thus generated wars. It might be the time to shed the old notion, born of the French Revolution and inspired by Rousseau, of the inalienable and indivisible absolute sovereignty of the State and its three classic powers, and to recognize that there were two kinds of sovereignty: the national sovereignty in the domestic affairs of States and the international sovereignty of the world community in matters of international concern. In that case, a fourth power might be set up in each State which would not interfere with the three classic powers of the national State, and would be concerned exclusively with matters of international import. He suggested that the General Assembly should instruct the International Law Commission or some other competent organ to study a revision of the structure of the State on the principle of the supremacy of law over force.

18. Mr. ZIAUDDIN (Pakistan), paying tribute to the International Law Commission for its work, felt that there was little that could be added to what had already been said on the matter. He had heard the views of the members of the Commission who were also members of the Sixth Committee, and had been deeply impressed with their knowledge of the subject; there could be no question of criticizing their work. The draft declaration, as had been pointed out in the report of the Commission (A/925) and the records of its meetings, had constituted the highest common denominator of the principles on which members of the Commission representing the world's various legal systems had been able to agree. Consequently, to refer the draft declaration back to the Commission would lead to little change;

nothing could be gained from such a procedure. He would therefore vote against any proposal which would merely serve to put the draft declaration in cold storage.

19. With regard to the draft declaration itself, his delegation supported it in its entirety and, prepared to go even further than the joint Argentine, Netherlands and United States proposal (A/C.6/L.50), would approve of the draft being given the status of a convention under the Charter. Both the Charter and the draft declaration constituted a landmark in the history of the relations among nations. The Charter did not, however, exhaust the subject of the rights and duties of States. Peace, which all nations desired, could not be secured through force, but only through justice. To that end, it was necessary to adopt a declaration proclaiming and defining the rights and duties of States.

20. The present draft declaration represented the first attempt by the nations of the world to codify and agree on certain principles in that direction. International law must be codified and clarified if men were to live together in peace. While great Powers were themselves able to defend their rights, the declaration would constitute a *Magna Carta* for the smaller States. True, it would not prevent aggression against the latter, but it would enable the victims to appeal to public opinion and to the good will of all nations, and would clearly determine the guilt of the violators under international law, the aggressors under international law. The draft might also serve as a code of law for the Security Council in the determination and settlement of disputes, and in the enforcement of law.

21. While exception could be taken to many provisions in the articles of the draft declaration, it should be borne in mind that the Commission's work had been difficult and could hardly be improved by detailed discussion in the Sixth Committee. Mr. Ziauddin recalled, in that connexion, the lengthy debates on the question of methods and procedures of the General Assembly. Nevertheless, he regretted certain shortcomings of the draft such as the absence of a definition of the State. That omission could create serious difficulty when a question relating to the very existence of a State was at issue, as had been shown when the Committee discussed¹ the application of Liechtenstein to become a party to the Statute of the International Court of Justice. In view of those circumstances, he supported, as the utmost which could be obtained in the circumstances, the joint proposal of Argentina, the Netherlands and the United States (A/C.6/L.50), and reserved his opinion on any other proposal which had been or would be presented on the matter.

22. Mr. DOMÍNGUEZ CÁMPORA (Uruguay) said that his delegation had carefully considered the matter of the formulation of rights and duties of States from an over-all point of view and wished to explain its general attitude on the subject, while reserving its right to comment on each article separately and on the various amendments submitted as they came up for discussion.

23. Whatever position was taken, no one could fail to realize the importance of such a formulation by an international organization like the

United Nations, an institution which was not the capricious work of men inspired by Utopian idealism but the legal expression of the co-operation which actually existed among nations by virtue of their interdependence and which affected all phases of human activities. To quote a famous jurist, it was the old family of nations invested with new legal forms. Those legal forms, which constituted precisely the legal expression of international co-operation, were the very essence of a juridical system. They were the basis of the development of law, and in them the aspirations and will of the peoples who made up international society found exact definition. The State was the very foundation of that society. The definition of its rights and duties was therefore of fundamental importance. To speak of rights and duties of States was to speak of a juridical system, because only from a juridical system did those rights and duties derive their origin, validity and authority.

24. The rights and duties which the Committee wished to formulate in the declaration must be considered as the foundation for the construction of an international legal system, and it was logical that its contents, expression, purposes and underlying thought should reflect a clear and precise concept of international law, or in other words, a clear and precise concept of international society and international life. Those rights and duties should also have other qualities, qualities of a formal nature. It had been said that they would have to be incorporated into a legal system. They must therefore have all the formal attributes of rules of law. If they were to fulfil their social function, they must be clear and precise and must have legal force.

25. Many examples of the importance of such formal attributes could be found in the history of the United Nations itself. When at San Francisco the problem of domestic jurisdiction mentioned in Article 2, paragraph 7, of the Charter had been considered in an effort to determine what matters international law should leave to the exclusive competence of the States, Mr. Dulles,² in formulating the opinion of the sponsoring Governments, had said that law was constantly evolving and escaped definition and that it would be difficult to know which matters came under the domestic jurisdiction of a State. Mr. Domínguez Cámpora did not agree with that view. If international law could not define the domestic functions of the State, where could such a definition be found? It could certainly not be based on political concepts, because they were evolving more rapidly than legal concepts.

26. Another example which could be cited from the history of the United Nations concerned the resistance to recognition of the compulsory jurisdiction of the International Court of Justice. The objection to compulsory jurisdiction had been based on the lack of preciseness in the rules of international law. Clarity and preciseness were imperative in the definition of principles concerning the rights and duties of States. As paragraph 52 of the report (A/925) of the International Law Commission explained, the articles of the draft declaration were formulated in general terms, without restriction or exception, as befitted a declaration of basic rights and duties. They enunciated

¹ See the Summary Record of the 174th meeting, paragraphs 61 to 70.

² See documents of United Nations Conference on International Organization, San Francisco, 1945. Volume VI, page 508.

general principles of international law; the extent and modalities of application of those principles were to be determined by more precise rules. Article 14 of the declaration recognized that fact and served as a key to other provisions of the declaration in proclaiming "the supremacy of international law". That paragraph showed that the rights and duties set forth in the draft declaration were not of an absolute nature; they would be more specifically defined later. The draft declaration was therefore a series of rights and duties laid down with reservations. Such a lack of precision raised doubts as to the absolute nature of the declaration.

27. The wording of article 6 was also ambiguous. It stipulated that the State had the duty to respect the human rights and fundamental freedoms of its subjects. Not everyone agreed that human rights included political rights. They had been included among human rights in the Universal Declaration of Human Rights, however, and in the constitutions or charters of regional organizations. Such ambiguities as that in article 6 should be avoided in formulating rights and duties of States.

28. It was imperative to settle clearly and precisely the problem of the legal nature of the declaration. Were the articles to be considered as rules, laws, abstract principles or merely aspirations? Some confusion on the subject had been apparent in the debates in the International Law Commission. At its 8th meeting, the Commission had questioned whether the declaration would become law or remain abstract principles, which would serve as a guide for the progressive development and codification of international law. After some discussion, the Chairman had said that the Commission might consider the possibility of drawing up a declaration which could be signed and ratified, and that it had before it a proposal that the Commission should state that it had in view a draft declaration on rights and duties of States to be adopted by the General Assembly as a "common standard of conduct" for the States. The Commission had agreed that it wished to prepare a draft declaration to be adopted by the General Assembly on the same conditions as the Universal Declaration of Human Rights.¹

29. At the 15th meeting, the Chairman had recalled that the Commission had decided that the declaration would be, like the Declaration of Human Rights, the expression of a common standard to be attained in the future.²

30. At the 24th meeting, during the discussion of the term "standard of conduct", the Chairman had considered that if the words were inserted in the text, they would weaken the preamble, the other paragraphs of which set forth positive rules, as did the body of the draft declaration. He thought that the declaration should establish rules of conduct, and not a standard of conduct. The latter term would deprive the instrument of its obligatory character and tended to narrow its scope. It had been decided to omit the words.³ But the decisions of the 8th and 15th meetings still stood.

31. In formulating the principles expressed in the draft declaration, the Commission was, in the opinion of the Uruguayan delegation, formulating law. Would those principles be the general

principles of law referred to in Article 38, paragraph 1, c, of the Statute of the International Court of Justice? It must be remembered that only the International Court applied, in its judgments, those general principles. However, the positivists denied the validity of those principles. Even the neonaturalists considered that such general principles of law were subsidiary in character, subsidiary to treaties and customary law, for example. They were a basis of international law, but they were subsidiary. For instance, the principle of legal equality, the obligation to settle disputes by peaceful means, and the principle of non-intervention were rules which gave concrete form to legal ideals. If they were considered to be principles of law, their application would be subsidiary to the application of customary law. Following that line of thought, the declaration of rights and duties of States could also receive only subsidiary application, subsidiary to the application of treaties or of customary law.

32. The peoples of the world were expecting much of the United Nations. They expected it to fill in the gaps in the Charter. For instance, they expected the Organization to maintain peace and security. In the settlement of disputes between its Members, what could the United Nations do? It could refer the matter to the Security Council, which in turn could make recommendations. But what legal force did those recommendations have? Were they binding?

33. The technique for referring such cases to the International Court of Justice was also defective. Under Article 94, paragraph 2, of the Charter, the Council could decide upon measures to be taken to give effect to the judgment of the Court if a party failed to perform its obligations under that judgment. But the difference between material security and legal security must be considered in evaluating the competence of the organs of the United Nations. When the Charter dealt with material security, it provided for compulsory measures. In the case of legal security, however, the provisions of the Charter were only discretionary. That could be corrected by the progressive development and codification of international law. In formulating the rights and duties of States, consideration must be given to the legal validity of that formulation.

34. The delegation of Uruguay considered that it was important to explain its concepts of peace, international law and security.

35. Peace was not an end in itself but a necessary and indispensable element of international co-operation to achieve the highest aims of mankind. Security, one of the fundamental elements of peace, was also essential to ensure co-operation among men belonging to different political units.

36. A restrictive interpretation of material security which protected nations solely against the undue use of armed force was too narrow, because there were other means of endangering the existence of States and their peoples. Failure to protect a State from unjust acts did not create a propitious atmosphere for co-operation.

37. The prohibition of the use of armed force in the settlement of disputes implied the necessity of resolving differences by peaceful means. In order to do that, however, the States comprising the international community should have at

¹ See document A/CN.4/SR.8, page 10.

² See document A/CN.4/SR.15, page 7.

³ See document A/CN.4/SR.24, page 10.

their disposal the necessary institutions or instruments to deal with illegal situations and re-establish peace and justice.

38. Any concept of material security under which the right to use force was reserved exclusively for the international community implied that the private exercise of force was illegitimate. The development and maintenance of community life, however, required the establishment of an organized and public judicial system. Moreover, material security was based on a system of collective security, that is to say, the organization of a supposedly irresistible social force. That was not the essential element of the problem, however; force only became a factor in the human solidarity indispensable to society when it was an instrument of the law. Only then did it assume its rightful importance in the international domain. The observance of the law was enforced through a process by which social force was far in the background and those commanding that force were competent solely to forestall, to remedy or to repress any violation of international order. That process would obviously require the existence of jurisdictional powers and norms.

39. Laws had always existed in one form or another, but an organ to centralize the legislative function had been lacking. The realities of the international situation made it clear that, if the United Nations hoped to broaden the competence of international jurisdiction, the norms and principles of the international juridical system should be clarified and made so specific that States would know the criteria to be applied in solving disputes submitted to international jurisdiction.

40. That alone was not enough, however, because the elements to which Mr. Domínguez Cápura referred concerned only the formal aspects of the law. To complete the system of juridical security, the very essence of the law should be profoundly human. That was indispensable to ensure the effectiveness of the law. For respect for the law to be socially useful, it would not suffice to impose those norms by force. Law should be looked up to as the expression of justice, and justice concerned man and his role in the international society as well as in national life. Day by day, men and nations were becoming more and more interdependent in the economic, social and cultural fields. The international community was the concrete manifestation of that interdependence.

41. National units and the international community became one in the person of man as he realized his highest cultural aspirations; the truly unified world culture was the synthesis of all national cultural traditions. The finest type of nationalism should integrate the contribution of the best elements of national life with the common culture. Nor should States forget the debt each national culture owed to the civilization and cultural influences of other nations of the world.

42. To ensure the fullest development of human potentialities, however, it was indispensable for man to live in an atmosphere of freedom. That led the Committee to the question of the guarantee of the fundamental human freedoms, a question which was an important element in the solution of various problems connected with the draft declaration on rights and duties of States. The representative of Uruguay cited article 1 concerning the right of the State to independence and article 6 on the duty of every State to treat its people

as human beings. Article 1 seemed to express an absolute right of the State. The Uruguayan delegation felt it would be useful to hear the opinions of the Sixth Committee on that question. In its view, that right was not absolute but was subject to the guiding principles of the United Nations.

43. There were certain limits to the right of a State to choose its own form of government. The Second World War had been fought to defeat an ideology incompatible with the political and social philosophies which were the foundation of the United Nations. The United Nations had fought to exterminate the nazi and fascist doctrines because they endangered the ideals and the peace it was struggling to maintain. Moreover, as President Roosevelt had said in his message of 6 January 1945 to the United States Congress, the United Nations was to crystallize the promise for which men had fought and died; it was to be the justification of all the sacrifices which the world had made. For those reasons, a declaration of war on nazi Germany and its satellites, and the signing of the United Nations Declaration of 1 January 1942, had been required before a nation had been allowed to participate in the San Francisco Conference.

44. Those acts implied agreement with the aims and purposes of the United Nations. Those purposes, as laid down in universally recognized declarations, had been proclaimed in the legal instruments upon which the peace treaties and the armistices concluded "in the interest of the United Nations" had been based.

45. The stamping out of nazism or fascism, a principle or condition essential to the international public order, was provided for in the Potsdam Agreement, in the Yalta Agreements and in the peace treaties with Italy, Bulgaria, Romania and Hungary.

46. According to the records of the San Francisco debates, the Organization was to continue in peacetime the efforts which the United Nations had made during the war to achieve its ideals.

47. Human rights were a vital concern of the Organization and crystallized in the United Nations a concept irreconcilable with the political philosophies of nazism or fascism. The Charter in Article 1, paragraph 2, stated that one purpose of the United Nations was to "develop . . . respect for the principle of equal rights and self-determination of peoples"; and the debates at San Francisco had shown clearly that an essential element of the principle of self-determination was a free and sincere expression of the will of the people. That was the sense in which that part of Article 1, paragraph 2, had been interpreted by other organs of the United Nations. The United Nations placed its hopes for the achievement of self-determination of peoples in those systems of government which respected fundamental human rights, including the right of a people to choose its own form of government.

48. In conclusion, the Uruguayan delegation suggested that ambiguity and lack of clarity which might give rise to misunderstandings on fundamental concepts or their interpretation should be eliminated from the draft declaration and that the text should be given full juridical authority.

49. With respect to the substance of the draft declaration, the Uruguayan delegation considered that international law should take basic human

needs into account. Those members of the international community which had duties to carry out in the achievement of that essential aim also had the right to expect the international community to ensure that the conditions necessary for the fulfilment of those duties would prevail. The international community was compelled not only to take collective action against aggression or the illegal use of force, but also to draft laws so that any State which was the victim of an injustice should have available the means necessary to ensure that justice would be done. Moreover, the problem of juridical security should be given the necessary importance, so that the law would be enabled efficiently to fulfil its social and human functions on an international plane.

50. With regard to the right of self-determination, the Uruguayan delegation stressed that any nazi, fascist or totalitarian régime was fundamentally incompatible with the basic principles and purposes of the United Nations. Furthermore, peace, security, international co-operation and respect for the legal system which guaranteed those conditions, necessitated that the political organization of the States of the world be based upon the democratic concept of representative government and on its effective functioning.

51. Mr. OUTRATA (Czechoslovakia) supported the Argentine proposal (A/C.6/332) to submit the draft declaration on rights and duties of States to Member Governments for comments and suggestions. That procedure would comply with the Statute of the International Law Commission and was the most advisable way to proceed if the declaration was some day to become more than a mere statement by a group of experts.

52. It had been said that Member Governments had already expressed their general views on the Panamanian draft declaration, which was the basis of the document before the Committee. The Czechoslovak delegation could not accept that argument because it did not evince the necessary respect for the Statute of the International Law Commission or for the work which that body had accomplished.

53. The draft before the Committee was not an exact reproduction of the Panamanian text; some articles of the latter document had been deleted and others combined and reworded. In substance and in form, the draft declaration prepared by the Commission represented a complete redrafting of the Panamanian text and other documents.

54. Mr. Outrata pointed out the importance, to a legal text, of the alteration of a single word or sentence; such modifications could radically change the meaning of a text. For that reason if for no other, the revised draft should be considered by Governments. That legal text of a dozen or more articles was a complete ensemble, and therefore had special significance not only in its parts but as a whole as well. The Sixth Committee implicitly recognized that principle whenever it took a vote on a proposal as a whole after having voted upon it by parts. Often approval of the parts of a proposal did not mean that the Committee approved the proposal as a whole.

55. The draft declaration was in reality a new text and should be submitted to Governments for expert legal consideration, which the Sixth Committee was not itself in a position to give.

56. In reality, there were several drafts before the Sixth Committee, and further proposals and

amendments to the draft declaration would undoubtedly be submitted, if it was decided to discuss the draft article by article. Mr. Outrata doubted whether the Sixth Committee was able to deal with every one of the proposals and amendments, and whether it could finally achieve a text which would be acceptable to the majority and at the same time be a valuable legal document. Personally, he was not an expert in international law and would not dare to undertake that task on behalf of his Government. He was sure that several other representatives found themselves in the same position.

57. One member of the Committee, in expressing appreciation of the International Law Commission's work, had doubted that those eminent jurists could produce an improved draft even if the declaration were returned to it accompanied by the comments and suggestions of Governments. That representative had urged that the draft declaration should be approved as a whole without amendment, even though it was only with much difficulty and after prolonged voting that the International Law Commission itself had been able to take a decision. While Mr. Outrata had the highest esteem for the International Law Commission, he hesitated to accept that suggestion.

58. From his own experience, he knew that it was usually possible for a person with a fresh point of view to improve any text. He felt that the debate in the Sixth Committee supported that view.

59. He had not been able to study the draft thoroughly enough, but to illustrate his contention he wished to explain the doubts he entertained concerning article 1. The text (A/925, paragraph 46) read that every State had the right "to exercise freely, without dictation by any other State, all its legal powers". It might be asked what were the "legal powers" of a State. A good working definition might be that they were a kind of freedom of action guaranteed by the law. A simple synonym for "its legal powers" would therefore be "its rights". That substitution showed that article 1 was an essentially correct, but not a particularly valuable, statement; as a matter of fact, it seemed pure tautology. In reply to that argument, some members might say that the true significance of article 1 lay in the words "to exercise freely, without dictation by any other State". Actually the word "freely" had no legal meaning. The phrase "without dictation by any other State" was also superfluous in view of the provisions of article 3, which stated that "every State has the duty to refrain from intervention in the internal or external affairs of any other State".

60. Moreover, a definition of the term "State" had been omitted from the draft declaration. The Czechoslovak delegation would not necessarily object to that, since it knew the difficulties which such a definition entailed. It would have been unnecessary to define the term "State" providing the articles of the draft declaration had been based on an accepted practical definition of the concept. He felt, however, that a certain degree of confusion in that respect prevailed even in article 1, which contained different concepts of the word. In the phrase "Every State has the right to independence", the word referred to the State as such; in the phrase "to exercise freely all its legal powers" "it" meant government, and in the phrase

"including the choice of its own form of government", the people or nation was meant.

61. Mr. Outrata made those points to indicate the type of doubts which might be raised. For those reasons, he felt that a more thorough study of the draft by an international law expert was not only necessary but indispensable.

62. With regard to the United States draft resolution (A/C.6/330) he wondered what would be the legal significance of the declaration if that proposal were approved. Some articles of the draft would be law merely because they already had been law for some time. What, however, would be the legal significance of the other articles, and what would be the effect of those rights and duties of States which had not been included in the draft? The United States proposal would tend to make the declaration merely a statement of principles and not of law. Therefore, it did not seem logical to call it a source of law. In some cases, a State would be able to cite the declaration as a source of law in support of its actions, and in other cases it could reverse its position and say that the document had no force of law.

63. Some members claimed that to refer the draft declaration to Governments would be to bury it, but the Czechoslovak delegation was of the opinion that the result of the United States proposal would be even more drastic because it would bury the draft alive.

64. If, however, the majority of the Committee felt that the time was not yet ripe for the drafting of a declaration on rights and duties of States as a legal instrument, the Czechoslovak delegation would prefer the French amendment (A/C.6/L.48),¹ which would delete the sixth and seventh paragraphs of the United States proposal (A/C.6/330). In the opinion of his delegation, the ambiguity of the United States proposal would thereby be eliminated, and it would become clearer and more logical. Moreover, that amendment would enable the United Nations to recommence work on the codification of rights and duties of States at a more opportune time in the near future.

65. The CHAIRMAN read the list of speakers still to be heard in the general debate and suggested that, if no one else wished to speak, the list might be closed.

66. Mr. FITZMAURICE (United Kingdom) stressed that, if the list of speakers were closed, that would not affect the right of members to speak on amendments and proposals concerning the draft declaration.

67. The CHAIRMAN stated that the United Kingdom representative's interpretation was correct. As there were no objections, he declared the list of speakers in the general debate closed.

The meeting rose at 1 p.m.

¹ See the Summary Records of the 172nd meeting, paragraph 12, and the 176th meeting, paragraph 82.