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SPECIAL COMMITTEE ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES

First Session

SUMMARY RECORD OF THE NINETEENTH MEETING

Held at Mexico City,
on Thursday, 10 September 1964, at 4.20 p.m.

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PRESENT:

Chairman:	Mr. GARCIA ROBLES	(Mexico)
Rapporteur:	Mr. BLIX	Sweden
Members:	Mr. COLOMBO	Argentina
	Sir Kenneth BAILEY	Australia
	U SAN MAUNG	Burma
	Mr. CHARPENTIER	Canada
	Mr. PECHOTA	Czechoslovakia
	Mr. IGNACIO-PINTO	Dahomey
	Mr. MONOD	France
	Mr. DADZIE) Mr. VANDERPUYE)	Ghana
	Mr. HERRERA IBARGÜEN	Guatemala
	Mr. MISHRA	India
	Mr. ARANGIO RUIZ	Italy
	Mr. HATANO	Japan
	Mr. FATTAL	Lebanon
	Mr. RATSIMBAZAFY	Madagascar
	Mr. CASTAÑEDA	Mexico
	Mr. RIPHAGEN	Netherlands
	Mr. ELIAS) Mr. AGORO)	Nigeria
	Mr. BIERZANEK	Poland
	Mr. CRISTESCU	Romania
	Mr. FEDOROV	Union of Soviet Socialist Republics
	Mr. [illegible]	United Arab Republic

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PRESENT (continued):

Members (continued):	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland
	Mr. SCHWEBEL	United States of America
	Mr. ALVARADO	Venezuela
	Mr. VILFAN	Yugoslavia
Secretariat:	Mr. BAGUINIAN	Acting Representative of the Secretary-General
	Mr. WATTLES	Deputy Secretary of the Committee

ORGANIZATION OF WORK (A/AC.119/5) (continued)

The CHAIRMAN, exercising the powers conferred on him by the Special Committee (A/AC.119/SR.15), announced the composition of the Drafting Committee, which would consist of the four permanent members of the Security Council (France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America) and the following ten other members whom the Chairman named with reference to the annex to General Assembly resolution 1192 (XII): four representatives from Asian and African States (Burma, Ghana, Lebanon and Nigeria), two representatives from Eastern European States (Czechoslovakia and Yugoslavia), two representatives from Western European and other States (Australia and, in turn, Italy for the consideration of the four principles and the Netherlands for the consideration of item 6 (II) of the agenda - methods of fact-finding). For the two representatives from Latin American States, he had kept to the unanimous choice of the four States from that region, which was Argentina and Mexico. He had succeeded in overcoming the reluctance of the representative of Lebanon, Mr. Fattal, and had persuaded him to accept the Chairmanship of the Drafting Committee.

It had been envisaged in the first informal talks during the previous week that the Rapporteur of the Special Committee would attend the meetings of the Drafting Committee without right of vote. By its resolution A/AC.119/5, the Special Committee had decided to dispense with voting in the Drafting Committee. Having obtained the approval of the various geographical groups, he announced that the Rapporteur would be able to attend all the meetings of the Drafting Committee as an observer if he thought it expedient to do so.

The Secretariat was putting the final touches to two working documents. A systematic statement of the proposals and amendments submitted in writing to the Special Committee would be distributed on Friday, 11 September at 3 p.m. A systematic summary of the commentaries, statements, proposals and suggestions submitted by representatives to the

(The Chairman)

Special Committee on principle A, along the lines of document A/AC.119/L.1, would probably be issued on Monday, 14 September. While the Drafting Committee was entirely the master of its own time-table, he suggested that it should make every use of the time available to prepare texts on all the items on the agenda in time for the Special Committee to consider them. If it proved necessary, the Secretariat would try to provide simultaneous interpretation to facilitate the Drafting Committee's work.

Mr. FATTAL (Lebanon), Chairman of the Drafting Committee, thanked the members of the Special Committee for the confidence they had shown in his country through him. If he had finally accepted the Chairmanship of the Drafting Committee, at the urging of the Chairman of the Special Committee and despite the modesty he must inevitably feel, it was because he knew himself to be surrounded by a galaxy of jurists and diplomats whom he regarded with respect and admiration. The Special Committee could be confident that the Drafting Committee would do its best to work objectively and amicably and would put the first results of its work before it without delay.

Mr. KHALIL (United Arab Republic) was gratified that the countries of Africa and Asia were represented on the Drafting Committee by four eminent jurists and that the representative of Lebanon had been appointed Chairman of that body. He thanked the Chairman of the Special Committee for all his efforts.

I. CONSIDERATION OF THE FOUR PRINCIPLES REFERRED TO THE SPECIAL COMMITTEE IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 1966 (XVIII) OF 16 DECEMBER 1963, NAMELY:

(b) THE PRINCIPLE THAT STATES SHALL SETTLE THEIR INTERNATIONAL DISPUTES BY PEACEFUL MEANS IN SUCH A MANNER THAT INTERNATIONAL PEACE AND SECURITY AND JUSTICE ARE NOT ENDANGERED (A/AC.119/L.6, L.7 and L.8) (continued)

Mr. SINCLAIR (United Kingdom) welcomed the fact that the delicate question of the composition and terms of reference of the Drafting Committee, which had been the cause of considerable friction in the Special Committee, had finally been satisfactorily resolved, and took the opportunity to pay tribute to the untiring efforts of the

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Chairman. He assured the Chairman of the Drafting Committee, whom he congratulated warmly, of his full co-operation, and said he was sure that in so doing he was speaking for all the delegations represented on that Committee.

He would be brief in introducing his delegation's proposal on principle B (A/AC.119/L.8) since, as he had indicated at the fifth meeting, the commentary which followed the statement of principles brought out its essential elements. That statement was both concise and clear. He would not dispute the charge, which the Yugoslav representative had made at the previous meeting, that the United Kingdom text paraphrased the Charter. It was pointed out in the commentary to principle B that the language of paragraph 1 followed closely that of Article 2 (3), that paragraph 2 was based on Article 33 and that paragraph 3 contained elements from Articles 36 (3) and 95. He considered that the Yugoslav representative's criticism was both irrelevant and misconceived. He reminded the Committee of its mandate, emphasizing that the most significant words of that mandate in relation to the study of principle B were the words "with a view to their more effective application". No representative seriously disputed the Charter principles on peaceful settlement, although certain delegations laid an unwarranted stress, not to be found in the Charter itself, on the method of direct negotiations. It must be admitted that one of the primary weaknesses of modern society was the lack of willingness of States to submit the solution of their disputes to independent third-party scrutiny. Not only did they refuse, as the Japanese representative had pointed out, to accept the compulsory jurisdiction of the International Court of Justice, but they also refused to agree to any form of impartial machinery for the settlement of disputes by a third-party organ, whether or not that machinery obliged the parties in dispute to accept the decision or recommendation of that organ. To solve the question, all Member States should be reminded of the obligations

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which they had undertaken under the Charter and which were set out in the three paragraphs of the United Kingdom proposal. However, it was not enough - and here he was in entire agreement with the Japanese representative - to formulate the principle of peaceful settlement. The Special Committee should also make recommendations to the General Assembly concerning concrete measures which would enhance and fortify the role of law in international affairs.

In that regard, his delegation had been encouraged by the statement of the Nigerian representative, who at the previous meeting had described the efforts being made by regional organizations, and in particular by the Organization of African Unity, to set up a regional system of mediation, conciliation and arbitration. While the Committee should encourage regional efforts, it had even more reason, as he had just said, to formulate concrete recommendations designed to encourage and urge States to make more effective use of third-party machinery for peaceful settlement, including recourse to the International Court of Justice. Accordingly, his delegation considered favourably the Netherlands working paper on methods of fact-finding (A/AC.119/L.9), which would strengthen the existing system.

Turning to the Czechoslovak proposal (A.AC.119/L.6), he had already said that in his opinion that proposal placed undue stress on the method of direct negotiations. Everyone would agree that there were disputes - particularly those in which the facts could not be established - which were stubbornly resistant to the method of direct negotiations. But if the parties could not come to agreement during direct negotiations, it was highly unlikely that they would be able "by common agreement" to decide upon recourse to another peaceful means of settlement. The only effect of such a proposal would be to encourage intransigence and the placing of national interests above international law.

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With regard to the Yugoslav proposal (A/AC.119/L.7), it was clear from what he had already said that his delegation had great difficulty in understanding the significance of the first two paragraphs, which seemed to it to depart very materially, even radically, from the principles of the Charter. He hoped to give more thorough study to the statement which the Yugoslav representative had made at the previous meeting and reserved his right to comment further on the subject at a future meeting. He would also study the suggestion made by the Nigerian representative that the idea contained in the third paragraph of the Yugoslav proposal might be included in a possible formulation of principle B.

In conclusion, he emphasized that it was the Committee's duty not to weaken or distort the principles of peaceful settlement by giving undue importance to the method of direct negotiations.

Mr. RIPHAGEN (Netherlands) considered that, since principle B was a necessary complement to all the other principles, it should logically be studied last. Moreover, there was a close relationship between that principle and the question of methods of fact-finding. Principle A dealt with unilateral measures which States were prohibited from taking in their relations with other States, principle C with a particular aspect of State sovereignty, and principle D with the equality of States in the international community. Those three principles were based on the assumption, and were subject to the condition, that States would settle their international differences by peaceful means in such a manner that international peace and security and justice were not endangered. Principle B was obviously intended to cover the international procedures which should be established and to which States should have recourse and conform in their mutual relations. During the discussion of principle A, his delegation had stated

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that the existence of conflicts of interests among States was inevitable and that States could hardly be denied the means of protecting their legitimate interests through the use of unilateral measures - excluding resort to war - if international procedures for the reconciliation of such divergent interests either did not exist or were not used. Similarly, when the conduct of one State was prejudicial to the legitimate interests of another, the attitude of the injured State in seeking redress could hardly be said to constitute intervention. Lastly, since the sovereignty of each State was unquestionably subject to the supremacy of international law, the use of international procedures for the peaceful settlement of disputes could not be considered as incompatible with the principle of the sovereign equality of States.

It would appear, however, that the principle of peaceful settlement of disputes was not sufficiently applied in practice. Many conflicts were either left unresolved or were resolved by means which were often in contradiction with the other principles on the Committee's agenda. That was not, of course, due to any lack of appropriate international procedures - even though a good deal of progress still had to be made in that regard - but because many States refused to resort to such procedures and in particular to use the wide variety of means available for settling disputes in accordance with the demands of justice.

In the circumstances, the codification and progressive development of principle B would seem to consist both in improving the existing international machinery and in imposing on States a stricter obligation to use it. With regard to the first point, his delegation had submitted to the Committee a working paper on the question of methods of fact-finding (A/AC.119/L.9), which came under the next agenda item. That was a field in which international procedures could very usefully be improved with a view to facilitating the amicable settlement of disputes

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and preventing a dispute from degenerating into a general conflict. For it was always necessary, and often sufficient, to ascertain the facts impartially for the parties to reach agreement.

However, the existence of international machinery for the peaceful settlement of disputes was one thing and the obligation of States to use it quite another. In that regard, he wondered whether the Committee ought to be content merely to reproduce the very general provisions of the United Nations Charter, and in particular to confine itself to enumerating the possible ways of settling disputes. Obviously there were many categories of disputes and it was difficult to determine which method of settlement was the most appropriate to each category. Moreover, the principles and basic rules applicable to the settlement of a conflict of interests between States were not always clear or indisputable. There was, however, at least one category of disputes with respect to which it should not be difficult to recognize that a State was required to use one particular method of settlement; those were disputes relating to the interpretation and application of general multilateral conventions adopted within the framework or under the auspices of the United Nations. Such conventions contained carefully drafted rules of international law which had been drawn up with the participation of all States Members of the United Nations and which took account of the interests and views of all. Where a State voluntarily subscribed to those rules and accepted the rights and obligations deriving therefrom by becoming a party to a convention, would it not be natural for it also to undertake to use a procedure of impartial settlement in the event of a dispute between it and another State party to that convention over the extent of its rights and obligations? If the Committee wished to formulate the principle of peaceful settlement of disputes more precisely, it should, in that case at least, provide for compulsory recourse to such a procedure. That was a well-defined category of disputes and the recognition in principle that such disputes should be referred to the International Court of Justice would represent a definite albeit relatively small step forward.

Mr. CRISTESCU (Romania) said that his delegation attached the greatest possible importance to the peaceful settlement of disputes, because on it depended the maintenance of international peace and security and peaceful coexistence between States with different political and social systems. The principle of peaceful settlement of disputes derived directly from the obligation which States had assumed not to resort to the threat or use of force in their international relations. In former times, the rights of States had not been accompanied by guarantees. Resort to force had been the ultima ratio and war had been considered as a legally acceptable means of settling disputes between States and a prerogative of the absolute sovereignty of those States. Since the end of the 19th century, however, attempts had been made to restrict the right to resort to war. In that respect, reference should be made to the various treaties on compulsory arbitration and on judicial settlement, the Calvo and Drago doctrines, the conciliation commissions set up by the Bryan treaties and the "moratorium on war" provided for in the Covenant of the League of Nations.

At the same time, the 1899 and 1907 Hague Conventions and the Covenant of the League of Nations had laid down the principle of peaceful settlement of international disputes, but since resort to war had not been formally prohibited the principle had expressed a wish rather than a peremptory norm. It was the United Nations Charter which, by prohibiting the use of force and proclaiming the principle of the sovereign equality of States, had given full effect to the principle of peaceful settlement of disputes as laid down in Article 2 (3) and Article 33 of that instrument.

Since the adoption of the Charter, new aspects of that principle had come to light which it was the Committee's duty to study. Romania, for its part, considered that negotiation was the first and the best means of settling international disputes. If the need for peaceful coexistence and the fact that world war could not be the way to settle international problems were acknowledged, negotiation became the only possible

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method of settling such problems, as Mr. Gheorghiu-Dej, the President of the Council of Romania, had said on the occasion of the Romanian national holiday on 23 August 1964. He had added that in politics, in the present-day world, there were no better advisers than calm, wisdom and a sense of responsibility.

Admittedly, the path of negotiation was not an easy one. States which embarked upon it must show initiative, patience, perserverance and realism and be capable of accepting reasonable compromises. However, negotiation had permitted the solution of serious and delicate international problems and was best suited to the nature of present-day international relations, i.e., to relations between States sovereign and equal before the law. Compared to other methods of settlement, diplomatic negotiation had the advantage of being simple and expeditious. It enabled States not only to find a solution to their disputes through mutual agreement, but also to establish rules which would govern their legal relations in the future. That was how international law, whose rules were the expression of agreements between States, had been gradually built up over the centuries, particularly by means of multilateral and bilateral treaties. The practice of international negotiation had shown that for that method of settlement to give good results, the parties must show goodwill and respect the universally accepted principles of international law. Today the practice of negotiation was increasing so rapidly, and the link between negotiation and the principles of international law had become so close, that an explicit statement was required that that method was the chief method of settling international disputes. Moreover, negotiation was the first method to be mentioned by the authors of the Charter in Article 33 of that instrument.

International law gave sovereign States equal before the law the right to choose, by mutual agreement, the method of settlement they considered most appropriate to the nature and particular circumstances of disputes between them. Practice showed that at the present time States made more frequent use of direct diplomatic negotiations than of

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legal settlement, even when their most vital interests were involved, and it was fair to say that such direct negotiations had made it possible to avoid world war and to remove a whole series of centres of conflict.

In its statement of the principle of peaceful settlement of disputes, the Committee should lay down the obligation for States to settle their international disputes by peaceful means only, and more specifically by negotiation, in respect for each other's sovereignty, independence and equality, in such a manner that international peace and security and justice were not endangered. It should leave parties to a dispute the choice of the most appropriate peaceful means. Lastly, it should make it an obligation for States to refrain from any action liable to aggravate the situation. Those ideas were expressed in part in the proposals submitted by Czechoslovakia (A/AC.119/L.6) and Yugoslavia (A/AC.119/L.7).

On the other hand, the United Kingdom proposal (A/AC.119/L.8) did not give negotiation the place it deserved. While it recognized, in its commentary on principle B, that negotiation was the means most commonly used, the United Kingdom delegation sought to restrict the use of that means to the initial stages of the settlement procedure and to reduce the scope of its effectiveness. At the expense of negotiation it urged the compulsory jurisdiction of the International Court of Justice, which, however, ran counter to the sovereignty and independence of States and their right to choose freely the means of settlement most appropriate to the nature and circumstances of disputes to which they were parties. Moreover, at the San Francisco Conference the compulsory jurisdiction of the Court had been rejected by 31 votes to 14, and was ruled out by Article 36 (1) of the Statute of the Court. Very few States had accepted the compulsory jurisdiction of the International Court, as they could under Article 36 (2) of that Statute, and some of those States had attached very far-reaching reservations to their acceptances. Recently, some of those reservations had been

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amended and extended. Lastly, the compulsory jurisdiction of the International Court of Justice had been rejected by the 1961 and 1963 Vienna Conferences on diplomatic and consular relations and immunities, and by the United Nations General Assembly at its seventeenth session.

His country recognized the optional competence of the International Court of Justice but considered that its compulsory jurisdiction would be an inadmissible infringement of the sovereignty of States. Because of its general approach, the United Kingdom proposal could not serve as the basis for a formulation of principle B adapted to the realities of the present-day world.

Mr. COLOMBO (Argentina) said that to think that peace was the result of a balance of forces between the great Powers was to show a profound contempt for mankind and the destiny of peoples. For that reason, his country had always done its utmost to help to draw up, and to strengthen from the legal standpoint, the principles aimed at the peaceful settlement of disputes. It was firmly convinced that all international controversies could be settled in that way.

Whereas, before the founding of the League of Nations, every country had had to ensure its own security, the establishment of that body had marked the beginning of an era of international solidarity, whereby nations were jointly to assume the natural duty to preserve the peace. Argentina had emphasized at the time that while universality was the sine qua non of international co-operation on common bases and of the very existence of the Assembly of the League, the equality of the nations participating in the League was essential to its functioning on the basis of respect for their independence, which none could surrender without shirking the role it was to play in the destiny of mankind.

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Those principles should underlie all efforts to organize the international community. Their corollary was the need to ensure and maintain peace through the peaceful settlement of disputes. Those purposes had later been recognized by the Charter, both in its Preamble and in Article 1 (1), as well as in Article 2 (3), which stipulated that "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

The logical inference from that provision was that the Charter obligation concerning the peaceful settlement of international disputes related only to those disputes which were likely to endanger international peace and security, and which must be settled in accordance with the principles of justice and international law. A second inference was that the Charter was concerned only with disputes of an international character which Rousseau had defined as a disagreement on points of fact or law, a contradiction or a difference in juridical doctrine between States. But international disputes could also exist between other subjects of international law, such as international organizations. Clearly, however, the Charter was concerned only with conflicts between States because those were the only ones likely to endanger peace.

Moreover, Article 33 (1) stated that "the parties to any disputes, the continuance of which is likely to endanger the maintenance of international peace and security, shall ... seek a solution ...". It followed from those provisions that the Members of the United Nations were bound to use the methods of settlement specified in the Charter only if the disputes to which they were parties endangered international peace and

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security. If such a danger did not exist, the parties might refrain from even trying to settle their dispute. If they did try to settle it, however, they should do so by peaceful means, the only means which the Charter recognized as lawful.

The distinguished jurist Mr. Jiménez de Aréchaga considered that the principle embodied in Article 2 (3) had not been drafted with precision because it imposed on States Members of the United Nations not the obligation to settle their disputes by peaceful means but the obligation not to settle them by other than peaceful means. That was more a negative than a positive obligation. Because of the negative nature of that obligation, two States parties to a dispute which did not endanger peace could maintain the status quo without thereby violating the principles of the Charter. As Mr. Verdross had pointed out, it could therefore be thought that the provisions of Article 2 (3) contradicted the terms of Article 33 (1) of the Charter. That was not the case, however. Article 2 (3) of the Charter reproduced the substance of article 2 of the Pact of Paris, according to which the settlement or solution of all disputes should never be sought except by pacific means and the use of non-pacific means, such as war and armed reprisals, was prohibited unconditionally.

In his view, the United Nations was less concerned that disputes should be settled than to ensure that international peace and security were not endangered. Logically, therefore, the greater the danger to peace the greater the obligation to settle disputes.

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Furthermore, Article 1 (1) of the Charter stated that such settlement must be brought about "in conformity with the principles of justice and international law", whil Article 2 (3) laid down that it must be carried out in such a manner that international peace and security, "and justice", were not endangered. The words "and justice" had not appeared in the corresponding provisions of the Dumbarton Oaks draft. At the San Francisco Conference, despite the objections of certain representatives, the word "justice" had been inserted in Article 1 (1). That had also been the case with Article 2 (3), Committee I having considered, having regard to certain earlier inequitab settlements, that it was not sufficient to ensure that peace and security were not threatened: justice, too, must not be endangered.

Examination of the relationship of Article 2 (3) to the rest of the Chapter in whic it appeared rather than of its actual language made it clear that the paragraph could determine new conditions for United Nations intervention in the settlement of disputes.

With regard to the means of settlement of disputes, he observed that the procedures enumerated in Article 33 (1), namely, negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement, were procedures which had been incorporated into international law by what was already fairly long-standing practice.

The Hague Convention of 1889 had spoken of good offices, mediation, inquiry and arbitration and the first Bryan treaties on conciliation went back as far as 1913. It could therefore be considered that those were traditional procedures for the settlement of disputes between States.

Those procedures occupied an important place in the system of peaceful settlement of disputes analysed by the Committee. The Dumbarton Oaks draft had listed a certain number of them. To that list the San Francisco Conference had expressly added inquiry but had omitted good offices, which had not been distinguished from mediation. There was, however, an important difference between those two methods of settlement,

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from both the practical and technical viewpoints. Oppenheim considered mediation to be the active and official participation by a third State which intervened in negotiations between States parties to a dispute, formulated proposals and suggested the solution to be adopted, whereas in the case of good offices the third State confined its action to promoting negotiations between the parties with a view to their settling their disputes themselves.

Nor was there any mention of legal consultation. Those omissions were unimportant, since the list in Article 33 was not exhaustive and the parties could use the methods suggested but also others of their own choosing. The intention of the authors of the Charter had undoubtedly been to give a varied list of methods which would enable the States to choose the one most appropriate to the type of dispute between them. The purpose of that Article was not to jeopardize any possibility of settlement owing to a lack of appropriate methods. In his view, the proposals before the Committee (A/AC.119/L.6, L.7 and L.8) had duly taken the diversity of those methods into account.

So far as their utilization was concerned, he felt that it would be wrong to establish as a principle that one or other of those methods should be preferred by States. It was not always easy to determine whether or not a controversy was a legal one, so that the application of a very flexible criterion in the matter was the most useful starting point in the search for a valid solution. He noted in that connexion that the wording proposed by Czechoslovakia (A/AC.119/L.6) and by Yugoslavia (A/AC.119/L.7) left a wider margin of discretion that should permit the adoption of the best possible solution.

The rules approved at San Francisco had been recognized by the Organization of American States, article 5 of whose Charter stated that controversies of an international character arising between two or more American States should be settled

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by peaceful procedures. And article 20, in conformity with Article 52 of the United Nations Charter, stipulated that all international disputes that might arise between American States shall be submitted to the peaceful procedures set forth in the OAS Charter, before being referred to the Security Council. Those procedures were: direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement, arbitration, and those which the parties to the dispute might agree upon (article 21).

The rules corresponding to each of those procedures had been formulated in a special treaty, the Pact of Bogota. That treaty could be adapted to the needs of the moment, as was the General Act for the Pacific Settlement of International Disputes of 1928 and its revised form of 1949. He wished to stress the necessity for the adaptation to the juridical needs of the moment of the conventions in force in the field the Committee was considering.

Argentina was traditionally devoted to the principle of peaceful settlement of disputes and its position was clear and constructive. The views it held in the Special Committee were the same views as it had held in the League of Nations. It was essential to establish juridical structures which would preserve the peace and would be regulated by ethical rules so lofty that they must inevitably help to bring about the triumph of justice.

The meeting rose at 5.55 p.m.